

as a factor in determining such update in subsequent years.

S. CON. RES. 66

At the request of Mr. STEVENS, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. Con. Res. 66, a concurrent resolution to express the sense of the Congress that the Public Safety Officer Medal of Valor should be awarded to public safety officers killed in the line of duty in the aftermath of the terrorist attacks of September 11, 2001.

AMENDMENT NO. 2157

At the request of Mr. MCCAIN, the names of the Senator from South Carolina (Mr. THURMOND), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Alabama (Mr. SHELBY), the Senator from Massachusetts (Mr. KERRY), the Senator from Nebraska (Mr. HAGEL), the Senator from Nevada (Mr. REID), the Senator from Indiana (Mr. LUGAR), the Senator from Indiana (Mr. BAYH), the Senator from Virginia (Mr. WARNER), the Senator from Maine (Ms. COLLINS), the Senator from Utah (Mr. HATCH), the Senator from North Carolina (Mr. HELMS), the Senator from Virginia (Mr. ALLEN), the Senator from Illinois (Mr. FITZGERALD), the Senator from Alaska (Mr. STEVENS), the Senator from Kansas (Mr. ROBERTS), the Senator from Nevada (Mr. ENSIGN), the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. MILLER), and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of amendment No. 2157 intended to be proposed to H.R. 3090, a bill to provide tax incentives for economic recovery.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL:

S. 1742. A bill to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President I rise today to introduce legislation that will help victims of identity theft recover from the injuries to their good name and good credit, the Reclaim Your Identity Act of 2001. Earlier this year, Washington State enacted a law to provide needed help to victims of identity theft that I believe serves as a good model for federal legislation. It gives victims of identity theft the tools they need to restore their good credit rating, requires businesses to make available records relevant to a victim's ability to restore his or her credit, and enables a victim to have fraudulent charges blocked from reporting in their consumer credit report. Currently, Federal law addresses the crime of identity theft, providing penalties for the perpetrator, but no specific assistance to the victim trying to recover

their identity. Today I am introducing legislation modeled on the state of Washington law that will do just that, help the victim restore their credit rating and their good name.

We need to do more to fight identity theft, a crime the Federal Trade Commission has described as the Nation's fastest growing. Last year there were over 500,000 new victims of identity theft and, according to the Department of Treasury, reports of identity theft to perpetrate fraud against financial institutions grew by 50 percent from 1999 to 2000. From March 2001 to June 2001, the number of ID theft victims contacting the FTC jumped from 45,500 to 69,400—a 50 percent increase in just three months. One in five Americans or a member of their families has been a victim of identity theft. Those numbers underscore why I am introducing this legislation today. The problem is particularly apparent in my State of Washington, which ranks in the top 10 for identity theft per capita.

Identity theft is not a violent crime, but its victims suffer real harm and need help to recover their good credit and good name. On average, it takes 12 months for a victim to learn that he or she has been a victim of identity theft. It takes another 175 hours and \$808 of out-of-pocket expenses to clear their names. Today, victims of identity theft are forced to become their own sleuths to clear their names, and all too often they do so without the help or support of the businesses that allowed the identity theft to take place. Believe it or not, when your identity is stolen, many businesses won't give you the records you need to reclaim your identity. My bill puts people first by requiring businesses to cooperate with victims.

We already require this in Washington State, thanks to the hard work of Attorney General Chris Gregoire and others. Now we need to take this good idea to the national level and make it work on behalf of many others. When your TV is stolen, you know it was taken from your living room. But when your identity is stolen, it could be stolen from anywhere, and businesses from every State could be involved. That's why we need a Federal solution to this problem.

The Reclaim Your Identity Act empowers consumers by establishing a transparent process victims can use to reclaim their identity. Under this bill, a victim of identity theft will have the right to request records related to a fraud based on an identity theft from businesses after proving their identity with a copy of the police report or the Federal Trade Commission standardized Identity Theft Affidavit or any other affidavit of fact of the business' choosing. The business must then provide, at no charge, copies of those business records to the victim or a law enforcement agency or officer designated by the victim within 10 days of the vic-

tim's request. This will make sure that the victims, or law enforcement investigating an identity theft on behalf of a victim, will be able to obtain the credit applications and other records of the fraud. As a protective measure, the bill gives businesses the option to decline to disclose records where it believes the request is based on a misrepresentation of facts. Further, a business is exempt from liability for any disclosure undertaken in good faith to further a prosecution of identity theft or assist the victim.

In addition, this bill reinstates consumers' right to sue credit-reporting agencies that allow identity theft to harm their good name. On November 12, the Supreme Court ruled that a California woman couldn't sue a credit reporting agency because she filed her claim more than two years after her identity had been stolen and that the two-year statute of limitations ran from the time of the crime. The woman didn't even know her identity had been stolen until two years after the crime had been committed. In the wake of the court decision, Congress must revise the statute of limitations so that common sense prevails and that the clock doesn't begin ticking until victims know that they have been harmed.

The Reclaim Your Identity Act also amends the Internet False Identification Prevention Act to expand the jurisdiction and membership of the coordinating committee currently studying enforcement of Federal identity theft law to examine State and local enforcement problems and identify ways the federal government can assist state and local law enforcement in addressing identity theft and related crimes. In the wake of the September 11 attacks we are painfully aware that identity theft can threaten more than our pocket books. This legislation also requires the Federal coordinating committee to look at how the Federal Government can improve the sharing of information on terrorists and terrorist activity as it relates to identity theft. Further, by giving consumers and law enforcement additional tools to fight identity theft, this bill will make it harder for terrorists to steal identities to hide their true identity.

Importantly, this bill also requires credit-reporting agencies to protect a consumers' good name from bad credit generated by fraud. The Reclaim Your Identity Act amends the Fair Credit Reporting Act to require consumer credit reporting agencies to block information that appears on a victim's credit report as a result of identity theft provided the victim did not knowingly obtain goods, services or money as a result of the blocked transaction.

Businesses too are victims of the fraud perpetrated in conjunction with identity theft. This legislation also

provides businesses with new tools to pursue identity thieves by amending Title 18 to make identity theft under State law a predicate for federal RICO violation. This will allow individuals and businesses pursuing a perpetrator of identity theft to seek treble damages and help prosecutors recover stolen assets for businesses victimized by identity theft.

The Reclaim Your Identity Act also gives States additional legal tools by providing that State Attorneys General may bring a suit in Federal court on behalf of State citizens for violation of the Act.

Identity theft and the fraud that can result is on the rise. We have the laws to discourage identity theft, but it is difficult behavior to attack. We have to give the tools to the victims to regain control of their financial life. The Consumers Union, Identity Theft Resource Center, and Privacy Rights Clearinghouse all support this legislation. The Reclaim Your Identity Act of 2001 will help victims of identity theft recover their identity and restore their good credit. I look forward to working with my colleagues to promptly enact this bill into law.

By Mr. HOLLINGS (for himself, Mrs. BOXER, and Mr. WYDEN):

S. 1743. A bill to create a temporary reinsurance mechanism to enhance the availability of terrorism insurance; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, in light of the need to provide additional capacity and reinsurance to the insurance industry for terrorism risks without burdening the taxpayer, balanced with the need to protect consumers from excessive increased in commercial insurance rates, I rise today to introduce the National Terrorism Reinsurance Fund Act.

This legislation will create a fund from assessments on the commercial insurance industry as a whole to for the purpose of providing a temporary backstop for terrorism losses for primary insurance companies doing business in the U.S. The Fund and assessment mechanisms would provide the first \$50 billion of protection for the insurance industry. In addition to this fund, the bill provides a program to provide direct Federal aid on a temporary basis for losses over \$50 billion, in order to increase insurance market capacity and ensure the availability of reinsurance in relation to acts of terrorism. The overall program is to last for 3 years only and is to be administered by the Secretary of Commerce.

All terrorism-related events causing losses beyond \$50 billion will be governed by a direct Federal grant program. Once a company has incurred losses of more than 10 percent of its premiums from the previous year, it can apply for assistance from the Fund

and the Federal Government. For the first year, the government will cover up to 90 percent of a company's losses. For the second and third years, the government will cover up to 80 percent of that company's losses. This aid will be applicable up to losses of \$100 billion. For events causing losses beyond this amount, the Secretary is required to seek guidance from Congress. Additionally, provisions have been included to ensure the industry shoulders the appropriate financial responsibility and to prevent unreasonable increases in insurance rates.

Simply put the legislation accomplishes the following goals: 1. it provides insurance companies the assistance they need to continue writing terrorism coverage; 2. it ensures the availability of insurance coverage for American businesses and consumers; 3. it avoids an unnecessary and potentially massive bailout of an insurance industry by forcing them to use their own resources to ensure the availability of terrorism reinsurance while setting direct Federal aid at levels sufficient to account for the industry's current positive capitalization; and 4. it strikes the right balance regarding the interests of industry, taxpayers and the consumers of insurance and the marketplace in general.

I look forward to working with other Senators to obtain swift passage of this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1743

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the "National Terrorism Reinsurance Fund Act".

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. National terrorism reinsurance program.
- Sec. 5. Fund operations.
- Sec. 6. Coverage provided.
- Sec. 7. Secretary to determine if loss is attributable to terrorism.
- Sec. 8. Mandatory coverage by property and casualty insurers for acts of terrorism.
- Sec. 9. Pass-throughs and other rate increases.
- Sec. 10. Credit for reinsurance.
- Sec. 11. Administrative provisions.
- Sec. 12. Inapplicability of certain laws.
- Sec. 13. Sunset provision.
- Sec. 14. Definitions.

**SEC. 2. FINDINGS.**

The Congress finds the following:

- (1) The terrorist attacks on the World Trade Center and Pentagon on September 11, 2001, have inflicted possibly the largest loss ever incurred by insurers and reinsurers.

- (2) The magnitude of the loss, and its impact on the current capacity of the reinsurance market, threaten the ability of the property and casualty insurance market to provide coverage to building owners, businesses, and American citizens.

- (3) It is necessary to create a temporary reinsurance mechanism to augment the capacity of private insurers to provide insurance for terrorism related risks.

**SEC. 3. PURPOSE.**

The purpose of this Act is to facilitate the coverage by property and casualty insurers of the peril for losses due to acts of terrorism by providing additional reinsurance capacity for loss or damage due to acts of terrorism occurring within the United States, its territories, and possessions.

**SEC. 4. NATIONAL TERRORISM REINSURANCE PROGRAM.**

(a) **IN GENERAL.**—The Secretary of Commerce shall establish and administer a program to provide reinsurance to participating insurers for losses due to acts of terrorism.

(b) **ADVISORY COMMITTEE; MEMBERSHIP.**—There is established an advisory committee to provide advice and counsel to the Secretary in carrying out the program of reinsurance established by the Secretary. The advisory committee shall consist of 10 members, as follows:

- (1) 3 representatives of the property and casualty insurance industry, appointed by the Secretary.

- (2) A representative of property and casualty insurance agents, appointed by the Secretary.

- (3) A representative of consumers of property-casualty insurance, appointed by the Secretary.

- (4) A representative of a recognized national credit rating agency, appointed by the Secretary.

- (5) A representative of the banking or real estate industry, appointed by the Secretary.

- (6) 2 representatives of the National Association of Insurance Commissioners, designated by that organization.

- (7) A representative of the Department of the Treasury, designated by the Secretary of the Treasury.

(c) **NATIONAL TERRORISM REINSURANCE FUND.**—

- (1) **ESTABLISHMENT.**—To carry out the reinsurance program, the Secretary shall establish a National Terrorism Reinsurance Fund which shall be available, without fiscal year limitations—

- (A) to make such payments as may, from time to time, be required under reinsurance contracts under this Act;

- (B) to pay such administrative expenses as may be necessary or appropriate to carry out the purposes of this Act, but such expenses may not exceed \$5,000,000 for each of fiscal years 2002, 2003, and 2004; and

- (C) to repay to the Secretary of the Treasury such sums, including interest thereon, as may be borrowed from the Treasury for purposes of this Act.

- (2) **CREDITS TO FUND.**—The Fund shall be credited with—

- (A) reinsurance premiums, fees, and other charges which may be paid or collected in connection with reinsurance provided under this Act;

- (B) interest which may be earned on investments of the Fund;

- (C) receipts from any other source which may, from time to time, be credited to the Fund; and

- (D) Funds borrowed by the Secretary from the Treasury.

(3) INVESTMENT IN OBLIGATIONS ISSUED OR GUARANTEED BY UNITED STATES.—If the Secretary determines that the moneys of the Fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(4) LOANS TO FUND.—The Secretary of the Treasury shall grant loans to the Fund in the manner and to the extent provided in this Act.

(d) UNDERWRITING STANDARDS.—In order to carry out the responsibilities of the Secretary under this Act and protect the Fund, the Secretary shall establish minimum underwriting standards for participating insurers.

(e) MONITORING OF TERRORISM INSURANCE RATES.—

(1) SECRETARY TO ESTABLISH SPECIAL COMMITTEE ON RATES.—The Secretary shall establish a special committee on rates, the size and membership of which shall be determined by the Secretary, except that the committee shall, at a minimum, include—

(A) representatives of providers of insurance for losses due to acts of terrorism;

(B) representatives of purchasers of such insurance;

(C) at least 2 representatives of NAIC; and

(D) at least 2 independent insurance actuaries.

(2) DUTIES.—The special committee on rates shall meet at the call of the Secretary and shall—

(A) review reports filed with the Secretary by State insurance regulatory authorities;

(B) collect data on rate disclosure practices of participating insurers for insurance for covered lines and for losses due to acts of terrorism; and

(C) provide such advice and counsel to the Secretary as the Secretary may require.

#### SEC. 5. FUND OPERATIONS.

(a) FUNDING BY PREMIUM.—

(1) IN GENERAL.—For the year beginning January 1, 2002, and each subsequent year of operation, participating insurers shall pay into the Fund an annual reinsurance contract premium of not less than 3 percent of their respective gross direct written premiums for covered lines for the calendar year. The annual premium shall be paid in installments at the end of each calendar quarter. The reinsurance contract premium and any annual assessment may be recovered by a participating insurer from its covered lines policyholders as a direct surcharge calculated as a uniform percentage of premium.

(2) ADDITIONAL CREDIT RISK PREMIUM.—If the Secretary determines that a participating insurer has a credit rating that is lower than the second from highest credit rating awarded by nationally recognized credit rating agencies, the Secretary may charge an additional credit risk premium, of up to 0.5 percent of gross direct written premiums for covered lines received by that insurer, to compensate the Fund for credit risk associated with providing reinsurance to that insurer.

(b) INITIAL CAPITAL.—

(1) LOAN.—The Fund shall have an initial capital of \$2,000,000,000, which the Secretary shall borrow from the Treasury of the United States. Upon application by the Secretary, the Secretary of the Treasury shall transfer that amount to the Fund, out of amounts in the Treasury not otherwise appropriated, at standard market rates.

(2) REPAYMENT OF START-UP LOAN.—The Secretary shall use premiums received from assessments in calendar year 2002 to repay

the loan provided to the Fund under paragraph (1).

(c) SHORTFALL LOANS.—

(1) IN GENERAL.—If the Secretary determines that the balance in the accounts of the Fund is insufficient to cover anticipated claims, administrative expenses, and maintain adequate reserves for any other reason, after taking into account premiums assessed under subsection (a) and any other amounts receivable, the Secretary shall borrow from the Treasury an amount sufficient to satisfy the obligations of the Fund and to maintain a positive balance of \$2,000,000,000 in the accounts of the Fund. Upon application by the Secretary, the Secretary of the Treasury shall transfer to the Fund, out of amounts in the Treasury not otherwise appropriated, the requested amount as an interest-bearing loan.

(2) INTEREST RATE.—The rate of interest on any loan made to the Fund under paragraph (1) shall be established by the Secretary of the Treasury and based on the weighted average credit rating of the Fund before the loss that made the loan necessary.

(3) \$50 BILLION LOAN LIMIT.—Notwithstanding any other provision of this Act, the total amount of loans outstanding at any time from the Treasury to the Fund may not exceed the amount by which \$50,000,000,000 exceeds the Fund's assets.

(4) REPAYMENT OF LOANS BY ASSESSMENT.—Any loan under paragraph (1) shall be repaid from reserves of the Fund, assessments of participating insurers, or a combination thereof. If an assessment is necessary, the maximum annual assessment under this subsection shall be not more than 3 percent of the direct written premium for covered lines. The reinsurance contract premium and any annual assessment may be recovered by a participating insurer from its covered lines policyholders as a direct surcharge calculated as a uniform percentage of premium.

#### SEC. 6. COVERAGE PROVIDED.

(a) IN GENERAL.—The Fund shall provide reinsurance for losses resulting from acts of terrorism covered by reinsurance contracts entered into between the Fund and participating insurers that write covered lines of insurance within the meaning of section 14(5)(A) or that have elected, under section 14(5)(C), to voluntarily include another line of insurance.

(b) RETENTION.—The Fund shall reimburse participating insurers for losses resulting from acts of terrorism on direct losses in any calendar year in excess of 10 percent of a participating insurer's average gross direct written premiums and policyholders' surplus for covered lines for the most recently ended calendar year for which data are available, based on each participating insurer's annual statement for that calendar year as reported to NAIC.

(c) REIMBURSEMENT AMOUNT.—If a participating insurer demonstrates to the satisfaction of the Secretary that it has paid claims for losses resulting from acts of terrorism equal to or in excess of the amount of retention required by subsection (b), then the Fund shall reimburse the participating insurer for—

(1) 90 percent of its covered losses in calendar year 2002; and

(2) a percentage of its covered losses in calendar years beginning after calendar year 2002 equal to—

(A) 90 percent if the insurer pays an assessment equal to 4 percent of the insurer's average gross direct written premiums and policyholders' surplus for the most recently ended calendar year;

(B) 80 percent if the insurer pays an assessment equal to 3 percent of the insurer's average gross direct written premiums and policyholders' surplus for the most recently ended calendar year; and

(C) 70 percent if the insurer pays an assessment equal to 2 percent of the insurer's average gross direct written premiums and policyholders' surplus for the most recently ended calendar year.

(d) \$50,000,000,000 LIMIT.—Except as provided in subsection (e), the Fund may not reimburse participating insurers for covered losses in excess of a total Fund reimbursement amount for all participating insurers of \$50,000,000,000.

(e) LOSSES EXCEEDING \$50,000,000,000 LIMIT.—If the Secretary determines that reimbursable losses in a calendar year from an event exceed \$50,000,000,000, the Secretary—

(1) shall pay, out of amounts in the Treasury not otherwise appropriated—

(A) 90 percent of the covered losses occurring in calendar year 2002 in excess, in the aggregate, of \$50,000,000,000 but not in excess of \$100,000,000; and

(B) 80 percent of the covered losses occurring in calendar year 2003 or 2004 in excess, in the aggregate, of \$50,000,000,000 but not in excess of \$100,000,000; and

(2) shall notify the Congress of that determination and transmit to the Congress recommendations for responding to the insufficiency of available amounts to cover reimbursable losses.

(f) REPORTS TO STATE REGULATOR; CERTIFICATION.—

(1) REPORTING TERRORISM COVERAGE.—A participating insurer shall—

(A) report the amount of its terrorism insurance coverage to the insurance regulatory authority for each State in which it does business; and

(B) obtain a certification from the State that it is not providing terrorism insurance coverage in excess of its capacity under State solvency requirements.

(2) REPORTS TO SECRETARY.—The State regulator shall furnish a copy of the certification received under paragraph (1) to the Secretary.

#### SEC. 7. SECRETARY TO DETERMINE IF LOSS IS ATTRIBUTABLE TO TERRORISM.

(a) INITIAL DETERMINATION.—If a participating insurer files a claim for reimbursement from the Fund, the Secretary shall make an initial determination as to whether the losses or expected losses were caused by an act of terrorism.

(b) NOTICE AND HEARING.—The Secretary shall give public notice of the initial determination and afford all interested parties an opportunity to be heard on the question of whether the losses or expected losses were caused by an act of terrorism.

(c) FINAL DETERMINATION.—Within 30 days after the Secretary's initial determination, the Secretary shall make a final determination as to whether the losses or expected losses were caused by an act of terrorism.

(d) STANDARD OF REVIEW.—The Secretary's determination shall be upheld upon judicial review if based upon substantial evidence.

#### SEC. 8. MANDATORY COVERAGE BY PROPERTY AND CASUALTY INSURERS FOR ACTS OF TERRORISM.

(a) IN GENERAL.—An insurer that provides lines of coverage described in section 14(5)(A) or 14(5)(B) may not—

(1) exclude or limit coverage in those lines for losses from acts of terrorism in the United States, its territories, and possessions in property and casualty insurance policy forms; or

(2) deny or cancel coverage solely due to the risk of losses from acts of terrorism in the United States.

(b) **TERMS AND CONDITIONS.**—Insurance against losses from acts of terrorism in the United States shall be covered with the same deductibles, limits, terms, and conditions as the standard provisions of the policy for non-catastrophic perils.

**SEC. 9. PASS-THROUGHS AND OTHER RATE INCREASES.**

(a) **LIMITATION ON RATE INCREASES FOR COVERED RISKS.**—Except as provided in subsection (b), a participating insurer that provides lines of coverage described in section 14(5)(A) or 14(5)(B) may not increase annual rates on covered risks during any period in which the insurer participates in the Fund by a percent in excess of the sum of—

(1) the percent used to determine the insurer's assessment under section 5(a)(1); and

(2) if there is an assessment against the insurer under section 5(c)(4), a percent equivalent to the percent assessment of the insurer's gross direct written premium for covered lines.

(b) **TERRORISM-RELATED INCREASES IN EXCESS OF PASS-THROUGHS.**—

(1) **REPORTS BY INSURERS.**—Not less than 30 days before the date on which a participating insurer increases the premium rate for insurance on any covered line of insurance described in section 14(5) based, in whole or in part, on risk associated with insurance against losses due to acts of terrorism, the insurer shall file a report with the State insurance regulatory authority for the State in which the premium increase is effective that—

(A) explains the need for the increased premium; and

(B) identifies the portion of the increase properly attributable to risk associated with insurance offered by that insurer against losses due to acts of terrorism; and

(C) demonstrates, by substantial evidence, why that portion of the increase is warranted.

(2) **REPORTS BY STATE REGULATORS.**—Within 15 days after a State insurance regulatory authority receives a report from an insurer required by paragraph (1), the authority—

(A) shall transmit a copy of the report to the Secretary;

(B) may include a determination with respect to whether an insurer has met the requirement of paragraph (1)(C); and

(C) may include with the report any commentary or analysis it deems appropriate.

**SEC. 10. CREDIT FOR REINSURANCE.**

Each State shall afford an insurer obtaining reinsurance from the Fund credit for such reinsurance on the same basis and to the same extent that credit for reinsurance would be available to that insurer under applicable State law when reinsurance is obtained from an assuming insurer licensed or accredited in that State.

**SEC. 11. ADMINISTRATIVE PROVISIONS; REPORTS AND ANALYSIS.**

(a) **IN GENERAL.**—In carrying out this Act, the Secretary may—

(1) issue such rules and regulations as may be necessary to administer this Act;

(2) enter into reinsurance contracts, adjust and pay claims as provided in this Act, and carry out the activities necessary to implement this Act;

(3) set forth the coverage provided by the Fund to accomplish the purposes of this Act;

(4) provide for an audit of the books and records of the Fund by the General Accounting Office;

(5) take appropriate action to collect premiums or assessments under this Act; and

(6) audit the reports, claims, books, and records of participating insurers.

(b) **REPORTS FROM INSURERS.**—Participating insurers shall submit reports on a quarterly or other basis (as required by the Secretary) to the Secretary, the Federal Trade Commission, and the General Accounting Office setting forth rates, premiums, risk analysis, coverage, reserves, claims made for reimbursement from the Fund, and such additional financial and actuarial information as the Secretary may require regarding lines of coverage described in section 14(5)(A) or 14(5)(B).

(c) **FTC ANALYSIS AND ENFORCEMENT.**—The Federal Trade Commission shall review the reports submitted under subsection (b), treating the information contained in the reports as privileged and confidential, for the purpose of determining whether any insurer is engaged in unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).

(d) **GAO REVIEW.**—The Comptroller General shall provide for review and analysis of the reports submitted under subsection (b), and, if necessary, provide of audit of reimbursement claims filed by insurers with the Fund.

(e) **REPORTS BY SECRETARY.**—No later than March 31st of each calendar year, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Technology and the House of Representatives Committee on Commerce an annual report on insurance rate increases for the preceding calendar year in the United States based upon the reports received by the Secretary under this Act. The Secretary may include in the report a recommendation for legislation to impose Federal regulation of insurance rates on covered lines of insurance if the Secretary determines that premium rates for insurance on covered lines of insurance are—

(A) unreasonable; and

(B) attributable to insurance for losses from acts of terrorism.

**SEC. 12. INAPPLICABILITY OF CERTAIN LAWS.**

(a) **IN GENERAL.**—State laws relating to insurance rates, insurance policy forms, insurance rates on any covered lines of insurance described in section 14(5)(A) or 14(5)(B), insurer financial requirements, and insurer licensing do not apply to contracts entered into by the Fund. The Fund is not subject to State tax and is exempt from Federal income tax. The reinsurance contract premium paid and assessments collected by insurers shall not be subject to local, State, or Federal tax. The reinsurance contract premium and assessments recovered from policyholders shall not be subject to local, State, or Federal tax.

(b) **EXCEPTION FOR UNFAIR TRADE PRACTICE LAWS.**—Notwithstanding subsection (a), nothing in this Act supersedes or preempts a State law that prohibits unfair methods of competition in commerce, unfair or deceptive acts or practices in commerce, or unfair insurance claims practices.

**SEC. 13. SUNSET PROVISION.**

(a) **ASSESSMENT AND COLLECTION OF PREMIUMS.**—The Secretary shall continue the premium assessment and collection operations of the Fund under this Act as long as loans due from the Fund to the United States Treasury are outstanding.

(b) **PROVISION OF REINSURANCE.**—The Secretary shall suspend other operations of the Fund for new contract years on the close of business on December 31, 2004, and may suspend the offering of reinsurance contracts for new contract years at any time before

that date if the Secretary determines that the reinsurance provided by the Fund is no longer needed for covered lines due to market conditions.

(c) **REVIEW OF PRIVATE REINSURANCE AVAILABILITY.**—The Secretary shall review the cost and availability of private reinsurance for acts of terrorism at least annually and shall report the findings and any recommendations to Congress by June 1 of each year the Fund is in operation.

(d) **DISSOLUTION OF FUND.**—

(1) **DISTRIBUTION FOR RESERVES.**—When the Secretary determines that all Fund operations have been terminated, the Secretary shall dissolve the Fund. Any unencumbered Fund assets remaining after the satisfaction of all outstanding claims, loans from the Treasury, and other liabilities of the Fund shall be distributed, on a pro rata basis based on premiums paid, to any insurer that—

(A) participated in the Fund during its operation; and

(B) demonstrates, to the satisfaction of the Secretary, that any amount received as a distribution from the Fund will be permanently credited to a reserve account maintained by that insurer against claims for industrywide aggregate losses of \$2,000,000,000 from—

(i) acts of terrorism in the United States; or

(ii) the effects of earthquakes, volcanic eruptions, tsunamis, or hurricanes.

(2) **RETENTION REQUIREMENT FOR TAPPING RESERVE.**—Amounts credited to a reserve under paragraph (a) may not be used by an insurer to pay claims until the insurer has paid claims for losses resulting from acts or events described in paragraph (1)(B) in excess of 10 percent of that insurer's average gross direct written premiums and policyholders' surplus for covered lines for the most recently ended calendar year for which data are available.

(3) **OFFICER AND DIRECTOR PENALTIES FOR MISUSE OF RESERVES.**—Any officer or director of an insurer who knowingly authorizes or directs the use of any amount received from the Fund under paragraph (1) for any purpose other than an appropriate use of amounts in the reserve to which the amount is credited shall be guilty of a Class E felony and sentenced in accordance with the provisions of section 3551 of title 18, United States Code.

(4) **RESIDUAL DISTRIBUTION TO TREASURY.**—Any unencumbered Fund assets remaining after the distribution under paragraph (1) shall be covered into the Treasury of the United States as miscellaneous receipts.

**SEC. 14. DEFINITIONS.**

In this Act:

(1) **SECRETARY.**—Except where otherwise specifically provided, the term "Secretary" means the Secretary of Commerce.

(2) **NAIC.**—The term "NAIC" means the National Association of Insurance Commissioners.

(3) **FUND.**—The term "Fund" means the National Terrorism Reinsurance Fund established under section 4.

(4) **PARTICIPATING INSURER.**—The term "participating insurer" means every property and casualty insurer writing on a direct basis a covered line or lines of insurance in any jurisdiction of the United States, its territories, or possessions, including residual market insurers.

(5) **COVERED LINE.**—

(A) **IN GENERAL.**—The term "covered line" means any one or a combination of the following, written on a direct basis, as reported by property and casualty insurers in required financial reports on Statutory Page 14 of the NAIC Annual Statement Blank:

(i) Fire.  
 (ii) Allied lines.  
 (iii) Commercial multiple peril.  
 (iv) Ocean marine.  
 (v) Inland marine.  
 (vi) Workers compensation.  
 (vii) Products liability.  
 (viii) Commercial auto no-fault (personal injury protection), other commercial auto liability, or commercial auto physical damage.

(ix) Aircraft (all peril).  
 (x) Fidelity and surety.  
 (xi) Burglary and theft.  
 (xii) Boiler and machinery.  
 (xiii) Any other line of insurance that is reported by property and casualty insurers in required financial reports on Statutory Page 14 of the NAIC Annual Statement Blank which is voluntarily elected by a participating insurer to be included in its reinsurance contract with the Fund.

(B) OTHER LINES.—For purposes of clause (xiii), the lines of business that may be voluntarily selected are the following:

(i) Farmowners multiple peril.  
 (ii) Homeowners multiple peril.  
 (iii) Mortgage guaranty.  
 (iv) Financial guaranty.  
 (v) Private passenger automobile insurance.

(C) ELECTION.—The election to voluntarily include another line of insurance, if made, must apply to all affiliated insurers that are members of an insurer group. Any voluntary election is on a one-time basis and is irrevocable.

(6) LOSSES.—The term “losses” means direct incurred losses from an act of terrorism for covered lines, plus defense and cost containment expenses. Notwithstanding the preceding sentence, a loss shall not be recognized as a loss for the purpose of determining the amount of an insurer’s retention or reimbursement under this Act unless the claim for the loss has been paid within 12 months after the terrorism event occurs and other loss adjustments.

(7) COVERED LOSSES.—The term “covered losses” means direct losses in excess of the participating insurer’s retention.

(8) TERRORISM; ACT OF TERRORISM.—

(A) IN GENERAL.—The terms “terrorism” and “act of terrorism” mean any act, certified by the Secretary in concurrence with the Secretary of State and the Attorney General, as a violent act or act dangerous to human life, property or infrastructure, within the United States, its territories and possessions, that is committed by an individual or individuals acting on behalf of foreign agents or foreign interests (other than a foreign government) as part of an effort to coerce or intimidate the civilian population of the United States or to influence the policy or affect the conduct of the United States government.

(B) ACTS OF WAR.—No act shall be certified as an act of terrorism if the act is committed in the course of a war declared by the Congress of the United States or by a foreign government.

(C) FINALITY OF CERTIFICATION.—Any certification, or determination not to certify, by the Secretary under subparagraph (A) is final and not subject to judicial review.

(9) INSURER.—

(A) IN GENERAL.—The term “insurer” means an entity writing covered lines on a direct basis and licensed as a property and casualty insurer, risk retention group, or other entity authorized by law as a residual market mechanism providing property or casualty coverage in at least one jurisdiction

of the United States, its territories, or possessions.

(B) VOLUNTARY PARTICIPATION.—A State workers’ compensation, auto, or property insurance Fund may voluntarily participate as an insurer.

(10) CONTRACT YEAR.—The term “contract year” means the period of time that obligations exist between a participating insurer and the Fund for a given annual reinsurance contract.

(11) RETENTION.—The term “retention” means the level of direct losses retained by a participating insurer for which the insurer is not entitled to reimbursement by the Fund.

By Mr. McCain:

S. 1744. A bill to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism; to the Committee on Commerce, Science, and Transportation.

Mr. McCain. Mr. President, while there are few people in the Senate more skeptical than I of providing Federal assistance to corporations or involving the Federal Government in private industry, the proposed wholesale cancellation of terrorism insurance coverage following the devastating events of September 11, dictates that Congress act before the end of this session to ensure that this coverage continues to be available and affordable. Since 1945 when Congress delegated the responsibility of regulating insurance to the States, the Federal Government has honored this delegation and, with the encouragement of state regulators, kept out of the business of insurance.

In a recent letter to Treasury Secretary O’Neill, however, the National Association of Insurance Commissioners, NAIC, implored the Federal Government for help. “What has not been widely reported is that insurers are now issuing notices of non-renewal and filing across-the-board property and casualty exclusions for terrorist risk with state insurance regulators,” the NAIC wrote. “[W]e need the Federal Government to act soon to give certainty to this situation \* \* \* further delay inadvertently could cause greater market disruption, thus making the need for quick action imperative.” I agree.

The bill I am introducing today draws from the many good ideas proposed by members of Congress and by the Administration to deal with the imminent cancellation of terrorism insurance coverage, and attempts also to address concerns raised with each of these proposals. It is by no means a perfect bill and I look forward to working with the Administration, my colleagues, state insurance commissioners, and other interested parties to improve it. While rough, the bill does reflect, however, what I believe to be the core principles that should be included in any legislation designed to keep terrorism insurance affordable and available. These principles include making Federal intervention short-term; deferring to states on questions

of rate regulation; requiring insurance companies and the insurance industry to bear enough risk to promote responsible claims handling and to ensure that incentives to protect against acts of terrorism are in place; fairly allocating the costs of a terrorist event among insurance companies, and between policy holders and taxpayers; and generally prohibiting the award of punitive damages in claims arising from acts of terrorism.

There has been much debate about whether the taxpayers should bear the cost in the short-term of another terrorist event, or whether this cost should be borne by policy holders. The answer, perhaps, is that the cost should be shared. I propose in this bill that federal assistance up to \$50 billion be paid back by commercial property and casualty policy holders through a capped surcharge on their premiums. For Federal assistance between \$50 billion and \$100 billion, which would be required only in the case of a truly catastrophic, perhaps cataclysmic event, however, the bill does not require repayment.

The following is a summary of the major provision of this bill. I look forward to working to improve it and to passage of needed legislation on terrorism insurance before the end of this session.

The bill provides a Federal backstop for certain insured losses due to acts of terrorism up to \$100 billion per year in 2002 and 2003. The Federal Government would get involved, however, only if there is an act of terrorism during these years that exceeded individual company retentions. If a commercial insurer reaches these retention levels, the federal government would provide assistance for 80 percent of the companies’ losses above the retention.

To provide uniformity, the bill preempts state definitions of “terrorism” and delegates to the Secretary of Commerce the responsibility of determining whether or not an act of terrorism has occurred.

Federal assistance is available only to companies whose annual terrorism-related losses in certain lines of commercial property and casualty insurance exceed the greater of \$10 million or 5 percent of gross direct written premium in the previous year.

Only companies that meet the company retention trigger can obtain assistance from the Federal Government. Outlays for losses up to \$50 billion are repaid by insurance policy holders through a surcharge imposed by the Secretary of Commerce on covered lines and collected by commercial insurers. These surcharges cannot exceed 6 percent of annual premiums, and the Secretary has the discretion to adjust the surcharge to reflect different risks in urban and rural areas.

Federal outlays up to \$50 billion are paid back over time by commercial

property and casualty policy holders. Federal outlays for losses over \$50 billion are not recoverable.

Rate regulation is left to the states.

Except with respect to claims against terrorists and their conspirators, punitive damages cannot be recovered in claims arising out of acts of terrorism.

By Mr. REID (for himself, Mrs. CLINTON, Mr. LIEBERMAN and Mr. JEFFORDS):

S. 1746. A bill to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities; to the Committee on Environment and Public Works.

Mr. REID. Mr. President, I would like to discuss an issue of great importance to our Nation, the safety of our Nation's nuclear power plants.

The tragedy of September 11 taught us many things: It taught us the importance of our first responders. It taught us the vulnerability of our Nation's buildings and the strength of our Nation's resolve. Finally, it taught us that we must be prepared for today's threats because they could become tomorrow's attacks.

We must not fail to take what we have learned and apply it to the vulnerabilities of our Nation's energy and transportation infrastructure.

Less than 1 week ago, the President signed a new law to increase the safety at our Nation's airports.

That act turned the first page in a long struggle to secure our Nation's infrastructure.

Today, I am introducing legislation with Senator CLINTON, Senator LIEBERMAN, and Senator JEFFORDS to write the next chapter, which covers commercial nuclear facilities.

I am pleased that Congressman MARKEY and Congresswoman LOWEY will introduce a companion bill in the House of Representatives.

Nuclear facilities provide us with needed electricity, but, in light of the events of September 11, they also present a security risk that we simply must address.

When plants are failing nearly half their security evaluations, we need to do more than update the curriculum. We need a whole new system.

There are some plants that do a good job, but it is not enough to have peaks of success, we need a new high plateau that secures all plants. We can accomplish that by establishing a new nuclear security force.

Our bill also requires the Nuclear Regulatory Commission to take a new look at the threats posed by terrorists.

This is the foundation that will support the efforts of the nuclear security force and overall plant security.

Our bill also establishes a rigorous training and evaluation program for the nuclear security force.

A new office will be established within the Nuclear Regulatory Commission

with a dedicated team of mock terrorists whose only jobs is to perfect their skills in challenging the security guards.

When professional sports teams practice, the don't do it against amateur athletes playing in the park. They train against other professionals. Nuclear Security personnel should also.

Our bill will honor the sacrifice of our Nation's emergency responders by ensuring that emergency response plans are in place and work as we expect them to.

Finally, we will require stockpiles of medicine to help out in the event of a release of radioactive material from a nuclear facility.

These potassium iodide tablets block the absorption of harmful iodine in the thyroid gland.

The American people told us how they wanted their airlines and airports protected. The Congress and the President listened and acted.

We will work to make sure their questions about the safety of all our Nation's nuclear power plants are also answered.

This bill starts that process.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1746

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Nuclear Security Act of 2001".

**SEC. 2. DEFINITIONS.**

Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended—

(1) by redesignating subsection jj. as subsection ii.; and

(2) by adding at the end the following:

"jj. DESIGN BASIS THREAT.—The term 'design basis threat' means the design basis threat established by the Commission under section 73.1 of title 10, Code of Federal Regulations (or any successor regulation developed under section 170C).

"kk. SENSITIVE NUCLEAR FACILITY.—The term 'sensitive nuclear facility' means—

"(1) a commercial nuclear power plant and associated spent fuel storage facility;

"(2) a decommissioned nuclear power plant and associated spent fuel storage facility;

"(3) a category I fuel cycle facility;

"(4) a gaseous diffusion plant; and

"(5) any other facility licensed by the Commission, or used in the conduct of an activity licensed by the Commission, that the Commission determines should be treated as a sensitive nuclear facility under section 170C."

**SEC. 3. NUCLEAR SECURITY.**

(a) IN GENERAL.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following:

**"SEC. 170C. PROTECTION OF SENSITIVE NUCLEAR FACILITIES AGAINST THE DESIGN BASIS THREAT.**

"(a) DEFINITIONS.—In this section:

"(1) NUCLEAR SECURITY FORCE.—The term 'nuclear security force' means the nuclear

security force established under subsection (b)(1).

"(2) FUND.—The term 'Fund' means the Nuclear Security Fund established under subsection (f).

"(3) QUALIFICATION STANDARD.—The term 'qualification standard' means a qualification standard established under subsection (e)(2)(A).

"(4) SECURITY PLAN.—The term 'security plan' means a security plan developed under subsection (b)(2).

"(b) NUCLEAR SECURITY.—The Commission shall—

"(1) establish a nuclear security force, the members of which shall be employees of the Commission, to provide for the security of all sensitive nuclear facilities against the design basis threat; and

"(2) develop and implement a security plan for each sensitive nuclear facility to ensure the security of all sensitive nuclear facilities against the design basis threat.

"(c) DESIGN BASIS THREAT.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, and at least once every 3 years thereafter, the Commission, in consultation with the Assistant to the President for Homeland Security, the Attorney General, the Secretary of Defense, and other Federal, State, and local agencies, as appropriate, shall revise the design basis threat to include—

"(A) threats equivalent to—

"(i) the events of September 11, 2001;

"(ii) a physical, cyber, biochemical, or other terrorist threat;

"(iii) an attack on a facility by multiple coordinated teams of a large number of individuals;

"(iv) assistance in an attack from several persons employed at the facility;

"(v) a suicide attack;

"(vi) a water-based or air-based threat;

"(vii) the use of explosive devices of considerable size and other modern weaponry;

"(viii) an attack by persons with a sophisticated knowledge of the operations of a sensitive nuclear facility; and

"(ix) fire, especially a fire of long duration; and

"(B) any other threat that the Commission determines should be included as an element of the design basis threat.

"(2) REPORTS.—The Commission shall submit to Congress a report on each revision made under paragraph (1).

"(d) SECURITY PLANS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall develop a security plan for each sensitive nuclear facility to ensure the protection of each sensitive nuclear facility against the design basis threat.

"(2) ELEMENTS OF THE PLAN.—A security plan shall prescribe—

"(A) the deployment of the nuclear security force, including—

"(i) numbers of the members of the nuclear security force at each sensitive nuclear facility;

"(ii) tactics of the members of the nuclear security force at each sensitive nuclear facility; and

"(iii) capabilities of the members of the nuclear security force at each sensitive nuclear facility;

"(B) other protective measures, including—

"(i) designs of critical control systems at each sensitive nuclear facility;

"(ii) restricted personnel access to each sensitive nuclear facility;

"(iii) perimeter site security, internal site security, and fire protection barriers;

“(iv) increases in protection for spent fuel storage areas;

“(v) placement of spent fuel in dry cask storage; and

“(vi) background security checks for employees and prospective employees; and

“(C) a schedule for completing the requirements of the security plan not later than 18 months after the date of enactment of this section.

“(3) ADDITIONAL REQUIREMENTS.—A holder of a license for a sensitive nuclear facility under section 103 or 104 or the State or local government in which a sensitive nuclear facility is located may petition the Commission for additional requirements in the security plan for the sensitive nuclear facility.

“(4) IMPLEMENTATION OF SECURITY PLAN.—Not later than 270 days after the date of enactment of this section, the Commission, in consultation with a holder of a license for a sensitive nuclear facility under section 103 or 104, shall, by direct action of the Commission or by order requiring action by the licensee, implement the security plan for the sensitive nuclear facility in accordance with the schedule under paragraph (2)(C).

“(5) SUFFICIENCY OF SECURITY PLAN.—If at any time the Commission determines that the implementation of the requirements of the security plan for a sensitive nuclear facility is insufficient to ensure the security of the sensitive nuclear facility against the design basis threat, the Commission shall immediately submit to Congress and the President a classified report that—

“(A) identifies the vulnerability of the sensitive nuclear facility; and

“(B) recommends actions by Federal, State, or local agencies to eliminate the vulnerability.

“(e) NUCLEAR SECURITY FORCE.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Commission, in consultation with other Federal agencies, as appropriate, shall establish a program for the hiring and training of the nuclear security force.

“(2) HIRING.—

“(A) QUALIFICATION STANDARDS.—Not later than 30 days after the date of enactment of this section, the Commission shall establish qualification standards that individuals shall be required to meet to be hired by the Commission as members of the nuclear security force.

“(B) EXAMINATION.—The Commission shall develop and administer a nuclear security force personnel examination for use in determining the qualification of individuals seeking employment as members of the nuclear security force.

“(C) CRIMINAL AND SECURITY BACKGROUND CHECKS.—The Commission shall require that an individual to be hired as a member of the nuclear security force undergo a criminal and security background check.

“(D) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Commission, in consultation with the heads of other Federal agencies, as appropriate, shall establish procedures, in addition to any background check conducted under subparagraph (B), to ensure that no individual who presents a threat to national security is employed as a member of the nuclear security force.

“(3) ANNUAL PROFICIENCY REVIEW.—

“(A) IN GENERAL.—The Commission shall provide that an annual evaluation of each member of the nuclear security force is conducted and documented.

“(B) REQUIREMENTS FOR CONTINUATION.—An individual employed as a member of the nu-

clear security force may not continue to be employed in that capacity unless the evaluation under subparagraph (A) demonstrates that the individual—

“(i) continues to meet all qualification standards;

“(ii) has a satisfactory record of performance and attention to duty; and

“(iii) has the knowledge and skills necessary to vigilantly and effectively provide for the security of a sensitive nuclear facility against the design basis threat.

“(4) TRAINING.—

“(A) IN GENERAL.—The Commission shall provide for the training of each member of the nuclear security force to ensure each member has the knowledge and skills necessary to provide for the security of a sensitive nuclear facility against the design basis threat.

“(B) TRAINING PLAN.—Not later than 60 days after the date of enactment of this section, the Commission shall develop a plan for the training of members of the nuclear security force.

“(C) USE OF OTHER AGENCIES.—The Commission may enter into a memorandum of understanding or other arrangement with any other Federal agency with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of members of the nuclear security force.

“(f) NUCLEAR SECURITY FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ‘Nuclear Security Fund’, which shall be used by the Commission to administer programs under this section to provide for the security of sensitive nuclear facilities.

“(2) DEPOSITS IN THE FUND.—The Commission shall deposit in the Fund—

“(A) the amount of fees collected under paragraph (5); and

“(B) amounts appropriated under subsection (g).

“(3) INVESTMENT OF AMOUNTS.—

“(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

“(B) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

“(i) on original issue at the issue price; or

“(ii) by purchase of outstanding obligations at the market price.

“(C) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

“(D) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

“(4) USE OF AMOUNTS IN THE FUND.—The Commission shall use amounts in the Fund to pay the costs of—

“(A) salaries, training, and other expenses of the nuclear security force; and

“(B) developing and implementing security plans.

“(5) FEE.—To ensure that adequate amounts are available to provide assistance under paragraph (4), the Commission shall assess licensees a fee in an amount determined by the Commission, not to exceed 1 mill per kilowatt-hour of electricity generated by a sensitive nuclear facility.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

sums as are necessary to carry out this section.”.

(b) IMPLEMENTATION.—The Commission shall complete the full implementation of the amendment made by subsection (a) as soon as practicable after the date of enactment of this Act, but in no event later than 270 days after the date of enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by adding at the end the following:

“Sec. 170B. Uranium supply.

“Sec. 170C. Protection of sensitive nuclear facilities against the design basis threat.”.

#### SEC. 4. OPERATION SAFEGUARDS AND RESPONSE UNIT.

Section 204 of the Energy Reorganization Act of 1974 (42 U.S.C. 5844) is amended by adding at the end the following:

“(d) OPERATION SAFEGUARDS AND RESPONSE UNIT.—

“(1) DEFINITIONS.—In this subsection:

“(A) ASSISTANT DIRECTOR.—The term ‘Assistant Director’ means the Assistant Director for Operation Safeguards and Response.

“(B) DESIGN BASIS THREAT.—The term ‘design basis threat’ has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

“(C) SENSITIVE NUCLEAR FACILITY.—The term ‘sensitive nuclear facility’ has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

“(D) UNIT.—The term ‘Unit’ means the Operation Safeguards and Response Unit established under paragraph (2)(A).

“(2) ESTABLISHMENT OF UNIT.—

“(A) IN GENERAL.—There is established within the Office of Nuclear Material Safety and Safeguards the Operation Safeguards and Response Unit.

“(B) HEAD OF UNIT.—The Unit shall be headed by the Assistant Director for Operation Safeguards and Response.

“(C) DUTIES.—The Assistant Director shall—

“(i) establish a program for the conduct of operation safeguards and response evaluations under paragraph (3); and

“(ii) establish a program for the conduct of emergency response exercises under paragraph (4).

“(D) MOCK TERRORIST TEAM.—The personnel of the Unit shall include a Mock Terrorist Team comprised of—

“(i) not fewer than 20 individuals with advanced knowledge of special weapons and tactics comparable to special operations forces of the Armed Forces;

“(ii) at least 1 nuclear engineer;

“(iii) for each evaluation at a sensitive nuclear facility under paragraph (3), at least 1 individual with knowledge of the operations of the sensitive nuclear facility who is capable of actively disrupting the normal operations of the sensitive nuclear facility; and

“(iv) any other individual that the Assistant Director determines should be a member of the Mock Terrorist Team.

“(3) OPERATION SAFEGUARDS AND RESPONSE EVALUATIONS.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Assistant Director shall establish an operation safeguards and response evaluation program to assess the ability of each sensitive nuclear facility to defend against the design basis threat.

“(B) FREQUENCY OF EVALUATIONS.—Not less often than once every 2 years, the Assistant

Director shall conduct and document operation safeguards and response evaluations at each sensitive nuclear facility to assess the ability of the members of the nuclear security force at the sensitive nuclear facility to defend against the design basis threat.

“(C) ACTIVITIES.—The evaluation shall include 2 or more force-on-force exercises by the Mock Terrorist Team against the sensitive nuclear facility that simulate air, water, and land assaults (as appropriate).

“(D) CRITERIA.—The Assistant Director shall establish criteria for judging the success of the evaluations.

“(E) CORRECTIVE ACTION.—If a sensitive nuclear facility fails to complete successfully an operation safeguards and response evaluation, the Commission shall require additional operation safeguards and response evaluations not less often than once every 6 months until the sensitive nuclear facility successfully completes an operation safeguards and response evaluation.

“(F) REPORTS.—Not less often than once every year, the Commission shall submit to Congress and the President a report that describes the results of each operation safeguards and response evaluation under this paragraph for the previous year.

“(4) EMERGENCY RESPONSE EXERCISES.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Assistant Director, in consultation with the Assistant to the President for Homeland Security, the Director of the Federal Emergency Management Agency, the Attorney General, and other Federal, State, and local agencies, as appropriate, shall establish an emergency response program to evaluate the ability of Federal, State, and local emergency response personnel within a 50-mile radius of a sensitive nuclear facility to respond to a radiological emergency at the sensitive nuclear facility.

“(B) FREQUENCY.—Not less often than once every 3 years, the Assistant Director shall conduct emergency response exercises to evaluate the ability of Federal, State, and local emergency response personnel within a 50-mile radius of a sensitive nuclear facility to respond to a radiological emergency at the sensitive nuclear facility.

“(C) ACTIVITIES.—The response exercises shall evaluate—

“(i) the response capabilities, response times, and coordination and communication capabilities of the response personnel;

“(ii) the effectiveness and adequacy of emergency response plans, including evacuation plans; and

“(iii) the ability of response personnel to distribute potassium iodide or other prophylactic medicines in an expeditious manner.

“(D) REVISION OF EMERGENCY RESPONSE PLANS.—The Commission shall revise the emergency response plan for a sensitive nuclear facility to correct for any deficiencies identified by an evaluation under this paragraph.

“(E) REPORTS.—Not less often than once every year, the Commission shall submit to Congress and the President a report that describes—

“(i) the results of each emergency response exercise under this paragraph conducted in the previous year; and

“(ii) each revision of an emergency response plan made under subparagraph (D) for the previous year.”

#### SEC. 5. POTASSIUM IODIDE STOCKPILES.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following:

“u. Not later than 180 days after the date of enactment of this subsection, the Commis-

sion, in consultation with the Director of the Federal Emergency Management Agency, the Secretary of Health and Human Services, and other Federal, State, and local agencies, as appropriate, shall—

“(1) ensure that sufficient stockpiles of potassium iodide tablets have been established at public facilities (such as schools and hospitals) within at least a 50-mile radius of all sensitive nuclear facilities;

“(2) develop plans for the prompt distribution of the stockpiles described in paragraph (1) to all individuals located within at least a 50-mile radius of a sensitive nuclear facility in the event of a release of radionuclides; and

“(3) submit to Congress a report—

“(A) certifying that stockpiles have been established as described in paragraph (1); and

“(B) including the plans described in paragraph (2).”

#### SEC. 6. DEFENSE OF FACILITIES.

(a) IN GENERAL.—In a case in which a state of war or national emergency exists, the Commission shall—

(1) request the Governor of each State in which a sensitive nuclear facility is located to deploy the National Guard to each sensitive nuclear facility in that State; and

(2) request the President to—

(A) deploy the Coast Guard to sensitive nuclear facilities on the coastline of the United States; and

(B) restrict air space in the vicinity of sensitive nuclear facilities in the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

### AMENDMENTS SUBMITTED AND PROPOSED

SA 2170. Mr. DASCHLE (for Mr. HATCH (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 10, to provide for pension reform, and for other purposes.

SA 2171. Mr. LOTT (for himself, Mr. MURKOWSKI, and Mr. BROWNBACK) proposed an amendment to amendment SA 2170 submitted by Mr. Daschle and intended to be proposed to the bill (H.R. 10) supra.

SA 2172. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1743, to create a temporary reinsurance mechanism to enhance the availability of terrorism insurance; which was referred to the Committee on Commerce, Science, and Transportation.

SA 2173. Mr. BURNS submitted an amendment intended to be proposed by him to the bill H.R. 10, to provide for pension reform, and for other purposes; which was ordered to lie on the table.

SA 2174. Mr. BURNS submitted an amendment intended to be proposed by him to the bill H.R. 10, supra; which was ordered to lie on the table.

### TEXT OF AMENDMENTS

**SA 2170.** Mr. DASCHLE (for Mr. HATCH (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 10, to provide for pension reform, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Railroad Retirement and Survivors’ Improvement Act of 2001”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

- TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974**
- Sec. 101. Expansion of widow’s and widower’s benefits.
- Sec. 102. Retirement age restoration.
- Sec. 103. Vesting requirement.
- Sec. 104. Repeal of railroad retirement maximum.
- Sec. 105. Investment of railroad retirement assets.
- Sec. 106. Elimination of supplemental annuity account.
- Sec. 107. Transfer authority revisions.
- Sec. 108. Annual ratio projections and certifications by the Railroad Retirement Board.

- TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986**
- Sec. 201. Amendments to the Internal Revenue Code of 1986.
- Sec. 202. Exemption from tax for National Railroad Retirement Investment Trust.
- Sec. 203. Repeal of supplemental annuity tax.
- Sec. 204. Employer, employee representative, and employee tier 2 tax rate adjustments.

### TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

#### SEC. 101. EXPANSION OF WIDOW’S AND WIDOWER’S BENEFITS.

(a) IN GENERAL.—Section 4(g) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)) is amended by adding at the end the following new subdivision:

“(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow’s or widower’s initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act, and without regard to any reduction for entitlement to a public service pension pursuant to section 202(e)(7), 202(f)(2), or 202(g)(4) of the Social Security Act.

“(ii) For the purposes of this subdivision, the widow or widower’s initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—

“(A) in subsection (g)(1)(i) ‘100 per centum’ shall be substituted for ‘50 per centum’; and

“(B) in subsection (g)(2)(ii) ‘130 per centum’ shall be substituted for ‘80 per centum’ both places it appears.

“(iii) If a widow or widower who was previously entitled to a widow’s or widower’s annuity under section 2(d)(1)(ii) of this Act becomes entitled to a widow’s or widower’s annuity under section 2(d)(1)(i) of this Act, a new initial minimum amount shall be computed at the time of award of the widow’s or widower’s annuity under section 2(d)(1)(i) of this Act.”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall take effect on the first day of the first month that begins more than 30 days after enactment, and shall apply to annuity amounts accruing for months after the