The House met at 9 a.m.
The Reverend Byron E. Powers, Senior Pastor, The Church Love is Building, Church of God, Sheffield, Ohio, offered the following prayer:

So we pray, Almighty and Gracious God, Your Word declares that “this is the day that the Lord has made.” We recognize this day that You have given us, these great United States, for our heritage. Help us to treasure and guard it. Help us, this day, always to prove ourselves to be cognizant of Your favor and eager to fulfill Your awesome purpose in this world. Forgive us for our sin, the discord, confusion, pride, and arrogance, that hinders our relationship with You and one another.

In our diversity, mold us into one united people. Empower our leaders this day with the spirit of wisdom, so that righteousness, justice, and peace may prevail and that, through obedience to Your commandments, we may show forth Your praise among the nations of the Earth.

So, Heavenly Father, we ask this day that our Nation and leaders will be blessed; that our influence will be enlarged; that Your hand would be upon us, and keep us from evil that we may not cause pain. We pray this in Your Name that is above all others. Amen.

THE JOURNAL
The SPEAKER. The Chair has examined the Journal of the last day’s proceedings and announces to the House his approval thereof.
Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE
The SPEAKER. Will the gentleman from Texas (Mr. HALL) come forward and lead the House in the Pledge of Allegiance.

Mr. HALL of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER
The SPEAKER. The gentleman from Ohio (Mr. NEY) is recognized for 1 minute. All other 1-minutes will be after business today.

WELCOME TO GUEST CHAPLAIN, THE REVEREND BYRON E. POWERS
(Mr. NEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEY. Mr. Speaker, it is my privilege to welcome the Honorable Reverend Byron E. Powers as our guest chaplain. Reverend Powers is currently the Senior Pastor of the Church Love Is Building in Sheffield, Ohio, one of the great parishes in the region.

Reverend Powers has devoted his life to helping others, and previously served as the senior pastor for churches in Illinois and Florida. He has earned a Bachelor of Arts in Psychology from Lee University and a Master of Arts in Clinical Pastoral Counseling from Ashland Theological Seminary. In addition to his pastoral responsibilities, he currently serves as senior chaplain to the Lorain Police Department. He has been married for 19 years to his wife Frankie, and they have three wonderful children, Sarah, Rachel and Nathan.

Reverend Powers is a leader in the community. His commitment and compassion for those less fortunate has led him to assist many in the area around Sheffield while working tirelessly to serve his community and the great State of Ohio.

It is my distinct pleasure to welcome Reverend Powers to the Congress of the United States and thank him for leading the House in prayer.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002
The SPEAKER. Pursuant to House Resolution 180 and rule XVIII, the Chair declares the House in the Committee of the Whole the House on the State of the Union for the further consideration of the bill, H.R. 2311.

The text of the amendment is as follows:

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes, with Mr. SIMPSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. The Chairman. When the Committee of the Whole House rose on Wednesday, June 27, 2001, a demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. BONIOR) had been postponed and the bill was open for amendment from page 22, line 19, through page 22, line 4.

SEQUENTIAL VOTES POSTED IN COMMITTEE OF THE WHOLE
The CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

Amendment offered by the gentleman from Colorado (Mr. TANCREDO); amendment No. 4 offered by the gentleman from Colorado (Mr. TANCREDO); amendment offered by the gentleman from New York (Mr. HINCHEY); amendment No. 2 offered by the gentleman from Ohio (Mr. KUCINICH); and amendment offered by the gentleman from Michigan (Mr. BONIOR).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT OFFERED BY MR. TANCREDO
The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Colorado (Mr. TANCREDO) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 2, line 18, after the dollar amount, insert the following: “(increased by $9,900,000)”.

Page 18, line 2, after the dollar amount, insert the following: “(reduced by $9,900,000)”.

RECORDED VOTE
The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 39, noes 372, not voting 22, as follows:

[Roll No. 199]

AYES—39
Barcia  Biggert  Cannon  Cassiari  Davis, Joe  Dean  Degette  Doggett  Ehlers  Flake  Gilchrest  Goodlatte  Gutknecht

Rivers  Royce  Schaffer  Sensemberger  Shadegg  Shays  Smith (MI)  Sussman  Tancredo  Terry  Toomey  Udall (CA)  Udall (NM)

NOES—372

This symbol represents the time of day during the House proceedings, e.g., 10407 is 2:07 p.m.

Material set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
CONGRESSIONAL RECORD—HOUSE

June 28, 2001

 Messrs. LAMPSON, LARSEN of Washington, BLAICOVICH, LARGET, DAVIS of Illinois, and MALONEY of Connecticut charged their vote from "aye" to "no," So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. GRUCCI. Mr. Chairman, on rollcall vote No. 199, I was detained in traffic and was unable to make it to the floor to vote on the Tancredo amendment increasing funding for the Department of Energy's Renewable Energy Research Program, while offsetting the Army Corps of Engineers General Investigations Account. Had I been present, I would have voted in the negative.

Mr. MICA. Mr. Chairman, on rollcall No. 199, I was unavoidably detained. Had I been present, I would have voted "no.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 4 OFFERED BY MR. TANCREDO

The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Colorado (Mr. TANCREDO) on which further proceedings were postponed and on which a vote by electronic device will be taken.

The vote was taken by electronic device, and there were—aye votes 403, noes 3, not voting 16, as follows:

[Roll No. 200]
Amendment offered by Mr. HINCHEY: In title III, in the item relating to "DEPARTMENT OF ENERGY PROGRAMS; ENERGY SUPPLY" after the aggregate dollar amount, insert the following: "(increased by $60,000,000)."

In title III, in the item relating to "ATOMIC ENERGY DEFENSE ACTIVITIES NATIONAL NUCLEAR SECURITY ADMINISTRATION: WEAPONS ACTIVITIES" after the aggregate dollar amount, insert the following: "(reduced by $60,000,000)."

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 163, noes 258, not voting 12, as follows: (Roll No. 201)

AYES—163

Ackerman                   Anderholt       Anderson                    Ashby                      Barrett              Bass                        Bercerra                       Berkley                      Bliley                        Bono
Buckley                    Brown, Mark     Brown, Thomas              Brown, Tom                 Brown                    Butler, Patsy                Buxton                        Calvert                    Calvert, Brian               Camp
Capito                     Cardin                      Carnahan                     Caso                       Castle                   Chad Billings                  Chambliss                     Clement                     Clemint                     Crenshaw
Culver                      Cummings                  Cutler                      Delahunt                    DeFazio                 DeGette                      Deutsch                      Doggett                      Ehlers                      Elpers
Engel                      Eshoo                        Farr                          Fatigah                     Ferguson                  Filner                      Frank                        Froel                         Gates                       Gates, John
Gonzalez                    Gutierrez                   Hillard                      Hinchee                     Hinojosa                  NOES—238

Mr. CAMP and Mr. ROHRABACHER changed their vote from "aye" to "no." Mr. SHERMAN changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. HINCHEY

The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. HINCHEY) on which further proceedings were postponed and on which the noes prevailed by a vote of 258.

The Clerk will designate the amendment.

The text of the amendment is as follows:

"as above recorded."
CONGRESSIONAL RECORD—HOUSE
June 28, 2001

Mr. KIND and Mr. FRANK changed their vote from "no" to "aye." So the amendment was rejected. The result of the amendment was announced as above recorded.

PERSOANAL EXPLANATION
Mr. ERLICH, Mr. Chairman, on rolloca Nos. 199, 200, 201, and 202, I was unable to vote. Had I been present, I would have voted "no" on all four.

AMENDMENT OFFERED BY MR. BONIOR
The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. BONIOR), on which further proceedings were postponed, and which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BONIOR: At the end of the bill, insert after the last sentence (preceding the short title) the following new section.

SEC. . No funds provided in this Act may be expended to issue any permit or other authorization under section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 463), or to issue any other lease, license, permit, approval, or right-of-way, for any drilling to extract or explore for oil or gas from the land beneath the water in any of Lake Huron, Lake Ontario, Lake Michigan, Lake Erie, Lake Superior, Lake St. Clair, the Saint Mary's River, the Saint Clair River, the Detroit River, the Niagara River, or the Saint Lawrence River from Lake Ontario to the 45th parallel of latitude.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 91, noes 331, not voting 11, as follows:

[Roll No. 202]

AYES—91

Mr. EHRLICH. Mr. Chairman, on rollcall Nos. 199, 200, 201, and 202, I was unable to vote. Had I been present, I would have voted "no" on all four.

AMENDMENT OFFERED BY MR. BONIOR
The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. BONIOR), on which further proceedings were postponed, and which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BONIOR: At the end of the bill, insert after the last sentence (preceding the short title) the following new section.

SEC. . No funds provided in this Act may be expended to issue any permit or other authorization under section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 463), or to issue any other lease, license, permit, approval, or right-of-way, for any drilling to extract or explore for oil or gas from the land beneath the water in any of Lake Huron, Lake Ontario, Lake Michigan, Lake Erie, Lake Superior, Lake St. Clair, the Saint Mary's River, the Saint Clair River, the Detroit River, the Niagara River, or the Saint Lawrence River from Lake Ontario to the 45th parallel of latitude.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 265, noes 157, not voting 11, as follows:

[Roll No. 203]

AYES—265

Mr. KIND and Mr. FRANK changed their vote from "no" to "aye." So the amendment was rejected. The result of the amendment was announced as above recorded.

PERSOANAL EXPLANATION
Mr. ERLICH, Mr. Chairman, on rolloca Nos. 199, 200, 201, and 202, I was unable to vote. Had I been present, I would have voted "no" on all four.

AMENDMENT OFFERED BY MR. BONIOR
The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. BONIOR), on which further proceedings were postponed, and which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BONIOR: At the end of the bill, insert after the last sentence (preceding the short title) the following new section.

SEC. . No funds provided in this Act may be expended to issue any permit or other authorization under section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 463), or to issue any other lease, license, permit, approval, or right-of-way, for any drilling to extract or explore for oil or gas from the land beneath the water in any of Lake Huron, Lake Ontario, Lake Michigan, Lake Erie, Lake Superior, Lake St. Clair, the Saint Mary's River, the Saint Clair River, the Detroit River, the Niagara River, or the Saint Lawrence River from Lake Ontario to the 45th parallel of latitude.
So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Pursuant to the request of the House of Wednesday, June 27, 2001, no further amendments to the bill shall be in order except the following amendments, which may be offered only by the Member designated in the request, or a designee, shall be considered as read, shall be debatable for the time specified, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question:

1. The amendment by the gentleman from Ohio, Mr. Traficant, regarding drilling, for 20 minutes;
2. The amendment by the gentlewoman from New York, Mrs. Kelly, regarding the Nuclear Regulatory Commission Inspector General salaries and expenses, for 10 minutes; and
3. The amendment by the gentleman from Florida, Mr. Davis, regarding the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility, or for plant or facility acquisition, construction, or expansion, $945,100,000, to remain available until expended.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. VISCLOSKY. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, the gentleman is correct.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The text of the remainder of the bill through page 39, line 18, is as follows:

DEFENSE NUCLEAR NONProliferation
For Department of Energy expenses, including the purchase, construction and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense, defense nuclear non-proliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility, or for plant or facility acquisition, construction, or expansion, $5,045,000,000, to remain available until expended.

NAVAL REACTORS
For Department of Energy expenses necessary for naval reactors activities to carry out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition (by purchase, condemnation, construction, or otherwise) of real property, plant, and capital equipment, facilities, and facility expansion, $688,045,000, to remain available until expended

OFFICE OF THE ADMINISTRATOR
For necessary expenses of the Office of the Administrator of the National Nuclear Security Administration, including official representation and representation expenses (not to exceed $12,000,000,000, to remain available until expended.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES
DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT
For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense environmental restoration and waste management activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility, or for plant or facility acquisition, construction, or expansion; and the purchase of not to exceed 30 passenger motor vehicles, of which 27 shall be for replacement only, $5,174,539,000, to remain available until expended.

DEFENSE FACILITIES CLOSURE PROJECTS
For expenses of the Department of Energy to accelerate the closure of defense environmental management sites, including the purchase, construction and acquisition of plant and capital equipment and other necessary expenses, $1,092,878,000, to remain available until expended.

DEFENSE ENVIRONMENTAL MANAGEMENT PRIVATIZATION
For Department of Energy expenses for privatization projects necessary for atomic energy defense environmental management activities authorized by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), $143,208,000, to remain available until expended.
Section 301. (a) None of the funds appropriated by this Act may be used to award a management and operating contract, or award a significant extension or expansion to an existing management and operating contract, unless such contract is awarded using competitive procedures or the Secretary of Energy grants, on a case-by-case basis, a waiver to the Secretary to award such a contract.

(b) At least 60 days before a contract award for which the Secretary intends to grant such a waiver, the Secretary shall submit to the Committees on Energy and Water Development Appropriations the following:

(1) A description of the contractor's proposed management and operating plan for such a contract.

(2) A description of the methods and procedures by which the Secretary will conduct a competition for such a contract.

SEC. 302. None of the funds appropriated by this Act may be used to develop or implement a workforce restructuring plan that covers employees of the Department of Energy, or that provides enhanced severance payments or other benefits for employees of the Department of Energy, under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 42 U.S.C. 7274h).

SEC. 303. None of the funds appropriated by this Act may be used to augment the $22,800,000 made available for obligation by this Act for severance payments and other benefits and community assistance grants under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 42 U.S.C. 7274h) unless the Department of Energy submits a reprogramming request approved by the appropriate Congressional committees.

SEC. 304. None of the funds appropriated by this Act may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 305. The unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balance so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 306. None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 307. None of the funds appropriated in other than Energy and Water Development Appropriations Acts may be used for Department of Energy laboratory directed research and development (LDRD).

SEC. 308. Not later than March 31, 2002, the Secretary of Energy, after consultation with the Nuclear Regulatory Commission and the Occupational Safety and Health Administration, shall transmit to the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Education and the Workforce of the House of Representatives, and to the Committee on Appropriations of the Senate, the Secretary's report concerning the LDRD program.

SEC. 309. None of the funds provided by this Act for the Nuclear Regulatory Commission may be used for the following:

(a) In the cleanup of the Hanford Site.

(b) In the cleanup of the Savannah River Site.

(c) In the cleanup of the Rocky Flats Site.

(d) In the cleanup of the Nevada Test Site.

SEC. 310. None of the funds provided by this Act for the Occupational Safety and Health Administration may be used for the following:

(a) In the cleanup of the Hanford Site.

(b) In the cleanup of the Savannah River Site.

(c) In the cleanup of the Rocky Flats Site.

(d) In the cleanup of the Nevada Test Site.
the Nuclear Regulatory Commission and $120,000 to the Occupational Safety and Health Administration. For purposes of this section, the Department of Energy’s science laboratories are the Argonne National Laboratory, the Brookhaven National Laboratory, the Lawrence Berkeley National Laboratory, the Oak Ridge National Laboratory, the Pacific Northwest National Laboratory, the Ames Laboratory, the Fermi National Accelerator Laboratory, the Princeton Plasma Physics Laboratory, the Stanford Linear Accelerator Center, and the Thomas Jefferson National Accelerator Facility.

Sect. 309. When the Department of Energy makes a user facility available to universities and other potential users, or seeks input from universities and other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a participant. For purposes of this section, the term “user facility” includes, but is not limited to: a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13303(a)(2)) National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and any other Department facility designated by the Department as a user facility.

TITLE IV
INDEPENDENT AGENCIES
APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, notwithstanding section 405 of said Act, and, for necessary expenses for the Federal Co-Chairman and the alternate on the Appalacian Regional Commission, for payment of the Federal share of the administrative expenses of the Commission, including services as authorized by §5 U.S.C. 3109, and hire of personal services, $11,290,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Salaries and Expenses

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out its activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100–456, section 1441, $18,500,000, to remain available until expended.

NUCLEAR REGULATORY COMMISSION

Salaries and Expenses

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individual and institutional membership, $214,000,000, to remain available until expended:

Provided further, That the amount of revenues received during fiscal year 2002 so as to result in a final fiscal year 2002 appropriation estimated at not more than $45,380,000.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $6,180,000, to remain available until expended. That revenues from licensing fees, inspection services, and other services and collections estimated at $5,833,000 in fiscal year 2002 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 U.S.C. 3302: Provided further, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2002 so as to result in a final fiscal year 2002 appropriation estimated at not more than $247,000.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Salaries and Expenses

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100–203, section 5051, to remain available until expended, $1,100,000.

SEC. 501. None of the funds appropriated by the Act may be used for the purchase of any article, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

Sect. 502. (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, or entering into any contract or subcontract made with funds made available in this Act, the head of each Federal agency shall ensure that the entity using such funds, or any entity entering into a contract with, or subcontract made with, such entity, shall be American-made.

(c) PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELED PRODUCTS AS MADE IN AMERICA.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be liable to the person or entity that suffered a loss as a result of the use of a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States.

SEC. 503. (a) None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

(b) The costs of the Kesterson Reservoir Cleanup Program, and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected with respect to the “Cleanup Program—Alternative Repayment Plan” and the “SJVIDP—Alternative Repayment Plan” described in the report entitled State of the Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1993’, prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal reclamation law.

The CHAIRMAN. Are there any points of order to any of the sections so opened?

POINT OF ORDER

Mr. LARGENT. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. LARGENT. Mr. Chairman, I make a point of order that section 308 of the bill, beginning on page 32, line 24, and ending on page 34, line 6, violates clause 2 of rule XXI of the rules of the House of Representatives prohibiting legislation on appropriations bills.

As I understand the intent of section 308, the language in question directs the Secretary of Energy to write a report to Congress on a plan to transfer certain regulatory functions in DOE science laboratories to the Nuclear Regulatory Commission and the Occupational Safety and Health Administration. My reading of the amendment, however, goes much further. I think that the language contained in the bill would actually effectuate the transfer of these functions to the NRC and OSHA.

In any event, Mr. Chairman, the language in section 308 clearly constitutes legislation on an appropriations bill in violation of clause 2 of rule XXI of the rules of the House because it changes current law, where no plan to transfer these functions is present.

I therefore insist on my point of order.

The CHAIRMAN. Does any other Member care to be heard on the point of order?

Hearing none, for the reasons stated by the gentleman from Oklahoma (Mr. LARGENT), the point of order is sustained, and section 308 of the bill will be stricken.

The CHAIRMAN. Are there amendments pending in the bill?

AMENDMENT NO. 1 OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. Traficant.
At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 1015. None of the funds appropriated or otherwise made available in this Act may be made available to any person or entity convicted of violating the Buy American Act (41 U.S.C. 10a–10c).

The CHAIRMAN. Pursuant to the order of the House of Wednesday, June 27, 2001, the gentleman from Ohio (Mr. TRAFICANT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Chairman, I yield myself such time as I may consume.

I want to give a little background on this amendment, and I want the appropriators to know that I have gone three times to the authorizing committee. This is the only drinking water supply for 125,000 of my constituents. The Senators, both Republicans, and every mayor supports stopping the banning of drilling under a lake when there are so many natural resources in that region.

Let me tell my colleagues about the hypocrisy. Our Department of Natural Resources will not allow any drilling for oil and gas adjacent to the Mosquito Creek Reservoir because there are trumpeter swans and Canadian geese habitat. I have 125,000 people that depend on this for drinking water with no backup water supply. And just on June 3, not counting last year, we had an earthquake of 3.0 in the district of the gentleman from Ohio (Mr. LaTourette), district to the north, not far from this lake.

Now, I have supported energy development. I have tried not to be hypocritical, because everybody says, not in my backyard. But when I believe that there are people, as we did in Florida, when there is fresh water, as we have done with the Great Lakes; God almighty, this is just common sense, and I did not have an amendment for this bill until I had seen the efforts made at the Great Lakes, and I worked 3 years through the authorizing committee.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. Mr. Chairman, I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, certainly this is something not only that we forgot to put in, but we appreciate the gentleman bringing it to our attention and allowing us to be a part of his effort to continue to encourage companies to buy American.

We have no objection to this amendment and would happily accept it.

Mr. VISCHLOSKY. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. Mr. Chairman, I yield to the gentleman from Indiana.

Mr. VISCHLOSKY. Mr. Chairman, I appreciate the gentleman yielding.

On behalf of all the steelworkers I represent, I am also happy to accept the gentleman’s amendment.

Mr. TRAFICANT. Mr. Chairman, I ask for an aye vote, and I yield back the balance of my time.

The CHAIRMAN. Does any Member claim time in opposition to the amendment?

Hearing none, the question is on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT).

The amendment was agreed to.

AMENDMENT OFFERED BY MS. BERKLEY

Ms. BERKLEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. BERKLEY:

Amendments to State, Local, and Tribal Assistance:

For additional expenses of the Nuclear Waste Technical Review Board, to be derived from the Nuclear Waste Fund, for the Board (1) to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy relating to the packaging and transportation of high-level radioactive waste and spent nuclear fuel, as authorized by section 503 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10383), (2) to hold hearings, sit and act, take testimony, and receive evidence, as authorized by section 504(a) of such Act (42 U.S.C. 10264(a)), and (3) to request the Secretary (or any contractor of the Secretary) to provide the Board with records, files, papers, data, and information, as authorized by section 504(b) of such Act (42 U.S.C. 10264(b)); and the aggregate amount otherwise provided in this Act for “Energy Programs—Nuclear Waste Disposal” is hereby reduced by $300,000.

The CHAIRMAN. Pursuant to the order of the House of Wednesday, June 27, 2001, the gentlewoman from Nevada (Ms. BERKLEY) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Nevada (Ms. BERKLEY).
June 28, 2001

Ms. BERKLEY. Mr. Chairman, I yield myself such time as I may consume.

I offer an amendment regarding the transportation of high-level nuclear waste. As we are all aware, the Department of Energy is nearing completion on its report on whether Yucca Mountain should be licensed as the Nation's repository for high-level nuclear waste. The DOE has written lengthy reports on hundreds of issues relating to the project, but has remained eerily silent on the one issue that affects almost every Member of this House: the transportation of nuclear waste across the country.

If the proposed Yucca Mountain repository is approved, the transfer of high-level nuclear waste would necessitate the shipment of over 77,000 tons of lethal nuclear waste through at least 13 States and 300 counties. DOE has recognized that such transfers may result in as many as 300 accidents with potentially catastrophic consequences, yet it has not published national shipping routes. Members of Congress and the American public have a right to know if high-level radioactive waste is going to be trucked through their districts, past their homes and hospitals, their children's schools, and on their neighborhoods, and they have a right to know what kind of impact these shipments will have on their communities. That is why I am offering an amendment that would transfer $500,000 to the Nuclear Waste Technical Review Board to help them encourage the DOE to publicize the transportation routes. It is only a matter of common sense and sound public policy that this body would seek the assurance of a review board composed of our country's top nuclear scientists on a matter of such importance and so fraught with danger for our country and the public is inappropriate to ensure that the board is given the resources it needs to hold hearings, take testimony, and receive evidence to evaluate the DOE's transportation routes. It is, after all, vitally important that Members of Congress understand fully the potential impact on our communities, our constituents and on the environment.

This amendment builds on the language of the committee report acknowledging the need to publicize the transportation routes in order to ensure with shipping nuclear waste across the country by road and rail and the need to select transportation routes. I want to thank the chairman and the ranking member for their efforts in this regard. Our amendment helps move forward the committee's intent by employing the Nuclear Waste Technical Review Board to analyze the routes and their potential impacts and to further encourage the DOE to make public, make public, make public.

Let me be clear. This is not a vote on whether or not one supports a nuclear repository at Yucca Mountain. This amendment is about whether Members of Congress and our constituents have a right to know, the right to know whether nuclear wastes are going to be traveling through our communities. A vote for this amendment is a vote in favor of protecting our neighborhoods from bureaucrats with too little information and too much secrecy. This is, in the end, about the public's right to know.

Mr. Chairman, I strongly urge my colleagues to support this amendment. Again, I want to thank the chairman and the ranking member for their work.

Mr. Chairman, I reserve the balance of my time.

Mr. CALLAHAN. Mr. Chairman, I reluctantly rise in opposition to the gentlewoman's amendment.

Mr. Chairman, I yield myself such time as I may consume.

First let me say to the gentlewoman that we are all concerned about the transportation part of the ultimate storage at Yucca Mountain. During the last month, I have traveled to Yucca Mountain and looked at the facility. We have discussed the transportation part of the storage site at Yucca Mountain, and we agree with the gentlewoman that we should be prepared. However, we have ample time to be prepared.

For the gentlewoman's information, we have already provided $3.1 million in the bill for the Nuclear Waste Technical Review Board. They tell us they can live with that much money, and I really do not think that taking another $500,000 and putting it into that study is going to enhance the solution to the gentlewoman's problems at all. Our major concern is that we have a safe conveyance. If, indeed, Yucca Mountain is approved, we need some safe capability of delivering the products through the various States and through the State of Nevada to the site.

So I would agree with the gentlewoman that we should be concerned about it, and we are concerned about it. We brought this up in our committee hearings, and the Department of Energy told us that they had opted to defer more serious transportation planning until the completion of the site's final site. The final determination has not yet been made. What the Department is saying is that as soon as final determination is made, it is still going to be 6, 7, maybe 9 years before the repository opens. It is going to take a long time, we will still have ample time to study the transportation possibilities. I think that at this time putting an additional $500,000 into a review board that really does not need the money is not the answer to the gentlewoman's problems.

So I would respectfully disagree with the gentlewoman's amendment.

Ms. BERKLEY. Mr. Chairman, will the gentleman yield?

Mr. CALLAHAN. Mr. Chairman, I yield to the gentlewoman from Nevada.

Mr. CALLAHAN. Mr. Chairman, I yield to the gentlewoman from Nevada. So I think the gentleman is on the right track; I think she is just a little off the right track. I think she is just a little off the right track. I think she is just a little off the right track. I think she is just a little off the right track. I think she is just a little off the right track.
transportation routes in Nevada and other States in cooperation with the States and to begin planning for construction of a rail line to the repository site.”

So again, reluctantly, I also am very opposed to the gentleman’s amendment.

Mr. CALLAHAN. Mr. Chairman, I reserve the balance of my time.

Ms. BERKLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. MARKET).

Mr. MARKET. Mr. Chairman, I thank the gentleman for yielding me this time.

Now, the reason the gentleman is raising the issue is quite simple. First of all, we are told that this nuclear technology is so safe that none of us have to worry, none of us have to be concerned at all as the materials are transported down streets in our own communities. On the other hand, there is a law on the books which indemnifies, which makes sure that none of the companies owning these trucks or the trains are liable in the event of an accident.

Well, that is not a good combination. One cannot say on the one hand it is safe and on the other hand say, well, we have to indemnify against any risks of the truck drivers and the train drivers. Who would want people careening through their neighborhoods with no insurance in large trucks, much less trucks or trains with nuclear materials there? So they become “mobile Chernobyls,” in a sense. They become these very dangerous vehicles.

What the gentleman is saying is that we should have advanced knowledge in which routes are going to be taken, what the precautions are that are being put into place. It is just kind of a common-sense, anticipatory way of looking at these issues, especially since this recipe has been constructed, which could be an invitation to recklessness, to willful misconduct, to excessive drinking or drug-taking by the truck drivers or the train conductors, because they are not liable for any accidents.

And that is why I think the gentleman is so concerned. And I think what this issue does is just help to spotlight how concerned all Americans should be if this material starts to move through their neighborhoods.

Ms. BERKLEY. Mr. Chairman, may I inquire as to how much time I have remaining?

Mr. CALLAHAN. Mr. Chairman, I urge a “no” vote, and I yield back the balance of my time.

Ms. BERKLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, two nights ago this House passed legislation that would prohibit dangerous trucks coming to this country from Mexico. Certainly, those trucks containing nuclear waste going through our neighborhoods is more serious than dangerous Mexican trucks, which we prohibited from coming onto our highways.

It seems to me there is not one of us that can go home to our constituents and say we voted down a piece of legislation that would demand that the Department of Energy actually publish the proposed transportation routes of 77,000 tons of toxic nuclear waste. This nuclear waste is going to be coming across all our neighborhoods, all of our towns, through our communities, through 43 States en route to Yucca Mountain, Nevada.

Now, I appreciate the fact that both the chairman and the ranking member suggest that perhaps this is premature, but listening to what the administration has been saying with their new reliance on nuclear energy and the fact that in the summary language itself, it states, although there has not been completion of the scientific study saying Yucca Mountain will be the Nation’s repository, certainly nobody reading the signs can say that this country is not trying very hard to make Yucca Mountain, which has been selected as the only site, the one that is acceptable for nuclear waste. I might add, however, that it is not acceptable, and it is very apparent that it is not.

The fact of the matter is that we have a right to know, and we have a right to protect our constituents. Our constituents, American citizens, have a right to know what their government intends to do. And I would like to harken back to the nuclear weapons tests that were conducted at the Nevada test site in the 1950s and the 1960s, when we were told there was absolutely no danger to detonating those atomic weapons in the middle of the Nevada desert. The fact of the matter is, every single employee of the Nevada test site that worked on those atomic tests are all dying of cancer now and other horrible, heinous ailments. And that is because our Federal Government said, Don’t worry, be happy; there is nothing wrong. This is a similar situation 50 years later, and we are hearing the exact same thing from our Federal Government.

For this body not to stand up and protect each one of our constituents, and make sure that that nuclear waste and those trucks are not going to be barreling down our neighborhood streets, I think is most irresponsible for anybody that does not support this legislation. This is the most important issue to the people in Southern Nevada, the people that I represent. I again urge all of my colleagues to stand with us, stand with me, and make a determination to keep our neighborhoods, our schools, our hospitals, and the people that we represent safe.

Mr. BACA. Mr. Chairman, I rise in support of the Berkley amendment to the Energy and Water FY 2002 Appropriations bill, H.R. 2311. We must study the problems associated with the transportation of nuclear waste and protect our communities.

The likeliest routes will truck much of California’s radioactive waste along Interstate 15 and along train tracks straight through San Bernardino County.

It has been said that used fuel is so dangerous that the nuclear plants must isolate the fuel from human contact for 10,000 years. So why would we run the risk of shipping it through our backyards without the proper scientific research and before we have weighed all our options?

Congress has spent billions of dollars on the Yucca Mountain storage site and it is still unknown whether this site is environmentally sound or not. Why should our tax dollars be spent and our health be put at risk without finding out all aspects of this issue? Scientific research now shows that transporting such material has potential risks that could end in catastrophic disasters and yet no other option has been proposed.

We must ensure the security of our community. Nuclear waste is a serious issue that must be handled very carefully and thoroughly. I am committed to protecting the health and environment of the 42nd district of California along with all the districts in the United States.

Ms. BERKLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question was taken; and the House passed legislation that would prohibit dangerous trucks coming to this country from Mexico.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nevada (Ms. BERKLEY).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. BERKLEY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Nevada (Ms. BERKLEY) will be postponed.

AMENDMENT OFFERED BY MRS. KELLY

Mrs. KELLY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. KELLY:

In title IV, in the item relating to “NUCLEAR REGULATORY COMMISSION—SALARIES AND EXPENSES,” after the second and fourth dollar amounts, insert the following: “(reduced by $700,000)”;

in title IV, in the item relating to “NUCLEAR REGULATORY COMMISSION—OFFICE OF INSPECTOR GENERAL,” after the first and second dollar amounts, insert the following: “(increased by $700,000)”;

The CHAIRMAN. Pursuant to the order of the House of Wednesday, June 27, 2001, the gentleman from New York (Mrs. KELLY) and a Member opposed each will control 5 minutes.
The Chair recognizes the gentleman from New York (Mrs. KELLY).  

Mrs. KELLY. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, I rise for the purpose of entering into this colloquy with the distinguished chairman of the committee, the gentleman from Alabama (Mr. CALLAHAN), I wish to discuss the importance of providing additional funding for the NRC Inspector General. I feel that providing the Inspector General with more resources will help the NRC better perform its responsibility of ensuring the safe operation of our Nation's nuclear power plants. Through my own experience, I have found that the agency's priorities have not always been what they should be.  

In February of last year, an accident occurred at the Indian Point 2 nuclear power plant in my district. A steam generator tube burst, and the plant was shut down immediately. It goes without saying the people in the community surrounding the plant, myself included, were seriously troubled by this accident. We expected the Federal agency responsible for handling nuclear safety would make every effort to quickly repair and restore public confidence in the plant. I regret to say that the NRC fell short of this very reasonable expectation.  

Though the agency itself acknowledged that this plant had the highest risk assessment of any plant in the Nation, they were on red as risk assessment, they demonstrated a stunning indifference to a litany of legitimate concerns about the plant's safety. The NRC chairman refused to play any role whatsoever in the very difficult deliberation as to when the plant ought to be started. The NRC chairman refused to hold a congressional hearing at the plant, or even come to Buchanan to see the plant and the surrounding community firsthand.  

Not once during the entire 11-month period that the plant was down did the chairman or any of the NRC commissioners think they ought to come to Buchanan, New York, and look at this plant. So the chairman can imagine my profound concern when I learned about some of the places that the NRC chairman and the commissioners did think they ought to go during the time the plant was down: places like Korea, Spain, and Mexico. The public record indicates that during the time the Indian Point 2 plant was down, the chairman of the NRC visited a nuclear power plant in Scotland. He visited three in Canada.  

During this time, investigators from the IG's office were at Indian Point cataloguing all of their mistakes. They found a troubling number of things at this plant, and the most troubling they discovered was that an inspection performed back in 1997 plainly indicated the strong likelihood of a leak. The NRC had that information back in 1997. It showed that there was a strong likelihood of a leak, but nothing was done because nobody at the NRC ever looked at the inspection report. This should not have happened.  

I realize there is a new interest in nuclear power, and I should say that I am not against nuclear power. But the way that the NRC handled the Nation's most troubled plant raises some real concerns. I understand the gentleman from Alabama has provided a generous increase in the funding for the Inspector General in this bill. I commend him and thank him for it. Is it the gentleman's understanding that this additional funding will be available for further independent reviews of NRC regulating activities?  

Mr. CALLAHAN. Mr. Chairman, will the gentlewoman yield?  

Mrs. KELLY. I yield to the gentleman from Alabama.  

Mr. CALLAHAN. I thank the gentlewoman for her work on this issue, Mr. Chairman; and I share her feelings about the importance of ensuring that the NRC Inspector General is provided the resources it needs for conducting independent reviews. This additional $800 million that we have in this bill is available for this very purpose.  

Mrs. KELLY. I thank the gentleman. I would ask only that the gentleman continue to keep in mind the importance of a strong funding level for the NRC Inspector General as we continue to work on this bill, and also that he continue to vigorously oversee the agency to ensure that unnecessary travel expenses are not incurred by the NRC officials.  

Mr. CALLAHAN. If the gentlewoman will yield further, I will continue to closely monitor all expenditures incurred by NRC officials to ensure that their resources are not improperly squandered.  

Mrs. KELLY. I thank the gentleman from Alabama very much, the distinguished chairman of the subcommittee. Mr. Chairman, I ask unanimous consent to withdraw my amendment.  

The CHAIRMAN. Is there objection to the request of the gentlewoman from New York?  

There was no objection.  

The CHAIRMAN. The amendment is withdrawn.  

AMENDMENT OFFERED BY MR. DAVIS OF FLORIDA  

Mr. DAVIS of Florida. Mr. Chairman, I offer an amendment.  

The CHAIRMAN. The Clerk will designate the amendment.  

The text of the amendment is as follows: Amendment offered by Mr. Davis of Florida: In title III, in the item relating to "FEDERAL ENERGY REGULATORY COMMISSION—SALARIES AND EXPENSES"; strike the last paragraph relating to Gulfstream Natural Gas Project.  

The CHAIRMAN. Pursuant to the order of the House of Wednesday, June 27, 2001, the gentleman from Florida (Mr. DAVIS) and a Member opposed each exercised control of debate. The Chair recognizes the gentleman from Florida (Mr. DAVIS).  

Mr. DAVIS of Florida. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, I would like to set the context of this amendment because it takes us back a little bit. Last week, we had a debate on the floor of the House of Representatives. It was a very heated, very democratic debate. On the floor about an amendment I offered, along with the gentleman from Florida (Mr. SCARBOROUGH), to prevent the Secretary of the Interior from going forward with issuing any new leases for offshore oil drilling, oil and gas, 17 miles off the coast of Pensacola, some of the most pristine beaches in not just the State of Florida but of the country, and about 200 miles off the coast of Tampa Bay, my home. The House adopted our amendment by a vote of 247, and the bill is now in the Senate where it will be debated there. Unfortunately, the highly esteemed chairman of the Subcommittee on Energy and Water Development, the gentleman from Alabama (Mr. CALLAHAN), was in Alabama, with other members of the Alabama delegation traveling with the President, and was not present for the debate. I regret that, and I know he certainly regrets it as well. But the House has done its will and spoke on that particular issue.  

The reason I rise today to offer this amendment is because the gentleman from Alabama (Mr. CALLAHAN) has inserted some language in this particular bill we are debating, which I think is fair to describe as a response to the debate last week. What that language, which I will speak about in more detail in a while, along with other Members both Democrats and Republicans, what that language does is to punish the State of Florida and, I would submit, other States who have a stake in a natural gas pipeline that has already had $800 million spent on it and is due to open in approximately 1 year.  

The language that the gentleman from Alabama (Mr. CALLAHAN) has inserted would basically bring that pipeline to a grinding halt. I think that is an irresponsible position for the House of Representatives to take today. I personally would not want to go home on the 4th of July and have to explain that I had voted for a bill that had that language in it. I do understand the gentleman’s point. His point is he wishes he had been here for the debate, and I think he disagrees in the strongest terms with the outcome of the debate last week. But that debate is over, and we are dealing with a new issue today and it is an issue that affects hundreds of workers’ lives.  

Mr. Chairman, I reserve the balance of my time.
Mr. CALLAHAN. Mr. Chairman, I yield myself such time as I may consume, and I rise in opposition to the amendment.

Mr. Chairman, let me say that, as the gentleman from Florida just mentioned, yes, they did bring up this measure while I, along with the other members of the Alabama delegation, were traveling with the President last week, which is their prerogative. I think, out of deference to me and to my delegation, that they should have at least informed us the night before of their intent. But they failed to do that, which is their prerogative. They do not have to notify me of anything if they do not want to. But I thought it awful strange they waited until we got out of town. When it was obvious we could not get back, this did not allow us the opportunity to defend our State.

But this amendment has nothing to do with that. As the gentleman from Florida said, the vote last Thursday was the will of the Congress. This has nothing to do with permitting the drilling of oil off the coast of Alabama, which 181 does. It has nothing to do with that.

I think it is the height of hypocrisy for Floridians, especially the sponsor of this amendment, to say we are not going to allow drilling for natural gas in the Gulf of Mexico because it is 270 miles off the coast of Tampa, but at the same time we want a pipeline from Alabama to Florida because we need this gas. They tell us that a 142 percent expectation of increased need is going to take place in the next 6 years in Florida. So what they said was, do not drill for the gas, but go ahead and build the pipeline and supply us with gas.

Mr. Chairman, they have got to make up their mind. It is the height of hypocrisy to try to pull the wool over the Floridians’ eyes just because it might look good in the local newspaper, or statewide newspaper, if someone happens to be running for a public office statewide. It is the height of hypocrisy to on the one hand go to your people and say, look how strong I am, look how faithful I am, look what I am doing to protect the beautiful beaches of Florida, look what I have done, re-elect me or send me to another office, do all of these good things; but let us go ahead and build that pipeline because we know it is going to happen anyway. And if it is not going to happen anyway, well, then, we do not want them drilling off the coast of Alabama for additional resources. We are going to take this resource away from the people of Alabama.

So they are saying to Alabamans, you suffer, but do not let us suffer. Let us run our air conditioners all year long, because the weather and the climate in Florida is so wonderful and so beautiful it requires that they have more air-conditioning. We want to do that. We want to provide for Floridians the ample resources they need, thereby ensuring they will not have the same problem Florida, which is what is going to happen.

We do not want that to happen to our neighbors in Florida, and we are not going to let that happen. But, in my opinion, why build a pipeline to transport gas when the author of this bill is the one who authored the other bill saying do not drill for gas.

Mr. Chairman, why are we going to disrupt the sandy bottom of the beautiful Gulf of Mexico and risk that brown sand turning the beautiful beaches of the panhandle in Destin and in Pensacola into a brown beach? Why? Why would we risk that if we are not going to have a resource? It is a mystery to me.

The only solution I can find to that mystery is that someone is grandstanding here. Someone either believes or wants it to happen on the one hand, and is trying for some reason to convince the Floridians that might read about this that he is a savior of Florida, and maybe he is.

I think Jeb Bush has done more, Mr. Chairman, to preserve the pristine beaches of Florida and make sure that there is no offshore drilling off the coast of Florida than anybody in history, and he is to be commended for that. But I do not know how we can tolerate the hypocrisy of what we are hearing here today, and that is do not drill for oil. That is accepted. That is not in question today; but just in case we do, then send it to Florida through this pipeline that we are going to lay on the bottom of the beautiful Gulf of Mexico.

Mr. Chairman, I reserve the balance of my time.

Mr. DAVIS of Florida. Mr. Chairman, I yield 4 minutes to myself to respond. Mr. Chairman, I am going to stick to the facts today. I think that holds up to the standard that we should be held up to. First, I am flattered at the notion that I had the chance to control the timing of the debate last week. I wish I had that much influence. It is clear that the gentleman from Florida (Mr. SCARBOROUGH) and I do not.

As far as the notice, I regret that the gentleman from Alabama was not aware. The amendment was not filed until the morning of the debate because I had difficulties with the Congressional Budget Office getting an amendment that would not be subject to a point of order, and that is the reason why the amendment only has a 6-month duration for the fiscal year.

Mr. Chairman, let me correct something the gentleman from Alabama said. Section 181 is 200 miles, not 270 miles, off the coast of Tampa Bay, my home. That is where I grew up. I remember an oil spill that happened there when I was a child. It was not a rig. It was a barge, but it had the same impact as the other spill in the district that the gentleman from Florida (Mr. SCARBOROUGH) represents, and he can talk about that better than I can.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Florida. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I might point out that they are already drilling now within 1 mile of the district of the gentleman from Florida (Mr. SCARBOROUGH). That is not an argument.

These waters are primarily the waters within 17 miles of the beaches or offshore land of the gentleman from Florida (Mr. SCARBOROUGH) that belong to me or are the State of Alabama. They are directly south of Alabama and not Florida. We can argue all we want by slanting arrows to Alabama that these are areas off the gentleman from Florida’s (Mr. SCARBOROUGH) beaches, but that is not factual. That is misleading. That is hypocrisy.

Mr. DAVIS of Florida. Reclaiming my time, Mr. Chairman, let us stick with the facts and not hyperbole. It is 17 miles. The gentleman and I can disagree whether or not that is Florida’s coast or not. The fact is it is 17 miles from some of the most pristine beaches of not just Florida, but in the country.

Mr. Chairman, the gentleman from Alabama (Mr. CALLAHAN) said yesterday on numerous occasions that he wanted to be remembered as a champion of Florida’s beaches, and after he retired, and I hope that is not soon, Mr. Chairman, to travel around our beautiful beaches. That is where many of the gentleman’s constituents and constituents of Democrat and Republican Members of Congress head this summer, to our beaches.

No, we do not want drilling off our coast that poses an unreasonable risk, and we do need energy, Mr. Chairman. The gentleman from Alabama (Mr. CALLAHAN) is correct about that. I know the gentleman from Alabama (Mr. CALLAHAN) wants energy for his State, too, but that does not mean he has to live next door to a nuclear power facility or any type of facility at all.

This is about balance. That is what the debate is about. It is about balance in terms of protecting our cherished environment.

Let me tell the gentleman, if it is hypocritical for Floridians to cherish their environment, then I proudly wear that label. We think there can be balance achieved, but we do not think that the language in the bill that the amendment addresses does anything to achieve that balance.

Let me also say this is not about allocating credit and blame. The public is too smart for that. I am pleased the
gentleman from Alabama (Mr. CALLAHAN) mentioned the Governor of the State of Alabama. He supports my amendment, Mr. Chairman, and Floridians support this amendment.

If this pipeline was not being built yet, I think the gentleman from Alabama (Mr. CALLAHAN) could have a plausible basis for his position. But let me just state the facts, and then yield to the gentleman from Florida (Mr. SCARBOROUGH).

This pipeline has had $800 million spent on it. There are hundreds of workers all over the country who are thankfully on the verge of earning a bonus for early completion. What are we saying to these workers and their families if we pass a bill today that brings that project to a grinding halt? I do not think that is responsible. That is why we could not debate today whether or not the Congress ought to take that position.

Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Chairman, I thank the gentleman from Florida for this amendment. I want to underline what he said about the Governor of the State of Florida. Jeb Bush not only supported our efforts last week, he supported our efforts in a bill that we have dropped regarding 181; and he and the State of Florida support the pipeline.

I think there is some hypocrisy going on here. I also think some people are having some fun, and I have no problem with people having fun on the House floor with some tongue-in-cheek amendments. But I could not help being moved yesterday by the gentleman from Alabama’s (Mr. CALLAHAN) love for northwest Florida beaches, and his stated desire to protect the environment of beaches, and his stated desire to protect the natural beauty of northwest Florida.

Just as he wants to protect Florida beaches, I want to protect Alabama jobs that would be lost if those who are currently employed working on the Gulf Coast were to lose their jobs to complete their work. And that is in my district, too, at Berg Steel and across the States of Louisiana and Texas.

I fear, though, that the precedent that is being set by what the chairman has attempted to do in this bill could be dangerous because, let us think about it. Just for 1 second, let us think about it. If we use this logic that is being used, like, for instance, communities that do not want drilling 17 miles off their beaches should not be able to get natural gas, well, let us see how that would apply to other things.

If one likes chicken, under the amendment’s logic, community chick- en farms would have to spring up on every block because it would be hypo- critical not to have chicken coops in the back yards of everybody’s house that eats chicken. Think about sau- sage. In Pensacola, Florida, we have a place called The Coffee Cup. It is a greasy spoon that serves bacon, and I will be the first to admit, I love bacon. I consume bacon. But I sure as heck do not want to have a self-sustaining Coffee Cup slaughterhouse in the parking lot behind that restaurant and every other restaurant, but, using this logic, would have to do it.

Got milk? Better tie up the cow behind the barn because if one likes milk, if you consume milk, you better have the cow. Just like on the commercial where one drinks milk and then he goes to his cereal, it looks preposterous. That is the world that we are heading into if we have protectionism where if you consume it in your district, you have to make it in your district.

Mr. Chairman, that is why I think this is tongue-in-cheek, because the gentleman from Alabama (Mr. CALLAHAN) knows that is not the way that the American economy works. The gentle- man from Alabama (Mr. CALLAHAN) knows that there are strengths in every area. Texas, Louisiana, Miss-issippi, Alabama, they have their strengths. Northwest Florida and the State of Florida, they also have their strengths; and who among us does not know that Florida’s strength lies in its natural beauty of its beaches.

I want to say that I understand that the chairman was upset because we took this vote when the State of Alabama Caucus, most of them, were out of the Capitol. Mr. Chairman, as I said to you the other day, before I hugged you for trying to protect my district so much, my staff worker that was responsible for tracking the where-abouts of the Alabama delegation must have been off that day. I know it will shock the gentleman, but I did not know that the delegation was down with the President in Alabama. I found out when we were on the floor, and if the gentleman from Alabama (Mr. CALLAHAN) wants, we can have, maybe after this amendment passes, we can discuss unanimous consent to let us know that if we pass something that had the Alabama delegation been here, the Davis-Scaborough amendment would have passed 247 to 194 instead of 247 to 188. It was not even close.

Mr. Chairman, I yield myself such time as I may con- sume. Mr. Chairman, let me say that once again we are experiencing sort of a demagoguery, sort of an attempt to mislead the Members of Congress as to what this amendment is all about.

This amendment has zero to do with drilling off the coast of Alabama or Florida. It has nothing to do with it. It means, that is water under the dam. That water is gone. They did that in my absence, and I will accept the gentleman’s apology. And let me apologize to him. I never thought the gentleman ought to keep track of me. I never thought that the gentleman ought to get his scheduler to poll to see where the Alabama delegation is. But this is a body of compromise, a body of conge- niality, a body of friendship. I would
never think of doing this to anyone in Florida when I knew they were gone; but that is water under the dam.

The gentleman from Florida and the chairman do not have to do with the drilling aspect, and quit trying to tell the Members of this body that it does. It has to do with the laying of a pipeline from Mobile, Alabama, my district, to Florida, and even the Florida newspapers are saying that the gas pipeline will cause damage in the Gulf of Mexico.

So here we have the Florida Naples Daily saying that it is going to cause damage to the environment, and now we do not have the Florida delegation defending that, they are saying, go ahead and destroy our environment. Build that nasty old pipeline. Bring the gas in from somewhere else.

Mr. Chairman, we ought to talk about the subject matter, not what happened last week.

Mr. Chairman, I yield 5 minutes to the gentleman from Mississippi (Mr. WICKER), a distinguished and knowledgeable Member of this issue and also a member of the subcommittee.

Mr. WICKER. I thank the gentleman for yielding me this time.

Mr. Chairman, a former Member of this body once went down in history when he made the statement, "Don't confuse me with the facts, my mind is made up."

Although the chairman of the subcommittee has just told us that this is not about the drilling in lease area 181, I did have to feel that way last week during the discussion of the Davis amendment. "Don't confuse us with the facts," some of our colleagues said, "our minds are made up."

"Forget that the area in an energy crisis. Just forget the fact that area 181 is way out in the Gulf of Mexico. My mind is made up. Forget the fact that we need to get rid of our dependence on foreign sources of energy. Just forget that. Don't confuse me with that fact, our minds are made up."

And then there was the constant discussion last week about drilling off the coast of Florida. Even The Washington Post, the next day, talked about drilling off the coast of Florida without giving the reader the foggiest notion of what we were talking about.

So what we are talking about, Mr. Chairman, is drilling in the colored-in area here which is called 'Sale 181 Area.'

As Members can see, it is over 213 miles from Tampa Bay, this drilling which our friends from Florida are calling off the coast of Florida. 213 miles away. Over 100 miles away from Panama City there. Yet it is being described by people in that delegation as being off the coast of Florida.

Now, it is true that there is a small strip of water, a small strip of the gulf in lease area 181 that goes up to the coast of Alabama. I want to suggest, perhaps the Chairman, Mr. CALLAHAN. I think, should apologize on behalf of the State of Alabama for being so close to Pensacola, Florida. But the fact of the matter is that this strip that extends within 17 miles of the coast of Alabama is Alabama territory. I think Alabama should get to make that choice.

And also forget the fact, our friends tell us, the supporters of the Davis amendment, that drilling offshore is not only environmentally sound nowadays but it can even be environmentally friendly.

Now, let me say a word of caution to my colleagues, Mr. Chairman. And I mean this sincerely. There has been the use of the word "hypocrisy" by both sides. Someone is going to jump up sometime and ask that words be taken down. I wish we would not use the word "hypocrisy." I think that has been established as perhaps going above and beyond what we can do on the floor. I think there is a degree of audacity in this argument here. And the audacity, the gentleman from Florida (Mr. SCARBOROUGH) is right, it is bipartisan. It is bipartisan.

I learned from the State Department yesterday that most nations in the world claim 12 nautical miles off the coast as their territory. Only one nation does not do this and that is Communist China. They claim 200 miles. There is a little bit of a parallel here. The people of Florida are saying off the coast of Florida is 213 miles. "That's our coast." Off the coast of Florida is 108 miles from Fort Walton Beach. They are saying, "Don't give us the 12 nautical miles. Give us 108 miles. Give us 213 miles." A bit of audacity there.

Let me just say this. Perhaps we do not need this pipeline anymore. We were talking last week with the Davis amendment about 7.8 trillion cubic feet of natural gas. I think this body, Mr. Chairman, made a grave mistake to decide that this Nation will forgo this very needed natural resource. It is not a question of where you put the sausage factory. It is not a question of where you bring the cow. This is where the natural gas is. It is right there in lease area 181. We have decided, and I hope we can reverse that decision, Mr. Chairman, we have decided to forget it. So since we are not going to have the 7.8 trillion cubic feet, I say there is no need for the pipeline to carry only 1 million cubic feet per day.

I urge the defeat of the Davis amendment.

Mr. DAVIS of Florida. Mr. Chairman, I yield myself 1 minute.

The gentleman who last spoke wants to reconvene the amendment last week and the chairman does not and I respect the chairman's view on that. I do not think we should redite it. But since he brought it up, let me respond.

There are 21 days of crude oil in section 181. We do not think as Floridians we should have to choose between satisfying our energy needs and exposing ourselves to undue environmental risk for 21 days of crude oil. The House has spoken on that. We sent a very strong message that we need a more balanced approach to environmental and energy policy and we saw it just in Florida but in the country, and that vote stands.

Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mrs. THURMAN).

Mrs. THURMAN. I thank the gentleman for yielding me this time.

I stand today to say that I support the amendment offered by the gentleman from Florida (Mr. DAVIS). I was struck a little bit by the idea that we are not here because of what happened last week. And so at some point I would like the gentleman from Alabama to tell me why we are here then.

This is a project that, in fact, is going to be completed later this year, about 753 miles long. The fact of the matter is that in my district, because this comes through my district, it was controversial. FERC held public hearings at which the concerns of these interested citizens were heard. In response, Gulfstream modified the pipeline plan and now FERC is reviewing the revised plan. So I do not think there is really a legitimate reason at this time for the House to stop this process, and I think that is what this amendment actually would do and why we are here.

Mr. CALLAHAN. Mr. Chairman, will the gentlewoman yield?

Mrs. THURMAN. I yield to the gentleman from Alabama.

Mr. CALLAHAN. No, that is not why we are here. This has nothing to do with the drilling. It has to do with the pipeline which is a natural gas and if there is not going to be, why build a pipeline. That is why we are here. It has only to do with the pipeline, not the drilling.

Mrs. THURMAN. Reclaiming my time, there has been natural gas and there continues to be natural gas. We have natural gas already. So I think that is kind of not true.

We get natural gas from other places. All we are saying is, we do not want the drilling in Florida. I think the gentleman can understand that. I mean, I have been to some of these other States where they have beaches and, quite frankly, I do not like getting into Louisiana's water because it is greasy looking and I do not like it. I apologize to the gentlewoman from Louisiana (Mr. TAUSIN), but I have been there and I have swam in some of those areas, in Lake Charles. So we have some real concerns about what is going on. We have some concerns about the idea that this is taking place today.

Maybe it was not the gentleman from Alabama's intention because of what
happened last week, but some of the articles that I have read in Florida actually do say that, and that this was controversial.

Mr. CALLAHAN. Mr. Chairman, I yield myself such time as I may consume.

In response to the gentleman from Mississippi's suggestion about Pensacola, Mr. Chairman, a lot of people in that Panhandle called me my entire tenure when I was in the Senate asking me to annex them into Alabama. Maybe that is a solution. If we annex the whole Panhandle into Alabama, then they will not have any argument about it being 17 miles away.

And with further respect to his indication that my words could be taken down for saying the word "hypocrisy," maybe he is right. It is the height of arrogance that causes us to be here today.

Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. DeLAY), the majority whip.

Mr. DeLAY. Mr. Chairman, I think it is very interesting. I hope our Members are watching this debate, because it is so telling. It is going on in the debate about providing energy so that Americans can turn on their lights, turn their stoves on and get natural gas, heat their homes. It is just amazing to me.

The Florida delegation, Mr. Chairman, says that they want to keep this pipeline, that if we do away with the pipeline it is going to cost jobs. But last week they did not care about the jobs that were lost by shutting down a lease sale. And now we are listening to the argument that exploring and producing oil and gas, natural gas, is like raising chickens. I guess if I asked the Florida delegation where does natural gas come from, they would say, "My stove."

Mr. Chairman, I rise to oppose this amendment to let Floridians share in the shortages that they are forcing on the rest of America. Last week, our friends from Florida torpedoed an extremely promising field of oil and gas. That action jeopardized our energy security. However, they do not apply that policy consistently. It outcomes that Floridians are far more accommodating on energy issues that directly benefit their own State.

They shot down lease sale 181 even though it holds billions of barrels of oil and trillions of cubic feet of natural gas. The Florida delegation ignored the important role that these reserves could play in lowering our national dependence on foreign sources.

It is common knowledge that America is increasingly relying on natural gas to produce electricity. That trend is happening because making electricity with natural gas can be less expensive than other types of generation. Well, it has to come from somewhere.

They will not let us find more in the gulf, but Florida sure is not resisting the trend toward natural gas. Florida's natural gas demand for electricity will double over the next 20 years. Florida's population will grow by a third over the same time period. And they plan to supply electricity to their expanded population with generating plants that burn natural gas. This is the height, oh, I have to use the word, of arrogance. Of arrogance. I did not want to use the word. This is the height of arrogance. Florida is happy to burn it, but they block the rest of America from securing an adequate and reliable supply of natural gas.

That is why Members from Florida are not blocking a proposed natural gas pipeline that will stretch 800 miles through gulf waters from Alabama to the beaches of Florida. And these are the same gulf waters that Florida placed off-limits to exploration that could help the rest of the country. I oppose the gentleman from Florida's amendment to block opposition to this pipeline.

Florida rivals California as a prime example of the not-in-my-backyard syndrome. Let Florida take the lead in conservation. Let them make do with half the natural gas that they are projected to need. If Florida is going to lead America to greater dependence on foreign sources of energy, then let them do it on their own.

There is another thing Floridians ought to remember, as pretty as their beaches may be, they are still a long way from being self-sufficient in oil and gas. And if their reactionary opposition to oil exploration holds sway, tourists will be making their way to Florida on shoe leather. Members should oppose this amendment to help Floridians understand the implications of their actions.

Mr. DAVIS of Florida, Mr. Chairman, I yield myself 2 minutes to respond to the previous comments.

First, there is a very important distinction between my amendment today and the amendment last week. The purpose of the amendment last week was to protect the beaches of Florida. It was not to punish any other State. I am not going to speak to what the purpose of the language in the bill is, but I will tell you what the effect is. The effect is to punish Florida, not to protect anybody else.

Secondly, with respect to jobs. Last week, every Member of Congress that spoke in opposition to the Davis-Scarborough amendment was from an oil-producing State and they were protecting jobs in their areas. As I said on the floor and I will say again today, they do not have to apologize for that.
personally of demagoguery and hypocrisy and of intentionally misleading Members.

I did not take his words down because he loves the northwest Florida environment so much. Also, I had the gentleman from Mississippi (Mr. WICKER) to come up soon afterwards and try to tone things down, as I hope we can do. Unfortunately, the gentleman from Mississippi (Mr. WICKER) then went on and compared my district to Communist China, but we will talk about that at another day.

I hope we can tone this down, and I hope we can understand what this really is all about. It is about punishing the State of Florida because over 200, almost 250 people, in this Chamber voted to protect our shoreline.

Mr. CALLAHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to respond somewhat to the comments of the gentleman from Florida (Mr. SCARBOROUGH) about where we are today and what we are going to do.

He keeps bringing up, everyone keeps bringing up, the vote that took place last week in our absence. As to whether or not it was done in the still of the night while I was gone, that is something that we can resolve. Maybe it was not. Maybe they had good intentions. Maybe they were just, I do not want to say ignorant, of my absence, but and I apologized to him, as I have already said, about the hypocrisy word; and I have changed that to arrogance. That is not the issue.

The issue is the pipeline, and the issue is what is going to be put in the pipeline. The gentleman from Florida has already said that they already have pipeline going into Florida; they want to build more pipelines because they need more natural gas. Now since we are not going to be able to drill in this particular section of the gulf, there is not going to be any more natural gas.

So why build a pipeline when the gentleman’s own newspapers in Florida are telling him that it could be devastating to his own environment? And therein comes my want to protect the beautiful beaches of Florida and especially the beautiful beaches of the Tampa Bay area.

When I take my boat to Florida, as I mentioned the other day, when I retire, if I ever do, when I go there I am going to go dock at a marina in Sarasota. That is where I want to be because that water is so pure, those beaches are so clean. I do not want to do anything to damage those beaches.

This is not about drilling. This is about the fact that this body decided we do not need any more drilling; we do not need any more natural gas. If we are not going to have any more natural gas, why do we need a pipeline to transport it? Therein lies the arrogance of what I was referring to when I mentioned the word hypocrisy. That is what I was referring to.

Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana (Mr. TAUZIN), the chairman of the Committee on Energy and Commerce, who is more impacted by this than Alabama, than Florida, than anybody else, because it is closer to his district than anywhere else; and he is about as knowledgeable of this industry as anyone in this body.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Alabama (Mr. CALLAHAN) for yielding me this time.

Mr. Chairman, I do want to calm things down because things get said in the heat of argument that I know Members would rather they did not say. So let me put something on the record.

The wetlands, the pristine wetlands in many cases, in my State are precious to me, and the waters of Louisiana are precious. They produce 28 percent of this Nation’s landings and seafood that all of us enjoy, and we do so simultaneously with producing 27 percent of the Nation’s natural gas and 27 percent of the Nation’s oil. Keep that in mind.

Our people have made a commitment to this country, not just to keep our wetlands safe, not just to keep our fisheries up and sound and running for everyone, but also to produce oil and gas for the rest of the country, including Florida. There is a national wildlife reserve in my district called Mandalay. I asked Secretary Norton if she ever came to it. She said she did not.

Come to Mandalay National Wildlife Reserve in my district, come and see it. It is full of wildlife, not just a few wildlife like one herd of caribou, but a mass of wildlife. We have 100 wells drilled in Mandalay National Wildlife Reserve producing oil and gas for the rest of America.

I asked her, is the National Wildlife Reserve in Louisiana less precious than ANWR? Less precious than section 181? Less precious than any block of land off of California? Why is it that this country makes a moral judgment that drilling off the coast of Florida? Even if this block were really off the coast of Florida instead of off the coast of Alabama and Louisiana and Mississippi, even if the facts were right that this land we are talking about in the gulf were really closer to Florida than it is to Louisiana in its entirety, not just in one little point, even if that judgment was right, and I question that, what makes production of resources in those areas of the country more desirable, from a moral standpoint, than production in the beautiful wetlands of Louisiana?

Now, I take quarrel with the gentleman who talked about our waters. We drained 40-something States through Louisiana. A lot of muddy water comes through Louisiana. Yet our wetlands are precious to us, but yet we accommodate this Nation in its oil and gas needs.

The gentleman from Alabama (Mr. CALLAHAN) has raised a good question. We are going to debate an energy policy on this floor pretty soon. We ought to think about the morality of an energy policy that says for some parts of America one does not have to take any risk, one does not have to take any risk at all, because somebody else will take the risk for them. Somebody else’s wetlands, somebody else’s coast is going to take a risk for them.

I asked Secretary Norton what would happen to this country if Louisiana decided to put an amendment on this floor to stop oil and gas drilling off our coast because we thought our Mandala wetlands and our beaches were as precious as the wetlands and the beaches of other States of this country? If we decided not to take that risk anymore, what would happen to this country if we lost 27 percent of the oil and the gas?

What was the answer? It would be pretty severe.

I said, no, ma’am. It would be catastrophic. This country would fall apart. If we are already buying oil from Iraq to turn it into jet fuel to put it in our planes to fly over Iraq to bomb the radar sites that are trying to kill American pilots today. How stupid is this policy? In a few short weeks we are going to be debating real broad national energy policy. And, yes, we will talk about conservation, and we will talk about protecting the environment and supplying this country with the energy it needs so that Americans can turn on the lights and they will not be off as they were in California this summer.

We have a moral question to answer in this body, too. Is it moral to protect some people from the risks of production and to ask some of us to do it all? The answer should be no. A pipeline is not needed if the natural gas is not produced.

Mr. DAVIS of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma (Mr. CARSON).

Mr. CARSON of Oklahoma. Mr. Chairman, I rise in strong support of the Davis amendment to strike the language from the appropriations bill that would stop the Gulf Stream pipeline in mid-construction.

The chairman and the gentleman from Louisiana (Mr. TAUZIN) raised great points about the need for an energy policy that says for some parts of this country in the interest of consistency it should be noted that I voted to explore and produce in section 181, just as I support opening up other public lands across this country.

It is critical that construction of this pipeline be allowed to continue, especially at a time when we do recognize the need for improving our energy infrastructure. I think both of us on both
sides of the aisle would agree that improving and increasing our infrastructure and its ability to supply the country with energy is a key component of any sensible energy policy. The completion of this pipeline will provide much needed natural gas throughout central and southern Florida, as well as providing many jobs for the people of the Gulf Coast region.

After all, pipes have already been ordered and delivered. Commitments have been made to construction companies. Contracts have been signed with customers. Power plants are now being built in anticipation of this project being completed.

The gentleman from Alabama (Mr. CALLAHAN) is right that this is not a vote about section 181. I was in the minority of this House in supporting drilling off the coast there. Today, the question is whether in the annals of all the wise policy tools at our disposal whether we shall cut off our nose to spite our face. Passing this appropriations bills with a prohibition would have the effect of stopping this pipeline and its construction.

The Federal Energy Regulatory Commission has already approved the project. The construction materials are already ordered at the cost of $800 million. The current language would prevent FERC from continuing the various approvals that are needed for ongoing construction.

Keeping this language in the energy and water appropriations bill would be both bad energy policy and bad public policy. If we are serious about improving our infrastructure, let us build this pipeline.

Let us not act in petulance or in haste just because we lost one vote in this debate. Let us try to work together to improve our national energy policy. I strongly encourage a “yes” vote on the Davis amendment to strike this unfortunate language from the energy and water appropriations bill.

Mr. CALLAHAN. Mr. Chairman, I yield 1 minute to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I thank the gentleman from Alabama (Mr. CALLAHAN) for yielding me this time.

Mr. CALLAHAN. The steel industry in Alabama is struggling. We have just lost two steel mills. That means that steel workers, iron workers, boiler makers, electricians, sheet metal workers, railroad craftsmen have been laid off work.

The Davis amendment allows the construction of a natural gas pipeline from Alabama to Florida. We just heard the gentleman say that contracts have already been let. That pipeline is expected largely with imported steel. That adds insult to injury for those of us in Alabama. For that reason, the members of the steel caucus, those who have those crafts in their States, should be aware that a yes vote on the Davis amendment will allow the continued use of imported steel and that the pipeline and its construction of this pipeline. That is why yesterday the gentleman from Pennsylvania (Mr. ENGLISH), chairman of the Congressional Steel Caucus, sent a letter to all members of the steel caucus and I quote to reiterate to everyone who has a steel industry in their district to take a long look and vote no on this measure.

Mr. DAVIS of Florida. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, nobody has answered the question yet why we are here. The gentleman from Mississippi (Mr. WICKER) said we are here to redate the amendment; the gentleman from Alabama (Mr. CALLAHAN) to put the language in the amendment, but he still has not told us why we are here.

Let me say what is happening because this is a fact. We have opened a can of worms here today. I would say to the gentleman from Alabama (Mr. CALLAHAN), we are hearing a national debate and the debate is that a pipeline on which $800 million has already been spent, we are going to debate whether it used the right kind of steel and if it did not we are going to shut it down. That is lunacy. Yes, this pipeline has some steel from other countries and it also has a lot of steel from the United States. Some of it was fabricated in Mobile, Alabama.

Let me add something else. I have been asked questions whether this is a unionized project or not. We are going to debate whether this was unionized after it has been built? What are we going to do reconstruct the thing and build a fishing reef off the coast of Mobile? This is a unionized project. Is it 100 percent unionized? No, it is not. So is it a pipeline that is to be unionized? No, it is not. That is a basis to defeat the amendment and scrap this project? Lunacy.

Let me also point out, this pipeline was built to transport natural gas that is already being drilled and extracted in the Mobile area.

Mr. DAVIS of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Chairman, I thank the gentleman for yielding me time.

Just very quickly, I want to say that we did find out why we are here today. Again, the gentleman from Texas (Mr. DELEY) is a straight shooter. He told us why we are here today, because of the vote of last week; basically telling Florida if you do not want to drill, then you do not get our gas.

He also talked about oil, which, of course has nothing to do with this; it is not about oil, it is about natural gas. It is about oil, eventually.

Also I just want to say to the gentleman from Louisiana (Mr. TAUZIN), certainly Louisiana does take the risk; but it takes an economic risk. That is what America is about. He says that Louisiana is doing, or else we are all in danger and not going to be able to put fuel into jets.

Well, that is what capitalism is all about. People make economic choices. They decide what their region or their State or their country is best at; and then, after they make that decision, they pursue it.

Louisiana decided that drilling for natural gas and oil made economic sense, and I applaud them. That is capitalism. We in Florida have decided that our natural resources and our beautiful beaches, which are the best in the world, and they are ranked the best in the world, year in and year out, we have made the economic decision that we want to do everything we can to protect those beaches.

So, if you want to talk about sort of disingenuousness or audacity, do not tell me that I do not love America because it does not make the economic sense in the State of Florida to drill in our wetlands as it does in Louisiana. If Alabama, Mississippi, Louisiana, Texas, and Alaska want to drill for oil, God bless them. That is what America is about, that is what the 10th amendment is about, that is what States’ rights are about.

The State of Florida does not want to be Louisiana; it wants to be the State of Florida.

Mr. CALLAHAN. Mr. Chairman, I yield myself such time as I may concern.

Mr. Chairman, I might just briefly reply to the description of me as, I think, a lunatic, or the word lunacy. I do not like that word either; but, nevertheless, in his statement, it highlights the height of hypocrisy again when he is saying that they are already drilling for gas in Mobile Bay, we want that gas.

But, even more so, this is not about drilling; it is about an inadequate supply of gas to go into a pipeline that is being constructed. So why should we construct it, if we are not going to have the gas?

Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. MICA).

Mr. MICA. Mr. Chairman, the question has been asked, why are we here? We really should be here not to talk about good politics. Possibly some of the proposals that have been put forth over the last couple of weeks have been good politics; but I can tell you, they are bad energy policy.

At the risk of being hit from all sides, I recently proposed a compromise that would comply with 100 million limits for oil drilling. Technically, the finger that comes up here on this map of Tract 181 is in Alabama waters and we should not be really interfering with that lease sale. The gentleman certainly
from Alabama (Mr. CALLAHAN) is right in opposing the amendment and prohibiting the construction of this pipeline. Why do we need a pipeline if we ban gas development?

I proposed that we should prohibit oil drilling in this finger, and then allow natural gas to be extracted from all of Tract 181, which we need. We have an expected population increase of 29 percent in Florida by 2020, and the demand for natural gas to produce electricity will grow by 97 percent.

The United States Department of Energy report entitled "Inventory of Power Plants in the United States" revealed that during the next decade, 28 of 34 electrical generating plants planned for Florida are designed for natural gas.

Here is an article for a plant in New Smyrna Beach. It is 2 weeks old; that proposed power plant is gas-turbine generated. Here is another proposed power plant mentioned this past week in the Orlando Sentinel, it is also gas-turbine generated. Where are we going to get the gas?

You cannot have it both ways, and I think the gentleman from Alabama (Mr. CALLAHAN), by his provision, in banning this pipeline, is correctly raising serious energy policy questions. We must have good energy policy, but we cannot be dependent on bad politics to make good energy decisions.

Mr. DAVIS of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. OBEG), the ranking member on the Committee on Appropriations.

Mr. OBEG. Mr. Chairman, I really do not have a dog in this hunt, coming from Wisconsin; but I simply want to observe that there has been a false parallelism between the idea that if you are going to prevent drilling off the coast of Florida, then somehow it makes sense to prevent the construction of this pipeline.

There is a big difference. The drilling has not occurred; the pipeline is already largely constructed. Secondly, there is no question that Florida is going to need the natural gas. So it seems to me that there is a false parallelism which should be dismissed by any neutral Members of the body.

Secondly, let’s not kid anybody: this amendment is not being offered because of the merits of the amendment. This amendment is here because it is payback time. There are some people in this place who are unhappy with the fact that last week this House said, “No, we are going to protect the beaches of Florida. The oil companies are not going to be able to drill any damn place they want. They are going to have to take other higher values into consideration.”

So, now people who are resentful of that are thinking it would be nice if you could tweak the Florida Representatives for standing up for their own environmental interests and make them pay a price for protecting their beaches from the money lust of the oil companies, basically what you are talking about.

So I think that any Member who does not have a dog in this hunt ought to recognize this amendment for what it is. It is a clever attempt at retaliation. I think the House is above that kind of thing, and I would urge that the amendment be offered by the gentleman today to remove this provision in the bill be adopted.

Any area has the right to protect its environmental resources. That is what Florida did last week, and the House ought to respect it.

Mr. CALLAHAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. O’BRIEN). I yield.

Mr. OBEG. Mr. Chairman, I hardley ever disagree with my ranking member on appropriations, but I do not think this amendment is about retaliation. I think it is about a real energy debate we need to have here on this floor.

I agree. Florida probably does not want to become like Louisiana or Texas. I am worried that they want to become like California, where they do not want to produce. I am glad at least they want to pipeline sometimes, because that is not the case in California.

Yet, when the price goes up, because our supplies are low, they want price caps and they complain about it.

I am worried about this, that if we do not adopt this amendment, if Florida recognizes you need to produce your resources, we will see a California in the southeastern United States, and we will have the same problem in the southeastern United States as we do in California.

We can produce. I have platforms offshore that are emitting zero pollution right now. Thirty years ago we did not have that; but today we have that, because we have different standards today. That none of the funds made available to the Federal Energy Regulatory Commission in this or any other Act may be used to authorize construction of the Gulf Stream natural gas project.” That is the amendment, to strike that language.

Here is why we ought not to be so exercised with each other. The issues are these: the permits to authorize the construction of this pipeline have already been issued. You are not going to change that, unless you are going to change the basic law. You are not going to change that with this language.

The amendment of the gentleman from Florida (Mr. DAVIS) to strike this language is fine, and I am going to vote for it; but the fact of the matter is, this whole debate is really about nothing, because the permits have already been issued. It has been a good vehicle for the debate on the question of Lease 181 and the issue of who drills and who does not drill.

We have to be together on this. To divide this Congress, to divide this House over this issue, is not a smart thing to do. We need to calm down the rhetoric and need to get about becoming energy independent from the rest of the world.

Mr. DAVIS of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Bradenton, Florida (Mr. MILLER.)

Mr. MILLER of Florida. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, for our distinguished chairman of the subcommittee, I thank him for referring to Sarasota. Those are my beaches in Sarasota. I have some of the most beautiful beaches in Florida on the west coast, Anna Maria, Longboat Key, Siesta; and I hope the gentleman brings his boat down to our area.

But I am also the base where the pipeline comes ashore in Manatee County, at Port Manatee. Just as it
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CONGRESSIONAL RECORD—HOUSE

leaves the gentleman’s district, it comes ashore in my district and has a big economic impact. So I think we need to recognize the importance of the pipeline and its investors, who are spending over $1 billion on this pipeline. Now, if there was not enough gas, they would not be spending over $1 billion on this pipeline to build it from two areas. This issue was brought up in a manager’s amendment on Monday which had something to do with Venice beaches, and I appreciate that in the manager’s amendment last week when we addressed the issue of this pipeline. So this is strictly about the pipeline. The investors, they are the ones putting the money at risk, so we do not even make that decision. We should go ahead with the project more clearly, and then I think we have had a thorough, hearty debate. The first is I wish I had the chart here today to show how many rigs have gone up, and I would submit can go up, hugging the coast of Louisiana and Texas, far removed from any chance of polluting the coast of Florida. We have a supply out there, and we Floridians are willing to pay a fair price to consume the energy we need for our State. Again, we do not want to be trapped like California. We want competition. We want more than one pipeline. Adapting this amendment will help achieve that. Let me finally say, just to put this in perspective, if we were to raise the CAFE standards by 14 miles per hour, some very powerful corporations, were shocked by the outcome of the vote on the Davis-Scarlborough amendment. I think we have to go back to the issue of respect and respect the will of the people in my district, respect the people of the State of Florida, just like we need to respect the will of the people of Alabama, Mississippi, Louisiana, Texas and Alaska to determine their own fate. We are very close to Alabama, and what affects Alabama affects us. We need to work together.

Mr. Chairman, I yield myself the balance of the time.

This has been an interesting debate, even though probably 90 percent of the time was spent on talking about an issue that is not even in the amendment. The gentleman from Florida (Mr. Young) is right. Maybe this amendment will have no impact. I think he is wrong, because I think it is sending a message. They are talking about the parochialism of this issue with respect to the gentleman from Florida (Mr. SCARBOROUGH) and the gentleman from Florida (Mr. DAvis). Mr. Chairman, this is about my district. This pipeline originates in my district. What the gentleman from Florida (Mr. Davis) said is we are going to take all you are already extracting, because you have too much, and we are going to send it to Florida because they do not have any. He is right, except we do not have too much. When we ship gas out of the State of Alabama, our power rates are going to become competitive, and they go up. So that is not the issue. The issue is that I think that this issue was brought up at such a time that was inconvenient to the Alabama delegation to be here and defend themselves. They have apologized for that. We accept that apology.

I am saying this is an environmental issue, and the issue is whether or not we need to build a pipeline if we are not going to permit drilling. That is the issue. It is of keen interest to me and to the people of my State as well. All they talked about today in their sellish vision and their sellish manner is that this is going to hurt Florida. We are not going to have gas to air condition our homes. Do not do this to us. I am saying, it is going to impact Alabama as well. If the gentleman from Florida (Mr. Young), the chairman of the committee, is right, and FERC would have the authority to stop it, then there is no need for this debate.

If I want to stop it, I think I can stop it through the permitting process in the State of Alabama, which I might; if this amendment is adopted, that is probably what I will do. But I do not think this amendment is going to be adopted, and I know that some people have come up to me and said, Sonny, you would not retaliate and take some of my projects out in the conference committee that you have been so generous with in the past 3 or 4 or 5 weeks; that is not the case. I would not think of doing that.

Mr. Chairman, I will say that this is a project that is of great interest to me, and that I would like very much to defeat this amendment, and I would encourage my colleagues to vote “no.”

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Florida (Mr. Davis).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. DAvis of Florida, Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Florida will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: The amendment offered by the gentlewoman from Nevada (Ms. BerkleY), and the amendment offered by the gentleman from Florida (Mr. Davis).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT OFFERED BY MS. BERKLEY

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Nevada (Ms. BerkleY), on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 102, noes 321, not voting 10, as follows:

[Roll No. 204]

AYES—102

Becerra
Baca
Berenil
Becerra
Berkeley
Bezisek
Bilger
Blumenauer

Brewer
Bryant
Capps
Capuano
Cniggest
Cleveland
Davis (CA)
Davis (IL)
DeFazio

Dingell
Daggett
Engel
Evans
Ferguson
Filner
Frank
Frost
Gephardt
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NOES—212

Messrs. SMITH of Washington, BILIARAKIS, HOLDEN, SANDLIN, GANSKE, GRAVES, RODRIGUEZ, SCOTT and SHEARMAN, and Mrs. MYRICK and Mrs. BIGGERT changed their vote from "aye" to "no."

Messrs. STUPAK, KENNEDY of Ohio, SHAYS, BOSWELL, SOUDER, RANGLING, and HINCHY and Ms. VELAZQUEZ changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, the Chair announces he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT OFFERED BY MR. DAVIS OF FLORIDA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida (Mr. DAVIS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment. The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The amendment was ordered to stand postponed until the close of business on Friday, June 29, 2001.
Calvert
Hinckley
Pickering
Cannon
Henson
Pitta
Cantor
Hoekstra
Pombo
Capito
Holden
Portman
Chabot
Horn
Reynolds
Challambles
Hostettler
Quinn
Clyburn
Hulshof
Ranaderovich
Coble
Hunter
Rziałi
Collins
Hutchinson
Regula
Committee
Hyde
Rehberg
Condit
Isakson
Reynolds
Cooksey
Ism
Riley
Cramer
Jenkins
Rogers (KY)
Crane
John
Rogers (MI)
Cubin
Johnson (IL)
Rohrabacher
Cubinhouse
Johnson (E)
Roukema
Cummins
Johnson, Sam
Roybal-Allard
Davis, Jo Ann
Kanjorski
Ryan (WI)
Davis, Tom
Kelly
Ryan (KS)
Deal
Kennedy (MN)
Sabo
Delahunt
Kerns
Saxton
DeLay
Kennedy (NY)
Schaffer
DeMint
Kingston
Schrock
Dicks
Kirk
Sensenbrenner
Doakleth
Knollenberg
Sensenbrenner
Decker
Kolbe
Shadegg
Duncan
Latham
Sherrwood
Dunn
LaTourette
Shimkus
Edwards
Lewis (CA)
Shuster
Emerson
Lewis (KY)
Simmons
English
Lindsay
Simpson
Everett
LoBiondo
Skak
Farr
Manzullo
Smith (MI)
Farr
Murray
Smith (NJ)
Flake
McCready
Souder
Fletcher
McGrath
Spence
Forbes
McInnis
Stark
Fossella
McIntyre
Stump
Frank
McKeon
Sweeney
Frehlinghausen
McKeon
Taylor (AZ)
Gallegly
Miller, Gary
Tanner
Gekas
Miller, George
Taum
Gibbons
Mink
Taylor (NC)
Gillmor
Mollohan
Terry
Goode
Morgan (KS)
Thornberry
Greatatt
Murry
Thornberry
Gordon
Neal
Thune
Graham
Norcross
Tyler (TX)
Graham
Ney
Tiberi
Graves
Northup
Toomey
Green
(TX)
Norwood
Traxler
Green
(WI)
Nussle
Visclosky
Grucci
Ortiz
Vitter
Gutknecht
Osburne
Walsh
Hansen
Ose
Wash
Hart
Otter
Wamp
Hastings
(WA)
Osley
Wexler
Hayes
Pastor
Whitfield
Hayworth
Paul
Wicker
Heffley
Politi
Wilson
Herger
Peterson (MN)
Wolf
Hillary
Peterson (PA)
Wu
Hilliard
Petri
Young (AK)
NOT VOTING—10
Barton
Platts
Thomas
Burton
Putnam
Weldon (PA)
Gilman
Rosen-Lehtinen
Houghton
Smith (TX)

If I had been present I would have voted “aye.” I ask unanimous consent to have my statement placed in the RECORD at the appropriate point.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

This Act may be cited as the “Energy and Water Development Appropriations Act, 2002.”

Mr. BENNETS. Mr. Chairman, I rise in qualified support of H.R. 2311, the FY 2002 Energy and Water Appropriations bill.

When the Budget Committee, on which I serve, considered the President’s proposal and produced a budget, I knew it was going to be very hard for Congress to fund many important water transportation and flood control projects. I recognize the incredibly difficult circumstances Chairman SONNY CALLAHAN and Ranking Member PETER VISCLOSKY have endured in this budget. I also like to thank my good friend from Texas, Mr. EDWARDS, a distinguished Member of the Subcommittee, for all the help and information he and his office have provided me.

In light of the dramatic budget cuts proposed by the President, I applaud the Subcommittee for the Brays Bayou flood control project. I want to thank the District’s capability—$5 million. When completed, the Brays Bayou project will be a national model for local control, community participation, flood damage reduction in a heavily populated urban watershed, and the creation of a large, multi-use greenway/detention area on the Willow Waterhole tributary. The Brays project is a demonstration project for a new reimbursement program initiated by legislation I authored along with Mr. DELAY that was included in Section 211 of WRDA 1996. The program provides local sponsors more responsibility and flexibility, resulting in projects more efficient implementation in tune with local concerns. I am very encouraged that the Brays project is on track to be fully funded at $5 million track in Fiscal Year 2002, rather than $4 million, as the Administration suggested. The project will improve flood protection for an extensively developed urban area along Brays Bayou in southwest Harris County including tens of thousands of residents. In the second largest port in the United States in total tonnage, and is a catalyst for the south- east Texas economy, contributing more than $5 billion annually and providing 200,000 jobs.

The Houston Ship Channel, one of the world’s most heavily-trafficked ports, desperately needs expansion to meet the challenges of expanding global trade and to maintain its competitive edge as a major international port. Currently, the Port of Houston is the second largest port in the United States in total tonnage, and is a catalyst for the southeast Texas economy, contributing more than $5 billion annually and providing 200,000 jobs.

The Houston Ship Channel expansion project calls for deepening the channel from 40 to 45 feet and widening it from 400 to 530 feet. The ship channel modernization, considered the largest dredging project since the construction of the Panama Canal, will preserve the Port of Houston’s status as one of the premier deep-channel Gulf ports and one of the top transit points for cargo in the world. Besides the economic and safety benefits, the dredged material from the deepening and widening will be used to create 4,250 acres of wetland and bird habitat on Redfish Island.

Accordingly, I was unable to vote on rollcall No. 205.
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Mr. SIMPSON, Chairman of the Committee on Appropriations, who has the floor.

The CHAIRMAN. Under clause 10 of rule XX, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 15, as follows:

YEAS—405

Mr. SIMPSON, Chairman of the Committee on Appropriations, having assumed the chair, Read the amendments to the bill (H.R. 2311) making appropriations for energy and water development for fiscal year 2002, and for other purposes, pursuant to House Resolution 180, he reports the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. The vote was taken by electronic device, and there were—yeas 405, nays 15, as follows:

NAYS—15

April 2000

Mr. SIMPSON, Chairman of the Committee on Appropriations, having assumed the chair, Read the amendments to the bill (H.R. 2311) making appropriations for energy and water development for fiscal year 2002,
conclusion of consideration of the bill for so printed shall be considered as read. At the Member offering an amendment has caused waived. During consideration of the bill for to comply with clause 2 of rule XXI are provisions in the bill, as amended, for failure as adopted in the House and in the Committee on Appropriations. After general debate the bill shall be considered as adopted.

The SPEAKER pro tempore. The gentleman from Texas (Mr. HASTINGS) for yield myself such time as I may consume.

Mr. HASTINGS of Washington. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. HALL), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Madam Speaker, House Resolution 183 is an open rule providing for consideration of the bill H.R. 2330, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002.

The rule provides 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The rule waives all points of order against consideration of the bill. The rule further provides that the bill shall be read for amendment by the Committee on Rules accompanying the rule shall be considered as adopted.

The rule waives all points of order against provisions in the bill, as amended, for failure to comply with clause 2 of rule XXI, prohibiting unauthorized or legislative provisions in a general appropriations bill.

Finally, the rule allows the chairman of the Committee of the Whole to accord priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD, and provides one motion to recommit with or without instructions.

Madam Speaker, House Resolution 183 appropriates $74.2 billion in fiscal year 2002 budget authority for agriculture and related programs through the Department of Agriculture and other agencies.

The bulk of the spending goes to food stamps, $22 billion; the Food and Drug Administration, $2 billion; child nutrition programs, $10.1 billion; supplemental nutrition for Women, Infants and Children, $4.1 billion; and the Federal Crop Insurance Program, $3 billion.

In addition, this bill provides $1 billion for the Agriculture Research Service; $720 million for the Food Safety and Inspection Service; and $946 million for the Farm Service Agency.

Madam Speaker, I am particularly pleased that the Committee on Appropriations has included $150 million for market loss payments for America's apple growers. As a representative of the number one apple-producing district in the Nation, I am acutely aware of the devastating losses sustained by apple growers in the past year.

In our area, for example, countless warehouses, packing houses and other apple-related businesses have either shut down, declared bankruptcy, or downsized dramatically. In county after county, growers find that it costs substantially more to produce a box of apples than the market will pay to buy it.

And, unlike many farms that can easily switch crops when prices are down for one commodity, apple growers cannot simply pull up their orchards and grow something else for a few years until apple prices go back up again. In the face of unfair competition from China and other Asian nations, our growers have few tools with which to fight back.

Apple growers are an unusually independent breed. They have suffered ups and downs of the market for years without asking for any kind of Federal assistance that has long been common to other types of agriculture and farming. But never before have we suffered the kinds of losses we are experiencing right now. For that reason, I would like to commend the gentleman from Florida (Mr. Young) and the gentleman from Texas (Mr. BONILLA) and their colleagues on the Committee on Appropriations for recognizing the dire situation in apple country and for providing this much-needed assistance.

Madam Speaker, this is a fair bill. It funds a number of high-priority programs while cutting out wasteful, unnecessary and duplicative spending. Accordingly, I urge my colleagues to support both this open rule and the underlying bill, H.R. 2330.

Madam Speaker, I reserve the balance of my time.

Mr. HALL of Texas. Madam Speaker, I yield myself such time as I may consume, and I thank the gentleman from Washington (Mr. HASTINGS) for yielding me the customary time.

This allows germane amendments under the 5-minute rule. This is the normal amending process in the House. All Members, on both sides of the aisle, will have the opportunity to offer amendments that do not violate the rules for appropriations bills.

Mr. HALL, this is generally a good bill that serves America's farmers as well as the poor and hungry in this land. And I commend the ranking Democrat, the gentlewoman from Ohio (Ms.
KAPTUR), and the gentleman from Texas (Mr. BONILLA), the chairman of the agriculture appropriations sub-committee for their work. They have done a fine job working with funding levels that are too low for their important jobs.

The bill funds child nutrition programs at a rate slightly higher than last year. It also increases funding for the food stamp program and gives a small boost to food banks. Funding for the WIC program, which feeds mothers and their children, is given a small increase over last year. Unfortunately, this increase is insufficient to meet the demand for this popular program. Monthly participation is exceeding the administration’s projections, which will result in an estimated 100,000 to 200,000 eligible people not being served.

I am disappointed that will add $50 million of the Committee on Rules which failed to make in order an amendment by the gentlewoman from Ohio (Ms. KAPTUR) to fund the Global Food for Education Initiative, which is commonly known as the Global School Lunch Program.

Here in this country, the school lunch program has been one of the most successful nutrition programs. A hungry child faces an extra challenge in school. This program promotes education by making sure that each day all children receive at least one nutritious meal.

What works in the United States ought to work around the world. If we believe in education for children, we should promote this program. Also, this is a great help to our farmers, and it is being championed by former Senators George McGovern and Bob Dole. During consideration of this measure by the Rules Committee last night, I offered an amendment that will add $50 million of the gentlewoman from Ohio (Ms. KAPTUR) to fund the Global Food for Education Initiative, which is commonly known as the Global School Lunch Program. The amendment was defeated on a straight party-line vote, with Democrats supporting the program and Republicans opposing it.

The gentlewoman from Ohio’s (Ms. KAPTUR) amendment could not be accepted because it went over budget. However, at the same time, this same Committee on Rules approved an amendment that added $150 million to the budget to pay apple growers. The Rules Committee also denied a request by the gentlewoman from Connecticut (Ms. DeLAURO) to offer her amendment to fund the Global School Lunch Program. The amendment was defeated on a straight party-line vote, with Democrats supporting the program and Republicans opposing it.

The gentlewoman from Ohio’s (Ms. KAPTUR) amendment could not be accepted because it went over budget. However, at the same time, this same Committee on Rules approved an amendment that added $150 million to the budget to pay apple growers.

The Rules Committee also denied a request by the gentlewoman from Connecticut (Ms. DeLAURO) to offer her amendment to fund the Global School Lunch Program. The amendment was defeated on a straight party-line vote, with Democrats supporting the program and Republicans opposing it.

The gentlewoman from Connecticut (Ms. DeLAURO) will probably be speaking against the rule soon on the question of food safety and improved food inspection. On the surface, the bill before us looks like it provides more

Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Speaker, I yield 3 1⁄2 minutes to the gentlewoman from Ohio (Ms. KAPTUR) to make this a much better bill.

The gentlewoman from Ohio (Ms. KAPTUR) and I, to add this amendment to increase food safety inspectors and give them more resources to do their job.

The gentlewoman from Ohio (Ms. KAPTUR) mentioned the reference to an amendment involving apples. We know that apple producers are facing a tremendou problem right now in trying to deal with some adverse conditions that they are faced with. This was an amendment that I offered yesterday. I am a good friend, the gentleman from New York (Mr. HINCHENY), who has worked very hard on this issue; and this amendment has bipartisan support.

Madam Speaker, I rise in strong support of the rule, and in strong support of the bill that will follow. This is a good, bipartisan bill. I have worked strongly and consistently as chairman of this subcommittee to try to be inclusive, working closely with every Member on both sides of the aisle to try to address as many of the issues as we possibly could in putting this bill together.

Our subcommittee heard many hours of testimony in previous days to get to this point. Many of the hours we spent listening to witnesses involved food safety, and that is something that both of us have worked on, the gentlewoman from Ohio (Ms. KAPTUR) and I, to address these issues. There is great concern in the communities about the threats that exist from diseases that are now prevalent in other countries, primarily in Europe, that many of us are concerned about. Livestock producers, especially with the threat of foot-and-mouth disease and mad cow disease, are concerned, and we have addressed many of these concerns.

We have worked in a bipartisan way to increase the number of inspectors for the Food and Drug Administration to give them the necessary resources to do their job. All of the inspection accounts that are important to keep our food supply and our industry safe from threats from abroad we have addressed in a strong way, and I think I speak for every member of the subcommittee as well, who would agree.

It has been a tough road as well because we have received over 2,500 individual requests for projects from individual Members around the country. We have done our best to try to take care of everyone that we possibly could.

The gentleman from Ohio (Mr. BONILLA) mentioned the reference to an amendment involving apples. We know that apple producers are facing a tremendous problem right now in trying to deal with some adverse conditions that they are faced with. This was an amendment that I offered yesterday. I am a good friend, the gentleman from New York (Mr. HINCHENY), who has worked very hard on this issue; and this amendment has bipartisan support.

Honesty, the Members know that we have tried to keep these authorizing provisions out of the appropriation bill. In this case, the committee worked its will. And we have this program in this bill. We know that there will be some contentious times in trying to deal with this as we move through this bill, but we expect to do that.

All in all, I think we can all stand up and say we are proud of what we have accomplished here. The Committee on Rules has also worked very hard to move this bill to the floor. Again, I want to thank the gentleman from Washington (Mr. BONILLA), the gentleman from California (Mr. DREIER), and all the members of the Committee on Rules for taking a lot of time and energy to get to this point and hope that, in a bipartisan way, we can support the rule and the bill.

Mr. HALL of Ohio. Madam Speaker, I yield the balance of my time to the gentlewoman from Ohio (Ms. KAPTUR), who has been a great proponent and advocate for hungry people all over the world and in her own country.

Ms. KAPTUR. Madam Speaker, I thank the esteemed ranking member for yielding time to me on this rule on our agriculture appropriation bill for the year 2002. Let me say that I have been a pleasure to work with our new chairman, the gentleman from Texas (Mr. BONILLA). We think we have perfected the bill as it has moved through subcommittee and full committee. Nonetheless, I must rise reluctantly to oppose this rule.

We did go before the Committee on Rules to try to get the permission to offer amendments here on the floor today. We were refused. I wanted to go through a few of those amendments that we believe are worthy and would make this a much better bill.

Probably one of the most important is the Global Food for Education initiative inspired by the work of Senators Bob Dole and George McGovern. It takes our school lunch program from this country and extends its concept abroad, using food to help over 9 million needy children in 38 countries to both promote their education and help them develop fully by having decent nutrition. We very much want to continue this program. We really believe that we allowed ourselves to become bottled up by artificial budget rules that prevented us from going on record to do what is right in this current bill.

We would very much like to have this Global Food for Education program extended directly by Congress as a part of the regular order in this appropriation bill.

The gentlewoman from Connecticut (Ms. DeLAURO) will probably be speaking against the rule soon on the question of food safety and improved food inspection. On the surface, the bill before us looks like it provides more
money for those needs, but it almost only pays costs to staff to hold on to what we have. Can anyone here really accept that the Food and Drug Administration can barely inspect 1 percent of the products coming across our borders every day? That means 99 percent of imported product is not tested. Is that the gold standard of safety we hear so much about? And can we really believe that we have the information on the testing of practices like irradiation and enhanced food safety standards? No. In fact, in the subcommittee bill, we were able to get language on irradiation to do the kind of baseline studies that are necessary to assure irradiated food safety to consumers, but then those were stripped at the full committee level.

In the area of biofuels funding, the Bush administration made over 100 recommendations to try to help America move forward and become more energy independent, but not a single one of those recommendations asks the Secretary of Agriculture to do anything. Yet we know that ethanol and biofuels and fuels based on biomass are in our sustainable energy future and that the Department of Agriculture should not be exempt from this important national challenge.

Finally, in the area of 4-H, we will be offering an amendment here on the floor to try to provide some of the initial funding for the measures that were passed here in the House this past week and in the Senate last week to celebrate the anniversary of 4-H. Let us put the money that is in the authorizing bill in this appropriation bill so that, in fact, there is no lapse of time.

For all these reasons, I do oppose the rule and look forward to the debate on the bill as passed by the House.

Mr. YOUNG of Florida. Madam Speaker, I am pleased to yield 5 minutes to the gentleman from Iowa (Mr. NUSSELL), the distinguished chairman of the Committee on the Budget.

Mr. NUSSELL. Madam Speaker, I wish to engage in a colloquy with the gentleman from Florida (Mr. YOUNG), the very distinguished chairman of the Committee on Appropriations.

Mr. YOUNG of Florida. Madam Speaker, I would be pleased to enter into such colloquy with the gentleman from Iowa.

Mr. NUSSELL. I thank the gentleman. It is my understanding that upon adoption of the rule, the appropriations bill will exceed the Subcommittee on Agriculture and Rural Development’s 302(b) allocation by $150 million. However, the bill as reported from the Committee on Appropriations included an additional $150 million in emergency funding to assist apple producers.

Some Members expressed concern over the emergency designation, which in effect would increase spending above the level assumed by the budget resolution, so that designation will be eliminated from the bill by the rule before us at the present time. As a result of this action, the level in this bill will be $150 million over the 302(b) allocation. However, the Committee on Appropriations has not exceeded our 302(a) allocation as set by the Committee on the Budget.

I want to assure the gentleman from Iowa and Members that it was not the intent and it is not the policy of the Committee on Appropriations to present a bill that is in excess of its allocation. It is simply the fact that after extensive discussions with the leadership of the Committee on Agriculture, and the Committee on the Budget, it was determined that the most expeditious way to resolve the matter and get this bill on the floor was the elimination of the emergency designation.

Mr. NUSSELL. It is my further understanding that the Committee on Appropriations will increase the subcommittee’s 302(b) allocation to the level provided by this bill and adjust the 302(b) allocation of other subcommittees by an offsetting amount.

Mr. YOUNG of Florida. Madam Speaker, the gentleman’s understanding is correct. It is the intent of the Committee on Appropriations to address this matter the next time it meets to consider revisions to the allocations by increasing the 302(b) allocation for this bill to a level equal to the amount this bill as passed by the House and to reduce other allocations for outstanding bills to the extent they were before to make thyroid medicine and so one meatpacking plant had simply ground the thyroid up with the rest of the animal. The result was that a good many people got deathly sick.

We have seen a lot of other examples. If we take a look at what the FDA has to say about the adequacy of their inspection system for foodstuffs that come into the United States, for instance, we see that they inspect less than 1 percent of everything that is imported into this country. We believe that that constitutes a true crisis. I think that if we do not act on this crisis, it will hurt not only consumers but the very farmers that many of us represent, because farmers depend on a high level of consumer confidence in order to be able to sell their products.

And while there is no question that our food supply is among the safest in the world, we still have a lot of problems that could be taken care of if we
put the needs of food safety, for instance, ahead of the needs of the wealthiest 1 percent of this country to get a $33,000 tax cut next year. We have some choices to make, and we are being prevented from making them by the choices that were already made by this House on the tax bill.

We also have the question about whether or not WIC is being funded adequately. It certainly appears to me that the funding level in this bill is not adequate. Yet we are not, under the rule, going to be allowed to do anything about that.

And then, thirdly, we have the effort that we tried to make in the full committee to take surplus food which we have in this country and make it available to children around the world. We have a program at USDA that did that last year; and we have been urged by Senator George McGovern and Senator Bob Dole, two people, who in the history of this Congress on a bipartisan basis have made more about food programs than most of us have ever learned, they both urge us to continue this program. USDA will not get off the dime and make up their mind one way or another. We tried to get that done as well in this bill and were blocked procedurally from doing so.

I would urge a no vote on the rule so that we can get a better rule under which we can address the other two issues that I think we have a program at USDA that did that last year; and we have been urged by Senator George McGovern and Senator Bob Dole, two people, who in the history of this Congress on a bipartisan basis have made more about food programs than most of us have ever learned, they both urge us to continue this program. USDA will not get off the dime and make up their mind one way or another. We tried to get that done as well in this bill and were blocked procedurally from doing so.

Mr. HASTINGS of Washington. Madam Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. LATHAM), a member of the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies.

Mr. LATHAM. Madam Speaker, I thank the gentleman from Washington (Mr. HASTINGS) and very much appreciate him yielding me the time.

Madam Speaker, first of all, I want to thank the Committee on Rules for a fair, open rule and for their work. This will bring this bill to the floor in a manner that will open debate and bring out a lot of different points of view. I appreciate that.

I also want to thank the chairman of the subcommittee, the gentleman from Texas (Mr. BONILLA), for a great job that he has done and the ranking member, the gentlewoman from Ohio (Ms. KAPTUR), for all the work and the cooperation that we have seen on both sides. The staff on this bill has done a tremendous job and their efforts are very much appreciated.

This is a bipartisan bill and it is brought to the floor with, I think, agreement that the needs of the majority of the people who are needing assistance for food, is met and that it is a bill that I think we can all support in the House.

There are a couple items that I am very pleased that were included. One is for funding for the National Animal Disease Center in Ames. This is in response to real concerns that we have with foot and mouth disease; mad cow disease; those types of problems that can be devastating to our livestock industry; and also for food safety for Americans. Also, they have increased the funding for the AgrAbility program, something that is very dear to me. What this program does is help people continue to farm even with disabilities, and $16 million in this bill for this very important program is very much appreciated.

This bill funds our research in a manner that agriculture is desperately in need of, new opportunities, new ways of adding value to our products. The way to do that is through research. So I am very pleased with the emphasis that the chairman has put on research.

Also, a key element for the Department of Food Safety, I am very pleased that the FDA has increased funding of $115 million to a level of $1.18 billion. That is the largest increase in history. The Food Inspection Service has an increase of $25.4 million, raising that total to $720 million, also a very substantial increase to meet the needs that we have to provide not only the best quality food but the safest food anywhere to be found in the world.

So, again, I ask Members to support this rule, support this bill. It is good for agriculture. It is good for all of our citizens.

Mr. HALL of Ohio. Madam Speaker, I yield 5 minutes to the gentlewoman from Connecticut (Ms. DELAURA).

Ms. DELAURA. Madam Speaker, I rise in opposition to the rule. It busts the budget caps. There has been a double standard applied to some programs within this bill, and I was fully supportive of the assistance to apple growers in this country, because I think it is the right thing to do to help an industry out when they need that help.

On the other hand, what they have done here with the Committee on Rules is they have made an exception for one emergency and have said no to all other emergencies that face American families. Whether it is family farmers facing the loss of their family farms, whether it is biodiesel fuels, Meals on Wheels, low-income nutrition assistance, we have emergencies that we need to address. We just cannot pick and choose which ones we want and which ones are politically advantageous.

Specifically, this rule blocks an amendment that I brought to the committee to provide urgent emergency funds to address the food safety crisis. Americans are more likely to get sick from foodborne illness than they were a half century ago, and the outbreak of food sickness is expected to go up by as much as 15 percent over the next decade. Each year, some of my colleagues have mentioned this already, 5,000 Americans die from foodborne illnesses, 76 million get ill and 325,000 are hospitalized. Just 2 days ago, the Excel Corporation recalled 190,000 pounds of ground beef and pork because of the possible contamination by deadly E. Coli in Kentucky, in Tennessee, in Georgia, Sara Lee pled guilty to selling tainted meat that was linked to a nationwide listeriosis in 1998 that killed 15 people. Grocery stores are afraid that their fruit is unsafe to sell.

Lest one thinks that these are things that just made up out of a number of headlines from recent news: A Big Recall of Meat Amid E. Coli Fears; Sara Lee Fined in Meat Recall Linked to 15 Deaths; USDA Blamed in Slaughter Violations; Grocers Demand Produce Inspections; Contaminated Food Makes Millions Ill Despite Advances.

Experts like Joe Levitt from the FDA are telling the press that, quote, we do have a real problem. To address this problem, I asked the committee to allow an amendment to provide $213 million in emergency funds, $90 million to increase inspection of imported foods from 1 to 10 percent, $73 million for over 600 new inspectors to inspect all high-risk and domestic farms twice a year and all other domestic farms twice a year, and $50 million for the food safety and inspection service to ensure the implementation of new food safety procedures to strengthen our food safety efforts.

The Food and Drug Administration inspects all food except meat, poultry, eggs, and dairy. They inspect fruit juices, vegetables, cheeses, and seafood. These foods are the sources of 85 percent of food poisoning; and last year, recalls of FDA-regulated products rose to 315, the most since the mid-1990s, and 36 percent above the average.

FDA inspects less than 1 percent of imported food that comes into the United States, and this is a market that has expanded from 2.7 million items coming in to our country to 4.1 million items, and that increase has happened in just the last 3 years.

In the domestic market, the FDA inspects high risk firms no more than once a year and other firms are inspected only once in 7 years.

The FDA has only 480 people to inspect all domestic food, and we have less than 120 people to inspect imported food. Food Safety and Inspection Service has held public hearings on a wide
range of issues: procedures for imported food, risk management, emergency preparedness. We know what has happened in Europe with food and mouth. We know about the threat of mad cow. It is vital that the FSIS has the resources it needs. American families should be able to go out to dinner, to buy food and not be fearful that they or their children or their families are going to be in jeopardy.

In the 1920s, Upton Sinclair wrote in a novel, The Jungle, he highlighted the abuses of the meat packaging industry. It brought a wave of reform in this country. We need to move forward on food safety, not to move backward to the days that Sinclair wrote about. This is about providing the agency that is responsible for protecting our food. This is about providing the agency that the days that Sinclair wrote about. This is about providing the agency that

Mr. HASTINGS of Washington. Madam Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. NUSSLE), the distinguished chairman of the Committee on Appropriations. Mr. NUSSLE. Madam Speaker, I rise to support the rule and to speak in favor of H.R. 2330, providing appropriations for agriculture and related agencies. As reported by the Committee on Appropriations, this bill is technically consistent with the budget resolution and complies with the Congressional Budget Act. As the chairman of the Committee on the Budget, I wish to report to my colleagues that H.R. 2330 provides $15.7 billion in budget authority and $15.97 billion in outlays for fiscal year 2002. The bill does not provide any advanced appropriations. As reported, the bill also designates $150 million in emergencies, which increased both the levels of the budget resolution and caps by the same amount. It also rescinds $3.7 billion, but this rescission produces no savings in outlays. As reported by the Committee on Appropriations on June 27, the bill does exceed the Subcommittee on Agriculture, Rural Development, Food and Drug’s 302(b) allocation. Therefore, it does not violate section 302(f) of the Budget Act, which prohibits the consideration of appropriating legislation that exceeds the reporting subcommittee’s 302(b) allocations. Members may be aware that I am concerned and have been concerned that the reported bill designates $150 million in emergency for the purpose that is already accommodated in the budget resolution. This designation had the effect of increasing the levels of the budget resolution and the statutory caps by the same amount. The budget resolution clearly anticipates and the need for additional agricultural assistance by increasing the Committee on Agriculture’s allocation by $5.5 billion in fiscal year 2001. Indeed, earlier this same week, the House passed a bill that provided that same $6.5 billion in agricultural emergency for the purpose that was provided at $169 million for the producers of specialty crops. In addition, the budget resolution provided another $7.3 billion of agriculture spending in fiscal year 2002 and included a procedure that could increase the total to as much as $63 billion. The Committee on Agriculture is free to use that portion and allocation as it sees fit for specialty crops.

While I continue to have concerns about the emergency designation, the chairman of the Committee on Appropriations and I have agreed, and we just shared that colloquy on the floor a moment ago, that the designation would be stricken by this rule and that the bill would be protected from resulting points of order. Furthermore, the gentleman from Florida (Mr. YOUNG) agreed that the Committee on Appropriations would revise its 302(b) allocations and reflect the fact that the bill would be offset by other appropriation bills. It was further agreed that the offsets would not come out of the bills that have already passed the House or bring Defense below the levels of the President’s budget submission. The gentleman from Florida (Mr. YOUNG) is a man of his work. He has done his best in bringing this bill to the floor, as has the gentleman from Texas (Mr. BONILLA).

In view of the good faith comments of the gentleman from Florida (Mr. YOUNG) and commitments in this regard, I urge Members not only to support the bill but to support the rule. Mr. HALL of Ohio. Madam Speaker, I reserve the balance of my time. Mr. HASTINGS of Washington. Madam Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. LAHOOD), my distinguished colleague and classmate. Mr. LAHOOD. Madam Speaker, I thank the gentleman from Washington (Mr. HASTINGS) for yielding me the time.

Madam Speaker, I want to pay my compliments to the chairman of the committee, the gentleman from Texas (Mr. BONILLA) and his staff and also to the gentleman from Ohio (Ms. KAPTUR) and the staff on the Democratic side for putting together a good bill. I think there is no doubt that every Member is on the subcommittee, of which I am the newest Member, believes that this is a good bill. Even though there are some who believe that the rule did not allow for some consideration of opportunities to solve some problems, many of those problems were discussed in the subcommittee and many agreements have been reached. As many amendments as people wanted to offer were able to be offered, thanks to the chairman. I know that the ranking member, the gentleman from Ohio (Ms. KAPTUR) offered many amendments, some of which were adopted, some of which were not. Other Members have the same concern.

So this notion that this is not a good rule because some people do not have the opportunity, those opportunities were provided to the subcommittee Members, and there was a full debate on many of these issues. Although I am a new member of the subcommittee, I am certainly not new to the issues of agriculture. During the last 6 years, and I have been a member of the agricultural authorization committee and I have worked very hard with many Members, including some who are in the Chamber today, on agricultural issues, in trying to solve agricultural problems.

Agriculture is in a recession. This bill will help us solve many of the problems that we have with respect to the recession that currently exists.

I have an agricultural research lab in my hometown of Peoria. They do marvelous work. The people there are very professional chemists and professional people who do the work that really helps us plan for the future uses of commodities and other fruits and vegetables and specialty crops that we grow in this country.

So the emphasis on research in this bill is extraordinary. The amount of money dedicated for research in this bill is extraordinary. It makes an awful lot of sense. I think, to pass the rule and certainly pass the bill. There will be some opportunities for some people to make modifications or offer amendments, and then there will be additional time, obviously later on, when there is a conference.

But today I think is the day to pass the rule, pass this good bill, keep things moving, and really assist those in agriculture who need the kind of assistance and help and research funds that this bill provides.

Mr. HASTINGS of Washington. Madam Speaker, I am pleased to yield such time as he may consume to the gentleman from Texas (Mr. SENSIQUE), my colleague on the Committee on Rules.

Mr. SESSIONS. Madam Speaker, I thank the gentleman from Washington, my colleague on the Committee on Rules, for yielding me time.

Our colleagues and I understand what we are discussing about today is the rule. That is what we are debating right now, about whether we are going to move forward on the rule,
an opportunity to put this on the floor, an opportunity to vote on this and get the appropriations bill done before we go home.

I think it important to understand that what this rule provides for is an incredible amount of money for some very important projects, to some things that sustain America, to some things that we have, how we deal with people in our country.

We should not go too far from understanding that this bill provides $22 billion for food stamp costs. This bill provides $1.2 billion for the Food and Drug Administration. They know how to administer their business. They know what they are doing, and $1.2 billion will cover that. Child nutrition programs, $10.1 billion. The Supplemental Nutritional Program for Women, Infants and Children, known as WIC, $4.1 billion.

What we are doing with this bill and with this rule is to make sure that the agriculture of this country is not only safe and the food they produce is reliable, but also trying to make sure that we look at the resources and assets that we have in this country and say that we believe that conservation programs are important; we think people who are engaged in agriculture are important.

We are making sure that our Federal Crop Insurance Corporation is funded, $3 billion. We are trying to prepare ourselves to make sure that people who live in rural areas and who are in agriculture know that Washington will deal fairly with them. But we also recognize that part of the argument we are going to hear today is we are not spending enough money. Well, I might remind my colleagues that we can never spend enough money to make sure that some people in this body will always be happy, but that we go back to the budget that we set in place earlier in the year, and that this program that we are doing for the 2002 agriculture appropriations act falls in line with what this body said it would do. Then, through the leadership of the gentleman from Texas (Mr. Bonilla), and our chairman, the gentleman from Florida (Mr. Young), and also the gentleman from Washington (Mr. Hastings), a member of the Committee on Rules who has worked carefully to make sure that this rule is fair and open. Lastly, I would like to give accolades to the gentleman from California (Mr. Dreier), who is our chairman, who has worked very diligently to make sure that the rule that was crafted not only exemplified what this body would be in favor of, but would also be something that people in his home State of California would be proud of.

Mr. HALL of Ohio. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HASTINGS of Washington. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I think this is a good rule. It is an open rule that we typically have for appropriations bills. As was mentioned earlier, there was some criticism by members of the Committee on Rules not allowing some amendments to be made in order. I think what the Committee on Rules really did was protect the product of the Committee on Appropriations.

Yes, there were some waivers in this bill, but essentially the will of the Committee on Appropriations was such that they went through their process and added some issues to this bill that required waivers. We gave them, and protected the product that they desired.

Madam Speaker. I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mrs. Biggert). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HALL of Ohio. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yes 222, nays 194, not voting 18, as follows:

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<tr>
<td>Lang</td>
<td>Lamborn</td>
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</table>
CONGRESSIONAL RECORD—HOUSE

June 28, 2001

Mr. BONILLA. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and that I may include tabular material on H.R. 2330.

The SPEAKER pro tempore (Mrs. Ros-Lehtinen [CA]) declared the question on the motion in the negative; the motion having been seconded by Mr. Biggert. Pursuant to House Resolution 183 and rule XVIII, the Chair declares the House in the Committee of the Whole on the State of the Union for the consideration of the bill, H.R. 2330.

Mr. Chairman, I am pleased to bring before the House today the fiscal year 2002 appropriations bill for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies.

In order to expedite action on this bill, we completed our subcommittee's hearings on May 6.

The subcommittee and full committee marked up the bill on June 6 and June 13 respectively.

We have tried very hard to accommodate the requests of Members, and to provide increases for critical programs. We received 2,532 individual requests for specific spending, from almost every Member of the House. Reading all of the mail I received, I can confirm to you that the interest in this bill is completely bipartisan.

This bill does have significant increases over fiscal year 2001 for programs that have always enjoyed strong bipartisan support. Those increases include:

- Agricultural Research Service, $79 million;
- Animal and Plant Health Inspection Service, $55 million;
- Food Safety and Inspection Service, $25 million;
- Farm Service Agency, $201 million;
- Natural Resources Conservation Service, $77 million; and
- Food and Drug Administration, $120 million.

I would like to say that I am very happy that we were able to provide significant increases for the Food and Drug Administration. I think it is vitally important for that agency to have the resources to perform its public health mission. We are able to provide FDA the following:

- $77 million; and
- $10 million to increase the number of domestic and foreign inspections, and to expand import coverage in all product areas;
$10 million to reduce adverse events related to medical products;
$10 million to better protect volunteers who participate in clinical research studies;
$9 million to provide a safer food supply;
$23 million to complete construction of the replacement facility in Los Angeles that we initiated last year;
And full funding of increased pay costs for existing employees.

I want to stress how important this is. In the past, FDA and all other agencies in this bill were forced to reduce the level of services provided to the public, in order to absorb legislated payroll increases. This year, we want to be sure that does not happen. I am sure that we all want to see that there is no slippage in research, application review, inspections, loan servicing, and all the other payroll-intensive operations that are financed through our bill. We worked hard to find these resources. I am glad we were able to do it, and I am sure the agencies will put them to good use.

Mr. Chairman, we all refer to this bill as an agriculture bill, but it does far more than assisting basic agriculture. It also supports human nutrition, the environment, and food, drug, and medical safety. This is a bill that will deliver benefits to every one of our constituents every day no matter what kind of district they represent.

I would say to all Members that they can support this bill and tell all of their constituents that they voted to improve their lives while maintaining fiscal responsibility.

The bill is a bipartisan product with a lot of hard work and input from both sides of the aisle. I would like to thank the gentleman from Florida, (Chairman YOUNG), and the gentleman from Wisconsin, (Mr. O'BEY), who serve as the distinguished chairman and ranking member of the Committee on Appropriations.

I would also like to thank all my subcommittee colleagues: the gentleman from New York (Mr. WALSH); the gentleman from Georgia (Mr. KINGSTON); the gentleman from Washington (Mr. NETHERCUTT); the gentleman from Iowa (Mr. LATHAM); the gentlewoman from Missouri (Mrs. EMERSON); the gentleman from Virginia (Mr. GOODE); the gentlewoman from Illinois (Mr. LAHOOD); the gentlewoman from Connecticut (Ms. DELAURO); the gentleman from New York (Mr. HINCHEN); the gentleman from Florida (Mr. BOYD).

In particular, I want to thank the gentlewoman from Ohio (Ms. KAPTR), the distinguished ranking member of the subcommittee, for all her good work on this bill this year and the years in the past.

Mr. Chairman, I would like to include at this point in the RECORD tabular material relating to the bill.

Mr. Chairman, I include the following Comparative Statement of Budget Authority for the RECORD:
<table>
<thead>
<tr>
<th>TITLE I - AGRICULTURE PROGRAMS</th>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>Bill</th>
<th>Bill vs. FY 2001 Enacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production, Processing, and Marketing</td>
<td>2,906</td>
<td>2,992</td>
<td>3,015</td>
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<tr>
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<td></td>
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<td>7,704</td>
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<td>12,768</td>
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<td>102,692</td>
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<td>628</td>
<td>647</td>
<td>652</td>
<td>+24</td>
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<td>Agriculture buildings and facilities and rental payments</td>
<td>182,345</td>
<td>187,561</td>
<td>187,647</td>
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<tr>
<td>Payments to GSA</td>
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<td>(130,266)</td>
<td>(130,266)</td>
<td>(+5,000)</td>
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<td>Building operations and maintenance</td>
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<td>(31,372)</td>
<td>(31,436)</td>
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<td>Repairs, renovations, and construction</td>
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<td>(25,943)</td>
<td>(25,943)</td>
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<td>Hazardous materials management</td>
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<td>15,660</td>
<td>15,665</td>
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<td>Departmental administration</td>
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<td>37,079</td>
<td>37,398</td>
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<td>Outreach for socially disadvantaged farmers</td>
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<td>2,983</td>
<td>2,983</td>
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<tr>
<td>Office of the Assistant Secretary for Congressional Relations</td>
<td>3,560</td>
<td>3,684</td>
<td>3,718</td>
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<td>Office of Communications</td>
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<td>8,084</td>
<td>8,075</td>
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<td>Office of the Inspector General</td>
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<td>Office of the Under Secretary for Research, Education and Economics</td>
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<td>573</td>
<td>578</td>
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<td>Economic Research Service</td>
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<td>National Agricultural Statistics Service</td>
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<td>113,786</td>
<td>114,546</td>
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<td>Census of Agriculture</td>
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<td>(25,350)</td>
<td>(25,456)</td>
<td>(+10,098)</td>
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<td>Agricultural Research Service</td>
<td>896,835</td>
<td>915,561</td>
<td>971,365</td>
<td>+74,530</td>
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<td>Buildings and facilities</td>
<td>74,027</td>
<td>30,462</td>
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<td>Total, Agricultural Research Service</td>
<td>970,872</td>
<td>946,053</td>
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<td>Cooperative State Research, Education, and Extension Service:</td>
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<td></td>
<td></td>
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<td>Research and education activities</td>
<td>505,079</td>
<td>407,319</td>
<td>507,452</td>
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<td>Native American Institutions Endowment Fund</td>
<td>(7,100)</td>
<td>(7,100)</td>
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<td>Extension activities</td>
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<td>413,454</td>
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<td>Integrated activities</td>
<td>41,649</td>
<td>41,849</td>
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<td>Total, Cooperative State Research, Education, and Extension Service</td>
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<td>862,572</td>
<td>986,836</td>
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<td>Office of the Under Secretary for Marketing and Regulatory Programs</td>
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<td>654</td>
<td>660</td>
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<tr>
<td>Animal and Plant Health Inspection Service:</td>
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<tr>
<td>Salaries and expenses</td>
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<td>QAU user fees</td>
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<td>(84,813)</td>
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<tr>
<td>Buildings and facilities</td>
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<td>Total, Animal and Plant Health Inspection Service</td>
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<td>Agricultural Marketing Service:</td>
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<td>Marketing Services</td>
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<td>71,430</td>
<td>71,774</td>
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<td>Standardization user fees</td>
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<td>(5,000)</td>
<td>(5,000)</td>
<td>(+1,000)</td>
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<td>Funds for strengthening markets, income, and supply (transfer from section 33)</td>
<td>(60,596)</td>
<td>(60,596)</td>
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<td>Payments to states and possessions</td>
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<td>Total, Agricultural Marketing Service</td>
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<td>Grain Inspection, Packers and Stockyards Administration:</td>
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<td>Salaries and expenses</td>
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<td>32,907</td>
<td>33,117</td>
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<tr>
<td>Inspection and weighing services</td>
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<td>(42,463)</td>
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<td>Office of the Under Secretary for Food Safety</td>
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<td>476</td>
<td>481</td>
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<tr>
<td>Food Safety and Inspection Service</td>
<td>696,171</td>
<td>715,542</td>
<td>720,852</td>
<td>+25,461</td>
</tr>
<tr>
<td>Lab accreditation fees</td>
<td>(896)</td>
<td>(1,000)</td>
<td>(1,000)</td>
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<tr>
<td>Total, Food Safety and Inspection Service</td>
<td>696,171</td>
<td>715,542</td>
<td>720,852</td>
<td>+25,461</td>
</tr>
<tr>
<td>Total, Production, Processing, and Marketing</td>
<td>3,899,158</td>
<td>3,998,886</td>
<td>4,123,529</td>
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<tr>
<td>Farm Assistance Programs</td>
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<td>Office of the Under Secretary for Farm and Foreign Agricultural Services</td>
<td>568</td>
<td>606</td>
<td>611</td>
<td>+23</td>
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<tr>
<td>Farm Service Agency:</td>
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<td>Salaries and expenses</td>
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<td>939,030</td>
<td>945,993</td>
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<tr>
<td>Transfer from export loans</td>
<td>(569)</td>
<td>(700)</td>
<td>(707)</td>
<td>(+29)</td>
</tr>
<tr>
<td>Transfer from P.L. 480</td>
<td>(613)</td>
<td>(972)</td>
<td>(980)</td>
<td>(+8)</td>
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<tr>
<td>Transfer from ACIP</td>
<td>(864,731)</td>
<td>(272,555)</td>
<td>(274,769)</td>
<td>(+10,024)</td>
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<td>Subtotal, Transfers from program accounts</td>
<td>(266,132)</td>
<td>(274,357)</td>
<td>(276,548)</td>
<td>(+10,414)</td>
</tr>
<tr>
<td>Total, salaries and expenses</td>
<td>(1,092,695)</td>
<td>(1,213,387)</td>
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<td>State mediation grants</td>
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<td>2,993</td>
<td>2,993</td>
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<tr>
<td>Daily indemnity program</td>
<td>450</td>
<td>100</td>
<td>100</td>
<td>-350</td>
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<tr>
<td>Subtotal, Farm Service Agency</td>
<td>830,006</td>
<td>942,123</td>
<td>949,086</td>
<td>+11,080</td>
</tr>
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### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, 2002 (H.R. 2330) — Continued

(Amounts in thousands)

<table>
<thead>
<tr>
<th>FY 2001</th>
<th>FY 2002 Request</th>
<th>Bill</th>
<th>Bill vs. FY 2001 Enacted</th>
<th>Bill vs. FY 2002 Request</th>
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<tr>
<td><strong>Agricultural Credit Insurance Fund Program Account:</strong></td>
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<tr>
<td>Loan authorizations:</td>
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<tr>
<td>Farm ownership loans:</td>
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<tr>
<td>Direct</td>
<td>(127,722)</td>
<td>(128,000)</td>
<td>(128,000)</td>
<td>+278</td>
</tr>
<tr>
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<td>(1,000,000)</td>
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<td>(1,128,000)</td>
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<tr>
<td>Farm operating loans:</td>
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<td></td>
</tr>
<tr>
<td>Direct</td>
<td>(522,891)</td>
<td>(600,000)</td>
<td>(600,000)</td>
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<td>(1,500,000)</td>
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<td>(500,000)</td>
<td>(500,000)</td>
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<td>(2,600,000)</td>
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<td>Indian tribe land acquisition loans</td>
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<td>(2,000)</td>
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<td>(25,000)</td>
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<td>Soil conservation eradiation loans</td>
<td>(100,000)</td>
<td>(100,000)</td>
<td>(100,000)</td>
<td>-</td>
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<td>Total, Loan authorizations</td>
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<td>Loan subsidies:</td>
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<td>3,366</td>
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<tr>
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<tr>
<td>Subtotal</td>
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<td>7,866</td>
<td>-10,357</td>
</tr>
<tr>
<td>Farm operating loans:</td>
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<tr>
<td>Direct</td>
<td>47,251</td>
<td>53,580</td>
<td>53,580</td>
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<tr>
<td>Unsubsidized guaranteed</td>
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<td>52,650</td>
<td>+37,912</td>
</tr>
<tr>
<td>Subsidized guaranteed</td>
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<td>67,800</td>
<td>67,800</td>
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</tr>
<tr>
<td>Subtotal</td>
<td>92,108</td>
<td>174,030</td>
<td>174,030</td>
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</tr>
<tr>
<td>Indian tribe land acquisition</td>
<td>322</td>
<td>118</td>
<td>118</td>
<td>-104</td>
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<tr>
<td>Emergency disaster loans</td>
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<td>3,363</td>
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<tr>
<td>Total, Loan subsidies</td>
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<td>185,377</td>
<td>185,377</td>
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<td><strong>ACIF expenses:</strong></td>
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<tr>
<td>Salaries and expense (transfer to FSA)</td>
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<td>272,595</td>
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<td>Administrative expenses</td>
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<td>Total, ACIF expenses</td>
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<td>289,769</td>
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<td>Total, Agricultural Credit Insurance Fund</td>
<td>365,594</td>
<td>465,972</td>
<td>468,146</td>
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<td>33,920</td>
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### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, 2002 (H.R. 2330) — Continued
(Amounts in thousands)

<table>
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<th>FY 2002 Request</th>
<th>Bill</th>
<th>Bill vs. FY 2001 Enacted</th>
<th>Bill vs. FY 2002 Request</th>
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<td>Loan authorizations:</td>
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<td><strong>Electric:</strong></td>
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<td><strong>Electric:</strong></td>
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### Rural Telephone Bank Program Account:

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<th>Bill</th>
<th>Bill vs. FY 2001 Enacted</th>
<th>Bill vs. FY 2002 Request</th>
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<td><strong>Total, Rural Telephone Bank Program Account</strong></td>
<td>5,577</td>
<td>3,082</td>
<td>5,691</td>
<td>+114</td>
<td>+2,609</td>
</tr>
<tr>
<td>High energy costs grants (by transfer)</td>
<td>(24,000)</td>
<td>(24,000)</td>
<td>(24,000)</td>
<td>(24,000)</td>
<td></td>
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<tr>
<td>Distance learning and telemedicine program:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(Loan authorization)</td>
<td>(400,000)</td>
<td>(400,000)</td>
<td>(400,000)</td>
<td>(400,000)</td>
<td></td>
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<tr>
<td>(Loan authorization) (proposed)</td>
<td>(100,000)</td>
<td>(100,000)</td>
<td>(100,000)</td>
<td>(100,000)</td>
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<tr>
<td>Grants</td>
<td>26,941</td>
<td>26,941</td>
<td>26,941</td>
<td></td>
<td></td>
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<tr>
<td><strong>Total, Rural Utilities Service</strong></td>
<td>3,864,936</td>
<td>3,510,292</td>
<td>5,184,907</td>
<td>+1,499,971</td>
<td>+1,500,000</td>
</tr>
<tr>
<td><strong>(Loan authorization)</strong></td>
<td>2,481,127</td>
<td>2,401,520</td>
<td>2,488,414</td>
<td>+7,878</td>
<td>+8,694</td>
</tr>
<tr>
<td>(By transfer)</td>
<td>(446,598)</td>
<td>(486,180)</td>
<td>(490,100)</td>
<td>+40,522</td>
<td>(+3,940)</td>
</tr>
<tr>
<td><strong>(Loan authorization)</strong></td>
<td>(2,034,539)</td>
<td>(1,910,340)</td>
<td>(1,998,314)</td>
<td>+1,494,455</td>
<td>+1,874,615</td>
</tr>
</tbody>
</table>

### TITLE IV - DOMESTIC FOOD PROGRAMS

| Office of the Under Secretary for Food, Nutrition and Consumer Services | 599 | 587 | 592 | +23 | +5 |
| Food and Nutrition Service: | | | | | |
| Child nutrition programs | 4,043,086 | 4,137,086 | 4,137,086 | +94,000 | |
| Transfer from section 32 | 5,127,579 | 5,357,256 | 5,340,708 | +213,129 | -16,548 |
| Discretionary spending | 6,486 | 2,000 | 2,000 | -4,486 | |
| **Total, Child nutrition programs** | 9,541,510 | 10,068,746 | 10,068,746 | +547,236 | |
| Special supplemental nutrition program for women, infants, and children (WIC) | 4,043,086 | 4,137,086 | 4,137,086 | +94,000 | |
| Food stamp program: | | | | | |
| Expenses | 18,616,228 | 19,556,436 | 19,556,436 | +936,208 | |
| Reserve | 100,000 | 1,000,000 | 1,000,000 | +900,000 | |
| Nutrition assistance for Puerto Rico | 1,350,000 | 1,355,500 | 1,355,500 | +5,500 | |
| The emergency food assistance program | 100,000 | 100,000 | 100,000 | | |
| **Total, Food stamp program** | 20,116,228 | 21,991,986 | 21,991,986 | +1,872,758 | |
| Commodity assistance program | 139,991 | 139,991 | 152,813 | +12,822 | +12,822 |
| Recission | -5,300 | | | | +5,300 |
| Food donations programs: | | | | | |
| Needy family program | 1,081 | 1,081 | 1,081 | | |
| Elderly feeding program | 149,670 | 149,668 | 149,668 | -2 | |
| **Total, Food donations programs** | 150,751 | 150,749 | 150,749 | -2 | |
### TABLE V - FOREIGN ASSISTANCE AND RELATED PROGRAMS

<table>
<thead>
<tr>
<th>Item</th>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>Bill</th>
<th>Bill vs. Enacted</th>
<th>Bill vs. Request</th>
</tr>
</thead>
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<td>Food program administration</td>
<td>116,550</td>
<td>125,546</td>
<td>126,656</td>
<td>+10,106</td>
<td>+1,110</td>
</tr>
<tr>
<td>Total, Food and Nutrition Service</td>
<td>34,111,116</td>
<td>36,628,604</td>
<td>36,648,036</td>
<td>+2,536,920</td>
<td>+19,232</td>
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<td>Title IV, Domestic Food Programs</td>
<td>34,111,685</td>
<td>36,629,391</td>
<td>36,648,628</td>
<td>+2,536,943</td>
<td>+19,237</td>
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<tr>
<td>Foreign Agricultural Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and expenses, direct appropriation</td>
<td>115,170</td>
<td>121,563</td>
<td>122,631</td>
<td>+7,461</td>
<td>+1,068</td>
</tr>
<tr>
<td>(Transfer from P.L. 480)</td>
<td>(2,224)</td>
<td>(3,224)</td>
<td>(3,224)</td>
<td></td>
<td></td>
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<tr>
<td>Total, Program level</td>
<td>(119,427)</td>
<td>(125,820)</td>
<td>(128,858)</td>
<td>+7,461</td>
<td>(+1,068)</td>
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<td>Public Law 480 Program and Grant Accounts:</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program account:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Loan authorization, direct</td>
<td>(159,327)</td>
<td>(139,396)</td>
<td>(150,000)</td>
<td>(9,327)</td>
<td>(-10,601)</td>
</tr>
<tr>
<td>Loan subsidy</td>
<td>113,335</td>
<td>113,935</td>
<td>122,600</td>
<td>+8,665</td>
<td>+6,665</td>
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<tr>
<td>Ocean freight differential</td>
<td>20,277</td>
<td>20,277</td>
<td>20,277</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title II - Commodities for disposition abroad:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program level</td>
<td>(835,159)</td>
<td>(835,159)</td>
<td>(835,159)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriation</td>
<td>813</td>
<td>572</td>
<td>690</td>
<td>+167</td>
<td>+8</td>
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<tr>
<td>Subtotal</td>
<td>1,848</td>
<td>2,005</td>
<td>2,013</td>
<td>+167</td>
<td>+8</td>
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<tr>
<td>Total, Public Law 480</td>
<td>(835,159)</td>
<td>(835,159)</td>
<td>(835,159)</td>
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<td></td>
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<tr>
<td>Appropriation</td>
<td>971,217</td>
<td>971,379</td>
<td>980,049</td>
<td>+8,832</td>
<td>+8,673</td>
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<tr>
<td>CCC Export Loans Program Account (administrative expenses):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>General Sales Manager (transfer to FAS)</td>
<td>3,224</td>
<td>3,224</td>
<td>3,224</td>
<td></td>
<td></td>
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<tr>
<td>Farm Service Agency (transfer to FSA)</td>
<td>568</td>
<td>750</td>
<td>797</td>
<td>+209</td>
<td>+7</td>
</tr>
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<td>Total, CCC Export Loans Program Account</td>
<td>3,812</td>
<td>4,014</td>
<td>4,021</td>
<td>+209</td>
<td>+7</td>
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<td>Total, Title V, Foreign Assistance and Related Programs:</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(By transfer)</td>
<td>(4,257)</td>
<td>(4,257)</td>
<td>(4,257)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title VI - FOOD AND DRUG ADMINISTRATION AND RELATED AGENCIES</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>1,066,173</td>
<td>1,173,073</td>
<td>1,160,623</td>
<td>+114,450</td>
<td>+6,950</td>
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<tr>
<td>Prescription drug user fee act</td>
<td>(149,273)</td>
<td>(161,716)</td>
<td>(161,716)</td>
<td>(+12,443)</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>(1,215,446)</td>
<td>(1,334,789)</td>
<td>(1,324,339)</td>
<td>(+126,693)</td>
<td>(+6,950)</td>
</tr>
<tr>
<td>Export and certification</td>
<td>6,962</td>
<td>(6,181)</td>
<td>(6,181)</td>
<td>+169</td>
<td></td>
</tr>
<tr>
<td>Payments to GSA</td>
<td>(104,736)</td>
<td>(105,116)</td>
<td>(105,116)</td>
<td>+380</td>
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<tr>
<td>Drug reimportation</td>
<td>2,950</td>
<td>2,950</td>
<td>2,950</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings and facilities</td>
<td>31,281</td>
<td>34,281</td>
<td>34,281</td>
<td>+3,000</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total, Food and Drug Administration</td>
<td>1,097,454</td>
<td>1,210,904</td>
<td>1,217,854</td>
<td>+120,400</td>
<td>+6,950</td>
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<tr>
<td>Independent Agencies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>67,650</td>
<td>70,400</td>
<td>70,700</td>
<td>+2,850</td>
<td>+300</td>
</tr>
<tr>
<td>Farm Credit Administration (limitation on administrative expenses)</td>
<td>(36,719)</td>
<td>(36,700)</td>
<td>(36,700)</td>
<td>(-19)</td>
<td></td>
</tr>
<tr>
<td>Total, title VI, Related Agencies and Food and Drug Administration</td>
<td>1,165,304</td>
<td>1,281,304</td>
<td>1,288,554</td>
<td>+123,250</td>
<td>+7,250</td>
</tr>
<tr>
<td>Title VII - GENERAL PROVISIONS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hunger fellowships</td>
<td>1,996</td>
<td>1,996</td>
<td>4,000</td>
<td>+2,004</td>
<td>+2,004</td>
</tr>
<tr>
<td>National Sheep Industry Improvement Center revolving fund</td>
<td>5,000</td>
<td>1,000</td>
<td>4,000</td>
<td>+3,000</td>
<td>+1,000</td>
</tr>
<tr>
<td>FDA drug reimportation</td>
<td>20,949</td>
<td>150,000</td>
<td>150,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total, title VI, General provisions</td>
<td>29,945</td>
<td>1,996</td>
<td>155,000</td>
<td>+125,055</td>
<td>+153,004</td>
</tr>
</tbody>
</table>

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**TITLE VII - FY 2001
NATURAL DISASTER ASSISTANCE AND OTHER EMERGENCY APPROPRIATIONS**

**CHAPTER 1
DEPARTMENT OF AGRICULTURE**

Office of the Chief Information Officer: Common computing environment (contingent emergency appropriations) 19,457 -19,457
Departmental administration (contingent emergency appropriations) -200
<table>
<thead>
<tr>
<th>Program</th>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>Bill</th>
<th>Bill vs. FY 2001 Enacted</th>
<th>Bill vs. FY 2002 Request</th>
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</thead>
<tbody>
<tr>
<td>Farm Service Agency&lt;br&gt;Salaries and expenses (contingent emergency appropriations)</td>
<td>46,690</td>
<td></td>
<td></td>
<td>-46,690</td>
<td></td>
</tr>
<tr>
<td>Emergency conservation program (contingent emergency appropriations)</td>
<td>78,824</td>
<td></td>
<td></td>
<td>-79,824</td>
<td></td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation&lt;br&gt;Federal crop insurance corporation fund (emergency appropriations)</td>
<td>12,971</td>
<td></td>
<td></td>
<td>-12,971</td>
<td></td>
</tr>
<tr>
<td>Natural Resources Conservation Service&lt;br&gt;Watershed and flood prevention operations (contingent emergency appropriations)</td>
<td>109,758</td>
<td></td>
<td></td>
<td>-109,758</td>
<td></td>
</tr>
<tr>
<td>Rural Development&lt;br&gt;Rural community advancement program (contingent emergency appropriations)</td>
<td>199,560</td>
<td></td>
<td></td>
<td>-199,560</td>
<td></td>
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<tr>
<td>Total, Department of Agriculture&lt;br&gt;General Provisions</td>
<td>471,060</td>
<td></td>
<td></td>
<td>-471,060</td>
<td></td>
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<tr>
<td>Conservation technical assistance (contingent emergency appropriations)</td>
<td>34,923</td>
<td></td>
<td></td>
<td>-34,923</td>
<td></td>
</tr>
<tr>
<td>CCC Disease loss compensation (contingent emergency appropriations)</td>
<td>9,000</td>
<td></td>
<td></td>
<td>-9,000</td>
<td></td>
</tr>
<tr>
<td>Daily assistance (contingent emergency appropriations)</td>
<td>473,000</td>
<td></td>
<td></td>
<td>-473,000</td>
<td></td>
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<tr>
<td>CCC Livestock assistance program (contingent emergency appropriations)</td>
<td>488,922</td>
<td></td>
<td></td>
<td>-488,922</td>
<td></td>
</tr>
<tr>
<td>WRP Additional acreage enrolments (contingent emergency appropriations)</td>
<td>117,000</td>
<td></td>
<td></td>
<td>-117,000</td>
<td></td>
</tr>
<tr>
<td>CCC Sheep loss assistance (contingent emergency appropriations)</td>
<td>2,965</td>
<td></td>
<td></td>
<td>-2,965</td>
<td></td>
</tr>
<tr>
<td>CCC Citrus canker compensation (contingent emergency appropriations)</td>
<td>57,672</td>
<td></td>
<td></td>
<td>-57,672</td>
<td></td>
</tr>
<tr>
<td>CCC Apple/peach/peanut market loss and price ($contingent emergency appropriations)</td>
<td>137,699</td>
<td></td>
<td></td>
<td>-137,699</td>
<td></td>
</tr>
<tr>
<td>CCC Honey assistance (contingent emergency appropriations)</td>
<td>20,000</td>
<td></td>
<td></td>
<td>-20,000</td>
<td></td>
</tr>
<tr>
<td>CCC Livestock indemnity program (contingent emergency appropriations)</td>
<td>9,978</td>
<td></td>
<td></td>
<td>-9,978</td>
<td></td>
</tr>
<tr>
<td>CCC Wool/mohair assistance (contingent emergency appropriations)</td>
<td>19,956</td>
<td></td>
<td></td>
<td>-19,956</td>
<td></td>
</tr>
<tr>
<td>CCC Crop loss disaster assistance (contingent emergency appropriations)</td>
<td>1,622,000</td>
<td></td>
<td></td>
<td>-1,622,000</td>
<td></td>
</tr>
<tr>
<td>CCC Cranberry assistance (contingent emergency appropriations)</td>
<td>19,956</td>
<td></td>
<td></td>
<td>-19,956</td>
<td></td>
</tr>
<tr>
<td>Shared appreciation loan arrangements (contingent emergency appropriations)</td>
<td>2,000</td>
<td></td>
<td></td>
<td>-2,000</td>
<td></td>
</tr>
<tr>
<td>SG grain dealer's guarantee fund (contingent emergency appropriations)</td>
<td>2,465</td>
<td></td>
<td></td>
<td>-2,465</td>
<td></td>
</tr>
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<td>Puerto Rico food stamp block grant&lt;br&gt;Business and industry loans:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>CCC Tobacco quota compensation (contingent emergency appropriations)</td>
<td>9,978</td>
<td></td>
<td></td>
<td>-9,978</td>
<td></td>
</tr>
<tr>
<td>CCC Cooperative assistance (contingent emergency appropriations)</td>
<td>19,956</td>
<td></td>
<td></td>
<td>-19,956</td>
<td></td>
</tr>
<tr>
<td>CCC Burley tobacco (contingent emergency appropriations)</td>
<td>9,978</td>
<td></td>
<td></td>
<td>-9,978</td>
<td></td>
</tr>
<tr>
<td>CCC LDP delinquent borrower (contingent emergency appropriations)</td>
<td>5,000</td>
<td></td>
<td></td>
<td>-5,000</td>
<td></td>
</tr>
<tr>
<td>Food stamp excess shelter allowance (contingent emergency appropriations)</td>
<td>15,000</td>
<td></td>
<td></td>
<td>-15,000</td>
<td></td>
</tr>
<tr>
<td>Food stamp vehicle allowance (contingent emergency appropriations)</td>
<td>25,000</td>
<td></td>
<td></td>
<td>-25,000</td>
<td></td>
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<td>Anti-dumping&lt;br&gt;Total, FY 2001&lt;br&gt;<strong>TITLE X - ANTI-DUMPING</strong></td>
<td>3,638,849</td>
<td></td>
<td></td>
<td>-3,638,849</td>
<td></td>
</tr>
<tr>
<td>New budget (obligational) authority&lt;br&gt;Grand total:</td>
<td>76,678,577</td>
<td>73,976,108</td>
<td>74,360,443</td>
<td>-2,018,134</td>
<td>+384,335</td>
</tr>
<tr>
<td>Appropriations&lt;br&gt;Rescission&lt;br&gt;Emergency appropriations&lt;br&gt;Contingent emergency appropriations&lt;br&gt;(By transfer)</td>
<td>(73,034,026)</td>
<td>(73,981,408)</td>
<td>(74,210,443)</td>
<td>(-1,175,815)</td>
<td>(-229,035)</td>
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<tr>
<td>(Loan authorization)</td>
<td>(5,500)</td>
<td></td>
<td></td>
<td>(-5,500)</td>
<td></td>
</tr>
<tr>
<td>Total, RECAPTURETION&lt;br&gt;Title I - Agricultural programs</td>
<td>33,249,900</td>
<td>31,636,339</td>
<td>31,769,514</td>
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<td>Title II - Conservation programs</td>
<td>871,556</td>
<td>928,605</td>
<td>903,932</td>
<td>+32,076</td>
<td>+24,873</td>
</tr>
<tr>
<td>Title III - Rural economic and community development programs</td>
<td>2,481,127</td>
<td>2,401,520</td>
<td>2,486,414</td>
<td>+7,287</td>
<td>+86,894</td>
</tr>
<tr>
<td>Title IV - Domestic food programs</td>
<td>34,111,685</td>
<td>36,826,391</td>
<td>36,848,928</td>
<td>+2,366,543</td>
<td>+19,237</td>
</tr>
<tr>
<td>Title V - Foreign assistance programs</td>
<td>1,060,199</td>
<td>1,046,953</td>
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<td>+5,746</td>
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<tr>
<td>Title VI - Related agencies and Food and Drug Administration</td>
<td>1,165,304</td>
<td>1,281,304</td>
<td>1,288,554</td>
<td>+123,250</td>
<td>+7,290</td>
</tr>
<tr>
<td>Title VII - General provisions</td>
<td>29,945</td>
<td>1,996</td>
<td>155,000</td>
<td>+123,005</td>
<td>+153,004</td>
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<tr>
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<td>3,638,849</td>
<td></td>
<td></td>
<td>-3,638,849</td>
<td></td>
</tr>
<tr>
<td><strong>Total, new budget (obligational) authority</strong></td>
<td>76,678,577</td>
<td>73,976,108</td>
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<td>-2,318,134</td>
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1 In addition to appropriation.
Mr. Chairman, I reserve the balance of my time.

Ms. KAPPU. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, let me rise to say that this is a good bill that, in fact, is getting better at every stage of the legislative process.

The gentleman from Texas (Mr. BONILLA), chairman of the Subcommittee, and our committee staff have worked to draft a fair bill within tight budget allocations; but the underlying amounts in different sections of the bill are far from what is necessary, given many of the needs of rural America and our food assistance programs.

This is the first bill managed by our new chairman, the gentleman from Texas (Mr. BONILLA). Let me congratulate our new chairman and former colleague, Mr. BROWN, on his appointment to the chairmanship of the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies and thank the gentleman for his cooperation throughout.

I will turn to the amendments, which keep America's people the best-fed people on Earth.

The bill, as reported, is about $260 million in discretionary spending above the President's request, but a little more than $2 billion below this year's level due to the absence of natural disaster and other emergency farm provisions.

Earlier, during the discussion on the rule, we discussed several improvements that should be included in this bill that amendments could make possible, but amendments that were denied in the Committee on Rules.

There was an amendment offered by the gentlewoman from Connecticut (Mrs. DELAUR) that would recognize that we need more money for the WIC program, the Women, Infants, and Children feeding program, due to the fact that participation is running 80,000 people more per month than the administration had expected predominantly due to higher unemployment levels.

The amendment of the gentleman from New York (Mr. HINCHEY) and others makes room for helping small specialty crop producers who are facing hard times. He has been successful in dealing with one sector, the apple sector, in this bill.

My own effort adopted by the full committee insists that the integrity of producer votes is protected in the pork checkoff program. It directs funds be spent only on those programs that the producers have approved and this directive has been included in the final bill.

Mr. Chairman, there are other elements that we still need to work through as we amend here on the floor and then as we move to the Senate: one is the Global Food for Education program, which the gentleman from Massachusetts (Mr. MCGOVERN) and the gentlewoman from Missouri (Mrs. Emerson) have championed here in the House; improved food safety and inspection; also new biofuels funding, including ethanol, biodiesel, and biomass-related fuel production to help move America toward energy independence.

There are six titles in this bill, and I just want to highlight a couple major points in each of those.

In Title I, Agricultural Programs, we have been able to take the first steps to fund relocation of some of our important laboratories in Arizona, as well as consolidating and modernizing our key agricultural research facilities in Ames, Iowa.

We are just so happy to be able to make progress there, the most important labs in our country that protect the entire livestock production in our Nation, as well as maintain the best veterinary service that the world knows of in pork production.

In the APHIS, Animal Planned Health Inspection Service, we have been able to improve by $2 million and increase the buildings account for a facility at the Miami International Airport.

In our conservation programs, the NRCS has scored below the administration request by $25 million.

In rural development in title III, the bill increases these important programs by $87 million over the research request, in the important account of water and wastewater disposal grants. Funding is included at a level of $75 million over the request.

There is a million dollars included for rural cooperative development grants beyond the request, and $3 million to restore the rural telephone loan program that the administration proposed to end.

In Title IV, Domestic Food Programs, the $18 million in increases above the request will help us to provide $3 billion in increases above the President's request, but a little more than $2 billion below this year's level due to the absence of natural disaster and other emergency farm provisions.

In title VI in the Food and Drug Administration, we have provided more than $100 million over the 2001 enacted level. In addition, the bill includes a contingent appropriation of $2.9 million for continued funding of last year's prescription drug importation provision.

Finally, I mentioned the pork checkoff and the apple programs as being included in the final bill that is coming to the floor.

Overall, this bill is a good one and is getting better. It should be one that truly embraces the needs and the challenges of the 21st century.

I will support it and encourage our colleagues to support it. But I also will definitely vote for a number of amendments being offered here on the floor today that can make this bill a hallmark of the best America can do when we as a Congress have the will to do it.

Mr. Chairman, I reserve the balance of my time.

Mr. BONILLA. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida (Mr. YOUNG), the Chairman of the Committee on Appropriations, my friend.

Mr. YOUNG of Florida. Mr. Chairman, I first want to congratulate the gentleman from Texas (Mr. BONILLA). This is the gentleman's first year as a member of Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, and he has done an outstanding job.
The gentleman came as a seasoned Member. The gentleman took over this very important role as chairman of the subcommittee, and he not only has produced a good bill, but he produced it in record time.

Although, he is a new chairman, he was the first one with a markup, and I congratulate the gentleman.

Mr. Chairman, I also congratulate the gentlewoman from Ohio (Ms. KAPTUR), the ranking minority member, who worked very well in partnership to produce a pretty good bipartisan bill.

As usual, there will be some differences, as we proceed, and proceed we will, but I will urge Members to support the bill and be very logical and realistic as we approach the issue of amendments.

We are going to be necessary for Members to limit some debate, to be willing to limit some debate, to going to be necessary for Members to be able to see if there was some way to get Members out of here at a reasonable time.

It is pretty obvious we cannot complete consideration of this bill today, so I see no reason to go on into the late hours of the night or the wee hours of the morning.

However, in order to arrive at a reasonable adjournment time today, it is going to be necessary for Members to be willing to limit some debate, to agree to some time limits, which the gentleman from Wisconsin (Mr. OBEY) and I are working on this very minute.

Also, I would like for the Members to know that if Members have an amendment that they would like to have considered on this bill, it would be a good idea, if they would advise the gentlewoman from Ohio (Ms. KAPTUR) or the gentleman from Wisconsin (Mr. OBEY) on that side or myself and the gentleman from Texas (Mr. BONILLA) on this side so that we can put those potential amendments into the list of the universe of amendments that we have to deal with.

We will be better able to manage this bill if we can do that. I put Members on notice that it would be a good idea to do that as soon as possible.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. Mr. Chairman, I am happy to yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I would simply like to repeat what the gentleman just said. For the benefit of all Members that the floor or all Members whose staff may be watching in their offices, every Member is coming up and telling us they want to get out of here early tonight. It is my understanding that the leadership intends to try to make that happen. But we need to know which Members intend to offer their amendment and which Members do not intend to offer their amendments.

So I would ask every single Member on our side of the aisle, if they are contemplating an amendment or a committee amendment, we took almost 2 hours on colloquels, if they are contemplating any of that, they need to let us know immediately, because we need to do two things.

We need, first of all, to try to establish which amendments are going to be offered today and how much time is going to be taken on them. We have had the cooperation of five or six Members who have told us that they will be happy to settle for 10 minutes a side, for instance. We need to fill out the rest of that. We need to know how far we are going to get in the bill today. Then if we can reach agreement on that, then that enables us to have some idea, perhaps, of what we can package so that we can see what we are facing when we get back.

But what I would urge Members not to do is to neglect to contact us now, then see their point in the bill passed, so their amendment is not in order, and then try to redraft their amendment as a look-back at the end of the bill. We will not save any time that way.

If Members have amendments, we need them to be prepared now to bring them up today in the regular order on the bill so that we can get out of here at a reasonable time.

Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for those comments. We are working hard. Now, if we get the cooperation of the membership, we can accomplish quite a bit of consideration on this bill today and still get us out of here at a reasonable time, and we will talk about that time later. But I believe the universe of amendments will be for today.

With that, again, I want to congratulate the gentlewoman from Texas (Chairman BONILLA), Ms. KAPTUR. Ms. KAPTUR. Mr. Chairman, I yield 3 minutes to the gentlewoman from Connecticut (Mrs. DeLAURO), a very hard-working and able member of our subcommittee.

Ms. DeLAURO. Mr. Chairman, I want to thank the gentleman from Texas (Chairman BONILLA) and to the gentlewoman from Ohio (Ms. KAPTUR), the ranking member of the committee. I thank them for their leadership.

Given the kind of budget constraints that we have, there was a lot of hard work and a good bill that has been produced, though there are a few critical issues that remain that we need to continue to work on.

I also want to say thank you to this subcommittee and the associate staff for all the hard work. The bill addresses many of the urgent needs of American families. Let me just take a moment to focus on the crisis in agriculture today. America's economy and security relies on the strength of agriculture. Yet America's farmers are facing the toughest times since the Great Depression.

Connecticut is a leader in New England's agriculture, in eggs, peaches, milk production per cow. The Nation's oldest agriculture experiment station is just up the street from my home in New Haven. Like other farmers, Connecticut farmers face plunging commodity prices and soaring gas prices. Urban sprawl puts it in the top 10 States in lost farmland. This spring, record low temperatures eliminated almost 40 percent of our peach, pear, grape and apple crops.

I am proud of the funding for programs that reach out and help our farmers: rural development, conservation, pest management, commodity marketing assistance.

This bill also funds food safety efforts, but in my view, as I have expressed before in the House today, does not go far enough. It needs to do more. Americans are more likely to get sick from what they eat today than they were a half century ago, and outbreaks of food sickness are expected to go up by more than 15 percent over the next decade.

Each year 5,000 Americans die from food-borne illnesses, 76 million get ill, and 325,000 are hospitalized. Just 2 days ago, the Excel Corporation recalled 190,000 pounds of ground beef and pork because of possible contamination by deadly E. coli.

The Food and Drug Administration inspects all food except meat, poultry and eggs. Yet to cover the 30,000 U.S. companies that make this food, the FDA has only 400 inspectors. For the 4.1 million imported food items entering the country, the FDA has less than 120 inspectors. To address this crisis facing the families, I will offer an amendment to increase the funds for inspections and other food safety initiatives.

As we move toward the conference, I also would like to work with the chairman to address the funding shortage that threatens WIC. If the administration's unemployment predictions come true, this essential nutrition program for low-income families, which yields more than $3 in savings to the government in reduced spending on programs such as Medicaid, will, in fact, not have enough funds to serve all who are eligible, all eligible women, infants and children.

I look forward to working with the gentleman from Texas (Chairman BONILLA) and the gentlewoman from Ohio (Ms. KAPTUR) to address these important issues and others as we debate the bill.

Mr. BONILLA. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado (Mr. TANCREDO).

Mr. TANCREDO. Mr. Chairman, I, too, want to rise in, in a way, admiration of the committee for their work.
on this particular piece of legislation, on this bill. It is truly commendable in a situation where profligate spending in this form, is commendable to have a bill coming here that is only 1.5 percent above last year’s spending and only 1.7 percent above the President’s request. There is no particular program in the bill with which I rise to take issue. I do wish, however, to just briefly discuss a point of concern that I have with the general tenor of our agricultural support payments. It is the fact that welfare, whether it is provided for able-bodied individuals or large corporate farmers, has a corrupting influence on both. The welfare farm subsidies keep land prices high, makes it harder for small farmers to enter into the market. Farm subsidies decrease the incentive to be efficient, which would greatly benefit the agricultural sector.

This is a list, by States, I have a list here from CBO of those States that receive a percentage of their net farm income as a result of government payments. It quite astounding. In 1999, the State of Illinois had 112 percent of its net farm income a government check; Indiana, 93 percent; North Dakota, 93 percent; Iowa, 87 percent; Missouri, 78 percent; Montana, 77. At least 12 States have government checks representing more than 50 percent of their net farm income. This is an unsustainable activity, and I urge the committee to think carefully about it in the future.

Ms. KAPTur. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. HINCHey), a member of our subcommittee who single-handedly turned this bill on end and was able to get language to deal with specialty crop producers across our country, a very large able and distinguished member of our subcommittee.

Mr. HINCHey. Mr. Chairman, I thank the gentlewoman from Ohio (Ms. KAPTur), ranking member, for her leadership on this committee and on this issue. I also want to express my appreciation to the chairman of the subcommittee. I think that the gentleman from Texas (Mr. Bonilla), in his first year as chairman of the subcommittee, has produced a very good bill and it has as a place working with him in this endeavor.

This bill adds $260 million to the President’s request for the U.S. Department of Agriculture. It increases funding for farm programs, conservation, rural development, education and research, nutrition, and food safety. When you add in the $5.5 billion in emergency agricultural spending that the House passed earlier this week, total funding for these programs is substantially increased over last year, of course, it could be even better. I think we should have made in order the amendment of the gentlewoman from Connecticut (Ms. DeLauro) to increase funding for food safety as well as the amendment of the gentlewoman from Ohio (Ms. Kaptur) to fund the Global School Lunch Initiative.

But the gentleman from Texas (Chairman Bonilla) has written a balanced bill that addresses important priorities for rural America. The bill also includes $150 million for a market loss assistance program for apple growers. I offered this provision in committee with the gentleman from New York (Mr. Sweeney) and the gentleman from New York (Mr. SweeNey), and it was adopted by a strong bipartisan vote of 34 to 24.

I appreciate everything that the gentleman from Texas (Chairman Bonilla), the gentleman from Florida (Chairman Young) and the gentleman from California (Chairman Dreier) have done to protect this funding. I also would like to thank the gentleman from Florida (Mr. Hastings) and the gentleman from New York (Mr. Reynolds) for their parts in writing the rule as well.

The U.S. apple industry is suffering serious financial hardships for the fifth straight year as a result of low prices, bad weather, and plant diseases. During this time, the total value of U.S. apple production fell more than 25 percent, and losses from the 2000 crop alone will probably top $500 million. This is a nationwide figure and includes losses, not only in New York, but also in Massachusetts, Michigan, Washington State, Pennsylvania, and every other place where apples are grown as a commodity crop.

Some of the apple losses can be blamed on foreign competition, the Chinese, for example, who were found guilty of dumping apple juice concentrate in the U.S. market at prices below production costs. Increased tariffs have not significantly improved the price of apple juice in the last year.

Apple producers in New York and the Northeast watched the value of their crop decline as a result of severe hail damage. In Michigan, growers suffered a crippling epidemic of fire blight that destroyed thousands of acres of orchards.

Compared with the billions of dollars that Congress routinely sends to commodity producers, $150 million is a drop in the bucket. This payment, however, will mean the difference between life and death for many growers across the country.

Mr. Chairman, apple growers face the same market, regulatory, trade and weather conditions as the double AMTA payments necessary for row crop farmers. It is preposterous that our foreign policy differentiates so radically between them.

This is a good bill. Mr. Chairman, I am happy to support it.

Mr. Bonilla. Mr. Chairman, I yield 2 minutes to the gentleman from Alabama (Mr. Riley).

Mr. Riley. Mr. Chairman, I have an amendment at the desk that I intend to withdraw, but first I would like to engage the chairman in a colloquy.

Mr. Chairman, I rise to acknowledge a job well done by the chairman and the ranking member. Agricultural programs are often arcane and seem to benefit only the agricultural community, but through the chairman’s leadership, the committee has produced a sound bill that benefits not only the agricultural community, but the Nation as a whole.

It is my understanding that the constraints placed upon the committee prevented funding for nearly all new research projects. One such unfunded project would have been undertaken by researchers at Auburn University, one of the leading agricultural research institutions in the country. This project sought to ensure public health through the development of improvements in poultry production. Mr. Chairman, this study, which I strongly support, will continue safely and efficiently producing poultry, and in an effort to address the environmental, human and animal concerns, I ask for your immediate consideration of a $1.3 million human health poultry-byproduct study at Auburn University. This study will determine the risks associated with poultry production and the contributions the poultry community can make to environmental stewardship and food safety through the development of innovative techniques documenting the presence of pathogens in the various phases of the production cycle and instituting techniques to eliminate them. This study, Mr. Chairman, will safeguard public health, the end-use consumer and the environment, all at minimal taxpayer expense.

Mr. Bonilla. Mr. Chairman, will the gentleman yield?

Mr. Riley. I yield to the gentleman from Texas.

Mr. Bonilla. Mr. Chairman, first, I want to acknowledge that the gentleman from Alabama (Mr. Riley) has worked very hard on this issue that is very important to Auburn University, and I would be pleased to work with the gentleman as we go to conference on this issue. It is going to be a difficult issue, and the gentleman and I have had discussions about that before, but we are going to give it our best shot. Again, I know how significant and how important it is to the folks in Alabama.

Mr. Riley. Mr. Chairman, I thank the gentleman from Texas (Chairman Bonilla) for his time and his consideration. I look forward to working with him.

Mr. KAPTur. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. Boyd), a member of our subcommittee, a rancher, and one of the most knowledgeable members of our subcommittee.
Mr. BOYD. Mr. Chairman, I want to thank the gentlewoman from Ohio for yielding me this time. I want to commend the gentleman from Texas (Mr. BONILLA), my chairman, and the gentlewoman from Ohio (Ms. KAPTUR), my ranking member, and their staff for their good work they have done on this bill.

Mr. BONILLA. Mr. Chairman, I reserve the balance of my time.

Mr. KAPTUR. Mr. Chairman, I would like to inquire as to our remaining time on both sides, please.

The CHAIRMAN. The gentlewoman from Ohio (Ms. KAPTUR) has 13 1/2 minutes remaining, and the gentleman from Texas (Mr. BONILLA) has 21 minutes remaining.

Ms. KAPTUR. Could I ask the gentleman if he has any additional speakers?

Mr. BONILLA. Not at this time, but there may be more coming.

Ms. KAPTUR. Mr. Chairman, I yield 1 1/2 minutes to the gentleman from Georgia (Mr. BISHOP), a distinguished member of the authorizing committee.

Mr. BISHOP. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, this Congress can make historic progress in making agricultural programs that enable farm producers to survive in today's markets and to continue providing the highest quality commodities at the lowest cost to consumers.

The House has already passed a bill providing immediate farm relief, and the Committee on Agriculture has moved aggressively to draft a new multiyear farm bill to secure greater long-term stability. Today, we are considering a bill for the next fiscal year that provides some $7 million more than the President's budget; more for research, including some $7 million more in Georgia; more for crop insurance; more in rural electric and communications loans; more for child nutrition and WIC programs; and sets aside more than $79 billion over 10 years in new emergency aid, including $7.4 billion for next year.

While I support a higher overall agricultural budget, it is time to move the procuts of this work to the Senate for any differences in House and Senate negotiations. Our goal is to save our agricultural system at a time of crisis, and today we can take another step in that direction.

Mr. Chairman, while I am concerned that the bill does not give enough help to small and disadvantaged farmers and research and capacity grants for the 1890 Land Grant Universities, I support the amendment of the gentlewoman from North Carolina (Mrs. CLAYTON) to do that.

Today, Mr. Chairman, we can move the process forward to bring more help to American agriculture. I urge my colleagues to join in support of this bill. It is a good bill. It moves the process forward, takes drastic steps in the right direction; and, hopefully, we can do what we need to do for America's agriculture.

Mr. BONILLA. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Chairman, I thank the distinguished chairman, the gentleman from Texas (Mr. BONILLA), for yielding me this time; and I rise for the purpose of a brief colloquy.

Mr. Chairman, I am sure that the chairman is aware, a serious threat has sprung up in wheat growing areas making the lives of our already-struggling farmers even more difficult. A fungus called Karnal bunt has been found in my district as well as in the district of our colleague, the gentleman from Texas (Mr. STENHOLM). While Karnal bunt poses no threat to humans or animals, it can make wheat kernels and flour ground from them unpalatable. At this time, a few counties have been quarantined. It appears it has been well contained, but we will have issues of compensation and appropriate action before us.

I have been working with the chairman and ranking member of the full committee, the gentleman from Texas (Mr. COMBEST) and the gentleman from Texas (Mr. STENHOLM), as well as the chairman of the Subcommittee on Conservation, Credit, Rural Development and Research, the gentleman from Oklahoma (Mr. LUCAS), but I would request the distinguished gentleman's continued assistance in working with USDA and the administration to deal with this issue appropriately and to deal with those who have been affected fairly.

Mr. STENHOLM. Mr. Chairman, will the gentleman yield?

Mr. THORNBERRY. I yield to the gentleman from Texas.

Mr. STENHOLM. I thank my friend for yielding to me, and I would like to say that the situation the gentleman has described is accurate, but here are the facts to date:

Seven producers affected, 10 elevator operators affected, 17 fields tested positive, 1.4 million bushels contaminated, and 21 bushels yet to be tested. An elevator operator in my district first discovered the fungus and bunted kernels in a load of grain delivered to his facility.

For these and many other reasons, I have been working with USDA to contain this outbreak and ensuring the critical assistance provided to producers, elevator operators, and others in agribusiness who have seen their livelihoods put on hold.

So we look forward to working with my colleague, with the chairman, and with USDA, who are on top of this, and APHIS, to make sure that we contain it. It is extremely important to our industry.

Mr. BONILLA. Mr. Chairman, will the gentleman yield?

Mr. THORNBERRY. I yield to the gentleman from Texas.

Mr. BONILLA. I thank my friend for yielding, and I would be more than happy and enthusiastic about helping my friend work on this problem. This is not a new problem for wheat producers. Accordingly, we will work to do everything possible to get USDA to act

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in a proper way, not only with the problem but to assist producers with whatever problems may occur.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. THORNBERRY. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I would like to thank my chairman for generously yielding that minute, and I just want to say that I share the gentleman’s deep concern about what this particular condition can do to our export market.

We had a situation a couple of years ago where we had USDA officials up before our committee and we asked where on the continent does Karnal bunt exist. I said was it Canada? No, we do not have it in Canada. Is it in the United States? No, it is not in the United States. I said, How did it get over there? And honestly, we have to work together to try to deal with the conditions that can come in from other countries.

I would just express to the chairman of the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, to the ranking member on the authorizing committee, and to the gentleman from Texas (Mr. THORNBERRY) that this Member is vitally interested in that problem, and he has my full cooperation on it.

Ms. KAPTUR. Mr. Chairman, I yield myself 30 seconds to say, however, that the costs of remediating that should not only be borne by the public sector. That if we are going to have problems related to trade, those participating in trade ought to bear the costs of what goes wrong in the transaction.

What has been happening within USDA is we have been transferring the cost of trade to the public sector, and the private entities that benefit have not been carrying their fair share of the load.

So let us hope we can find a solution to that that is fair to all.

Mr. Chairman, I yield 3 minutes to the gentlewoman from North Carolina (Ms. CLAYTON) as the ranking member of the authorizing committee, and one of the hardest-working Members of this Congress.

Mrs. CLAYTON. Mr. Chairman, I thank the gentlewoman for yielding me this time. I want to commend both the chairman and the ranking member for their time and effort. They have been given a very difficult task of meeting the ever-demanding needs of the agricultural sector in the face of a difficult economic condition for agriculture, but also in the face of a number of environmental threats and trying to move us into the 21st century. They also have been given a very tight allocation, and I understand they are trying to work within the budget. I am on the Committee on the Budget, so I know the constraints that were imposed upon them.

There are many things they did very, very well; and I want to commend them on that. Indeed, they did increase allocations for APHIS, which I will talk a little more about, and that is desperately needed. Those are some current threats that they are trying to provide sufficient funds to address those issues. They also recognized the ever-demanding need for research for agricultural communities and our institutions. Again, I think we have an opportunity to make sure as we increase those research dollars that there is some equity and parity among the institutions that we have. I will have a chance to discuss that a little later.

So I want to commend them for all the things they have done. However, I do want to point out a couple of areas that I think we should give consideration to in the future. Although there may be dollars there, there is still environmental impact issues that we just heard about, the issue of the wheat. The funding in the bill is certainly to be commended. I had raised an amendment in the supplemental that was not approved, although in the notes that went forward, they acknowledged there was a need; and I want to say that we need to at least make the case to our Senator friends that we need to do even more. And as we write the farm bill, hopefully, we will be mindful of that fact.

Nutrition, which is very dear to my heart, I want to commend the Committee on Appropriations for what they have done in increasing those areas. However, I would be remiss if I did not mention that WIC has identified that there is a need for a new and more eligible pregnant women and their children who may not receive basic needs. This is an issue I can do better on. I do not have an amendment for it, do not propose to have an amendment on it; but I just wanted to acknowledge that it is an area where I think we all would acknowledge we need to do more.

In conclusion, Mr. Chairman, I plan to vote for this bill. I also plan to try to make this bill even better. It is a good bill that could be better.

My final point is that I had hoped that the Kaptur amendment for the global lunch program would have been in order by the Committee on Rules. That is not the problem of the agricultural appropriation, but it is an issue of this Congress that we have an opportunity here to not only feed our children but to respond to hungry children across the world.

Mr. BONILLA. Mr. Chairman, I yield myself 4 minutes.

Ms. DELAUNOY. Mr. Chairman, will the gentleman yield?

Mr. BONILLA. I yield to the gentlewoman from Connecticut.
Mr. BONILLA. Mr. Chairman, claiming my time, I would be pleased to work with the gentlewoman from Connecticut (Ms. DELAURO) on this issue. This program has widespread support of the Members in the whole House. As a result of the gentlewoman’s efforts, the subcommittee has placed a priority on the program. We are aware that WIC participation levels can fluctuate above and below those forecast in administration budgets. I look forward to continuing my work with the gentlewoman to address the changes that may be brought on by adjustments in caseloads, and I thank the gentlewoman from Connecticut (Ms. DELAURO) for her efforts.

Ms. SANDERS. Mr. Chairman, even the New York Yankees sometimes lose, and it has been known that on occasion the Los Angeles Lakers lose a ballgame. But, Mr. Chairman, one organization never loses, and that organization has hundreds of victories to its credit and zero defeats in the United States Congress, and that is the pharmaceutical industry.

For decades now, good people in the House and Senate, Democrats and Republicans, have attempted to do something about lowering the cost of prescription drugs in this country so that Americans do not have to pay for the highest prices in the world for the medicine they need. And year after year with lies, distortions, well-paid lobbyists, massive amounts of advertising, and millions in campaign contributions, pharmaceutical industry always wins. Americans die and suffer because they cannot afford the outrageous cost of prescription drugs, and we remain the only country in the industrialized world that does not in one way or another regulate the cost of prescription drugs.

As part of this bill, the gentlewoman from Connecticut (Ms. DELAURO), the gentleman from New York (Mr. CROWLEY), the gentleman from California (Mr. ROHRABACHER) and I will be introducing an amendment which is exactly the same as the Crowley amendment that 363 Members of this House voted for last year. This amendment will serve as a placeholder so we can move the reimportation bill forward that was passed overwhelmingly last year, but was not implemented.

In a globalized economy, prescription drug distributors and pharmacists should be able to purchase and sell FDA safety-approved medicines at the same prices as in other countries. The passage of reimportation will lower the cost of medicine by 30 to 50 percent and enable Americans to pay the same prices as people in Canada, Europe, Mexico and all over the world.

Mr. Chairman, I thank the gentleman from Ohio (Ms. KAPTUR), and the gentlewoman from Connecticut (Ms. DELAURO) for their leadership on this program, first proposed last year by Ms. KAPTUR, who has fought so hard for the Global Food and Education Initiative.

Mr. McGOVERN. Mr. Chairman, I rise in support of this bill; and like many of my colleagues, I hope more funds may become available as we move forward in the appropriations process for critical programs that protect American farmers, conserve our soil and water, provide food aid abroad, and address hunger at home.

I would like to speak for a few moments about one such program. The Global Food for Education Initiative began last year as a pilot program. I want to make clear based on the report language accompanying this bill that the McGovern amendment to continue through fiscal year 2002, and in turn this program will provide approximately 9 million hungry children in 38 countries with at least one nutritious meal each day and a chance to go to school.

The report accompanying H.R. 2330 contains strong and explicit language in support of this program saying, “The committee expects the Secretary of Agriculture shall continue in fiscal year 2002 the Global Food for Education Initiative. The committee expects this program to continue through fiscal year 2002, and in turn this program will provide approximately 9 million hungry children in 38 countries with at least one nutritious meal each day and a chance to go to school.”

Mr. Chairman, I thank the gentlewoman from Texas (Ms. BONILLA), the gentlewoman from Ohio (Ms. KAPTUR), and the gentlewoman from Missouri (Mrs. EMERSON) for their leadership. This amendment, first proposed last year by former Senators George McGovern and Bob Dole, needs to be permanently established and authorized. Nothing illustrates this more than the difficult debates in the Committee on Appropriations and the Committee on Rules, where Members of both parties who support this initiative were faced with a difficult scoring issue because the program is funded under CCC authority.

The gentlewoman from Missouri (Mrs. EMERSON), the gentlewoman from Ohio (Ms. KAPTUR), and the gentleman from Ohio (Mr. HALL) have introduced H.R. 1700 to make this pilot initiative a permanent program so that this debate never happens again. I call upon my colleagues to join the broad bipartisan coalition of Members who have cosponsored H.R. 1700.

Mr. Chairman, I respectfully ask Secretary of Agriculture Ann Veneman to use her executive authority to extend funding for this program for fiscal year 2001 at the level implemented in fiscal year 2001, and Public Law 480 title II commodities. Ms. KAPTUR. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri (Mrs. EMERSON), the gentlewoman from Connecticut (Ms. DELAURO), the gentleman from California (Mr. ROHRABACHER) and the gentleman from New Jersey (Mr. ANDREWS), the Repaupo Creek watershed in my district in New Jersey is in urgent need of a replacement tide gate and dike restoration project. The project is needed for several reasons, the most important of which is to provide flood protection for the residents of Logan and Green-which Townships in Gloucester County. The Department of Agriculture’s Natural Resource Conservation Service has funded many of our best food and development programs. They are proven partners and they guarantee that our food aid programs have an American face and character on the ground. Along with our farmers, they are among our best ambassadors abroad, and they deserve our support.

Mr. Chairman, I thank the chairman and ranking member for their work on this bill, and I urge my colleagues to support it.

Mr. BONILLA. Mr. Chairman, I yield 2 minutes to myself.

Mr. ANDREWS. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. Mr. Chairman, I yield to the gentleman from New Jersey.

Mr. ANDREWS. Mr. Chairman, the Repaupo Creek watershed in my district in New Jersey is in urgent need of a replacement tide gate and dike restoration project. The project is needed for several reasons, the most important of which is to provide flood protection for the residents of Logan and Greenwich Townships in Gloucester County. The Department of Agriculture’s Natural Resource Conservation Service has funded many of our best food and development programs. They are proven partners and they guarantee that our food aid programs have an American face and character on the ground. Along with our farmers, they are among our best ambassadors abroad, and they deserve our support.

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do the work repairing the Repaupo tide gate.

Mr. BONILLA. Mr. Chairman, reclaiming my time, while I have not examined this issue in particular in detail, I assure the gentleman from New Jersey that I will work with him on this and will consider inserting language into the final report regarding this matter.

Mr. Chairman, I reserve the balance of my time.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as we close down general debate, I want to state my sincere thanks to the gentleman from Texas (Mr. BONILLA) for his openness in working through this bill. He has been responsive to all of our Members. We have had some testy moments at the subcommittee and full committee levels, but we have managed to keep walking forward; and I congratulate the gentleman on this first bill that he has brought to the full House.

Mr. Chairman, regarding the issue of Karnal bunt and the wheat supply in Texas, a couple of years ago post-NAFTA, we had a situation in Arizona and in Texas, and I believe even in parts of California, where it was suspected that this fungus had moved into our wheat supply. This is a really serious issue. It essentially can make our wheat product unexportable. Already we are having trouble in our wheat markets as China now exports to us more wheat than PNTR ever anticipated. Now we have this real contamination inside our country.

We need USDA's attention to this issue. I am going to enter into the RECORD a Sunday, June 24 article from the Associated Press on this question. It explains one of the reasons we fought so hard in this budget and in this bill for additional help for the inspector general, additional help for the Animal, Plant Health Inspection Service so we could have timely inspections and also avoid of these problems in the first place.

Mr. Chairman, this bill is not perfect. Let us hope as we move toward the Senate it can be made even better. But we ask for the membership's support. In closing down this general debate period, I would hope that we can move through the amendments in a very expedient manner so Members can catch airplanes late tonight in order to get home.

[From the Washington Post, June 24, 2001] USDA WHEAT DISEASE REACTION FAULTED
GROWERS SAY THE SPREAD OF KARNAL BUNT FUNGUS COULD BE CRIPPLING

(By Roxana Hegeman)

ANTHONY, Kan.—Bureaucratic bungling by the U.S. Department of Agriculture has allowed the spread of a plant disease that could prove as devastating to wheat exports as foot-and-mouth disease has been to European poultry groups said.

Wheat growers in Kansas, Oklahoma and Texas say the USDA responded too slowly to an outbreak of Karnal bunt at the southernmost edge of the nation's wheat belt just as harvest season was getting underway.

Karnal bunt is a fungus that is harmless to people but scour the taste and smell of flour made from infected kernels. Itslated, said Brett Myers, executive vice president of the Kansas Wheat Growers Association.

"Their reaction to the situation was not as timely as it should have been," said Kansas Agriculture Secretary Jamie Clover Adams.

On June 19, concern grew as the USDA added neighboring Archer County to the quarantined area, followed by Baylor County. But the wheat has also been quarantined in Fort Worth, about 150 miles southeast.

One Arizona grower said that the presence of the fungus could price his wheat out of the market. Durum wheat, which is planted in the fall and harvested in the spring, accounts for about two-thirds of U.S. wheat production. But a quarantine was imposed in July 1996 in four counties, according to the Arizona Agricultural Statistics Service.

In Arizona the amount of land used to grow wheat doubled almost 50 percent after a quarantine was imposed in 1996 in four counties, according to the Arizona Agricultural Statistics Service.

Karnal bunt, which originated in India, was first detected in the United States in 1996 in Arizona and California. It has since spread to southern Texas and New Mexico.

"Our wheat producers are extremely concerned," said Brett Myers, executive vice president of the Kansas Wheat Growers Association.

"Their reaction to the situation was not as timely as it should have been," said Kansas Agriculture Secretary Jamie Clover Adams.

Charles P. Schwalbe, deputy director of APHIS's plant protection and quarantine program, said his agency sent the sample away for testing at a national lab instead of using a local one to make sure it had accurate and legally defensible information before taking action.

"The decisions that emerge . . . mean livelihoods to people from time to time," Schwalbe said.

The Karnal bunt found in Throckmorton and Young counties in Texas were the first confirmed cases in the nation's wheat belt, an area extending from central Texas to Alberta, Canada.

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In Arizona the amount of land used to grow wheat has dropped almost 50 percent after a quarantine was imposed in 1996 in four counties, according to the Arizona Agricultural Statistics Service.

But Arizona is a minor durum wheat producer, and U.S. wheat growers have reassured overseas buyers that the disease was far from the nation's major winter wheat producing region. Winter wheat, which is planted in the fall and harvested in the spring, accounts for about two-thirds of U.S. wheat and is used primarily for bread.

With half the winter wheat going to the export market, the discovery of the disease at the southernmost edge of the nation's breadbasket just as the harvest was gathering momentum was a blow to the industry.

Oklahoma, just 90 miles from the two Texas counties, said the suspected Karnal bunt contamination was first discovered, immediately closed its borders and ordered combines coming into the state to be blocked and inspected. Harvesters from international wheat with a USDA certification of cleanliness were turned back.

"We need to preserve our heritage and our wheat industry. The spread of Karnal bunt in the United States has resulted in a great deal of concern," said Kansas Gov. Bill Graves (R). Kansas is the nation's biggest wheat producer, with a $1 billion crop and nearly 10 million planted acres.

Rep. Frank D. Lucas (R-Okla.) has been pursuing the issue after a request from growers for a congressional investigation into the USDA's handling. His office said he has not decided whether to ask for an inquiry.

Mr. Chairman, I yield back the balance of my time.

Mr. BONILLA. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. NETTHERCUTT), a very distinguished member of the subcommittee.

Mr. NETTHERCUTT. Mr. Chairman, I thank the gentleman for yielding me this time and for his kind remarks. I am delighted to stand in support of this bill. We have had a lively and valuable discussion on both sides of the aisle on various issues.

Mr. Chairman, I think the subcommittee chairman has done a wonderful job to put this bill together in essentially record fashion. I am grateful to him for his leadership.

I am supportive of this bill because it has a strong research component for agriculture, production agriculture, to be sure that it has the tools and the information and the technology necessary to compete in a world market. That is what we need for our farmers.

I am also pleased that this bill under the chairman's leadership has increased food safety and inspection. We have the safest food on the world and we must make sure that we acknowledge that and do not deignicate it in debate on the issue, because we have a very safe system. We need to keep it safe. We will keep it safe with the resources that are available in this bill.

At the subcommittee and the full committee level, I had raised the issue of ecoterrorism. When we spend millions of dollars on agriculture research but yet some of that research gets destroyed by extremists, ecoextremists who seek to destroy agriculture research, then we need to make sure we, as taxpayers and as Members of this body, protect that research.

This is not the place or the time for that issue and the discussion surrounding it, but it is an issue that we need to attend. My expectation is that we will attend to it as we go through the legislative process later in this year. I think those of us who care deeply about agriculture need to be critically aware that ecoterrorism is a reality in this country. We need to protect the research and the researchers.
Congress is providing fewer-and-fewer farmers with financial assistance.

The failure of Congress to make fundamental changes to existing agriculture policy, which had led to many farmers being driven off their land due to the perverse financial incentives, is beyond reasonable belief.

It is my hope that future agriculture policy will be equitable, providing federal assistance—when needed—to all producers. It is my hope that future agriculture policy respects the broad diversity of rural America. It is my hope that future agriculture policy provides for clean and safe drinking water, along with improved soil and air quality.

Mr. Chairman, this measure obviously covers more than just financial assistance to American farmers. In addition, it provides important funding for nutrition programs, food inspection, and safety. For these reasons, it is very important that this measure is passed.

Mr. Chairman, the gentleman for his bill and point out a small provision of it that is extremely important to the farmers of the northeastern part of the Nation, particularly to those in Connecticut. I strongly support the increase in funding for the EQIP program, the Environmental Quality Incentives Program, because it will help us achieve our national attainment goals in the area of clean water.

The AFO/CAFO regulations are expensive. My State has adopted all of the in keeping the bill tree of continuous compliance with the AFO/CAFO regulations; and the only reason frankly, the only possible way that small farmers can survive these costly regulations is through the technical assistance that the EQIP funds provide to them to help them determine what projects will, in fact, contain runoff. These funds give them some help in offsetting the costs of developing manure management programs and other modern approaches that will enable them to make a significant contribution to the cleanliness of our waterways and also, in the long run, to the revitalization of Long Island Sound.

In New England, we have very steep, hilly farms. We also have more rainfall than other parts of the country. So the burden on us is, frankly, far higher than the burden on other parts of the country. We are not a part of the country that benefits much from the farm bill through its crop assistance and other programs, but so some of its conservation dollars, and these EQIP dollars, are extremely important to us. I thank the chairman for uncapping them and making more resources available for compliance with the AFO/CAFO requirements.

Mr. BONILLA. Mr. Chairman, our Committee has worked hard to bring a good bill to the House. We have made prudent recommendations for the use of the budgetary allocation available to us, and we have done yeoman work on important issues such as trade policy, that have caused concern in prior years. I think we have a very good bill, and I know that we will have a good debate. In closing, I would certainly hope that everyone would support this bill on final passage.

Mr. KIND. Mr. Chairman, today the House is considering funding for the fiscal year 2002 Agriculture appropriations bill. This bill provides funding for U.S. Department of Agriculture and the Food and Drug Administration.

As a Member of Congress from a large agricultural district who is also concerned about this Nation's long-term fiscal health, I am concerned that this measure is yet another repeat of past agriculture spending packages—where Congress reserves funding for the U.S. Forest Service for the Cooperative Land Forest Health Management program specifically to fight the spread of the gypsy moth and the Asian Longhorned Beetle.

Resources for the fight against beetle infestation are especially important to New York City. Just this month, 60 trees from Calvary Cemetery in my district in Queens were cut down, chipped, and burned to the root because of beetle infestation. Additional trees were recently cut down in Astoria and Woodside Queens.

Mr. Chairman, the future viability and competitiveness of the U.S. agricultural industry depends on its ability to adapt to increasing worldwide demands for U.S. exports of intermediate and consumer goods. In order to meet these changes worldwide demands, agricultural research must also adapt to provide more emphasis on adding value to our basic farm commodities. The Midwest Advanced Food Manufacturing Alliance can provide the necessary cooperative link between universities and industries for the development of competitive food manufacturing and processing technologies. This will, in turn, ensure
that the U.S. agricultural industry remains competitive in an increasingly competitive global market.

This Member is also pleased that this bill includes $200,000 to fund the National Drought Mitigation Center (NDMC) at the University of Nebraska-Lincoln. This project is in its fourth year and has assisted numerous States and cities in developing drought plans and developing drought response teams. Given the nearly unprecedented levels of drought in several parts of our country, this effort is obviously important.

Furthermore, this Member is also pleased that the measure provides $700,000 for efforts at the University of Nebraska-Lincoln to improve biomass for feedstocks. The research will benefit the environment and the agricultural economy. It also holds the potential to greatly reduce the nation’s dependence on foreign sources of energy.

Another important project funded by this bill is the Alliance for Food Protection, a joint project between the University of Nebraska and the University of Georgia. The mission of this alliance is to assist the development and modification of food processing and preservation techniques. This technology will help ensure that Americans continue to receive the safest and highest quality food possible.

This Member is also pleased that the legislation funds the following ongoing Cooperative State Research, Education, and Extension Service (CSREES) projects at the University of Nebraska-Lincoln: Food Processing Center: $42,000; non-food agricultural products: $64,000; sustainable agricultural systems: $59,000; Rural Policy Research Institute (RUPRI) (a joint effort with Iowa State University and the University of Missouri): $1,300,000.

In addition, this Member is pleased that the bill directs the Agriculture Research Service to collect and focus $300,000 at the University of Nebraska-Lincoln to address sorghum fungal plant pathology concerns. This funding will fill a critical gap for fungal plant pathology research for sorghum in the central Great Plains and the United States.

This Member would also note that H.R. 2330 includes $99.77 million for the section 538, the rural rental multifamily housing loan guarantee program. The program provides a Federal guarantee on loans made to eligible persons by private lenders. Developers will earn 10 percent of the cost of the project to the table, and private lenders will make loans for the balance. The lenders will be given a 100 percent Federal guarantee on the loans they make. Unlike the current section 515 direct loan program, where the full costs are borne by the Federal Government, the only costs to the Federal Government under the 538 Guarantee Program will be for administrative costs and potential defaults.

Mr. Chairman, this Member certainly appreciates the $3.1 billion appropriation for the Department of Agriculture’s Section 502 Unsubsidized Loan Guarantee Program. The program has been very effective in rural communities by guaranteeing loans made by approved lenders to eligible income households in small communities of up to 20,000 residents in nonmetropolitan areas and in rural areas. The program provides guarantees for 30-year fixed-rate mortgages for the purchase of an existing home or the construction of a new home.

Mr. Chairman, in conclusion, this Member supports H.R. 2330 and urges his colleagues to approve it.

Mr. LARGENT. Mr. Chairman, I rise today to express my support for H.R. 2330, the FY 2002 Agriculture Appropriations bill. I am pleased that the Appropriations Committee has both supported our farmers and displayed fiscal discipline by remaining close to the President’s budget request. This responsible bill addresses the needs of our nation’s farmers and ranchers while keeping in mind the desire of American consumers to buy affordable and safe agriculture products.

I want to commend the full committee for passing a number of important amendments. Specifically, I am pleased that employees of the Farm Service Agency will be better able to deliver farm ownership, farm operating, and disaster loans through improved salary and expense funding and through additional resources for agricultural credit programs. This assistance will not only provide relief as the workload of this vital agency has grown in response to a weakening farm economy.

I am also pleased with the investment this bill makes in the future safety and health of our citizens and our environment. The research that will be facilitated and advanced through this bill will ensure the continued quality of our food supply by improving safeguards. The conservation programs within the bill also reflect foresight. The desire of farmers to preserve American soil exemplifies the respect and attachment they have for the land in which they are invested.

Lastly, I am encouraged by the Distance Learning and Telemedicine Program which will link rural Americans with resources and opportunities previously available only in urban areas. As we seek a prosperous future for our rural residents, we must find ways to stimulate local economies. This bill advances that goal through education and enhanced services that will enable individuals and families to stay in their hometowns while receiving education and health services. Using technology to provide useful links between rural and urban areas will slow the flight to cities and preserve smaller towns and municipalities, which are vital pieces of the American fabric.

I commend the chairman, and all of the members of the committee for crafting this responsible bill.

Mr. TANCREDO. Mr. Chairman, I rise in opposition to H.R. 2330, the Agriculture Appropriations Act, a bill considered on the floor today which makes appropriations for the Department of Agriculture and related agencies. But more specifically, I rise in strong opposition to the increase provided in the bill for the Food and Drug Administration (FDA) and recommend that the Appropriations Committee remove this provision.

Mr. Chairman, I have presented a case showing that the Food and Drug Administration is not doing the job for which it was created. In particular, I would like to call to your attention a problem that one of my constituents has been having with the agency and one that I believe deserves careful consideration by the oversight committees in this chamber.

Recently, the FDA gave final approval of my constituent’s product, TMJ Concepts. As the Director of the TMJ Concepts, Mr. Statland, I was pleased to see this approval. TMJ Concepts is a company located in Colorado Springs, Colorado, which had been having problems with the review of its Premarket Approval Application of the TMJ Total and Fossa-Eminence Prosthesis. Up until last year, the company was the premier market supplier of temporomandibular joint prostheses.

Over the last 2 years, I have taken an active interest and an active role in monitoring the progress of TMJ Implants’ application, which was finally approved in February. On numerous occasions, I met with Dr. Bob Christensen, President of TMJ Implants, to find out information about the approval of the partial and total joint, and personally talked to FDA Commissioner Jane Henney and to members of the Agency about the status of the company’s applications. I was also, and continue to be, in contact with the House Commerce Subcommittee on Oversight, which has sole jurisdiction over the FDA and issues relating to abuse and the internal operations of the agency.

Specifically, I closely followed this case since my office’s first contact with Dr. Christensen and TMJ Implants in early May 1999, after a meeting of the FDA’s Dental Products Panel of the Medical Devices Advisory Committee. This committee was reviewing the company’s Premarket Approval Application of the PMA by a 90 vote. From this point onward, the FDA engaged in an obvious pattern of delay and deception and even went as far as to remove TMJ Implants’ Fossa-Eminence Prosthesis from the market, which had been approved for almost 40 years. This has done nothing more than to cause harm to patients and cost the company millions of dollars.

This was done at the same time that the application for TMJ Concepts, a competitor of TMJ Implants, sailed through the process. Several allegations have come to light over the last two years detailing the fact that several Agency employees have worked under the direction of TMJ Concepts’ associates.

The agency went so far as to reconvene a new Medical Devices Advisory Committee late last year, with a clear majority of its members lacking the required expertise, which denied the company’s application.

It was not until Mr. Bernard Statland, the new Director of the Office of Device Evaluation (ODE) was brought in that the logjam was broken the PMA was quickly approved.

As the above demonstrates, several concerns remain about the process that has taken place over the last two years. It is no secret that everyone involved in this case believes that there have been significant questions raised about the process—the sluggish pace of the review of the engineering data for both the total and partial joint and, more importantly, the constant “moving of the goal posts” during the review of both PMAs.

Over the last 2 years, my office has received numerous letters from physicians all across the country—from the Mayo Clinic to the University of Maryland—each describing the benefit of the partial joint and the fact that the partial and total joint results in immediate and dramatic improvement in range of motion and increased function.

While I am, of course, pleased that the application has been approved by the FDA after
much delay, the circumstances of the last 2 years calls into question the integrity of the agency, including both generic drugs and medical devices.

Under the Fossa-Eminence labeling’s Warnings section is a boxed statement heading, “FULL DISCLOSURE” STANDARD IN TMJ APPROVAL OPENS NEW FDA ERA.

Instead of FDA tying itself in knots trying to guarantee no inappropriate patient exposure to implant devices—and stalling a product in mid-review as a result—yesterday’s approval of the TMJ Implants Fossa-Eminence Prosthesis set a new “full disclosure” labeling standard that lifts that self-imposed burden from the agency and should expedite other product reviews. TMJ Implants’ pre-1976 jaw joint devices was stalled for 20 years. The FDA’s then-Office of Device Evaluation (ODE) director Bernard Statland broke the logjam. In doing this, he was implementing one stage of a policy initiative on innovative public use of clinical device information articulated last year by Center director David Feigal—placing such FDA-held information in the hands of physicians and patients.

According to one of the two attorneys who steered the TMJ Implants submission through its FDA ordeal, Mike Cole (Bergeson & Campbell), yesterday’s approval is the first he’s seen in 25 years of dealing with ODE where the agency stepped back from its “appropriate use” worries and left it to physicians to decide, based on disclosure, labeling of the device’s real-world limitations—including the availability of no-device alternative therapies. Under the Fossa-Eminence labeling’s Warnings section is a boxed statement headed, “The medical literature reports,” with four bulleted statements:

That many cases of Internal Derangement resolve after non-surgical treatment, or, in some cases, with no treatment at all.

That the complexity of contributing factors in this patient population must be considered in the diagnosis and decision to surgically treat patients.

That a replacement surgery, therefore, should be utilized only as a last resort after other treatment options are exhausted or determined not to be warranted in the medical judgment of the physician/dentist in consultation with the patient.

That the Wilkes classification is a guide in determining the severity of the disease. This classification will fall on as a sole criterion for surgical treatment.

“If it really is a striking difference in philosophy,” Cole told FDA Webview, “It discloses the proper tool that would be used without the surgery. . . it describes situations where the doctor arrives at the diagnosis that surgery may be appropriate, but it doesn’t prejudge that decision point. Over the years, there are many instances of concern about off-label use of products and misuse of products, and part of it, I think, from a mentality that we have to be 100% sure that it will be used appropriately. As a result, manufacturers have started submitting applications with more and more restricted indication statements in them, because that can get through the system.”

Cole and colleague David Rosen (Mcdermott, Will & Emery) believe the TMJ Implants Fossa-Eminence prosthesis should not have been approved at the FDA for so long simply because reviewers were afraid the products would be used inappropriately—an FDA syndrome that has affected most products over the years. “A lot of times, what it really comes down to is demands for more data, more data, more data,” Cole explained, “because the reviewers are not comfortable with the idea that the device ought to be on the market, or available. The way out of that is to keep asking for more information.”

In TMJ Implants case, he said, review leader Susan Runner “held what I think was an absolute guarantee that the product would meet the assurance of safety and efficacy had been demonstrated, that we would not decide for them.”

When we had this meeting with Dr. Statland, he got up with a whiteboard and started talking about the data, and he said to his people, “You’ve got a lot of information here; what we need to do is figure out how we’re going to present this information to the doctor so that the doctor and the patient understand what surgery fits in this and make sure we discuss the limitations of the data.” For the first time that I’ve heard this in 25 years dealing with Center, he said, “We’ll discuss this information in the labeling and we’ll let the doctors and the patients decide whether they want to use the device—we won’t decide for them.”

Statland, Cole the reviewers’ agonizing at the point where reasonable assurance of safety and efficacy had been demonstrated, thus preventing the agency from continuing to ask for more data, “to secure an absolute guarantee that the product would not be used improperly.” “In a way it’s a kind of subtle point, but in a way it’s also a sledgehammer point,” When Dr. Statland told Cole that FDA Webview he injected himself into the review because it was “stuck.” It helped that his wife once had a TMJ condition that did not require surgery—he learned as much as he could about “this very complex problem, which has many causes and many different treatments.”

He noted, in the TMJ Implants controversy, he discovered that the parties’ positions had hardened through communication breakdowns, which was able to soft-edge. “There were venting on both sides,” Statland said.

“The message is,” he told us, “that those companies that are very conscientious in testifying to the clinical studies, find that that speaks much louder than anything else. Ancillary information is fine, opinions
of various people and declarations are fine, but when it comes to numbers, I think that’s the take-home lesson.”

With TMJ Implants, Statland said, FDA played “a consultative role,” although he would not address Christensen’s complaints that the early stages of the review were far from consultative. “I’m pro-technology,” he stressed, “I want good devices to be out there so we can be going to help people. At the same time, I want full disclosure, so people can make good decisions.”

Rosen acknowledged that after Statland began the issues dividing the company from reviewers, there were holes in the data (e.g., patients lost to follow-up) that the company had provided and that reviewers apparently didn’t know how to assess. After one round-table discussion, on 2/9, he and Mike Cole worked through the week-end to extract from the company’s prospective clinical study data a subset analysis of patients who had at least three years’ experience with the Fossa-Eminence implant. On 2/13, he presented this to the reviewers, and it answered all of their questions. That left only the labeling, which then moved quickly to completion.

Christensen, who had enlisted legal, political, and economic frustration in his frustration with the process, told us 2/27 he is now “very pleased” with the result, although he thinks FDA owes him for some of his extraordinary costs restoring two devices in the market. He has resumed full marketing efforts. By his calculations, he has $6 million to $8 million in losses to make up.

Mr. BONILLA. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule and the amendment printed in House Report 107-118 is adopted.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read. The Clerk will read.

The Clerk read as follows: H.R. 2330

* * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2002, and for other purposes, namely:

**TITLE I**

**AGRICULTURAL PROGRAMS**

**PRODUCTION, PROCESSING, AND MARKETING**

**OFFICE OF THE SECRETARY**

For necessary expenses of the Office of the Secretary of Agriculture, and not to exceed $75,000 for employment under 5 U.S.C. 3109, $3,015,000: Provided, That not to exceed $11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary: Provided further, That none of the funds appropriated otherwise made available by this Act may be used to pay the salaries and expenses of personnel of the Depart-
Act of 2001 so that we actually can authorize this program for a 5-year period. However, it is unlikely that this authorizing legislation will be approved in time to provide a seamless transition from the pilot to the authorized program for fiscal year 2002.

An amendment was offered to continue funding for the program at the current level of funding during our markup in the agriculture appropriations subcommittee, but we determined that, for lots of reasons, it would not be part of our bill today. However, I was pleased at the efforts of the gentleman from Texas to include language explaining that the House of Representatives expects the Department of Agriculture to continue the GFEI pilot program in the fiscal year 2002.

Mr. Chairman, it is my hope that the committee supports the international school feeding programs. I would like to see the GFEI continued for the next fiscal year. Is it the gentleman from Texas' expectation that the Department of Agriculture will continue to fund this program at its current level in fiscal year 2002?

Mr. BONILLA. Mr. Chairman, will the gentlewoman yield?

Mrs. EMERSON. I yield to the gentleman from Texas.

Mr. BONILLA. It is hard to speculate as to what the Department is going to do, but I can assure her that this is something that we are all concerned about. I know the gentleman from Ohio (Ms. KAPTOR) has worked on this as well, along with the gentleman from Massachusetts (Mr. MCGOVERN), the gentleman from New York (Mr. WALSH), and others. The subcommittee included report language that encourages the Secretary to continue this program at the same level as the current fiscal year. Accordingly, I will be pleased to work with the gentlewoman to see that the Department continues a program they initiated administratively.

Mrs. EMERSON. I thank the gentleman.

Mr. MCGOVERN. Mr. Chairman, will the gentlewoman yield?

Mrs. EMERSON. I yield to the gentleman from Massachusetts.

Mr. MCGOVERN. First of all, I want to thank the gentlewoman from Missouri for her tremendous leadership on this issue; and I want to thank the gentleman from Texas for his work on this issue and for his incredible leadership on this issue; and I want to thank the gentlewoman from Texas for her support.

We have been asked by former Senator George McGovern and former Senator Bob Dole, who each on occasion was honored with the nomination of his party to the Presidency of the United States, we have been asked by both of them to continue the program and to make it a long-term commitment. That is something we ought to do.

I would submit that no one in the history of the Congress knows more about child nutrition than George McGovern and Bob Dole. They devoted a great deal of their lives to it and I think that children in this country were adequately nourished, and they are trying to also do something to recognize that we have responsibilities to people around the world who are not as fortunate as we are.

The problem we have is that when the gentlewoman from Ohio (Ms. KAPTOR) and others sought to offer the amendment, we were told if we offer the amendment and if we do that in this bill, then this bill will be scored and that will hurt us vis-a-vis the Budget Act.

I would simply say I think this is a sing example of how we have been tied up by some of the ludicrous accounting rules that get in the way of our achieving important policy goals.

We are stuck in a battle of accountants and the lawyerly interpretation of what accountants tell us and, as a result, we are prevented from doing something which we obviously ought to do.

We have one problem. The agency has not decided to proceed. This Congress had a choice. It could tell the agency to get off the dime and proceed or it could pass the buck. I think that is unfortunate. It seems to me that if this Congress had had the courage to continue the program and continue the program, then the bill will be scored and that will hurt us vis-a-vis the Budget Act.

I would simply say I think this is a sad example of how we have been tied up by some of the ludicrous accounting rules that get in the way of our achieving important policy goals.

We are stuck in a battle of accountants and the lawyerly interpretation of what accountants tell us and, as a result, we are prevented from doing something which we obviously ought to do.

We have one problem. The agency has not decided to proceed. This Congress had a choice. It could tell the agency to get off the dime and proceed or it could pass the buck. I think that is unfortunate. It seems to me that if this Congress had indicated today, through an amendment on this legislation, that we were directing them to proceed, the agency would have proceeded. We would have had not had the accounting problem and we could have, in fact, delivered this program.

We have a simple choice. We have surplus commodities in this country. The question is, will the taxpayers be asked to pay money in order to store them or will they be asked to pay money in order to ship them so they can be used to provide nutrition for young children abroad who need them?
That is a win-win proposition, both for those kids and our farmers. It is good for the health of our children as well, and I think it is indeed unfortunate that we have been prevented from offering the amendment today.

Ms. KAPTUR. Mr. Chairman, if the gentleman will yield, I reserve the right, as we move toward conference, to redirect this issue into the debate as we further perfect this bill.

Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

The Clerk will read.

The Clerk read as follows:

EXECUTIVE OPERATIONS

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses of the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622a), and including employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), of which not to exceed $5,000 is for employment under 5 U.S.C. 3109, $7,704,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, including employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), of which not to exceed $5,000 is for employment under 5 U.S.C. 3109, $12,669,000.

Ms. LEE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to enter into a colloquy with the chairman of the committee. I had intended to offer an amendment to provide funding to make it easier for students to purchase organic and whole foods in the school breakfast and lunch programs, but I will not offer my amendment today.

I want to thank the chairman from Texas (Mr. BONILLA), and the ranking member, the gentlewoman from Ohio (Ms. KAPTUR), for their support of my intention to assist schools in purchasing healthy foods for their school breakfast and lunch programs.

This would include organic, locally grown, and fresh produce. At a time when our children’s health is threatened by such conditions as obesity and type II diabetes, it is more important than ever to ensure that they have healthy options when they eat at school.

Currently, our tax dollars buy a high fat, high caffeine, fast food diet, which is turning into an extremely expensive public health problem. According to the Centers for Disease Control and Prevention, youth nutrition and obesity are an epidemic in the United States. The Healthy Farms and Healthy Kids Report states that the awful irony is that our multibillion dollar investment is yielding a multibillion dollar public health crisis in school-aged children while at the same time 83 percent of farmers who are perched precariously on the edge of urban sprawl are threatened with extinction. In many school districts in my State of California and around the Nation, urban, rural, and suburban, it is a real challenge to serve fresh, ethnically diverse meals prepared on-site from whole ingredients obtained by local farms.

With the commitment from the schools and the community, things can be better. In my district, for example, in Berkeley, California, they are facilitating a district-wide food systems-based curriculum supporting garden classrooms and cooking programs in every school.

In Berkeley, local funding has allowed the schools to have a garden in every school, and they are opening fresh salad bars with organic and other fresh foods. So this will help our schools and our local farmers, and, of course, of the purchasers like schools, we believe we will demonstrate that we can bring more healthy foods into our schools while lowering the costs but still supporting our farmers. So I would just like to ask the gentleman from Texas (Mr. BONILLA) for his help really in the future to secure funds to make it easier to get healthy foods from our farms to our children and to our schools, of course.

I look forward to working with him and our ranking member, the gentlewoman from Ohio (Ms. KAPTUR), to ensure that this provision could possibly be contained in the final version of the fiscal year 2002 Agricultural Appropriations Act.

Mr. BONILLA. Mr. Chairman, will the gentlewoman yield?

Ms. LEE. I yield to the gentleman from Texas.

Mr. BONILLA. Mr. Chairman, I would be happy to work with the gentlewoman from California (Ms. LEE) and the folks at USDA to provide some positive direction in this area. There is not a parent out there that is not concerned about good nutrition for children so I thank the gentlewoman for bringing this up and would look forward to again trying to direct USDA, somehow working with the gentlewoman on this issue of organic foods.

Ms. KAPTUR. Mr. Chairman, will the gentlewoman yield?

Ms. LEE. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I just wanted to say to the gentlewoman from California (Ms. LEE) that I fully support her efforts. I think she has raised an exceedingly important issue for our country. Without question, the nutrition of our children will yield the health of the future generation. The high use of sugar and high fats in the diets of our youth are creating an untenable, extremely unhealthy situation in this country that even the Surgeon General has recognized.

One of the hardest challenges we face within the U.S. Department of Agriculture is to get the nutrition part of the agency, which has over half of its budget, to talk to the production side, which is the part the gentlewoman is talking about. That is producers, organic producers, small farmers, must be linked to our local school districts. This has been a tough job.

I really support the gentlewoman on her efforts. Her goals of helping our children, I think, are commendable and also getting the Department of Agriculture to see its responsibilities toward our youth by working with farmers who can provide that fresh product in fruits and vegetables, with ethnic and racial sensitivity at the most local of levels, which is where we all live.

So I look forward to working with the gentlewoman as we move the bill in the other body and hopefully we can strengthen this measure as we move forward. I thank the gentlewoman so very much for bringing up this very important issue today.

Ms. LEE. Mr. Chairman, I want to thank the chairman and our ranking member for their coloquy and for their assistance and look forward to working with them. I come from an urban community. I look forward to working with our rural and suburban and urban legislators on this.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, including employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), of which not to exceed $5,000 is for employment under 5 U.S.C. 3109, $7,041,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, including employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), of which not to exceed $10,000 is for employment under 5 U.S.C. 3109, $10,325,000.

COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service and Rural Development mission areas for information technology systems, and services, $59,369,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 9315–18 and 40 U.S.C. 1241–28: Provided, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization Plan of the county-based agencies, and shall be subject to the concurrence of the Department’s Chief Information Officer.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, including employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), of which not to exceed $5,000 is for employment under 5 U.S.C. 3109, $12,669,000.
OFFICE OF the ASSISTANT SECRETARY FOR
CONGRESSIONAL RELATIONS
(INCLUDING TRANSFERS OF FUNDS)
For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison with the Congressional budget process, $3,718,000: Provided, That these funds may be transferred to the Department of Agriculture funded by this Act to maintain personnel at the agency level: Provided further, That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

OFFICE OF COMMUNICATIONS
For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 6901 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

Hazardous Materials Management
(INCLUDING TRANSFERS OF FUNDS)
For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION
(INCLUDING TRANSFERS OF FUNDS)
For Departmental Administration, $57,398,000, to provide for necessary expenses for maintenance, repairs, and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department, $57,398,000: Provided further, That the foregoing limitations shall not apply to charges for space rental and related costs not otherwise provided for:

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), $2,905,000, to remain available until expended.

OFFICE OF the INSPECTOR GENERAL
For necessary expenses of the Office of the Inspector General, including employment pursuant to section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and the Inspector General Act of 1978, $71,429,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, including not to exceed $50,000 for employment under 5 U.S.C. 3109, and not to exceed $2,000,000 may be used for farmers' bulletins.

OFFICE OF the GENERAL COUNSEL
For necessary expenses of the General Counsel, $114,546,000, of which not to exceed $25,456,000 shall be available for space rental and related costs not otherwise provided for:

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution, $578,000: Provided, That the foregoing limitations shall not apply to charges for space rental and related costs not otherwise provided for:

For necessary expenses to carry out services related to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), $2,905,000, to remain available until expended.

OFFICE OF the ASSISTANT SECRETARY FOR
CONGRESSIONAL RELATIONS
(INCLUDING TRANSFERS OF FUNDS)
For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison with the Congressional budget process, $3,718,000: Provided, That these funds may be transferred to the Department of Agriculture funded by this Act to maintain personnel at the agency level: Provided further, That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

OFFICE OF COMMUNICATIONS
For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

Hazardous Materials Management
(INCLUDING TRANSFERS OF FUNDS)
For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION
(INCLUDING TRANSFERS OF FUNDS)
For Departmental Administration, $57,398,000, to provide for necessary expenses for maintenance, repairs, and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department, $57,398,000: Provided further, That the foregoing limitations shall not apply to charges for space rental and related costs not otherwise provided for:

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), $2,905,000, to remain available until expended.

OFFICE OF the INSPECTOR GENERAL
For necessary expenses of the Office of the Inspector General, including employment pursuant to section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and the Inspector General Act of 1978, $71,429,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, including not to exceed $50,000 for employment under 5 U.S.C. 3109, and not to exceed $2,000,000 may be used for farmers' bulletins.

OFFICE OF the GENERAL COUNSEL
For necessary expenses of the General Counsel, $114,546,000, of which not to exceed $25,456,000 shall be available for space rental and related costs not otherwise provided for:

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution, $578,000: Provided, That the foregoing limitations shall not apply to charges for space rental and related costs not otherwise provided for:

For necessary expenses to carry out services related to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

Hazardous Materials Management
(INCLUDING TRANSFERS OF FUNDS)
For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 9601 et seq., $15,665,000, to remain available until expended: Provided, That the funds made available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION
(INCLUDING TRANSFERS OF FUNDS)
For Departmental Administration, $57,398,000, to provide for necessary expenses for maintenance, repairs, and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department, $57,398,000: Provided further, That the foregoing limitations shall not apply to charges for space rental and related costs not otherwise provided for:

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 2279), $2,905,000, to remain available until expended.
the occupancy or use of land and facilities (including land and facilities at the Beltsville Agricultural Research Center) issued by the agency, as authorized by law, and such fees shall be credited to this account, and shall remain available until expended for authorized purposes.

AMENDMENT NO. 24 OFFERED BY MR. TIERNEY. 
Mr. TIERNEY. Mr. Chairman, I offer amendment No. 24.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 24 offered by Mr. TIERNEY: In title I, under the heading “AGRICULTURAL RESEARCH SERVICE-SALARIES AND EXPENSES”, insert at the end the following:

SEC. 1530. REPORT REGARDING GENETICALLY ENGINEERED FOODS.

(a) IN GENERAL.—Not later than one year after funds are made available to carry out this section, the Secretary of Agriculture, after funds are made available to carry out this section, the Secretary of Agriculture, shall complete and transmit to Congress a report that includes recommendations for the following:

(1) DATA AND TESTS.—The type of data and tests that are needed to sufficiently assess and evaluate human health risks from the consumption of genetically engineered foods.

(2) MONITORING SYSTEM.—The type of Federal monitoring system that should be created to assess any future human health consequences from long-term consumption of genetically engineered foods.

(3) REGULATIONS.—A Federal regulatory structure to approve genetically engineered foods for consumption.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture $500,000 to carry out this section.

Mr. BONILLA. Mr. Chairman, I reserve a point of order on this amendment.

The CHAIRMAN. The point of order is reserved.

Mr. TIERNEY. Mr. Chairman, there is probably no more important responsibility for a government than to protect the well-being of its citizens. For this reason, it is essential that we properly assess the best way to ensure the health safety of genetically engineered foods.

This amendment presented at the desk seeks a National Academy of Sciences study to examine three important health-related aspects of genetically engineered foods. One, whether or not the tests being performed on genetically engineered foods really ensure their health safety and whether or not they are adequate and relevant; two, what type of monitoring system is needed to assess future health consequences from genetically engineered foods; and, lastly, what type of regulatory structure should be in place to approve genetically engineered foods for humans to eat.

In the year 2000, more than 100 million acres of land around the world were planted with genetically engineered crops. This is 25 times as much as was planted just 4 years before. In fact, genetically engineered food crops planted and marketed by United States farmers include 45 kinds of corn, canola, tomatoes, potatoes, soybeans, and sunflowers.

Today, genetically engineered ingredients are found in virtually all of our foods that are sold on supermarket shelves; and that includes baby foods, potato chips, soda, and vegetables.

Despite the growing presence of genetically engineered foods and despite industry assertions that the foods are safe to eat, the public remains unconvinced. The discovery last year of genetically engineered Starlink corn that was not approved for humans to eat in taco shells was a wake-up call.

Now that the cat is out of the bag, Starlink’s manufacturers want the Environmental Protection Agency to declare Starlink safe for human consumption.

Mr. Chairman, that is no way to protect our health. As the Centers for Disease Control noted earlier this month, we need to properly evaluate genetically engineered foods before they get into the food supply. In my home State of Massachusetts, the State legislature is considering legislation that would impose a 5-year moratorium on the growing of genetically engineered foods. Similar legislation is pending in New York. In fact, according to the Grocery Manufacturers of America, as of March this year there were eight bills in six States that would ban or put a moratorium on the planting of genetically engineered crops.

We cannot afford to bury our heads in the sand and let the public’s concerns continue to grow. We need to develop a standard of tests that can be applied to all genetically engineered food to ensure that it is safe for our children and ourselves to eat.

I think that is what we are looking for, Mr. Chairman. We want consumers to feel secure when they eat, and we want farmers to be confident when they market their products. We should heed the words from that study, and we should fund the study proposed in this amendment.

Mr. Chairman, I thank the chairman for his attention.

The CHAIRMAN. Does the gentleman from Texas (Mr. BONILLA) insist upon his point of order?

Mr. BONILLA. I continue to reserve my point of order, Mr. Chairman.

The CHAIRMAN. The gentleman continues to insist on his point of order.

Mr. KUCINICH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the Tierney amendment. I think the gentleman from Massachusetts raises an excellent point about the need for further study. The truth is that in 1999, over 100 million acres of genetically engineered crops were planted in this country, and the consumption of genetically engineered crops is happening. Yet we really do not have much information about the effects; we really do not know much about how this might have some implications for public health. That is why many States are starting to look at this quite critically, and the issues that are raised here certainly merit more study.

The gentleman from Massachusetts (Mr. TIERNEY) should be congratulated for raising this issue and for asking for a more thorough review of this. I can say that I think most people
in this country would support such a call. People are concerned about the food they eat, and they are certainly concerned about the people which may, in one way or another, change the functional characteristics of the food, as well as the properties of the food and the way in which the food interacts in the human medium.

So I want to thank the gentleman from Massachusetts (Mr. TIERNEY) for his work.

Mr. TIERNEY. Mr. Chairman, will the gentleman yield?

Mr. KUCINICH. I yield to the gentleman from Massachusetts.

Mr. TIERNEY. Mr. Chairman, I would hope that the chairman would just know, this is the second year we have presented this motion; and I think it is a pretty balanced motion. We are trying to make sure that farmers know that they can go to the market with confidence. We are going to do us no good in terms of the economics of our society to have a bunch of farmers that are creating a product in which the consumers have no confidence, so there is no market there.

This particular amendment was a hope to strike the point where we get the National Academy of Science to determine for us what is the best testing regime, what is the best way to monitor this as it goes through, and what is the best way to make sure that we have a regulatory structure to give the confidence at both of those levels.

Mr. KUCINICH. Mr. Chairman, reclaiming my time, the gentleman is correct on that. As a matter of fact, American farmers are quite concerned about the safety of genetically engineered products on their markets, because if their markets begin to dry up, as they have in some countries, then American farmers are not able to sell what we know is the best agriculture in the world, here from America. But if the products are genetically engineered, if there has not been much study and there is concern about quality, safety and other things, then our farmers can endure economic loss.

So I want to again thank the gentleman from Massachusetts (Mr. TIERNEY) for raising this issue, and I hope that the gentleman would respectfully consider his amendment as being in order.

The CHAIRMAN. Does the gentleman from Texas (Mr. BONILLA) still insist on his point of order?

Mr. BONILLA. Mr. Chairman, I continue to reserve my point of order.

The CHAIRMAN. The gentleman continues to reserve his point of order.

Mr. SMITH of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I commend the gentlemen for their interest in providing wholesome food. It is important. I would like to point out, however, that regarding the Starlink corn question, there has been no ill effects to humans. That is good news.

I would like to also point out that, because we have been cross-breeding for 1,000 years, every food item that we buy in a store, except a couple of varieties of fish, have been genetically modified. This has happened simply because farmers have been looking for ways to improve the quality and cost of food.

I think it is very important that we continue our scientific effort with this new technology of genetic modification. We must also consider the importance of its tremendous potential in developing better food products and more healthy, more nutritious foods. I hope that the gentleman can develop food products that have vaccines. Also, especially in the developing countries of this world, we now have the potential of developing the kind of plants and seeds that can grow in those arid soils or those types of climatic conditions where they could not grow food before. So we need to proceed in our scientific research.

Just a point before I yield for a comment. We have the best regulatory system in the world in terms of our oversight of genetically engineered products. Between the United States Department of Agriculture, the Food and Drug Administration and the Environmental Protection Agency, we now have the ability to review, regulate and test these products that are coming to market to assure safety.

Mr. TIERNEY. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from Massachusetts.

Mr. TIERNEY. I might respectfully just disagree with the gentleman on the last point, as I think the National Academy of Science does, when they indicated that they think this idea of having three different agencies with overlapping and different responsibilities would be better served to look at what other kind of regulatory structure we could put in place that would give us more confidence.

Also I want to draw a point on the study the gentleman talked about on Starlink. One, I think we want that kind of information before the problem arises, and that is partly why I filed this bill; and, secondly, there is still some controversy swirling around the study the gentleman talked about and the results of it.

I suspect from the gentleman’s comments and the importance he puts on genetically engineered foods that he favors my bill, which would be a confident way for the Australians to set up the right kind of test that people could have confidence in, if we set up the right kind of monitoring system that people would know would be something we could rely on, and if we had the right kind of regulatory structure, it would benefit people that take the chance and people, as well as people that might be skeptical or more on that.

The idea is to follow the advice of the National Academy and do just that. Let them give us the advice through this gentleman’s position, as well as the gentleman’s objections on technical matters on this, and I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. The Clerk will read. The Clerk reads as follows:

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where otherwise provided, and in the amount of $577,599,000—Provided, That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing any research facility of the Agricultural Research Service, as authorized by law.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, $507,452,000, as follows: to carry out the provisions of the Hatch Act (7 U.S.C. 361a–1), $180,148,000; for grants for cooperative forestry research (16 U.S.C. 592–a7), $21,884,000; for payments to the 1890 land-grant colleges, including Tuskegee University (7 U.S.C. 3222), $32,604,000, of which $998,000 shall be made available to West Virginia State College in Institute, West Virginia, for special grants for agricultural research (7 U.S.C. 450i(c)), $82,409,000; for special grants for agricultural research on improved pest control (7 U.S.C. 450i(c)), $15,721,000; for competitive research grants (7 U.S.C. 450i(b)), $105,767,000; for the support of animal health and disease programs (7 U.S.C. 3195), $5,098,000; for supplemental and altercrop and pasture programs (7 U.S.C. 3196), $950,000; for grants for research pursuant to the Critical Agricultural Materials Act of 1984 (7 U.S.C. 176) and section 177 of the Food and Agriculture Act of 1977 (7 U.S.C. 3318), $639,000, to remain available until expended; for the 1994 research program (7 U.S.C. 301 note), $998,000, to remain available until expended; for the United States Department of Agriculture fellowship grants (7 U.S.C. 3152(b)(6)), $2,993,000, to remain available until expended.
(7 U.S.C. 2269(b); for higher education challenges (7 U.S.C. 3152(b)(1), $4,350,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), $996,000, to remain until expended (7 U.S.C. 2269(b)); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), $3,492,000; for a program of noncompetitive grants, to be awarded on an equal basis, to Alaska Native-serving and Native Hawaiian-serving Institutions to carry out higher education programs (7 U.S.C. 3242), $2,993,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(b)(1)), $1,000,000; for aquaculture grants (7 U.S.C. 3322), $3,991,000; for sustainable agriculture research and education (7 U.S.C. 3322), $4,260,000; and a program of pacity buildings grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326 and 328), including Tuskegee University, $9,479,000, to remain available until expended (7 U.S.C. 2269(b)); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 102–516, $549,000; and necessary expenses of Research and Education Activities, of which not to exceed $100,000 shall be for employment under 5 U.S.C. 3109, $18,399,000.

Amendment No. 22 Offered by Mr. Smith of Michigan

Mr. Smith of Michigan. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 22 offered by Mr. Smith of Michigan:

In title I under the heading “Cooperative State Research, Education, and Extension Service”−“Research and Education Activities” insert after the dollar amount relating to “competitive research grants (7 U.S.C. 450(b))” the following: “including grants for authorized competitive research programs regarding enhancement of the nitrogen-fixing ability and efficiency of plants”.

Mr. Smith of Michigan. Mr. Chairman, I believe this amendment does is to include research to increase the efficiency of nitrogen fixation from plants.

We have a situation where the nitrogen fertilizer of this country is made out of natural gas. It is estimated that 3 to 6 percent of the natural gas produced in the United States is used to produce nitrogen. Farmers use that nitrogen fertilizer and therefore natural gas. If plants could do a better job of fixing N₂ in the soil, we would save energy and reduce the cost to farmers.

This simply says let us include in our research effort research into the fixation of nitrogen. We now have plants that can put nitrogen back into the soil. We have started on this this research. We need to move ahead. It is part of the whole renewable energy effort that we need to consider.

I thank the chairman and ranking member for supporting the amendment.

Mr. Chairman, I have an amendment today that would address the challenge of increased farm input costs due to continued high energy prices. Specifically, the amendment would direct the Cooperative State Research, Education, and Extension Service (CSREES) Competitive Grants Program better the last year of the National Research Initiative, to include grants for research into improving nitrogen-fixation ability of crop plants.

As we are aware, higher energy costs over the last two crop years have further stressed farmers over the extended period of low commodity prices. From 1999 to 2000, U.S. producers incurred an additional $2.4 billion in fuel costs. In the 2001 crop year, energy costs are expected to increase an additional $1.5 billion for farmers. As a result, agricultural bottom lines continue to suffer, and many farmers have gone out of business, despite increasing government support.

While we work to accomplish the larger goals set forth in the President’s comprehensive energy plan, I think we should also be sure that we are working with respect to finding new ways to improve our energy usage and consumption. One area where I believe there is great potential for improvements is the reduction of fertilizer input costs on farms through greater nitrogen fixation ability.

In the United States, nitrogen fertilizer production and use requires 3 to 6 percent of the country’s natural gas production. Natural gas prices and nitrogen fertilizer prices are closely related, with over 70 percent of the cost of N fertilizer attributable to natural gas. The tripling of natural gas prices last winter highlights this relationship, as nitrogen fertilizer costs skyrocketed over 350 percent. This huge increase obviously left farmers scrambling to modify planting decisions and find other ways to cut fertilizer input costs.

One way that we can do this is by developing plants that put nitrogen in the soil. For example, in a typical soybean-corn rotation—if we can develop new varieties of soybeans that fix greater amounts of nitrogen, the residual nitrogen would remain for the following corn crop, lessening the amount of nitrogen fertilizer that would need to be purchased by the producer.

Recent research indicates that significant potential for improvements exist in this area, but currently, a very limited amount of research is being done on these issues. My amendment would ensure that USDA’s National Research Initiative Competitive Research Grants Support research into enhancing the nitrogen fixing ability and efficiency of plants.

I believe that making this type of agricultural research a priority will pay great and lasting dividends to farmers facing continued challenges of high energy input costs, and I urge the members to support my amendment.

Note: Currently, USDA-ARS is spending $3.05 million in FY ’01 to fund N-fixing projects. USDA-CSREES/NRI is also funding N-fixing projects, but have not reported back the total amount spent.

Mr. Bonilla. Mr. Chairman, will the gentleman yield?

Mr. Smith of Michigan. I yield to the gentleman from Texas.

Mr. Bonilla. Mr. Chairman, will the gentleman yield?

Mr. Smith of Michigan. I yield to the gentleman from Texas.

Mr. Bonilla. Mr. Chairman, I thank my friend for yielding. I appreciate the hard work that the gentleman has undertaken on this issue. I know it is a very serious problem.

The committee and this chairman are aware of the emergency conditions that exist in Utah and throughout the Great Basin region caused by the Mormon Crickets. The gentleman from Utah and his colleagues have expressed their concern that proper funding for this problem is obtained in a timely manner this year and that specific funding for addressing the Mormon Cricket and grasshopper

The amendment was agreed to.

Mr. Hansen. Mr. Chairman, I move to strike the last word.

Mr. Chairman. I come to the floor today on behalf of all the farmers and ranchers in Utah and other western States who are dealing with the devastating outbreaks of Mormon Crickets and grasshoppers. This outbreak, now under a declaration of emergency by the Governor of Utah, is considered to be the worst in over 60 years and is spreading over 1.5 million acres.

These insects, which breed undisturbed and untreated on the vast acres of BLM and Forest Service land and then spread to neighboring State and private land, are devouring the crops and rangeland to the tune of what is expected to be at least $25 million worth of damage.

This is not all. In Oak City, Utah, for example, the mayor informs me that the crickets have now inundated the community water system at the sealed collection boxes and tanks. They are now moving into towns, and with no people are attempting to burn their fruit trees to keep them away from their homes, and children are kept indoors.

Line-item funding has been eliminated, and formerly available funds from previous years have all been expended in battling these insects. The plight of these lands has become such a critical concern, that I have asked our Subcommittee on Public Lands to hold oversight hearings on this issue next month. Timely and adequate funding has been a continual issue for us.

While I understand there are not any line-item funds for Mormon Cricket and grasshopper treatment in this bill as it stands today, I understand the chairman is aware of the problem we are facing and has committed to ensure there is sufficient APHIS funds for the 2002 fiscal year specific to Mormon Cricket and grasshopper treatment, as well as working with us to ensure the Secretary addresses our emergency problem with contingency funds.

I thank the chairman and look forward to working with him and obtaining emergency funds.

Mr. Bonilla. Mr. Chairman, will the gentleman yield?

Mr. Smith of Michigan. I thank the chairman for yielding. I appreciate the hard work that the gentleman has undertaken on this issue. I know it is a very serious problem.

The committee and this chairman are aware of the emergency conditions that exist in Utah and throughout the Great Basin region caused by the Mormon Crickets. The gentleman from Utah and his colleagues have expressed their concern that proper funding for this problem is obtained in a timely manner this year and that specific funding for addressing the Mormon Cricket and grasshopper...
problem is identified to meet future needs in the FY 2002 bill.

Mr. HANSEN. Mr. Chairman, reclaiming my time, I thank the chairman and appreciate his help on this critical matter and look forward to addressing this issue in conference and with the Secretary’s help.

Mr. GEORGE MILLER of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of ensuring that all warm-blooded animals used in research receive the protection for which the Animal Welfare Act entitles them, and therefore oppose the language that has been included in the bill before us which will continue to deny those protections to those species that constitute the majority of the animals used in research.

In 1970, the Congress specifically amended the Animal Welfare Act to provide for the protections of all warm-blooded animals used in experiments. Since then, however, the U.S. Department of Agriculture has unfairly and illegally denied those modest safeguards to a majority of the research animals—millions of birds, rats, and mice used each year.

When Congress amended the law, we certainly did not intend to exclude 95 percent of the animals used in research. This is confirmed by our esteemed former colleague from the other body, Senator Bob Dole, who, along with my great friend, the late Congressman George Brown, further improved the treatment of lab animals in 1985.

I wish to enter into the RECORD the letter from Senator Dole on this subject.

To correct this 30-year-old wrong, USDA committed the beginning of the rulemaking process to extend the Animal Welfare Act regulations to these animals. I am disappointed that the Agriculture Appropriations Subcommittee chose to add language that prohibits USDA from going forward with this rulemaking which is long overdue. The scientific community must be held accountable to the public for its treatment of animals. The American public expects animal research to be conducted as humanely as possible. We in Congress cannot assure them that if we not only allow, but also encourage, USDA to exclude the majority of research animals from this law’s protection.

Mr. Chairman, I urge that this language be stricken in the conference committee between the House and the Senate.

The letter referred to previously follows:

CONGRESSIONAL RECORD—HOUSE


JOHN McARDLE, Director, Alternatives Research and Development Foundation, Eden Prairie, MN.

Dear Dr. McARDLE: Thank you for your letter regarding the different status of laboratory animals under the Animal Welfare Act (AWA).

I support the use of animals in research but firmly believe that there is a responsibility incumbent upon researchers to provide basic protections to the animals they use. It is obvious that good animal care is essential to ensuring good quality research. Through good animal treatment and minimizing painful tests, biomedical research gains in both accuracy and humanity.

As someone deeply involved with the process of revising and expanding the provisions for all laboratory animals, I am disappointed that the amendment, meant to include birds, mice, and rats, was not included. From the standpoint of the animals used in biomedical research laboratories, although the National Institutes of Health and the Association for Assessment and Accreditation of Laboratory Care International provide oversight for some of the birds, mice, and rats used for experimentation, many research institutions fail outside the purview of USDA regulations. I believe, with AWA regulations soon extended to these animals, I believe USDA, with its substantial experience in enforcement, is best suited to ensuring humane care for all laboratory animals, as the NIH’s policy nor voluntary accreditation includes legal consequences for failure to perform. The Animal Welfare Act does.

I am aware of efforts by opponents of animal welfare to prevent coverage of birds, mice, and rats as detrimental to research. This notion is preposterous. A similar strategy was employed by opponents of my 1985 amendments to the Act. I am happy to observe that none of their predications about the dire consequences for research ever materialized.

Indeed, those amendments have facilitated significant improvements in laboratory animal care and use, which in turn have benefited research. In fact, I understand that those members of the research community best informed about laboratory animals support the inclusion of birds, mice, and rats. From their work on the front lines, they recognize, as you and I do, that uniform protections not only are humane, but also ensure consistent experimental results and level the playing field in vital scientific research.

Those who oppose USDA’s efforts to fulfill its court settlement with your organization, I believe, are overlooking the long-term benefits to conducting better science.

We owe much to laboratory animals—that were true in 1985 and is truer today. I would hope that the Bush Administration and Members of the present Congress, whom stood with me in 1985 in advancing my amendments, will recognize that all animals used in experimentation deserve the benefit of the modest requirements of the Animal Welfare Act. I would urge them to allow USDA to achieve this end by pursuing a full and fair rulemaking as provided in the settlement agreement.

I wish you the best of luck not only in defending the Animal Welfare Act, but also in your ongoing efforts to advance humane methods of biomedical research.


BOB DOLE.

The CHAIRMAN. The Clerk will read. The Clerk reads as follows:

None of the funds in the foregoing paragraph shall be available to carry out research related to the production, processing or marketing of tobacco products: Provided, That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103–382 (7 U.S.C. 301 note), $7,100,000.

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and grants under Public Law 298(c) under title I, for retirement and employees’ compensation costs for extension agents and for costs of penalty mail for cooperative extension agents and State extension directors, $275,940,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C. 343(b)(3)), $3,273,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, $56,366,000; payments for the pest management program under section 3(d) of the Act, $507,759,000; payments for the farm safety program under section 3(d) of the Act, $5,800,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University, as authorized by section 1447 of Public Law 95–113 (7 U.S.C. 3222b), $12,173,000, to remain available until expended; payments for the rural development centers under section 3(d) of the Act, $906,000; payments for youth-at-risk programs under section 3(d) of the Act, $515,000; payments for the Rural Development, Renewal Resources Extension Act of 1978, $3,185,000; payments for Indian reservation agents under section 3(d) of the Act, $1,986,000; payments for sustainable agriculture programs under section 3(d) of the Act, $5,000,000; payments for rural health and safety education as authorized by section 2390 of Public Law 101–624 (7 U.S.C. 2261 note, 2662), $2,622,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 323–325 and 327), and Tuskegee University, $28,181,000, of which $998,000 shall be made available to West Virginia State College in Institute, West Virginia; and for Federal administration and coordination including administration of the Smith-Lever Act, and the Act of September 29, 1977 (7 U.S.C. 541–549), and section 361(c) of the Act of October 29, 1977 (7 U.S.C. 541 note), and to coordinate and provide program leadership for the extension work of the Department and the several States and insular possessions, $18,648,000.

The letter referred to previously follows:

DEAR DR. M CARDLE: Thank you for your letter...

I am aware of efforts by opponents of animal welfare to prevent coverage of birds, mice, and rats as detrimental to research. This notion is preposterous. A similar strategy was employed by opponents of my 1985 amendments to the Act. I am happy to observe that none of their predications about the dire consequences for research ever materialized.

Indeed, those amendments have facilitated significant improvements in laboratory animal care and use, which in turn have benefited research. In fact, I understand that those members of the research community best informed about laboratory animals support the inclusion of birds, mice, and rats. From their work on the front lines, they recognize, as you and I do, that uniform protections not only are humane, but also ensure consistent experimental results and level the playing field in vital scientific research.”
Samoan prior to availability of an equal sum which has been donated. The provision of $2,000,000 for the mide transition program, $2,500,000; and payment for the Food Quality Protection Act risk mitigation program, $4,531,000; payments for the food cultural Research, Extension, and Education including necessary administrative expenses, $12,971,000; payments for the Food Inspection Service; the Agricultural Marketing Act for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration; $969,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SAALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, including those pursuant to the Act of February 28, 1947 (7 U.S.C. 226c–4b), necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities: to discharge the authorities of the Secretory of Agriculture under the Acts of March 2, 1931 (46 Stat. 1468) and December 22, 1967 (101 Stat. 1239–1331) (7 U.S.C. 426–426c); and for the construction, repair, and security of buildings and facilities to be carried out by the United States department of Agriculture: Provided, That $387,386,000, of which $1,096,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases, and pests; and $(50,000,000) for the extension of pest and disease control services to the extent necessary to meet emergency conditions: Provided, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: Provided further, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2252) and not to exceed $90,000 for employment under 5 U.S.C. 3109: Provided further, That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: Provided further, That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary for employment only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with section 2 of February 26, 1935, and section 102 of the Act of September 21, 1944, and any unexpended balances of funds transferred for such emergency purposes in the fiscal year that does not exceed $5,000,000, subject to such transferred amounts: Provided further, That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements: Provided otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

In fiscal year 2002 the agency is authorized to collect fees to cover the total costs of providing technical services or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity’s liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, with further appropriate, for providing such assistance, goods, or services. Provided, That this appropriation shall be available for the control of out breaks of insects, plant diseases, animal diseases, and pests, to the extent necessary to meet emergency conditions: Provided, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: Provided further, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2252) and not to exceed $90,000 for employment under 5 U.S.C. 3109, $33,117,000: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2252) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

AGRICULTURAL MARKETING SERVICE

MARKETING ACT

For necessary salaries to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, including field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2252), including those pursuant to the Act of February 28, 1947, and December 22, 1967, and any unexpended balances of funds available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

INSPECTION AND WEEIGHING SERVICES

Not to exceed $24,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: Provided, That if grain export activities require additional supervision and oversight, or other uncontrollable events occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety and Inspection Service, $481,000.

Mr. BONILLA (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill through page 25, line 1, be considered as read, printed in the RECORD, and open to amendment at any point.

THERE WAS NO OBJECTION.

Mr. BONILLA. The Chairman, the Clerk will read. The Clerk read as follows:

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed $50,000 for representation allowances and for expenses pursuant to section 4 of the Meat Act of August 8, 1956 (7 U.S.C. 1766), $720,652,000, and in addition, $1,000,000 may be credited to this account from fees collected for the cost of labeling and certification under the Act of August 26, 1962 (7 U.S.C. 1917) of Public Law 102-237: Provided, That this appropriation shall be available for the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956; (2) transfers otherwise provided in this Act; and (3) not more than $13,995,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, boards of counties, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1625(b)), $1,347,000.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, including field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2252) not to exceed $25,000 for employment under 5 U.S.C. 3109, $33,117,000: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2252) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $60,596,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: Provided, That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.
field employment pursuant to the second sentence of the Outer Continental Act of 1944 (7 U.S.C. 2255), and not to exceed $75,000 shall be available for employment under 5 U.S.C. 3109. Provided further, That this appropriation is available to pay the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

AMENDMENT OFFERED BY MS. DELAURO

Ms. DE LAURO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. DeLauro:

In title I, in the item relating to “FOOD SAFETY AND INSPECTION SERVICE”, insert at the end the following:

In addition, for the Food Safety and Inspection Service to improve food safety and reduce the incidence of foodborne illnesses, $50,000,000: Provided, That such amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That such amount shall be available only to the extent that an official budget request, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress.

In title VI, in the item relating to “FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES”, insert at the end the following:

In addition, for the Food and Drug Administration to improve food safety and reduce the incidence of foodborne illnesses, $183,000,000: Provided, That such amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That such amount shall be available only to the extent that an official budget request, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress.

Ms. DeLauro (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

Mr. BONILLA. Mr. Chairman, I reserve a point of order on this amendment.

The CHAIRMAN. A point of order is reserved.

Mr. BONIOR. Mr. Chairman, I ask unanimous consent that all debate on this amendment be limited to 30 minutes and that the time be equally divided.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The time will be equally divided between the proponent of the amendment, the gentlewoman from Connecticut (Ms. DeLauro) and a Member opposed.

Mr. BONILLA. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN. The gentlewoman from Connecticut (Ms. DeLauro) is recognized for 15 minutes.

Ms. DE LAURO. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, my amendment provides emergency funds to address the food safety crisis that faces our Nation today. Today more Americans are getting sick from the food that they eat. Outbreaks of food sickness are expected to go up by as much as 15 percent over the next 10 years. The outbreaks are reported across the spectrum: fish, eggs, beef and lettuce, to name a few. The statistics are staggering. Five thousand Americans die every year from illness, and 176 million get ill and 325 are hospitalized. Medical expenses and lost productivity cost us every year $5.6 billion and $9.4 billion respectively.

Two days ago the Excel Corporation recalled 150 million pounds of ground beef and pork because of possible contamination by deadly E. coli. Sara Lee pled guilty to selling tainted meat linked to a nationwide outbreak of listeriosis in 1998, and 15 people were killed.

Grocery stores are afraid that their food is unsafe. Slaughterhouses are killing cattle before the animals are unconscious because there are not enough inspectors to ensure that the law is enforced.

“Outbreaks of food sickness are expected to go up by as much as 15 percent over the next 10 years. The outbreaks are reported across the spectrum: fish, eggs, beef and lettuce, to name a few. The statistics are staggering. Five thousand Americans die every year from illness, and 176 million get ill and 325 are hospitalized. Medical expenses and lost productivity cost us every year $5.6 billion and $9.4 billion respectively.”

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Grocery stores are afraid that their food is unsafe. Slaughterhouses are killing cattle before the animals are unconscious because there are not enough inspectors to ensure that the law is enforced.

George Grob, Deputy Director and Inspector General of Health and Human Services states that, and I quote, “Any reasonable person would worry about it. If the inspection process worked really well, there would be fewer recalls.”

To address the problem I asked the committee to allow an amendment that would provide a total of $213 million in emergency funds, $90 million for more inspections of imported foods, $73 million for additional inspections of domestic food products, and $50 million for the Food Safety Inspection Service to ensure that it has the resources that it needs to implement food safety procedures and regulations.

The Food and Drug Administration inspects all food except meat, poultry and eggs. This food, which includes fruit juices, vegetables, cheeses, sea food, is the source of 85 percent of food poisoning in this country. In the United States alone, there are 30,000 companies that produce these food items, and last year recalls of FDA-regulated products rose to 315, the most since the 1980s and 36 percent above average.

Mr. Chairman, my amendment inspects less than 1 percent of imported food, and that market has expanded from 2.7 million items to 4.1 million items in just 3 years. In the domestic market, the FDA does not inspect all high-risk firms more than once a year; other firms are visited only once in 7 years. The FDA employs 400 people to inspect domestic food, and there are 30,000 food plants to look into and less than 120 people to inspect imported food. According to their own testimony, the FDA says to conduct annual inspections of every domestic food firm, it would need 1,400 inspectors. To increase its inspection of imported food from 1 percent to 10 percent would require 1,600 employees.

The FDA needs resources in order to begin to meet its goal, and that is what this amendment does, is to begin the process of increasing the number of inspectors in order to look at imported foods and take the 1 percent of the inspections to 10 percent, and it would add 630 inspectors to guarantee that all high-risk firms are inspected. Once a year, all other firms every 2 years, and all food warehouses every 3 years.

The last part of the amendment says, let us have $50 million for the Food Safety Inspection Service to allow it to reach its goal of looking at reducing food-borne illnesses that are carried by meat and poultry by 25 percent.

The FSIS has held public hearings to look at how we deal with imported food and procedures, risk management, and emergency outbreaks. We only have to look at our European friends to see what they have gone through with foot and mouth and with mad cow illness to understand that what we need to do is to be able to meet any kind of emergency. We need to move forward on food safety, not backwards. If we continue to not provide the kinds of inspection services that are needed, in fact, we will move backwards and jeopardize the health of this country.

Mr. Chairman, I ask for support of this amendment and to provide emergency assistance for food safety.

Mr. Chairman, I reserve the balance of my time.

Mr. BONILLA. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin, Mr. Obey.

Mr. OBEY. Question: How many times have we all heard, “The government is too blasted big. Get the government out of our lives.” I bet my colleagues have heard it a lot. Yet the first time that we have an outbreak of disease someplace, the first time that people die from contaminated food, all of a sudden people say, “Where is the government? What are they doing? Why don’t they get off their duffs? Why don’t they protect the public interest?”

Well, there is very good reason for that. It is because we are not providing the resources necessary to provide an
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American people.

The purpose of this amendment is to, over a 3-year period of time, bring us to where the FDA says we should be in protecting the public health of this country.

When we had subcommittee hearings earlier in the year, here is what FDA said in response to questions: “The inspection coverage of food manufacturers, particularly high-risk manufacturers, has been inadequate over the past several years. FDA estimated we would need at least $220 million for an optimum inspection schedule of domestic food facilities under our jurisdiction. This would provide inspection of high-risk firms twice each year, warehouses every 3 years, and all other food firms every 2 years.

Now, people can argue all day long about government priorities, but the fact is that we are here today unable to offer this amendment because the budget limitations under which the bill is being considered will not receive a vote because of the fact that we have increasing amounts of food imports.

So this Congress decided it was more important to give the wealthiest 1 percent of people in this country, who, over the last 20 years, have seen an after-tax rise in their income of $41,400 per family, that it was more important to give those people an additional tax cut of $53,000 a year than it is to meet government priorities, but the people in this country.

As modern a society as we are, we question, why does this happen? Part of the reason for it is because our food system, in many ways, is moving very far away from home.

It used to be that you knew the farmer where your eggs came from. You knew the farmer who grew your strawberries. There was local accountability. You knew where your chickens came from. You knew where your beef for your sausage came from, because the people in your community and you went to the stores and the outlets that they operated.

Mr. Chairman, today we live in a very industrialized food system, and industrialized food processing has not necessarily brought with it a safer food system. In fact, last year, 315 Food and Drug Administration regulated food products were recalled, the most recalls in 1 year since the mid-1980s.

It was a 36 percent increase above the average for the last 10 years. It is, even though we have certain scientific methods in place, the way in which our food is processed actually encourages food-borne illness.

For example, in the area of beef, if you go into some of our slaughterhouses and meat-packing plants now, which are very, very mechanized, often, an intestine will be pierced and E. coli will be driven into flesh in the animal that is ultimately then cut up and sold on the supermarket shelf.

Mr. Chairman, some of that is not detected by the human eye. Industrial slaughtering is different than when animals were cut by hand and there were not so many animals slaughtered per day, so much less oversight.

It has never been easy to work in a meat processing facility. At the beginning of the 20th century, books were written about what was going on inside these meat-packing plants; and through the 20th century, we tried to improve the situation.

In poultry, for example, if you look at the USDA inspectors who are on a line, the rate at which birds move by them has become so fast, the human eye cannot necessarily see the different types of salmonella and pfiesteria and other bacterial microbes that can infect the meat product.

It is surprising to us also that in a country as bountiful as ours that we have increasing amounts of food imports.

Over the last 4 years alone, imported foods sold in the United States have increased by 50 percent, from 2.7 million items in 1997 to 4.1 million last year alone. But of all the foreign imports coming in here, as the gentlewoman from Connecticut (Ms. DeLAURO) has accurately described, only 1 percent are inspected.

Most people get sick from food poisoning, they do not report it to the Centers for Disease Control. A lot of times they do not really realize what is wrong with them until a couple of days later. At the local level, there is not an automatic reporting upstream to the CDC. So a lot of the food poisoning goes unreported. The DeLauro amendment would provide additional funds for food inspection.

The FDA actually is the agency where 75 percent of the problem is, 75 percent of the outbreaks and problems relate to FDA-inspected facilities. This means inspection is inadequate.

The DeLauro amendment would provide $50 million for USDA food safety and inspection service to carry out new procedures and regulations for meat and poultry products. For example, USDA is currently addressing port of entry procedures and the development of contingency plans for emergency breakthroughs. Remember, we had that problem of strawberries in Michigan causing children to become so ill.

To this day, we were never actually able to track back where the problem was with those strawberries came from. We knew they were processed in southern California. Their origin was Mexico, but we just could not track it back.

Mr. Chairman, this is simply an effort to try to build the infrastructure
of the agencies that we charge with protecting our food, our food supply, which is ultimately about the food, it is about the safety of every man, women and child in this country. That is all that we are asking about here.

Given the statistics, which are staggering, 5,000 deaths, 73 million people ill, 305,000 people hospitalized, it is unconscionable that we do not recognize this as a crisis and as an emergency.

We cannot allow this to continue. We can do something about it.

Mr. BONILLA. Mr. Chairman, I have a parliamentary inquiry. Is the gentlewoman from Connecticut (Ms. DELAuro) withdrawing her amendment?

The CHAIRMAN pro tempore (Mr. WHITFIELD). The gentlewoman from Connecticut (Ms. DELAuro) is withdrawing her amendment. The amendment will be stricken from the bill.

Mr. BONILLA. Mr. Chairman, I insist on his point of order.

The CHAIRMAN pro tempore. The Chair finds that this amendment to a general appropriation bill, and, therefore, violates clause 2 of rule XXI. The amendment will be stricken from the bill.

Mr. BONILLA. Mr. Chairman, I make a point of order against the amendment, because it proposes to change existing law and constitutes legislation in an appropriations bill, and, therefore, violates clause 2 of rule XXI. The amendment will be stricken from the bill.

Mr. BONILLA. Mr. Chairman, I make a point of order against the amendment, because it proposes to change existing law and constitutes legislation in an appropriations bill, and, therefore, violates clause 2 of rule XXI. The amendment will be stricken from the bill.

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Mr. BONILLA. Mr. Chairman, I do.

The CHAIRMAN pro tempore. Does the gentleman from Texas (Mr. LATHAM) assume the Chair?

The SPEAKER pro tempore. Without objection, the Chair will assume the Chair.

MESSAGE FROM THE PRESIDENT
A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The Committee resumed its seating. The CHAIRMAN pro tempore. The Clerk will read. The Clerk read as follows:

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, $631,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES (INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, $99,000,000: Provided, That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments under programs administered by the Agency: Provided further, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account: Provided further, That these funds shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $1,000,000 shall be available for employment under 5 U.S.C. 3109.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 2013g), $274,769,000: Provided, That not to exceed $700 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act, such sums as may be necessary, to remain available until expended (7 U.S.C. 2209).

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For fiscal year 2002, such sums as may be necessary, to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a–11).

OPERATIONS AND MAINTENANCE FOR HAZARDOUS WASTE MANAGEMENT

For fiscal year 2002, the Commodity Credit Corporation shall not expend more than $5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the Resource Conservation and Recovery Act, 42 U.S.C. 9601.
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TITLES

II CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, $738,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutant(s); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials centers; payment or purchase at a nominal cost not to exceed $100 pursuant to the Act of August 3, 1935 (7 U.S.C. 428a); purchase and erection or alteration of permanent and temporary buildings; and operation and maintenance of aircraft, $728,762,000, to remain available until expended (7 U.S.C. 229(b)), and in accordance with the provisions of laws relating to the activities of the Department, $105,743,000, to remain available until expended (7 U.S.C. 229(b)), or which not to exceed $45,914,000 is for operation and maintenance of the plant materials centers, of which not less than $9,349,000 is for operation and establishment of the plant materials centers, of which not less than $20,000,000 shall be for the grazing lands conservation initiative: Provided, That $8,500,000 of the funds authorized for allocations or transfers under 15 U.S.C. 714h shall be available for Conservation Reserve Program technical assistance: Provided further, That appropriated funds hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alteration or improvements to other buildings and other public improvements shall not exceed $250,000: Provided further, That when buildings or other structures are provided on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 229a: Provided further, That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): Provided further, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2255), and not to exceed $25,000 shall be available for employment under 5 U.S.C. 3109: Provided further, That qualified local engineers may be temporarily employed at differential rates to perform the technical planning work of the Service (16 U.S.C. 590e–2).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures that are not limited to research, engineering operations, methods of cultivation, the growing of vegetation, re- habilitation of existing works and changes in their operation, and for the conduct of the Watershed Protection and Flood Prevention Act approved August 4, 1954 (16 U.S.C. 1991–1999); $11,039,000: Provided, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2255), and not to exceed $110,000 shall be available for employment under 5 U.S.C. 3109.

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures that are not limited to research, engineering operations, methods of cultivation, the growing of vegetation, re- habilitation of existing works and changes in their operation, and for the conduct of the Watershed Protection and Flood Prevention Act approved August 4, 1954 (16 U.S.C. 1991–1999); $11,039,000: Provided, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2255), and not to exceed $110,000 shall be available for employment under 5 U.S.C. 3109.

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watershed and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act approved August 4, 1954 (16 U.S.C. 1991–1999); $11,039,000: Provided, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2255), and not to exceed $110,000 shall be available for employment under 5 U.S.C. 3109.

For necessary expenses to conduct research, investigation, and surveys of watershed and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act approved August 4, 1954 (16 U.S.C. 1991–1999); $11,039,000: Provided, That this appropriation shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2255), and not to exceed $110,000 shall be available for employment under 5 U.S.C. 3109.

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, $628,000.

RURAL COMMUNITY PROGRAMS

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926a, 1926c, 1926d, and 1932, except for sections 381E–H, 381N, and 381O of the Consolidated Farm and Rural Development Act, $767,465,000, to remain available until expended, of which $34,503,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which $658,994,000 shall be for the rural areas described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act; and of which $73,968,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: Provided, That of the total amount appropriated in this Act, $200,000 shall be for grants and loans and grants to benefit Federally Recognized Native American Tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which $1,000,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which $250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: Provided further, That the amount appropriated for rural community programs, $6,000,000 shall be available for a Rural Community Development Initiative: Provided further, That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American tribes to undertake projects to improve housing and community infrastructure and economic development projects in rural areas: Provided further, That such intermediary organizations shall provide matching funds from other sources, includ- ing Federal funds for related activities, in an amount not less than funds provided: Provided further, That of the amount appropriated for rural community programs described in section 306D of such Act, not to exceed $500,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; and $2,000,000 shall be for grants to Missippi Delta region counties: Provided further, That of the amount appropriated for rural utilities programs, not to exceed $20,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico borders, including grants pursuant to section 306C of such Act; not to exceed $20,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, of which one percent to ad- minister the program and to improve inter- agency coordination may be transferred to and merged with the appropriation for “Rural Development, Salaries and Ex- penses”; not to exceed $16,215,000 shall be for technical assistance grants for rural water and waste systems under section 306(a)(14) of such Act; and not to exceed $1,000,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: Provided fur- ther, That of the total amount appropriated, not to exceed $37,624,000 shall be available to fund future tribal consolidated farms and rural communities and communities designated by the
In addition, for administrative expenses necessary to provide applications for guaranteed multi-family housing guaranteed loans, $422,910,000, which shall be transferred to and merged with the appropriate appropriation for "Rural Development, Salaries and Expenses." 

AMENDMENT OFFERED BY MRS. CLAYTON

In title III, in the item relating to "Rental Housing Insurance Fund Program Account," as defined in section 502(c)(5)(D) of the Housing Act of 1949, $693,504,000; and, in addition, such sums as may be necessary, as authorized by section 521(a)(2) of the Act, for rental assistance agreements entered that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. BONILLA. Mr. Chairman, I reserve the right to reoff er at an appropriate time.

Mr. CLAYTON. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Ms. KAPTUR. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Ms. KAPTUR. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.
shall be available for cooperative agreements (7 U.S.C. 1932), $7,500,000, of which $2,500,000 shall not be obligated and $3,616,000 are rescinded. 

Rural Utilities Service

Rural Electrification and Telecommunications Loans Account (INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of title 305 of the Rural Electrification Act of 1966 (7 U.S.C. 935) shall be made as follows: 

For the principal amount of direct loans, $121,107,000; 

For the cost of direct loans, $3,616,000; 

For the cost of direct loans, $794,358,000; 

For the principal amount of guaranteed loans, $3,419,000; 

For the cost of guaranteed loans, $3,616,000; 

And for the cost of direct farm labor housing loans, $100,000,000; 

For the cost of direct and guaranteed telecommunications loans, $120,000,000; 

For the cost of direct loans, grants, and contracts, $100,000,000; 

For the cost of direct loans, including the cost of modifying loans, of direct and guaranteed loans authorized by the Rural Electrification Act of 1966 (7 U.S.C. 935 and 936), as follows: 

For the cost of direct rural electric loans, $3,689,000, and the cost of telecommunication loans, $2,036,000; 

Provided, That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1966, the cost of direct loans, $120,000,000; 

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $36,322,000, which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

Rural Telephone Bank Program Account (INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized loan program for fiscal year 2002 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be $174,615,000.

For the principal amount of direct and guaranteed loans authorized by the Rural Electrification Act of 1966 (7 U.S.C. 935), $2,549,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, $3,197,000 which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

Distance Learning and Telemedicine under the Act

For the principle amount of direct distance learning and telemedicine loans, $300,000,000; and for the principle amount of broadband telecommunication loans, contingent upon the enactment of authorizing legislation, $100,000,000.

For the cost of direct loans and grants, as authorized by 7 U.S.C. 950aaa et seq., $26,941,000, to remain available until expended, to be available for loans and grants for telemedicine and distance learning services in rural areas: Provided, That, contingent upon the enactment of authorizing legislation, $1,996,000 may be available for a loan and grant program to finance broadband transmission and local dial-up Internet service in areas that meet the definition of “rural” used for the Distance Learning and Telemedicine Program authorized by 7 U.S.C. 950aaa: Provided further, That the cost of direct loans shall be defined in section 502 of the Congressional Budget Act of 1974.

TITLE IV

DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, $592,000.

Food and Nutrition Service

Child Nutrition Programs (INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; $10,088,746,000, to remain available through September 30, 2003, of which $4,748,038,000 is hereby appropriated and $3,540,708,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1957 (7 U.S.C. 1622c): Provided, That except as specifically provided under this heading, none of the funds made available under this heading shall be used for studies and evaluations: Provided further, That up to $4,507,000 shall be available for independent verification of school food service claims: Provided further, That funds provided under this heading, $2,000,000 shall be available for new activities to enhance integrity in the National School Lunch Program.

AMENDMENT OFFERED BY MRS. DAVIS OF CALIFORNIA

Mrs. DAVIS of California. Mr. Chairman, I offer an amendment. The Clerk read as follows: 

Amendment offered by Mrs. Davis of California

In title IV under the heading “CHLD NUTRITION PROGRAMS”, insert before the period at the end the following: “Provided further, That the Secretary of Agriculture may not take into account the availability of a basic allowance for housing for members of the Armed Forces when determining the eligibility of persons for free or reduced-price lunch programs”.

Mr. BONILLA. Mr. Chairman, I reserve a point of order. We have not seen this amendment.

The CHAIRMAN pro tempore. The point of order is reserved.

Mrs. DAVIS of California. Mr. Chairman, I realize this amendment will most likely not be ruled in order, but I offer it to raise awareness to a critical problem.

In an effort to leverage its limited quality-of-life resources, the armed services are privatizing military family housing. I support this effort. In fact, we have some wonderful projects online in San Diego. But as you know, obviously there are unintended consequences of a good program. I would like to point out one in particular.

This is creating a loss of income to school districts, and it is affecting the eligibility for free and reduced school meals.

I urge the Secretary of Agriculture to consider this amendment.
Mr. Bonilla. Mr. Chairman, I would ask the Chair if the gentlewoman from California (Mrs. Davis) is going to be on this, and I certainly will ask to withdraw my amendment.

Ms. KapTur. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would just like to say to the gentlewoman from California (Mrs. Davis) and to the chairman of the subcommittee that I do believe the gentlewoman has really brought up an issue that we never have considered, never were asked to consider during our regular hearings and so forth.

I think this does involve also the authorizing of the Committee on Education and the Workforce since they have jurisdiction over the school lunch program, the free and reduced lunch program, although we have jurisdiction over the expenditures for that.

Knowing that some of our military personnel are extremely pressed, even some eligible for food stamps when serving the Government of the United States at points around the world, it would seem to me that we should find a way to encourage the Department of Education, the Department of Agriculture to treat our military personnel with the respect that they deserve.

I want to compliment the gentlewoman for bringing this issue to the attention of our subcommittee and pledge my own cooperation with her in resolving this in the weeks and months ahead, and certainly also encourage her to testify before the Committee on Education and the Workforce as well as the authorizing Committee on Agriculture.

We here on the Committee on Appropriations will continue to work with the gentlewoman from California (Mrs. Davis) as we move to conference with the other body.

The CHAIRMAN pro tempore. Does the gentlewoman from California (Mrs. Davis) intend to withdraw her amendment?

Mrs. Davis of California. Yes, Mr. Chairman, I will do that. I know that there are colleagues on the other side of the aisle as well who have confronted this problem in their community, and I appreciate their help and support on this as well.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Mr. Schrock. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to take this opportunity to speak on behalf of this amendment that was introduced by the gentlewoman from California (Mrs. Davis). At a time when retention in the military is so critical, it is unfair to the young men and women of the military who have dedicated their lives in service to our country.

Many military families, many new military families are finding it difficult just to make ends meet. Many are living just above the poverty level. The long hours, the months away from loved ones and low-paying jobs for spouses is often the norm for these families. When military communities introduced privatized housing to help manage basing costs, it, unfortunately, does not always save money for the servicemembers.

When a member lives on base, they forfeit their basic allowance for housing. When a member lives in a privatized community, the Department of Defense adds the allowance to their pay statement, but this is money they never see.

When the Department of Agriculture includes this amount as income, it affects many families’ eligibility for free or reduced school lunches. Schoolchildren lose their free lunches, families lose their assistance, and school districts lose Federal funds that receive this money to assist for free and reduced school lunch programs.

At the Naval Amphibious Base Little Creek in Virginia Beach, they were working with the Department of Housing Authority to plan for privatized housing in Virginia Beach and Norfolk, which I represent. I do not want to see what is happening as the direct result of the gentlewoman from California (Mrs. Davis) happen to the military families in our area.

I urge my colleagues to support this amendment. I thank the gentlewoman from California (Mrs. Davis) for introducing it.

The CHAIRMAN pro tempore. The Clerk will read.

The Clerk read as follows:

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) (INCLUDING TRANSITIONS)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1766), $4,137,066,000, to remain available through September 30, 2003: Provided, That none of the funds made available under this heading shall be used for studies and evaluations: Provided further, That of the total amount available, the Secretary may obligate up to $25,000,000 for the farmers’ market nutrition program and up to $15,000,000 for senior farmers’ market activities from any funds not needed to maintain current caseload levels: Provided further, That notwithstanding section 17(h)(10)(A) of...
such Act, up to $10,000,000 shall be available for "Farm Service Agency, Salaries and Expenses", and of which $980,000 may be transferred to and merged with the appropriation for "Commodity Credit Corporation Export Subsidy Programs".

Commodity Credit Corporation export subsidy programs (including transfers of funds)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSMM 102 and GSMM 103, to be covered by funds made available for the cost of the title I agreement, except for the transfer of funds as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reinvestment Act of 1990, and to be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which $797,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

Title VI

Related agencies and food and drug administration

For necessary expenses of the Food and Drug Administration, including payment of space rental and related costs pursuant to Public Law 92-313, and all activities of the Food and Drug Administration, including payment of space rental and related costs pursuant to Public Law 92-313, and all activities of the Food and Drug Administration, including payment of space rental and related costs pursuant to Public Law 92-313.

Title VII

Department of Health and Human Services

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles, payment of space rental and related costs pursuant to Public Law 92-313, and all activities and programs of the Food and Drug Administration, including payment of space rental and related costs pursuant to Public Law 92-313, and all activities and programs of the Food and Drug Administration, including payment of space rental and related costs pursuant to Public Law 92-313.

Amendment offered by Mr. BROWN of Ohio

Mr. BROWN of Ohio. Mr. Chairman, I offer an amendment.

The Clerk reads as follows:

Amendment offered by Mr. BROWN of Ohio: In title VI, in the item for "DEPARTMENT OF HEALTH AND HUMAN SERVICES-FOOD AND DRUG ADMINISTRATION-SALARIES AND EXPENSES", insert before the...
period at the end of the first paragraph the following:

> Provided further. That of the total amount appropriated, $2,500,000 is available for the purpose of carrying out the responsibilities of the Food and Drug Administration with respect to abbreviated applications for the approval of new drugs under section 505(j) of the Federal Food, Drug, and Cosmetic Act, and $200,000 is available under section 900(d)(2) of such Act for the purpose of carrying out public information programs regarding drugs with approved such applications, in addition to other allocations for such purpose to protect the public health.

Mr. BROWN of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BONILLA. Mr. Chairman, I ask unanimous consent that all debate on this amendment be limited to 26 minutes and that the time be equally divided.

The CHAIRMAN pro tempore (Mr. WHITFIELD). The time equally divided between the proponent and an opponent?

Mr. BONILLA. Yes, Mr. Chairman.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Chairman, I yield myself 3 minutes and 15 seconds.

Within the next 5 years, patents on brand-name drugs with combined U.S. sales approaching $20 billion will expire. Given the tremendous cost savings with generic competition, it has never been more important to reduce unnecessary delays in FDA approval of generic drugs.

The amendment I am offering today, along with the gentleman from California (Mr. WAXMAN), the gentleman from Michigan (Mr. DINGELL), the gentleman from Arkansas (Mr. BERRY), and the gentleman from New Jersey (Mr. PALLONE), would increase funding for the Office of Generic Drugs by $2.5 million. Our amendment builds on the $1.5 million increase already allocated to this office under the leadership of the chairman, the gentleman from Texas (Mr. BONILLA), and the ranking member, the gentlewoman from Ohio (Ms. KAPTUR).

I am pleased the gentlewoman from Ohio (Ms. KAPTUR) supports this amendment. While I understand how difficult it is to allocate limited FDA resources, this amendment will pay for itself many times over. Additional dollars committed to the Office of Generic Drugs will generate enormous returns for American consumers, for Federal and State governments, and for employer-sponsored health plans.

Prescription drug spending increased by 18.8 percent last year, accounting for half the increase in national health spending and a third of the increase in employer-sponsored health coverage. Generic drugs cost on average 40 to 80 percent less than their brand name counterparts. Sometimes they are 90 percent cheaper.

To get a sense of the savings inherent in approving these drugs more rapidly, brand-name drug companies receive 6 additional months of market exclusivity when they conduct pediatric clinical trials. That 6 months, on the average, represents $695 million in lost consumer savings each year. It takes 6 to 12 months, on average, to review a new drug application. It takes 18 months, on average, to review a generic drug application. Multiply that $695 million, Mr. Chairman, times the full universe of generic drugs, and the 6-month difference means tens of billions of dollars in lost savings.

There are more than 2,100 scientists on staff today to review generic drug applications. There are more than 2,100 scientists on staff to review new drug applications. By giving the Office of Generic Drugs the resources it needs, we can make a tangible difference in easing the prescription drug spending burden. Opportunities to reduce both public and private spending on prescription drugs without sacrificing access or quality are very hard to come by.

Our amendment provides an additional $250,000 to fully fund a national campaign to raise public awareness about generic drugs. Generic drugs are as safe and as effective as brand-name drugs; they are just cheaper. But there is clearly an information gap when it comes to generics. Forty-three percent of Americans report no bias against generic drugs, but only 54 percent fill prescriptions with the generics. There is a misperception that as conditions become more serious, the use of generic drugs becomes more risky. The greatest bias against generic drugs exists when cost savings, unfortunately when cost savings are potentially the greatest for serious conditions requiring expensive long-term treatment.

If we can get generic drugs to market on a more timely basis and encourage more widespread use of these products, the public and private sector savings will quickly dwarf our investment. I ask the Members of this Congress to support the amendment.

Mr. BONILLA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the amendment. The bill that the committee has presented to the House includes a very carefully balanced recommendation for funding for the Food and Drug Administration. The $39 million provided in this bill for generic drug activities includes a 17 percent increase for generic drug review, generic drug development, and other generic activities.

I should also note that the funding for generics includes the only FDA program increase above the President’s budget, which certainly demonstrates our commitment to affordable, effective, and safe generic drugs. So, again, I rise in opposition to the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from Arkansas (Mr. BERRY), who has fought for low-cost prescription drugs for several years in this body.

Mr. BERRY. Mr. Chairman, I want to thank the distinguished gentleman from Ohio for his leadership in this effort.

The American people, Mr. Chairman, are continuing to be robbed by the brand-name prescription drug manufacturers in this country. The reason that happens is because they have patent protection, they have trade barriers, they have American workers who work very hard to protect their patents, and they have limited access to generic medicine. It is time that we do something about that. It is time that we make reasonably priced prescription medicine available to the American people. We know that they could be saving $20 billion a year today if they had access to generic medicine that is not available to them today.

What we are asking in this amendment is that we provide $2.5 million to the FDA so they can have the ability to approve more generic medicine to the American people that would be offered at a much more reasonable price and create competition in the prescription medicine market that we have to deal with today. Generic drugs cost, on average, 75 percent less than brand names.

As I said, we know that we can save the American people $20 billion a year if we do this. It takes 6 to 12 months to review a new drug application, but it takes 18 months today, because of FDA’s limited ability, to approve a generic drug application. This does not make any sense that this would be the case.

I urge the Members of this House to vote for this amendment and support the effort of the gentleman from Ohio to provide the American people with reasonably priced prescription medicine.

Mr. BROWN of Ohio. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey (Mr. PALLONE), who has been very involved in health care issues, especially prescription drug and managed care issues.

Mr. PALLONE. Mr. Chairman, I rise in support of the Boren amendment. There is a need for statutory or legislative initiatives that allow timely access and availability of generic drugs once the patent on a brand-name drug...
Mr. Chairman, I am proud to stand in support of the bill.

I urge all my colleagues to support the amendment. This is a very, very worthy amendment.

I want to thank both the chairman of the subcommittee and also the ranking member because this amendment actually builds on the $2.5 million increase they have in the bill. This would help move generic drugs to the market quicker. We are talking about $2.5 million. It typically takes 6 to 12 months to review a new drug application, but 18 months for generic drugs.

This will help all our people, but particularly our seniors, who take more prescription drugs and spend billions every year on prescription drugs. Let us see if we can get generics there to save our seniors some dollars.

Mr. Brown of Ohio. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Ohio has 2 minutes remaining.

Mr. Brown of Ohio. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Ohio (Ms. Kaptur).

Ms. Kaptur. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank him so very much for bringing up this important amendment.

I think it is important for the membership to know this does not involve any new money but merely a reallocation of funds within the Food and Drug Administration itself. So this is a very, very worthy amendment.

We have had to try to fight in this bill and the bill last year to try to get more attention to the approval of generic drugs, which so many Americans obviously need. They are a lot less expensive. I can remember when Claude Pepper used to stand on this floor trying to get generic drug incentives put into the law.

So I want to thank the gentleman from Ohio, as always, taking the leadership on health questions and certainly trying to get medicine to people who need it. In my neighborhood, there are many citizens who make a choice between food and medicine every weekend when they shop at the local supermarket. This will help families like them.

We need to get FDA working more quickly. And I am so happy that the gentleman from the Committee on Energy and Commerce has brought this to our attention and has given us additional drive to get additional generic drugs approved. So I fully support his amendment. It is within the budget resolution and within our allocation, and I would urge the membership to support him.

Mr. Brown of Ohio. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the gentlewoman from Toledo.

In summary, Mr. Chairman, this amendment increases funding for the Office of Generic Drugs, to speed the approval process for generic drugs, to get them on the market more quickly, because generic drugs save money; always 40 to 60 to 80 percent over the price of a name-brand drug, sometimes as much as 90 percent. Consumers deserve access to generic drugs as quickly as possible. It will save money for America’s consumers; it will save money for all levels of government that provide prescription drugs to employees and to citizens of this country; and it will save money for employer health care plans.

Mr. Chairman, I ask for support of the Brown amendment on generics.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. Brown).

The question was taken; and the Chairman announced that the noes appeared to have a majority.

Mr. Brown of Ohio. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Ohio (Mr. Brown) will be postponed.

AMENDMENT OFFERED BY MR. BROWN OF OHIO

Mr. Brown of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Brown of Ohio:

In title VI, in the item relating to “DEPARTMENT OF HEALTH AND HUMAN SERVICES—FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES”, insert before the period at the end of the first paragraph the following:

Provided further. That of the total amount appropriated, $5,000,000 is available for the purpose of carrying out the responsibilities of the Food and Drug Administration with respect to antibiotic drugs, in addition to other allocations for such purpose made from such total amount.

Mr. Brown of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. Bonilla. Mr. Chairman, I ask unanimous consent that all debate on this amendment be limited to 20 minutes and that the time be equally divided.

The CHAIRMAN. The Chair would seek clarification. The time divided is between the gentleman from Ohio (Mr. Brown) and the gentleman from Texas (Mr. Bonilla).

Mr. Bonilla. The Chair is correct.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The gentleman from Ohio (Mr. Brown) and the gentleman from Texas (Mr. Bonilla) each will control 10 minutes.

The Chair recognizes the gentleman from Ohio (Mr. Brown).

Mr. Brown of Ohio. Mr. Chairman, I ask unanimous consent that all debate on this amendment be limited to 20 minutes and that the time be equally divided.

The CHAIRMAN. The Chair would seek clarification. The time divided is between the gentleman from Ohio (Mr. Brown) and the gentleman from Texas (Mr. Bonilla).

Mr. Bonilla. The Chair is correct.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The gentleman from Ohio (Mr. Brown) and the gentleman from Texas (Mr. Bonilla) each will control 10 minutes.

The Chair recognizes the gentleman from Ohio (Mr. Brown).
Mr. BROWN of Ohio. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the amendment allocates funds to carry out the FDA’s antibiotic resistance plan. On January 18, 2001, the FDA, the Centers for Disease Control and Prevention, and the National Institutes of Health unveiled an action plan that would address, by all available governmental action, the threat that this poses to public health. The amendment I am proposing directs funds to carry out the FDA’s antibiotic resistance action plan within its responsibility and would leave the decision on the sources of the offset to the Agency.

Mr. Chairman, I ask for Members to support the Brown amendment on antibiotic resistance.

Mr. Chairman, I reserve the balance of my time.

Mr. LATHAM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the amendment. The bill that the committee has approved includes a very carefully balanced recommendation for funding for the Food and Drug Administration, including $27 million for antimicrobial resistance activities. This is an increase of over 70 percent from just 2 years ago, which clearly demonstrates our commitment in this area.

The gentleman’s amendment proposes to increase funding for certain purposes, but it makes no proposal on where the money should come from. I would like to say that I am very happy that we were able to provide significant increases for the FDA. It is vitally important for that agency to have the resources to perform its public health mission. We were able to provide them the following increases above last year’s level: $15 million to prevent BSE, or bovine spongiform encephalopathy, which is commonly known as mad cow disease; $10 million to increase the number of domestic and foreign inspectors; $10 million to spend import surveillance in all product areas; $10 million to reduce adverse events related to medical products; $10 million to better protect volunteers who participate in clinical research studies; $9 million to provide a safer food supply; $1.75 million to improve the timeliness of generic drug application review and to provide generic drug education; and full funding of increased payroll costs for existing employees.

I want to stress how important this is. In the past, FDA and all other agencies in this bill were forced to reduce the level of services provided to the public in order to absorb payroll increases. This year we want to be sure that does not happen. I am sure that we all want to see that there is no slippage of activities at FDA involving research, application review, inspections, and all of the other payroll-intensive operations that are financed through our bill. We worked hard to find these resources, I am glad we were able to do it, and I am sure FDA will put them to good use.

Now here is my point. In the real world, when we go to conference with the other body, the increase that the gentleman’s amendment proposes would have to come out of other investments. We have heard a number of speeches today that told us not to do that. Should we reduce protection for people participating in clinical trials, or reduce resources for blood safety or BSE prevention?

Mr. Chairman, I ask all Members to support the committee’s recommended increases in FDA. I oppose the gentleman’s amendment, and I ask for its defeat.

Mr. Chairman, I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York.

Ms. SLAUGHTER. Mr. Chairman, I rise in strong support of the Brown-Slaughter amendment. This amendment would set aside $5 million in the FDA’s budget for the purpose of implementing FDA’s portion of the public health action plan to combat antimicrobial resistance. As a former microbiologist with a master’s degree in public health, I am profoundly concerned over the rising number of infections that do not respond to the majority of antibiotics in our medical arsenal.

In my judgment, the resistance of bacterial infections to antibiotics represents a major public health crisis in the Nation today. According to the Centers for Disease Control and Prevention, in some parts of the country more than 40 percent of streptococcus pneumoniae infections are highly resistant to penicillin. Moreover, approximately 70 percent of the bacterial infections acquired in a hospital setting are resistant to at least one antimicrobial drug. As long ago as 1997, at least one strain of staphylococcus developed resistance against the last and strongest antibiotic available: vancomycin.

These facts have a real impact on patients. According to the WHO, 1 American dies every 38 minutes because of a drug-resistant infection. When first-line drugs against these infections are not effective, patients are sicker for longer periods of time. In the case of patients with suppressed immune systems, or those recovering from surgery or injury, a delay in effective treatment of infection can be fatal. Children are particularly susceptible. In 1999, the CDC reported that four otherwise healthy children had died of drug-resistant staphylococcus aureus infections.

Mr. Chairman, I ask all Members to support the committee’s recommended increases in FDA. I oppose the gentleman’s amendment, and I ask for its defeat.

Mr. Chairman, I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York.

Ms. SLAUGHTER. Mr. Chairman, I rise in strong support of the Brown-Slaughter amendment. This amendment would set aside $5 million in the FDA’s budget for the purpose of implementing FDA’s portion of the public health action plan to combat antimicrobial resistance. As a former microbiologist with a master’s degree in public health, I am profoundly concerned over the rising number of infections that do not respond to the majority of antibiotics in our medical arsenal.

In my judgment, the resistance of bacterial infections to antibiotics represents a major public health crisis in the Nation today. According to the Centers for Disease Control and Prevention, in some parts of the country more than 40 percent of streptococcus pneumoniae infections are highly resistant to penicillin. Moreover, approximately 70 percent of the bacterial infections acquired in a hospital setting are resistant to at least one antimicrobial drug. As long ago as 1997, at least one strain of staphylococcus developed resistance against the last and strongest antibiotic available: vancomycin.

These facts have a real impact on patients. According to the WHO, 1 American dies every 38 minutes because of a drug-resistant infection. When first-line drugs against these infections are not effective, patients are sicker for longer periods of time. In the case of patients with suppressed immune systems, or those recovering from surgery or injury, a delay in effective treatment of infection can be fatal. Children are particularly susceptible. In 1999, the CDC reported that four otherwise healthy children had died of drug-resistant staphylococcus aureus infections.

If we fail to slow the rise of resistance to these infections, we could find ourselves returning to a day when common infections like tuberculosis and salmonella could become untreatable, and potentially fatal.
CONGRESSIONAL RECORD—HOUSE

June 28, 2001

A wide range of factors are contributing to the rise of resistance of antimicrobial agents. They include the overprescription of antibiotics, viral infections which do not respond to antibiotics; the misuse of antibiotics, such as the use of a newer, broad-range antibiotic when a less recent version would be equally effective; and the decline in simple sanitation measures, like effective hand-washing.

The various agencies responsible for the many aspects of the antimicrobial resistance issue have come together and issued a comprehensive plan of attack against this problem. “A Public Health Action Plan to Combat Antimicrobial Resistance” was developed in partnership with the FDA, the CDC, and the National Institutes of Health, with input and assistance from the Agency for Healthcare Research and Quality, the Department of Agriculture, Department of Defense, Department of Veterans Affairs, the Environmental Protection Agency, the Health Care Financing Administration, and the Health Resources and Services Administration:

This was an exhaustive and overarching effort to show the advance of antimicrobial resistance. As one of the lead agencies in developing this plan, the FDA has a crucial role to play in its implementation. The Brown-Slaughter amendment would set aside $5 million for the FDA to begin to stem the rising tide of antimicrobial resistance. This modest investment has the potential to save untold numbers of lives.

I urge my colleagues in the strongest possible terms to support the Brown-Slaughter amendment. Antimicrobial resistance is a quiet crisis growing in the United States, and we ignore it at our own risk.

Mr. BROWN of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I thank the gentleman for yielding me this time, and thank him for his leadership on this issue.

Mr. Chairman, how many times have Americans gone to a doctor, been prescribed an antibiotic only to find out it did not work, that it was not effective for the person? This is not only a health problem, but one that is repeated many times around the world. We know for some reason antibiotics are not effective because of certain resistance. What the gentleman from Ohio (Mr. BROWN) is doing is trying to get an additional $5 million to fund components of the action plan to combat antimicrobial resistance.

Mr. Chairman, this money will be money well spent because this is not only a health problem in this country, this is a world health problem. I thank the gentleman for his dedication.

Mr. BROWN of Ohio. Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio (Ms. KAPTUR), who is the ranking member of the subcommittee.

Ms. KAPTUR. Mr. Chairman, I want to compliment the gentleman from Ohio (Mr. BROWN) for taking leadership on this important issue of antimicrobial research.

Mr. Chairman, it has been amazing to me among families and friends, staff members and their families back home, how many individuals go into a hospital and are the victims of an infection. In spite of some of the best knowledge we have with modern medicine, yet we find that there is this antimicrobial resistance that in some ways is as a result of the technologies that we brought on board in the 20th century.

As we now embark on the 21st century, this research to add funding to help to expedite the action plan to combat antimicrobial resistance is essential. We need to transform it and that every action has an equal and opposite reaction. I am sure that is the case, that scientists note every day, whether we are talking about HIV/AIDS or whether we are talking about some type of staphylococcus infection which becomes resistant to antibiotics which have been brought on board in years past.

We need to know which drugs are being affected most; how, when and why antibiotic drugs are being prescribed. We must educate physicians and the public on the proper use of antibiotics. I have been amazed at people who have taken antibiotics and find their systems having to readjust anywhere from 6 months to a year.

Mr. Chairman, I want to compliment the gentleman. The amendment would simply authorize funding for priorities already set by the health agencies of this government. I urge my colleagues for a “yes” vote on this important amendment on antimicrobial research.

It provides $5 million to the FDA to expedite the carrying out of priority action items designated under an adopted action plan.

Mr. BROWN of Ohio. Mr. Chairman, I yield myself the balance of my time.

I ask my colleagues to speak to a physician or to a nurse or to a hospital administrator or to a medical researcher about this problem of antibiotic resistance. Every one of them will tell you that they know of cases, they have seen cases, they have seen the damage done by cases where antibiotic resistance is very real. Antibiotics are not as effective as they were a year ago or 5 years ago or 10 years ago. They also will tell you that we need action. We need to begin to recognize the problem, we need to anticipate the problem of growing resistance to antibiotics, and we need to do something about the problem.

This amendment does not ban any antibiotics. It simply carries out the action plan that our government has already set for the Brown-Slaughter amendment.

The CHAIRMAN pro tempore (Mr. BASS). The question is on the amendment offered by the gentleman from Ohio (Mr. BROWN).

The question was taken; and the CHAIRMAN pro tempore announced that the noes appeared to have it.

Mr. BROWN of Ohio. Mr. Chairman, I demand a recorded vote.

AMENDMENT OFFERED BY MR. ENGEL

Mr. ENGEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

In title VI, in the item relating to “DEPARTMENT OF HEALTH AND HUMAN SERVICES—FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES”, insert before the period at the end of the first paragraph the following:

Provided further, That of the total amount appropriated, $250,000 is available for the purpose of carrying out the responsibilities of the Food and Drug Administration with respect to food labeling within the meaning of section 403 of the Federal Food, Drug, and Cosmetic Act, in addition to other allocations for such purpose made from such total amount.

Mr. LATHAM. Mr. Chairman, I ask unanimous consent that all debate on this amendment be limited to 30 minutes and that the time be equally divided between the proponent and an opponent.

The CHAIRMAN pro tempore. Without objection, the gentleman from New York (Mr. ENGEL) will be recognized for 15 minutes and the gentleman from Iowa (Mr. LATHAM) will be recognized for 15 minutes.

There was no objection.

Mr. ENGEL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment sets aside $250,000, which in the totality of this budget is very, very small, for the FDA to develop labeling requirements indicating that no child slave labor was used in the growing and harvesting of cocoa.

Forty-three percent of the world’s cocoa beans come from small scattered farms in the Ivory Coast. The beans are prized for their quality and abundance. In the first 3 months of 2001, more than 47,300 tons of them were shipped to the United States to be processed by U.S. cocoa processors.

There are more than 600,000 small farms and no corporate or government agency in the Ivory Coast is monitoring them for slave labor. The United Nations estimates that approximately 200,000 slaves are working in various trades in West Africa and the State Department has estimated that about
15,000 children between the ages of 9 and 12 have been sold into forced labor in northern Ivory Coast in recent years. Let me restate that. The State Department has estimated that about 15,000 children between the ages of 9 and 12 have been sold into forced labor in northern Ivory Coast in recent years.

On many of the farms, the fields are cleared and the crops are harvested by boys between the ages of 12 and 16 who were sold or tricked into slavery. Some are even as young as 9. These boys come from neighboring countries, including Mali, Burkina Faso, Benin, and Togo and do not speak the most common language used in the Ivory Coast, French. They are children, who, out of respect, will do anything to help their parents. The boys are uneducated, poorly nourished, and are worked by offers of money, bicycles, and trade jobs. "Locateurs" offer them work as welders or carpenters, and they are told falsely that they will be paid $170 a year. As soon as they accept the offer, they are sold into slavery and are forced to clear the fields and harvest the cocoa crop. They live on corn paste and bananas, work 12 to 14 hours a day for no pay, suffer from whippings, are locked up at night in small, windowless rooms, and are given cans to urinate in.

One of these boys, Aly Diabate, was sold into slavery when he was barely 4 feet tall. He said, "Some of the bags were taller than me. It took two people to put the bag on my head. And when you didn't hurry, you were beaten. The beatings were a part of my life. Anytime they loaded you with bags and you fell while carrying them, nobody helped you. Instead, they beat you and beat you until you picked it up again."

Mr. Chairman, this must be stopped. Just like we cannot accept slave labor in factories in Asia, we must not accept products being sold in this country that are made by enslaved child labor. In 1999, former President Clinton issued an executive order prohibiting labor. In 1999, the chocolate chain Americans spend $13 billion a year on chocolate, but most of them are as ignorant of where it comes from as the beans that harvest cocoa beans are about where their beans go.

More cocoa beans come from Ivory Coast than from anyplace else in the world. The cocoa beans are grown in the country of Ivory Coast, and it is the responsibility of the Ivory Coast to ensure that the cocoa beans are harvested in a good manner.

Mr. BONILLA. Mr. Chairman, I yield myself such time as I may consume.

Mr. ENGEL. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Chairman, I hope that the Members will take this amendment seriously, because it is in the interest of the American consumer. In fact, as a result of the amendment, a result of this global trading pattern that we have engaged in without really examining closely and understanding fully the consequences of this system.

A recent report by our own State Department estimated that there are currently some 15,000 children working on cocoa and similar plantations in the Ivory Coast alone. That is the source of about 40 percent of the cocoa that is imported into this country. I think it is important to ensure that if people in this country knew that they were buying products that were the result of slave labor, particularly the labor of children as young as 8 or 9 years old, they would not buy it. And I think that this amendment which proposes a simple labeling mechanism to indicate where this cocoa is harvested is a good amendment and it ought to be supported.

Mr. ENGEL. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Ms. KAPTUR), the ranking member on the agriculture subcommittee.

Ms. KAPTUR. Mr. Chairman, I thank my esteemed colleague the gentleman from New York for yielding me this time and rise in support of his amendment which is a very straightforward and simple amendment to ask FDA to engage itself in the proper labeling of goods that are farmed and harvested in this country. In the area of cocoa beans and chocolate, I think we do not often think of where a product's ingredients come from.

Mr. Chairman, I include for the RECORD an article that was published in the Philadelphia Inquirer on June 24 1980 which talks about the cocoa beans that come here and America blended into our product from places like the Ivory Coast.

Ms. KAPTUR. [From the St. Paul Pioneer Press, June 24, 2001]

DALOA, IVORY COAST

There may be a hidden ingredient in the chocolate cake you baked, the candy bars your children sold for their school fund-raiser that fudge recipe you enjoyed on Saturday afternoon. Slave labor. Forty-three percent of the world's cocoa beans, the raw material in chocolate, come from this small, scattered West African country of Ivory Coast. And on some of the farms, the hard work of clearing the fields and harvesting the crop is done by boys who were sold or tricked into slavery. Most of them are 12 to 16 years old. Some are as young as 9. The slaves live on corn paste and bananas. Some are whipped, beaten and broken like horses to harvest the almonds-size beans.

The State Department's human rights report last year concluded that some 15,000 children ages 9 to 12 have been sold into forced labor on cotton, coffee and cocoa plantations in northern Ivory Coast in recent years.

I don't believe was almost 12 when a slave trader promised him a bicycle and $150 a year to help support his poor parents. He worked for a cocoa farmer who is known as "Le Gros" ("The Big Man") but he said his only reward was the rare days when Le Gros' overseer would choose a younger or older slave with a bicycle chain or branches from a cacao tree. Cocoa beans come from pods on the cacao tree. To get the 400 or so beans it takes to make a pound of chocolate, the boys who work on Ivory Coast's cocoa farms cut pods from the trees, slice them open, scoop out the beans, spread them in baskets or on mats and cover them to ferment. They uncover the beans, put them in the sun to dry, bag them and load them onto trucks to begin the long journey to America or Europe.

A recent report by our own State Department estimated that there are currently about 43 percent of the cocoa that is imported into this country. It is important to ensure that if people in this country knew that they were buying products that were the result of slave labor, particularly the labor of children as young as 8 or 9 years old, they would not buy it.
And a 1998 report from UNICEF, the United Nations Children's Fund, confirmed that some Ivory Coast farmers use enslaved children, many of them from the poorer neighboring countries of Mali, Burkina Faso, Benin and Togo. A report by the Geneva, Switzerland-based International Labor Organization, released June 15, found that trafficking in children is widespread in West Africa.

SOME OF THE BAGS WERE TALLER THAN ME

Aly Diabate and 18 other boys labored on a 494-acre farm, very large by Ivory Coast standards, in the southwestern part of the country. Their days began when the sun rose, which at this time of year in Ivory Coast is a few minutes after 6 a.m. They finished work about 6:30 in the evening, just before nighttime, trudging home to a dinner of burned bananas. A treat would be yams seasoned with saltwater "gravy."

After dinner, the boys were ordered into a 24-by-20-foot room, where they slept on wooden planks. The window was covered with hardened mud except for a baseball-size hole to let some air in. "Once we entered the room, nobody was allowed to go out," said Mamadou Diarra, who was frail and had pimply, brown eyes who is 19 now. "Le Gros gave us cans to urinate. He locked the door and kept the key." He said the beatings were a part of his life.

Le Gros was charged with assault against children and suppressing the liberty of people. The latter crime carries a five- to 10-year prison sentence and a hefty fine, said Dalehe Guindo, an official in the region. "In Ivorian law, and adult who orders a minor to hit and hurt somebody is automatically responsible as if he has committed the act," said Rouch. "Le Gros did the beatings himself or ordered somebody, he is liable." Le Gros spent 24 days in jail, and today he is a free man pending a court hearing that is scheduled for Thursday.

He said the case against Le Gros is weak because the witnesses against him have all left the country. He said the Malian authorities are willing to cooperate, if they can bring two or three of the children back as witnesses.

Mr. ENGEL. Mr. Chairman, I yield to the gentleman at this time.

Daleba Rouba, attorney general for the region and kept the key. He said he wasn't working very hard," said Macko, who was then the Malian consul general in Bouake, said he would look into the matter.

He said the case against Le Gros is weak because the witnesses against him have all left the country. He said the Malian authorities are willing to cooperate, if they can bring two or three of the children back as witnesses.

Mr. Engle said he wasn't working very hard," said Macko, who was then the Malian consul general in Bouake, said he would look into the matter.

Le Gros said, according to Mamadou, "So you have to work harder to reimburse me."

"We though we had been sold, but we weren't sure," said Aly. "The boys became sure one day when Le Gros walked up to Mamadou and ordered them to leave. "If I bought each of you for 25,000 francs" (about $35), the farmer said, according to Mamadou. "So you have to work harder to reimburse me."

Aly was barely 4 feet tall when he was sold into slavery, and he had a hard time carrying the heavy bags of cocoa beans. "Some of the bags were taller than me," he said. "It took two people to put the bag on my head. And when you didn't hurry, you were beaten. You can still see the faint scars on his back, right shoulder and left arm. They said he wasn't working very hard." said Macko, who was then the Malian consul general in Bouake, said he would look into the matter.

Le Gros is accused of beating and holding, being tired, slim with no en and held, being tired, slim with no smiles, and many boys having healed scars as well as open infected wounds all over their bodies. Police freed the boys, and a few days later the Malian consulate in Bouake sent them all home to their villages in Mali. The sick boy was treated at a local hospital, the other for them. Even if I kill a guy, I pay for my medical treatment. "When I go hunting, when I get a kill, I divide it in half—one for my family and the other for them. Even if I kill a gazelle, 70 percent is for them and 30 percent is for me."

He denied beating any of the boys. "I've never, ever laid hands on any one of my workers," Le Gros said. "Maybe I called them names, and I got angry. That's the worst I did." Le Gros said a Malian overseer beat one boy who had run away, but he said he himself did not order any beatings.

A BOY ESCAPES

One day early last year, a boy named Oumar Konate, who was 12 at the time, told his father that he had eaten around to the House floor so the American people can understand what is going on.

Mr. Engle, I yield myself such time as I may consume.

CONGRESSIONAL RECORD—HOUSE

12271

Mr. Engel. Mr. Chairman, I yield to the gentleman at this time.

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Mr. Engel, I yield myself such time as I may consume.
I think that the gentlewoman from Ohio made two very, very good points at the end. Throughout her speech she made good points, but I want to raise two that she made at the end. This is only $250,000. It is a very, very small amount, and such a small amount to ensure that the cocoa and the chocolate in this country has not come to be by slave labor of children. I think that is a very, very high price to pay.

There is a moral responsibility as the gentlewoman points out, a moral responsibility for us not to allow slavery, child slavery, in the 21st century. This is a small amount of money, it is in the budget, it will not do any harm whatsoever; and I think that it will certainly bring us to the point that this Congress can look with pride and say that we are making an attempt to stop something that we thought did not exist anymore and only now are we being made aware of the fact that slavery is continuing to rear its ugly head in the year 2001.

I want to just again urge my colleagues to support this. This should have bipartisan support because again we are talking about children and we are talking about slavery. I do not think the American people would want to knowingly eat chocolate or cocoa that was harvested by children who have been tricked into slavery.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. BASS). The question is on the amendment offered by the gentleman from New York (Mr. ENGEL).

The question was taken; and the Chairman pro tempore announced that the nays appeared to have it.

Mr. ENGEL. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York (Mr. ENGEL) will be postponed.

Mr. BONILLA. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. ISAACSON) having assumed the chair, Mr. BASS, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2330) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2002, and for other purposes, had come to no resolution thereon.

LIMITING AMENDMENTS DURING FURTHER CONSIDERATION OF H.R. 2330, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

Mr. BONILLA. Mr. Speaker, I ask unanimous consent that during further consideration of H.R. 2330 in the Committee of the Whole pursuant to House Resolution 183, no further amendment to the bill may be offered except the following amendments, each of which shall be debatable for 10 minutes:

An amendment offered by Mrs. CLAYTON related to rental assistance, which may be offered at any time during consideration; an amendment offered by Mr. TRAFFICANT related to Buy American; an amendment offered by Mr. ALLEN related to lack of closure of research and development and approvals of new drugs; an amendment offered by Ms. KAPTUR related to biofuels; an amendment offered by Ms. KAPTUR related to BSE; an amendment offered by Ms. KAPTUR related to 4-H Program Centennial; an amendment offered by Mr. LUCAS of Oklahoma related to watershed and flood operations; an amendment offered by Mrs. MINK of Hawaii related to the Hawaii Agriculture Research Center; an amendment offered by Mrs. MINK of Hawaii related to the Oceania Institute of Hawaii; an amendment offered by Mr. BLUMENAUER related to price supports; an amendment offered by Mr. ROYCE related to allocations under the market access program; an amendment offered by Mr. SMITH of Michigan related to the Food Security Act; an amendment offered by Mr. SMITH of Michigan related to the Agriculture Market Transition Act; an amendment offered by Mr. SMITH of Michigan related to the nitrogen-fixing ability of plants; an amendment offered by Mr. BACA related to Hispanic-serving institutions; an amendment offered by Ms. PELOSI related to HIV.

Two, the following additional amendments, each of which shall be debatable for 20 minutes:

An amendment offered by Mr. BROWN related to abbreviated applications for the approval of new drugs under section 505(j) of the Food, Drug and Cosmetic Act; an amendment offered by Mr. STUPAK or Mr. BOEHLENT related to elderly nutrition; an amendment offered by Mrs. CLAYTON related to socially disadvantaged farmers.

Three, the following additional amendments, each of which shall be debatable for 30 minutes:

An amendment offered by Mr. HINCHY related to American Rivers Heritage; an amendment offered by Mr. KUCINICH related to transgenic fish; an amendment offered by Mr. GUTKNECHT related to drug importation.

Four, the following additional amendments, each of which shall be debatable for 40 minutes:

An amendment offered by Mr. SANDERS related to drug importation; an amendment offered by Mr. WEINER related to tobacco.

Five, the following additional amendment, which shall be debatable for 60 minutes, and which may be brought up at any time during consideration:

An amendment offered by Mr. OLVER or Mr. GILCHREST related to Kyoto.

Each additional amendment may be offered only by the Member designated in this request, or a designee; shall be considered as requireable for the time specified equally divided and controlled by the proponent and an opponent; shall not be subject to amendment; and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Texas?

Mr. YOUNG of Florida. Mr. Speaker, reserving the right to object, I only do so to advise the House what we are doing. After the approval of the unanimous consent request, we will go back to the Committee of the Whole and we will have the votes that were rolled to this time. At the conclusion of that time, I believe we are to deal with the amendment of the gentlewoman from North Carolina (Mrs. CLAYTON) briefly. At that point then, the subcommittee chairman will move to rise; and we will have concluded the business for the day. We will return to this bill the day after we return from our July 4, Independence Day recess.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Texas?

Mr. OBEY. Mr. Speaker, reserving the right to object, I would just like to clarify what that means is that after the disposition of the Clayton amendment, we will have the three votes, that will be it for the evening. And then when we return after the July 4 recess, this bill will be the first order of business. We will take it up on Wednesday, and we will debate it to its conclusion.

Mr. YOUNG of Florida. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Speaker, this bill would be considered on the day after we return from the recess.

Mr. OBEY. We mean Wednesday by that; do we not?

Mr. YOUNG of Florida. Yes.

Mr. OBEY. That will be the first bill up, and it will be debated to its conclusion.

Mr. YOUNG of Florida. I would expect that it would be first, and I know one reason why it will not be first.

Mr. OBEY. If I could also clarify the language of the unanimous consent request, the last paragraph reads, "Each
additional amendment may be offered only by the Member designated in this request. By that word “additional,” you mean the amendments previously cited, does not the gentleman?

Mr. BONILLA. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Texas.

Mr. BONILLA. Mr. Speaker, that is correct.

Mr. OBEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The SPEAKER pro tempore. Pursuant to House Resolution 183 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2330.

The SPEAKER pro tempore. The Senate has demanded the time. The Speaker will order the record.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings were postponed in the further consideration of the Senate and in the further consideration of the bill (H.R. 2330) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2002, and for other purposes, with Mr. BASS (Chairman pro tempore) and Mr. CLAYTON (Mr. BROWN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Speaker will designate the amendment.

The Clerk will designate the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. The recorded vote has been demanded.

The vote was taken by electronic device, and there were—aye 324, noes 89, not voting 20, as follows:

[Roll No. 208]

AYES—324

Abschonhoefer
Ackerman
Anderl
Alioto
Andrews
Baca
Bach
Baird
Baldacci
Baldwin
Banks
Barrett
Bartlett
Becerra
Benten
Berater
Berkeley
Berman
Beyler
Billikakis
Bishop
Blanchard
Blumenauer
Bondi
Bono
Borski
Boswell
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Calvert
Camp
Cannon
Capitol
Capps
Capuano
Cardin
Carnes (IN)
Carras (OK)
Castle
Clay
Clayton
Clement
Clyburn
Cooper
Conyers
Cookson
Cosby
Coyne
Craizle
Crowley
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann

Hunterson
Hutchinson
Hyde
Inacie
Israel
Jackson (IL)
Jackson-Lee
(TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjerski
Kaptur
Kerry
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Klecka
Kildee
Kilbuck
Kilroy
King (NY)
Kloiber
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaRouette
Leach
Lee
Leon
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Maloney (CT)
Maloney (NY)
Mann
Manzullo
Marsala
Matheson
McAuliffe
McCarthy (MO)
McCollum
McCreary
McHenry
McGovern
McHugh
CONGRESSIONAL RECORD—HOUSE

TANCREDO, HOEKSTRA, BASS, DUNCAN, ROEKSTRA, of Kentucky, GALLEGGI, J. KIRK, TIBERI, MCCRY, TAUZIN, GOODLATTE, and TERRY, and Ms. PRYCE of Ohio changed their vote from "no" to "aye." So the amendment was agreed to.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. BASS). Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT OFFERED BY MR. BROWN OF OHIO

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Ohio (Mr. BROWN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

The CHAIRMAN pro tempore. A recorded vote has been demanded.

The vote was taken by electronic device, and there were—ayes 271, noes 140, not voting 22, as follows:

[Roll No. 209]

aye—271

Mr. BARR of Georgia changed his vote from "aye" to "no."

Messrs. SENSENBRENNER, JOHNSON of Illinois, WAMP, HYDE, QUINN, HEFLEY, JENKINS, HOSKINS, LEWIS (KY), ROYCE, and SCHRADER. Pursuant to clause 6 of rule XVIII, Mr. BARR of Georgia changed his vote from "aye" to "no."
<table>
<thead>
<tr>
<th>Watts (OK)</th>
<th>Wicker (FL)</th>
<th>Young (AK)</th>
<th>NOT VOTING—22</th>
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<tr>
<td>Whitfield</td>
<td>Wolf (NC)</td>
<td>Young (FL)</td>
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The amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ENGEL

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. ENGEL) on which further proceedings were postponed and on which the noes prevailed by a voice vote.

The Clerk will direct the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 291, noes 115, not voting 27, as follows:

<table>
<thead>
<tr>
<th>AYES—291</th>
<th>NOES—115</th>
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<tbody>
<tr>
<td>Abercrombie</td>
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<td>Ackerman</td>
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<td>Andrews</td>
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<td>Bacsa</td>
<td>Davis, Jo Ann (IN)</td>
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<td>Bachus</td>
<td>Davis, Tom (NY)</td>
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<td>Baird</td>
<td>DeFazio (OH)</td>
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<td>Baldwin</td>
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<td>Barretts</td>
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<td>Cox</td>
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<td>Gravel (VT)</td>
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<td>Crafer</td>
<td>Gutierrez (TX)</td>
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The result of the vote was announced as above recorded.

Mr. BONILLA. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAHOOD) having resumed the chair, Mr. GOODLATTE, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 2360) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2002, and for other purposes, had come to no resolution thereon.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate has passed without amendment a concurrent resolution of the House of Representatives and a conditional adjournment of the Senate.

HEARTFELT THANKS TO ANNE HOLCOMBE, CINDY SEBO, AND VICKY STALLSWORTH

(Mr. EHLERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EHLERS. Mr. Speaker, I hope you will be kind on the time allotted, because I want to take a few moments to recognize a very special person who has worked in this Chamber for some time, who has graced this Chamber and has helped us a great deal, and she will soon be leaving, and that is Ms. Anne Holcombe, who is seated at the front desk.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. EHLERS. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank the gentleman from Michigan (Mr. EHLERS), my friend, for yielding to me.

I join today in recognizing Anne Holcombe. This is her last day as the senior legislative clerk, so I, along with my colleagues, thought it appropriate that we take a 1 minute, since
you enjoy them so much, Anne, a spe-
cial order.
I know that you enjoy sitting here 
through special orders. If you had a 
chance of a 1 minute or a special order, 
I suspect that you might prefer a 1 
minute.
Anne is moving to Charlotte, North 
Carolina to be closer to her family and 
and to start a new chapter in her life. 
I want to wish her well. Our col-
league, the former Mayor of Charlotte, 
North Carolina, a distinguished mem-
ber of the Committee on Rules, Sue 
Myrick, will become your representa-
tive here in the House.
Anne’s professionalism on the dais 
has been a steady source of confidence 
that the records of the House will al-
ways be in order, that is why we are all 
very sad to see her leave.
I cannot imagine why Anne would 
want to leave the House. I know that 
you greatly enjoy sitting here waiting 
until 3 o’clock in the morning until the 
committee that I am privileged to 
Chair reports a rule down here.
As a way to show how much you 
enjoy special orders that often extend 
up to, under our great reform process, 
midnight we know, but you do, obvi-
ously, grace the dais extraordinarily 
well.
You have worked here for many 
years. Anne started in September of 
1996, Mr. Speaker, as a legislative in-
formation specialist and was respon-
sible for researching, editing, and 
maintaining the legislative database 
that we, in the House, as well as the 
general public, depend on for informa-
tion about what is happening here in 
the Congress.
In October of 1997, Anne was pro-
filed to assistant chief floor clerk, 
whereby she has done a terrific job 
working in the House floor clerk. She 
has done a terrific job in serving this 
institution and her country very well.
Mr. Speaker, if the gentleman will 
continue to yield, I would also like to 
note that we also have two official re-
porters out on the right here, who 
is actually finishing her last day.
Cindy Sebo, who has worked long 
and hard, and also Vicky Stallsworth, who 
is also completing her last day here.
I guess the place is going to be empty 
when we come back. No one will be 
here to do any work. I hope very much 
that these positions are filled.
Let me say to all three that we wish 
them well in their future endeavors, 
and I thank my friend for yielding.
Mr. EHLERS. Mr. Speaker, reclaim-
ing my time, I want to add my con-
gratulations to all three of them and 
especially my heartfelt thanks. I have 
always made a point of trying to get to 
know the individuals who work in the 
front of this Chamber, who keep very 
long hours and transcribe everything 
we do and keep good order out of it.

I am delighted that both of the re-
porters who are leaving us are here 
present so we can thank both Cindy 
and Vicky as well. I hope you spell 
your names properly as you transcribe 
this.
They work tirelessly. They are going 
on to other things and other lands. I 
cannot imagine why Vicky, who is 
moving to Fort Collins, Colorado; and 
Anne, who is moving to North Caro-
olina, if you are going to leave Wash-
ington to find a better place, I can un-
derstand that; but I would certainly 
recommend Grand Rapids, Michigan, 
especially this time of year. So come 
up there and stop in and see us.
Cindy will be leaving for the private 
sector. She will remain in this area, 
and we hope we see her around here oc-
casionally.
So from the bottom of my heart, 
thank you to all of you. Congratulations. 
God bless you in your future en-
deavors and employment.
Mr. HOYER. Mr. Speaker, will the 
gentleman yield?
Mr. EHLERS. I yield to the gen-
tleman from Maryland.
Mr. HOYER. Mr. Speaker, I appreci-
ate the gentleman yielding.
I did not rise to defend the Wash-
ington metropolitan area as a place to 
live, notwithstanding his observations. 
But I did rise to say thank you on be-
half of all of us, not on a partisan 
sense, although I am on this side of the 
aisle, and there are others on the other 
side of the aisle, but to, again, remind 
ourselves how critically important to 
the operations of the people’s House are 
those who never rise and speak. 
They also serve who stand and record, 
the poet might have said.
To Anne and Cindy and Vicky, we ap-
preciate very much what you have 
done. You have at times been asked to 
spend long, long, long hours. You have 
fought fatigue; and I am sure, although 
you do not have to admit this, fought 
boredom as well in the operations that 
you have been responsible for.
You make it possible for the Ameri-
can public, even if they cannot see us 
on C-SPAN, even if they cannot be in 
the gallery, even if years later they are 
trying to find out what happened on 
the floor of the House, their House, 
doing their business, you make it pos-
sible for them to find out. You do so 
with incredible accuracy and effi-
ciency. We thank you for that, and we 
acknowledge how critically important 
you are to the operations of this House.
I am not surprised that one of you is 
going into the private sector. Maybe 
both of you are going into the private 
sector, I am not sure, our two report-
ers, or Anne returning to North Caro-
olina to be closer to her family, because 
there are, in my opinion, no more tal-
eted, no more highly motivated, no 
more productive people that could be 
rented, no more highly motivated, no 
more productive people that could be 
rented, no more highly motivated, no 
more productive people that could be 
rented, no more highly motivated, no 
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more productive people that could be 
rented, no more highly motivated, no 
more productive people that could be 
rented, no more highly motiva
ted, no more productive people that 
could be hired by the private sector than 
those who work on this Hill and certainly, 
all those who work at the desk and who 
record our debates.
It is a hallmark of American democ-

racy that we want to be open to the 
public. We want to have a historic and 
accurate record of proceedings. You 
have enabled us to continue to do that.
We thank you. We wish you God-
speed. We hope that you take with you 
very positive feelings about this House, 
that you know firsthand that, although 
there are fights and disagreements, and 
sometimes we are much smaller than 
we ought to be, that, at bottom, almost 
everybody, indeed everybody in this 
House, cares about their country and 
cares about their constituents. You 
have had the opportunity to see that 
firsthand. As I tell the pages, I hope 
you will tell that story wide and far.
We thank you, and we wish you the 
best of everything in the days ahead. 
Thank you for yielding.
Mr. SKELTON. Mr. Speaker, will the 
gentleman yield?
Mr. EHLERS. I am happy to yield to 
the gentleman from Maryland.
Mr. SKELTON. Mr. Speaker, I, too, 
would like to add my best wishes to 
Anne Holcombe as she leaves and also 
say farewell to Cindy and Vicky for 
the work that they have done.
Regarding Anne, I was sitting here 
thinking of the old Irish tune that has 
the melody of “When Johnny Comes 
Marching Home.” A phrase in there is 
“Johnny, we hardly got to know you.” 
It just seems like you came last week, 
and time flies so fast, and we hardly 
got to know you.
You have done so well. You have been 
very friendly, You have been very par-
ticularly kind to me in making sure 
sure the podium is at the right height. 
Your professionalism, your competency 
are beyond match. So we thank you 
for your efforts, your hard work, We wish 
you the very best in your next chapter 
of life, and do not forget us, God bless.
Mr. EHLERS. Mr. Speaker, reclaim-
ing my time, I want to thank all three of 
the speakers, the gentleman from 
California (Mr. DREIER), the gentleman 
from Maryland (Mr. HOYER), and the 
gentleman from Missouri (Mr. SKEL-
TON) for their eloquent comments.
Frankly, they stole my speech, and 
there is not much I can add to it other 
than to say, on behalf of all of those 
who use this Chamber and rely on you 
as well as the broader American public 
who sees your work constantly on the 
front page of the Washington Post, the 
Congressional Record, I want to thank 
you for your hard serv-
ice here. I wish you well. God bless you
CONGRESSIONAL RECORD—HOUSE

ELECTION OF MEMBER TO COMMITTEE ON ARMED SERVICES AND COMMITTEE ON SCIENCE

Mr. FOLEY. Mr. Speaker, I offer a resolution (H. Res. 194), and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the resolution.

The Clerk read as follows:

H. Res. 194
Resolved, That the following Member be and is hereby elected to the following standing committees of the House of Representatives:

Armed Services: Mr. Forbes.
Science: Mr. Forbes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO HAVE UNTIL MIDNIGHT, FRIDAY, JULY 6, 2001 TO FILE REPORTS ON H.R. 2215, 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, AND H.R. 2137, CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2001

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary have until midnight on July 6 to file the reports to accompany H.R. 2215 and H.R. 2137.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The resolution was agreed to.

There was no objection.

AUTHORIZING THE SPEAKER, THE MAJORITY LEADER, AND THE MINORITY LEADER TO ACCEPT RESIGNATIONS AND MAKE APPOINTMENTS AUTHORIZED BY LAW OR THE HOUSE NOTWITHSTANDING ADJOURNMENT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that, notwithstanding any adjournment of the House until Tuesday, July 10, 2001, the Speaker, Majority Leader, and Minority Leader be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

DISPENSING WITH CALENDAR

Wednesday Business on Wednesday, July 11, 2001

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday, July 11, 2001.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1613

Mr. SIMMONS. Mr. Speaker, I ask unanimous consent to remove my name from H.R. 1613.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

APPOINTMENT OF THE HONORABLE TOM DAVIS TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH JULY 10, 2001

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC, June 28, 2001,

I hereby appoint the Honorable Tom Davis to act as Speaker pro tempore to sign enrolled bills and joint resolutions through July 10, 2001.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is agreed to.

There was no objection.

REPORT ON EMERGENCY REGARDING PROLIFERATION OF WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. Doc. No. 107-93)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Enclosed is a report to the Congress on Executive Order 13235, as required by section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)) and section 401(c) of the National Emergencies Act (50 U.S.C. 1641(c)).

GEORGE W. BUSH,

President's Comprehensive National Energy Policy—Message from the President of the United States

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection of referred to the Committee on Energy and Commerce, the Committee on Science, the Committee on Resources, the Committee on Ways and Means, the Committee on Transportation and Infrastructure, and the Committee on Education and the Workforce:

To the Congress of the United States:

One of the first actions I took when I became President in January was to create the National Energy Policy Development Group to examine America's energy needs and to develop a policy to put our Nation's energy future on sound footing.

I am hereby transmitting to the Congress proposals contained in the National Energy Policy report that require legislative action. In conjunction with executive actions that my Administration is already undertaking, these legislative initiatives will help address the underlying causes of the energy challenges that Americans face now and in the years to come. Energy has enormous implications for our economy, our environment, and our national security. We cannot let another year go by without addressing these issues together in a comprehensive and balanced package.

These important legislative initiatives, combined with regulatory and administrative actions, comprise a comprehensive and forward-looking plan that utilizes 21st century technology to allow us to promote conservation and diversify our energy supply. These actions will increase the quality of life of Americans by providing reliable energy and protecting the environment.

Our policy will modernize and increase conservation by ensuring that energy is used as efficiently as possible. In addition, the National Energy Policy will modernize and expand our energy infrastructure, creating a new high-tech energy delivery network that increases the reliability of our energy supply. Further, it will diversify our energy supply by encouraging renewable and alternative sources of energy as well as the latest technologies to increase environmentally friendly exploitation and conservation of domestic energy resources.

Importantly, our energy policy improves and accelerates environmental protection. By utilizing the latest in pollution control technologies to cut harmful emissions we can integrate our desire for a cleaner environment and a sufficient supply of energy for the future. We will also strengthen America's energy security. We will do so by reducing our dependence on foreign sources of oil, and by protecting low-income Americans from soaring energy prices and supply shortages through programs like the Low Income Housing Energy Assistance Program.
CONSERVATION IS CRITICAL PIECE OF PUZZLE

(Mr. REHBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REHBERG. Mr. Speaker, while we all know we cannot conserve our way out of the energy crunch, conservation is a critical piece of the puzzle if we are going to solve this problem. In times like these, each and every American must do their part. This means turning out the lights when leaving a room, walking more often instead of driving, and investing in new technologies and alternative renewable energy sources.

While some in this Chamber merely talk about conservation, President Bush is actually doing something about it.

Today, President Bush announced $77 million in Federal conservation grants which will help accelerate the development of fuel cells in new technology for tomorrow’s cars and buildings. These grants will play a critical role in lowering emissions and improving energy efficiency.

Mr. Speaker, instead of throwing rocks and using America’s energy problems for political gain, President Bush is providing leadership and solutions.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker’s announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

HIGH COST OF PRESCRIPTION DRUGS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

Mr. GUTKNECHT. Mr. Speaker, today I rise to talk about an issue that is of great concern to all Americans, but is of particular concern to the 53 million Americans that have no health insurance and to the 14 million American seniors that do not have prescription drug coverage under their Medicare benefit. What I am talking about is the high cost of prescription drugs.

I want to show a chart for the benefit of the Members that begins to illustrate just how serious this problem is. The first chart I want to show my colleagues begins to talk about the differentials or the difference between what we pay in the United States and what they pay in Europe for some of the most commonly prescribed drugs.

We have heard over the last several years about how much difference there is between Canada and the United States and how much difference there is between Mexico and the United States. But many Americans do not realize there are enormous differences between what we pay for exactly the same drugs made in the same plants here in the United States compared to what they pay in Europe.

For example, the first drug on this list is a drug called Allegra, 120 milligrams. It is triple in the United States what they pay in Europe for the same drug. Some people will say, well, they have price controls in Europe. In some countries in Europe, that is true. But in Germany and Switzerland, it is not true.

Take a look at the drug Coumadin, which is a drug that my father takes. In the United States, it is quadruple the $8.22, which they charge for the average price in Europe.

Glucophage, which is a very commonly prescribed drug for people who have diabetes. In the United States, it sells for $30.12 on average for a 1-month supply. In Europe, it is only $4.11. That is seven times more than Americans are required to pay.

Mr. Speaker, my colleagues need to understand that, once a person is diagnosed, it is likely that they will stay on that drug for the rest of their lives. So we are talking about an enormous difference over the life-span of a patient who needs that.

Take a look at a drug Zithromax down here at the bottom. It is a new wonder drug in terms of being an antibiotic. It is a marvelous drug. But I wonder whether Americans should really have to pay triple what consumers in Europe have to pay.

As my colleagues can see, it is $486 for a month’s supply here in the United States on average. In Europe, it is only $176.19.

The next chart I want to show is really one of the most troubling charts of all. Last year the average senior got in their cost of living adjustment in the United States a 3.5 percent increase in their Social Security. At the same time, prescription drugs went up 19 percent. My colleagues, this is unsustainable.

Now, I intend to offer an amendment to the appropriations bill that will at least clarify that law-abiding citizens have a right, if they have a legal prescription, to buy drugs in Europe.

And we are trying to work out the language right now. That is all I want to do.

Some say that the FDA lacks the resources to inspect mail orders. The truth is the FDA is focusing its inspections in the wrong places. Instead of stopping illegal drugs reported by illicit traffickers, the FDA concentrates on approved drugs being brought in by law-abiding citizens. So far this year the FDA has detained 18 times more packages from Canada than they have from Mexico. This is outrageous. They are spending all of their resources chasing law-abiding citizens.

One of the biggest arguments of the people who oppose my amendment is that they say, well, we are going to ultimately have a Medicare benefit, a prescription drug benefit that will eliminate the need to open the markets so that we get competition in prescription drugs. Well, the truth is simply shifting the burden from those people who currently do not have insurance to the taxpayers will not solve this problem. The problem is there is no real competition.

But the biggest concern that a lot of people raise is what will this do in terms of public safety. Let me say this. More people have been killed in the United States from unsafe tires being brought into the United States from other countries than by bringing legal drugs into the United States by law-abiding citizens. As a matter of fact, there is no known scientific study that demonstrates that there is a threat of injury to patients importing medications, legal medications, with a prescription, from an industrialized country.

What is more, millions of Americans have no prescription drug coverage. Stopping importation of FDA-approved drugs only threatens their safety. Remember, Members, a drug that an individual cannot afford is neither safe nor effective, and too many Americans are put in the position where they simply cannot afford the drugs that they need.

Mr. Speaker, I am not asking for the world. The amendment I intend to offer is very narrowly focused. It simply says that the FDA cannot stand between law-abiding citizens who have legal prescriptions and allowing them to bring into the country drugs which are otherwise approved by the FDA. In fact, we even go further. We say it cannot be a controlled substance. It cannot even be codeine. The drugs we are talking about are drugs that are commonly prescribed. I will appreciate my colleagues’ support on that amendment.

Mr. Speaker, I submit herewith for the RECORD a few fact sheets regarding the Medicare drug benefit argument.

Some say a Medicare drug benefit will simply shift his drug prices to the government only transfers the burden to American taxpayers. Moreover, Medicare
coverage won't help the millions of Americans without health insurance.

Some say importation is merely an indirect way of enacting price controls. The truth is—Importing prescription drugs to the United States will lower prices here and, in the long run, force Europe to pay more for drug research and development costs. The best way to break down price controls is to open up the markets.—Stephen W. Schondelmeyer, Pharm.D., Ph.D., Professor and Director, PRIME Institute, Head, Dept. of Pharmaceutical Care & Health Systems, College of Pharmacy, University of Minnesota.

Some say the FDA lacks the resources to inspect mail orders. The truth is—The FDA is focusing its inspection resources in the wrong places. Instead of stopping illegal drugs imported by illicit traffickers, the FDA concentrates on approved drugs imported by law-abiding citizens. So far this year, the FDA detained 18 times more packages coming from Canada than from Mexico. Last year, the FDA detained 90 times more packages coming from Mexico than from Canada. Wannabe, last year Congress appropriated $23 million for border enforcement, but the Secretary of Health and Human Services refused to use the funds.

Some say importation jeopardizes consumer safety. The truth is—No known scientific study demonstrates a threat of injury to patients resulting from medication of a prescription from industrial countries. What’s more, millions of Americans have NO prescription drug coverage. Stopping importation of FDA-approved drug threatens their safety. A drug you can’t afford is neither safe nor effective.

REVISIONS TO ALLOCATION FOR HOUSE COMMITTEE ON APPROPRIATIONS

The SPEAKER pro tempore (Mr. LaHood). Under a previous order of the House, the gentleman from Iowa (Mr. Nussle) is recognized for 5 minutes.

Mr. Speaker, pursuant to Sec. 314 of the Congressional Budget Act and Sec. 221(c) of H. Con. Res. 83, the concurrent resolution on the budget for fiscal year 2002, I hereby submit for printing in the CONGRESSIONAL RECORD revisions to the allocations for the House Committee on Appropriations.

As reported to the House, H.R. 2330, the bill making appropriations for Agriculture and Related Agencies for fiscal year 2002, includes an emergency-designated appropriation providing $150,000,000 in new budget authority and $143,000,000 in new outlays. Under the provisions of both the Budget Act and the budget resolution, I must adjust the 302(a) allocations and budget authority and the current resolution on the budget for fiscal year 2002. I hereby submit for printing in the CONGRESSIONAL RECORD revisions to the allocations for the House Committee on Appropriations.

Accordingly, I increase the 302(a) allocation to the House Appropriations Committee contained in House Report 107-100 by $150,000,000 in new budget authority and $143,000,000 in new outlays. This changes the 302(a) allocation for fiscal year 2002 to $661,450,000,000 for budget authority and $683,103,000,000 for outlays. The increase in the allocation also requires an increase in the budgetary aggregates to $1,626,638,000,000 for budget authority and $1,590,801,000,000 for outlays.

The rule providing for consideration of H.R. 2330 strikes the emergency designation from the appropriation. Upon adoption of the rule, Sec. 314 of the Congressional Budget Act provides that these adjusted levels are automatically reduced by the amount that had been designated an emergency. Should the rule (H. Res. 183) not be adopted, these adjustments shall apply while the legislation is under consideration and shall take effect upon final enactment of the legislation. Questions may be directed to Dan Kowalski at 67270.

MICROBICIDES DEVELOPMENT ACT OF 2001

The SPEAKER pro tempore (Mr. LaHood). Under a previous order of the House, the gentleman from Maryland (Mrs. Morella) is recognized for 5 minutes.

Mrs. MORELLA. Mr. Speaker, I rise today to introduce the Microbicides Development Act of 2001. I am pleased that so many of my good friends and colleagues have signed on as original cosponsors of this legislation which I am dropping in this evening. My thanks go to them.

Mr. Speaker, this week the United Nations convened a special session of the U.N. General Assembly to address how to combat the spreading HIV and AIDS epidemic. We have entered the third decade in the battle against HIV and AIDS. June 5, 1981, marked the first reported case of AIDS by the Centers for Disease Control, and since that time 400,000 people have died in the United States, and globally 21.8 million people have died of AIDS.

Tragically, women now represent the fastest growing group of new HIV infections in the United States, and women of color are disproportionately at risk. In the developing world, women now account for more than half of the HIV infections, and there is growing evidence that the position of women in developing societies will be a critical factor in shaping the course of the AIDS pandemic.

So what can women do? Women need and deserve access to a prevention method that is within their personal control. Women are the only group of people at risk who are expected to protect themselves without any tools to do so. We must strengthen women’s immediate ability to protect themselves, including providing new women-controlled technologies; and one such technology does exist, called microbicides.

The Microbicides Development Act, which I am introducing, will encourage Federal investment for this critical research with the establishment of programs at the National Institutes of Health and the Centers for Disease Control and Prevention. Through the work of NIH, nonprofit research institutions, and the private sector, a number of microbicide products are poised for successful development. But this support is no longer enough for actually getting microbicides through the development pipeline and into the hands of millions who could benefit from them. Microbicides can only be brought to market if the Federal Government helps support critical safety and efficacy testing.

Health advocates around the world are convinced that microbicides could have a significant impact on HIV and AIDS and sexually transmitted diseases. Researchers have identified almost 60 microbicides—topical creams and gels that could be used to prevent the spread of HIV and other sexually transmitted diseases such as chlamydia and herpes. But interest in the private sector in microbicides research has been lackluster. However, it will be at least 2 years before any compound trials are completed.

Currently, the bulk of funds for microbicides research comes from NIH, nearly $25 million per year, and the Global Microbicide Project, which was established with a $35 million grant from the Bill and Melinda Gates Foundation. However, more money is needed to bring the microbicides to market. Health advocates have asked NIH to increase the current budget for research to $75 million per year.

Mr. Speaker, today the United States has the highest incidence of STDs in the industrialized world. Annually, it is estimated that 15.4 million Americans acquired a new sexually transmitted disease. STDs cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV.

This legislation has the potential to save billions of dollars in health care costs. Direct cost to the U.S. economy of sexually transmitted disease is approximately $8.4 billion. When the indirect costs, such as lost productivity, are included, that figure will rise to an estimated $20 billion. With sufficient investment, a microbicide could be available around the world within 5 years, and reduce the risk of contracting HIV for millions of women and girls.

I urge my colleagues to lend their support to this vital legislation.
Mr. GANSKE. Mr. Speaker, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Iowa.

Mr. GANSKE. Mr. Speaker, I just want to commend the gentlewoman from Bethesda, Maryland, for her long-time concern on issues related to women's health. I think this is a vitally important bill. It is something that this Congress should pass. It will affect millions and millions of women in a positive way. Sexually transmitted disease is a tremendous problem in this country. My hat is off to the gentlewoman, and I am happy to be a cosponsor of her bill.

Mrs. MORELLA. Mr. Speaker, I was just going to thank the gentleman from Iowa (Mr. GANSKE) for being a cosponsor and for his work in making sure that we have appropriate access to health care.

EDUCATION IN AMERICA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from New York (Mr. OWENS) is recognized for 60 minutes as the designee of the minority leader.

Mr. OWENS. Mr. Speaker, we are about to enter our July recess for the 4th of July holiday, and it must be noted that this Congress has completed two major legislative developments to date. One of those, of course, has been fully completed: the tax bill. That is fully completed, signed into law, and checks will begin to move soon.

Those checks will be going to the people at the very bottom of the rung as a result of legislation which was first proposed by the Progressive Caucus last fall. The Progressive Caucus that every American should get some benefit from this tax cut. That did not exactly happen, but every taxpayer is getting a small benefit as a result of the action taken early in the session by the Progressive Caucus. The idea got out there and kept moving until finally it was incorporated in another form in the tax bill. So people at the bottom are getting to see a small amount of money from the tax bill. That is real. It is completed.

The other piece of legislation that has almost been completed is the education bill, the leave-no-child-behind legislation of the President. The new President, of course, made this a high priority; and we have moved in both Houses, with both parties cooperating extensively, to pass the leave-no-child-behind legislation separately in the House and in the Senate. But there has been no conference, and the bill is now on hold.

I think it should be noted that there are rumors that the bill will be held deliberately until we have a chance to negotiate the major question of financing for the education bill. Education is on the legislative back burner right now; but in the hearts of the people who are policed out there, legislation is still a number one issue.

Education has to remain on the front burner. The fact it is being held here is a good development in that the critical question in the legislation that passed the House versus the legislation that passed the Senate is the amounts of money that are appropriated to carry out the features of the bill. The amounts of money are critical.

We do state in the legislation that passed the House that there will be an increase in an authorization for an increase in title I funds of double the amount that exist now in 5 years. In 5 years, in other words, we will have twice as much funding for title I as we have today. It will move from the present amount to about $17.2 billion in 5 years. Authorization is there. That does not guarantee that the appropriation, of course, will keep pace.

The Senate bill has even more money earmarked for increases, but they do not have a commitment from the White House that the appropriation is going to follow the authorization. The big question is will the authorizations be honored. We had a great deal of effort to get bipartisan agreements.

I reluctantly voted for the education legislation because of the fact it did two things: one, it got rid of the consideration of vouchers for private schools as a Federal policy. And I think to clear the board and have vouchers off the discussion table was good for Federal legislative policy. However, the critical question of will we have more resources was also addressed. And the fact that the bill does promise to double title I funds, which are those monies directly to the areas of greatest need, impressed me to the point where I voted for the bill, even though there were some other features, which I will discuss later, which I do not consider to be desirable.

The critical point is, are there more resources? The need to have resources to maintain what I call opportunity-to-learn standards is a critical point that I have been trying to make for all these years. Opportunity to learn is the most important factor if we really want to improve education and have more youngsters who are attending our public schools benefit from the process. What we are trying to do, however, is force a process of accountability, insist that schools measure progress by the tests that are taken by the students and the scores on the tests, and that that is the way we should measure accountability. A school system is held accountable for improved test scores.

On the other hand, the opportunity-to-learn standards are ignored completely. Opportunity to learn means that before the test is given we must guarantee that the student will have an adequate place to learn; classrooms that are not overcrowded, libraries that have books that are up to date, laboratories that have science equipment. The opportunity to learn means that we have the right equipment, the right facilities. It means that we have certified teachers in the classroom. It means that all the resources that are needed are there before we start the testing.

But the process that we have pushed here is a process which tries to ignore the opportunity to learn as a major factor.

So we need to hold the education legislation because that vital component is missing. Let us hold it until we can negotiate an increase in the resources, an increase in the amount of money we use to purchase resources, and those resources will provide the opportunity to learn. It may be that it will be end-game negotiations all of the way to the end of the session. The legislation has benefited greatly over the last few years through the end-game negotiation process, right down to the very last hours of the session. When the White House and the Congress came together and they had their priorities on the table, education had fared very well.

Mr. Speaker, I hope that by holding the legislation this time until we get to that end-game negotiation, we will get the kind of funding necessary to make the legislation that we have passed have some real significance. If we do not get some additional funding for the Leave No Child Behind funding, then it is a fraud. It has no substance if it is not going to provide additional resources.

There is a need to refresh ourselves and come back to an understanding of the fact that we have passed these two pieces of legislation in the House of Representatives and the Senate. There is no reason to rest on our laurels. We still have a basic problem of that bill that passed having great gaps in it, and those great gaps are not going to be closed in the end-game negotiation unless the people that we represent, our constituents, understand where we are and why there is a great need for more Federal involvement in the improvement of education.

I want to use as an example a series of articles that have appeared in the Daily News in New York City to talk about the New York City school system, and I want to use New York City as a negative model. It is not the way it should be, but it is the way that it is in most of our large cities. I would not bore my colleagues with a discussion of what is going on in New York City unless I did not think that it was applicable all over the country in other big cities, and it is also applicable in rural areas.
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Yesterday we voted on a bill to establish a commission to plan for the anniversary, 50th anniversary, of the Brown v. Board of Education. The law is necessary relates to the question of segregation in public schools and whether or not it was legal. The Supreme Court struck down the fact of segregation and clearly made it illegal. Our concern with segregation has begun to fade as far as segregation by race is concerned. The phenomenon we face now is a more subtle phenomenon. We have segregation in another way; not by race, but segregation of the people who have no power away from those who do have power. It turns out in many cases that the people who do not have power in the big cities are people who happen to be minorities also.

In the rural areas there are large numbers of schools scattered primarily throughout the country; these are poor people who are in the same position because they have poor schools as a result of having no power. Folks who have money, who have power, always guarantee that their children get the best schooling possible. People with money in larger and larger numbers are sending their children to private schools; and, of course, there are not enough private schools to accommodate 53 million children. Others who have power and are in control of their schools and of the budget-making processes of their counties or cities, or their school districts, they make certain that they have good schools. Where they have the power to do that, they have done it for their children.

We have a problem, however, because many of the people who have power, who have control about the decision-making with the budget are not involved to the point where their children or grandchildren are in the schools. The people who have the power, the people who have the most influence do not care about public schools enough to allow through on guaranteeing that you have the best schools possible.

We have a serious situation where we have schools that are stuck in a time bind. One of the greatest problems of our school is that in scattered primary of them are so old. When one looks at the physical age of the structures, one gets a good visible manifestation of the way in which education and schooling are viewed in that area as a whole. New York is in that kind of bind.

I am going to make it simple by reading from an excellent editorial that appeared in the Daily News which accompanied their series on the New York City school system. I think it was a magnificently written piece of work. It pegged the problem and was forthright in dealing with the exposure of rampant waste and corruption and inadequacies. At the same time every day this series sought out uplifting models that could be replicated, and it sought out models which contradicted the general notion that people who are in charge of the system do not want to be realistic. People who are in charge of the system do not want to be realistic. People who are in charge of the system do not have good schools. There were examples all over New York City which prove this not to be true.

But in the end the Daily News pointed the fact that the school system is in great trouble. In terms of service to the majority of the children attending the schools of New York City, we are falling at a faster and faster rate, and it is likely that school systems in Los Angeles, Philadelphia, a number of big cities, are falling in the same way, at the same rate, for the same reason, and that is why I want to bring to your attention what this Daily News series has pointed out, and how the implications read in the system.

Reading from their own editorial page, “This week in a Daily News special report entitled Save Our Schools, you have been reading about the meltdown of the New York City educational system. What was the school system producing at the beginning of the ‘90s? Now, Daily News is not a radical newspaper. They very seldom use extreme words like ‘meltdown.’ When they say ‘meltdown,’ you have to consider that they have been shocked, and this is truly a serious situation.

This laboratory of failure, this culture of catastrophe, puts 1.1 million school children at risk. It must end. That is why the Daily News has launched a campaign, no, a crusade, to rescue what was once a world-class system that created opportunities for millions.”

I think it is important to point out that the New York City school system was once considered a world-class system. It gave a lie to the notion that any big system, any bureaucratic system is automatically a wasteful system. It gave a lie to the notion that the New York City school system produced such a rock bottom number. It is appalling. Just 44 percent of teachers hired last year for city schools had credentials, down from 1999. Meanwhile, 16 percent of all teachers are uncertified, the most in a decade.

Ten percent of parents did not bother to pick up their kids’ report card. Fifteen percent do not know what grade their child is in, and the PTA at one school has only two members.

Oh, yes, they say in passing, “The buildings are falling down. Eighty-five percent of schools need major repairs.” I am going to repeat that paragraph because herein lies the story of denial of opportunities to learn.

How can the children of the New York City school system score well on the series of tests that are being proposed? The Leave No Child Behind legislation pushed through the House and now passed by both Houses has a testing regimen which starts in the third grade. From the third to the eighth grade, children will be tested. If you test children who are going to school under these conditions, I can tell you now without looking at the tests, most of them will fail.

Here are the conditions that the school, the children in the schools of New York will be facing as they take the tests. I am repeating this paragraph because herein lies the story of the denial of opportunity to learn by the children in the schools of New York.

“Consider more numbers: Just 44 percent of teachers hired last year for city schools had State credentials, down from 59 percent in 1999.”

If you talk about meltdown, you are in a terrible situation at 44 percent hired last year, or only 44 percent have State credentials, are certified. The fact that that is increasing at a rapid rate lets you know that you are in a much worse situation than just the
fact that only 44 percent hired were certified. That is down from 59 percent the year before. That, I am sure that we had

Meanwhile, 16 percent of all teachers are uncertified, the most in a decade. As for parents, 10 percent didn’t bother to pick up their kids’ report cards. And 65 percent of schools need major repairs.”

What they do not tell you is that of this 85 percent, quite a number of these schools are 100 years old and should have been replaced a long time ago.

There are honeycomb success stories among the failures. They give examples of public schools that are doing a great job.

Continuing to read from the Daily News editorial statement of June 22:

“Unfortunately, such efforts are but seeds of real reform. To truly transform education, activist moms and dads must work with better trained teachers and with principals who don’t double as building managers. Schools must no longer be fettered by the United Federation of Teachers’ crippling work rules and its lifetime protection program for inept instructors. Finally, the Board of Education must be abolished so that accountability—and mayoral control—can reclaim the system.

Those 1.1 million kids deserve a genuine chance to become beacons for the city's future, a chance they will have only if New Yorkers unite to save our schools.”

I disagree with the remedies. The New York Daily News set of articles clearly related the problem and is to be applauded for that. It leaps to conclusions that have no basis in fact or experience as to remedies. To abolish the board of education is to throw away any opportunity for this generation of New York children to get an education. It would take more than a generation to rebuild anything that is half as good as what you have already. The board of education obviously has serious problems at present, but most of these problems are problems which are directly related to a lack of resources, the denial of the resources.

We have just gone through a situation where a clear statement was made by a judge after months of considering a case that was brought against the State of New York in terms of its allocation of resources to the City of New York. That case sums up the need for opportunity to learn in a way which is far simpler than I could state it elsewhere. But it is important that we understand that nothing would be more beneficial to the well being and progress of the Nation than the provision of the opportunity to learn that I am talking about.

Opportunity to learn for all would mean that we understand that brainpower is the greatest asset of the Nation and the world. Education for all, including the least among us, is a vital investment in the future of the Nation. Economic power, technology power, the power of cultural influence and even military power is directly dependent on our reserve of brainpower.

About 2 years ago, we launched the last super high-tech aircraft carrier that we launched and the Navy admitted at that time that it was about 300 crew members short because they did not have the necessary trained personnel. There was a lack of brainpower. There was a lack of young crewmen who had the aptitude to be trained to run the high-tech equipment on the aircraft carrier.

I am saying again that New York City schools are examples of what is happening all over the country. They are frozen in time in terms of providing a basic education. Not even do as well as they were doing 50 years ago. But here is the challenge that faces us in terms of going into the future, where the challenges are much greater and the education system needs to be equipped to do a far better job. Brainpower is the key to where this Nation is going. Unless we have a system that can educate all of the young people and guarantee that there are pools of trained personnel to draw from, then our entire society is in serious trouble.

We do not just have a shortage of scientists, we do not just have a shortage of trained computer personnel, information technology personnel, we have shortages right across the board.

Half of the graduate students in our big universities are foreigners. More than half of the graduate students studying science at the highest levels are foreigners. Whether you focus on basic science or physical or engineering, or all of the technical and scientific pursuits, more than half are foreigners, which means you have a problem in terms of theoretical and scientific know-how. When you come down to the next level of technicians, there is a great shortage. If you look at any area, whether you are talking about auto mechanics or sheet metal workers, even carpenters, there is a tremendous shortage of people who can do the ordinary jobs in our society because those jobs have become more and more complex. They need more and more skills.

I visited a sheet metal training facility in Queens more than a year ago, and I was surprised at the use of computers. They are now using the intensive use of computers in the training of sheet metal workers. Obviously, sheet metal workers use computers a great deal. There is almost no area where the skills required, the knowledge required is not far greater now than it was 25, 50 years ago.

That is the other problem. The first problem is to have a basically sound school system that is functioning at minimum level. The bigger problem is to have a school system which is able to do business in the 21st century. New York falls on the first rung and cannot continue to exist as a school system unless it moves rapidly to the second rung, because that is where the soul of the city lies, in the production of brainpower. To double this brainpower crisis in the information technology industry, for example, corporations are using foreigners more and more. But we cannot use foreigners to run our aircraft carriers. We cannot use foreigners to run the armed services. We cannot use foreigners to vote intelligently for our elected leadership.

The survival of our constitutional civilization is directly dependent on the pools of brainpower we develop and maintain inside the United States. Our complex society is doomed without adequate checks and balances. This goes far beyond the executive, judicial, and legislative units of government.

The press and media, the nonprofit organizations, the politicians, all of these are also vital parts of the system of checks and balances. Without constantly increasing brainpower reserves and replacements, these institutions will diminish and lose their potency in the collective decision-making process.

In other words, I pointed out the crisis in science. It is not only in the area of science but in the area of writers, in the area of social workers. Wherever you examine the need for trained people, there is a shortage; and the shortage is increasing. The police are having difficulty recruiting qualified candidates. The fire department is having difficulty recruiting qualified candidates. A more complex world demands people who are slightly better trained than we can find them in the pools of manpower and brainpower that we have now.

We presently have a growing shortage of teachers and educated supervisors and administrators. That is the most critical shortage. This will greatly hamper any meaningful education reform. But similar shortages, as I said before, are appearing among numerous other categories of professionals.

Right now there is a great negotiation taking place in New York City in respect to teachers’ salaries. It is seen as a collective-bargaining problem, and really it is far beyond a collective-bargaining problem. The salaries of New York City teachers is a major public policy issue. The kingpin of the school system is the leadership, the quality of the teachers and the principals, the assistant principals and the other personnel. If we do not get higher salaries for the people who are running that school system, we cannot consider that we are competing with salaries in all the surrounding suburbs and cities and towns who draw off the best personnel from New York City, then the rapidly,
the speed with which we are losing the best teachers and administrators, will greatly and it will be very impossible to change the system. When you talk about meltdown, nothing will speed the meltdown of the system faster than the failure of the present negotiations to greatly increase the salaries of the teachers and the education personnel in New York City in order to allow it to keep pace with the personnel salaries in the surrounding areas.

We have pinpointed that one of the most important opportunity-to-learn standards, opportunity-to-learn factors, is the provision of qualified and trained teachers. That is number one. Without the leadership, without qualified trained teachers, without principals and administrators, the system does not go anywhere. No study and experimentation will be necessary to understand what maximum opportunity to learn means. To provide an adequate and properly trained and secondary education, we already know what works. There is no need for a great deal of discussion and controversy. There is a need for more resources. We need the money to pay the teachers decent salaries, we need to raise the standards, raise the morale, stop the brain drain and improve in all the other opportunity-to-learn areas, like the physical facilities, the equipment, the books, et cetera.

Before we begin to search for the most suitable pedagogical approaches, we must first put in place this set of opportunity-to-learn standards. The physical environment of the class, the building, the library, the cafeteria, laboratories, etc., of these must be safe and conducive to learning. The first negative by-product of overcrowded classrooms and hallways is usually an exacerbated discipline problem. Constantly we hear complaints about discipline problems. There is no silver bullet, no solution for discipline problems; but one thing is certain, if you have overcrowded classrooms and overcrowded schools, the hallways, the cafeteria, the auditorium, then certainly you are going to have greater discipline problems. And, of course, you cannot honestly lower the pupil-teacher ratio unless you have more classrooms.

Right now we have a situation in New York City where we cannot honestly make use of the funds that were appropriated by the efforts of the last administration. We did get some movement in terms of funds to lower the pupil-teacher ratio in each class. But at the right direction, many teachers were employed; but the honest truth is that in New York City, instead of them having a lower pupil-to-teacher ratio in the classroom, they put another teacher in a crowded classroom because there were no classrooms.

If you do not build additional classrooms, then you cannot have a lower pupil-teacher ratio in the classroom. They added a teacher to a crowded classroom which is not what the legislation called for in the first place. We have done some creative maneuvers to get the money and use the money; but actually the benefit sought, a classroom where you had fewer pupils per teacher in order to be able to maintain greater order and give more attention to the students at a younger age, that did not happen and it is not happening in many cases.

This is a self-evident requirement, that you have trained teachers and you have trained supporting personnel. We refuse to take our children to untrained, uncertified dentists or pediatricians, so why not pay and seek the best teachers? Why should any child be subjected to the efforts of an untrained teacher? We do not normally expect successful outcomes when unqualified staff are in charge. It is an unfortunate factor in big-city school systems that the substitute teacher, to whom the untrained teacher, who could not pass the test, who is not regularly on the rolls, who is not paid fully and who does not get full benefits, that substitute teacher becomes the teacher that children see the most often in their lifetimes. In other words, in the poorest neighborhoods where other teachers do not want to teach, it is the substitute teacher, the unqualified teacher, that is usually brought in to fill the classrooms.

In one of my sections of my district, District 23, at one point they had more than half of the teachers who were not certified, who were substitutes, teaching in an area where the reading scores were very low and they needed the very best teachers.

What I am attempting to explain is summarized with shocking simplicity at the end of the court order just handed down by the New York State Supreme Court Judge DeGrasse in New York State. The New York State civil judge heard the case that was brought which challenged the fact that the State of New York had been short-changing the City of New York in terms of education funds. The court case went on for almost a year, testimony was heard, and the judge finally made a decision.

I will read just a few excerpts from that decision. Quote, and this is Judge Leland DeGrasse, New York State Supreme Court, this court has held that a sound basic education, mandated by the education article, that is the education article of the constitution, consists of the foundational skills that students need to become productive citizens capable of civic engagement and sustaining competitive employment.

In order to ensure that public schools offer a sound basic education, the State must take steps to ensure at least the following resources which, as described in the body of this opinion, are, for the New York City public school students.

Number one, sufficient numbers of qualified teachers, principals and other personnel; two, appropriate class sizes; three, adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum; four, sufficient and up-to-date books, supplies, libraries, educational technology and laboratories; five, suitable curricula including an expanded platform of programs to help at-risk students by giving them more time on task; six, adequate resources for students with extraordinary needs; and seven, a safe, orderly environment.

Now, these items laid out by Judge Leland DeGrasse, in the opinion of the New York State Supreme Court against the State of New York, accusing the State of not supplying these items, there is an exact parallel to the opportunity-to-learn standards which I have been discussing. These are statements in another way of what opportunity to learn means. You are not provided sufficient teachers, qualified teachers and principals. You do not have appropriate class sizes. You do not have adequate school buildings. You do not have sufficient supply of up-to-date books, libraries, educational technology and laboratories, and as a result, your curriculum is not suitable. You do not have a safe, orderly environment. All of these are stated in the court decision.

I might add that the judge gave the State of New York until the first of June, I think, to come forward with some kind of plan to respond to his decision. That has not happened.

I might also add that the Governor of New York appealed the decision of the court, and the Governor in essence stated what the lawyers had been arguing for the Governor all along, and that is that in New York City the children are too poor to learn. The poverty is the reason they cannot learn.

There is a condemnation out of which there can be no solution; that is to say, children cannot learn because they are too poor, and, therefore, we should not put resources in to try to teach children who are too poor to learn dooms the children forever. It is like condemning slaves for being illiterate, nonfunctional when they came out of slavery after having a series of laws in every confederate State which made it a crime to teach a slave to read. It is a crime to teach you to read. At the same time, of course, there was a big contradiction there because slaves were considered inferior, not quite human, and, therefore, why did they have to worry about teaching them to read? Evidently they were human enough, smart enough to learn how to
read, so much so that laws were made. In every Confederate State there was a law that said it is a crime to teach a slave to read.

Now we have a situation where a Governor of one of the most advanced States of the Union, the great Empire State of New York, is arguing that the problem of education in New York City is that the children are too poor to learn, and, therefore, do not expect the State to solve the problem by providing more resources because they are too poor to learn; more resources will not help the situation. It is a State where we spend $25,000 per year for an inmate to be kept in prison. In New York City we spend only $7,000 per year to educate each student. You can see the direction of the reasoning of the Governor. If you cannot educate them, and only the fact that the children are going to cost far more later on, but I suppose there are some profits to be made in the prisons that we do not know about.

Anyway, I can think of no more confused, or illogical, reasoning than that for a Governor of a State to say we cannot solve the problem because the children are too poor to learn.

In the course of reforming the school finance system, a threshold task that must be performed by the State to the extent possible, the actual costs of providing a sound basic education in districts around the State has to be decided, but certainly you are going to have to ensure that every school district has resources necessary to provide opportunity for a sound, basic education. Taking into account variations in local costs and all the other things, the State should be in a position to provide what is necessary.

The New York Daily News article does not pinpoint the Governor's position, the fact that the Governor is now spending State funds to appeal the decision of the court, which called upon the Governor to provide more funding for New York City. The New York Daily News article does not finger that as one of the great reasons why we have the problem.

We have a meltdown in New York City schools. A meltdown is taking place right now, and the meltdown is primarily due to the fact that children are too poor to learn. If that was the case, then New York City would not have produced some of the greatest scholars in our Nation.

The City College, the city universities, would not have turned out so many Ph.Ds. They are spread all over the world. Poor youngsters who came to New York City took Scholastic Aptitude Tests, a standardized exam for admission to most colleges. Seventy-three percent of this year's high school seniors, that is about 4,100 students, failed the math Regents test. More than 13,000 students from the class of 2000 dropped out between the 9th and the 12th grades. That is 13 percent of the class. Between 1996 and 1999, 30 percent of New York City students took Scholastic Aptitude Tests, a standardized exam for admission to most colleges. Seventy-three percent passed statewide and scored 40 to 50 points higher than the New York City students.

Sixty percent of elementary and secondary middle school students cannot read at grade level. That is quite an indictment. Seventy percent are not proficient in math. Thirteen percent of this year’s high school seniors, that is about 4,100 students, failed the math Regents test. More than 13,000 students from the class of 2000 dropped out between the 9th and the 12th grades. That is 13 percent of the class. Between 1996 and 1999, 30 percent of New York City students took Scholastic Aptitude Tests, a standardized exam for admission to most colleges. Seventy-three percent passed statewide and scored 40 to 50 points higher than the New York City students.

Sixty percent of elementary schools and 67 percent of high schools are overcrowded. Sixty percent of elementary schools and 67 percent of high schools are overcrowded. The board of education’s master plan for the year 2003 concedes that 85 percent of the schools need major repairs. Deterioration is occurring at a rate faster than we can.
save the systems, the board documents revealed.
            I think that that physical deterioration is the best visible manifestation of what is happening in general. When you talk about meltdown, look at the physical deterioration. I quote: Deterioration in the actual school buildings is occurring at a rate faster than we can save systems, the board documents reveal.
            In recent years about half of public school students have completed high school in 4 years; 9 percent have graduated later, by the age of 21, and the rest have been lost completely. Is this an example, a model for where we dare go in terms of education in America?
            I am using the New York City school system because it is an example of where our big cities are. Now, there was a lot of hype in the past, and Chicago was being used as some kind of magic model for the improvement of big-city school systems. Now, I understand the tests have shown that Chicago is again in serious trouble, that there has been a lot of hype and a lot of public relations, but underneath the improvements have been minimal, and the improvements have been minimal because, again, the opportunity-to-learn standards have not been addressed sufficiently.
            They have not provided the kinds of quality facilities, trained teachers, adequate supplies and equipment, laboratories for science, library books and libraries. It is so simple, the opportunity-to-learn standards have not been addressed sufficiently.
            Some have not provided the kinds of quality facilities, trained teachers, adequate supplies and equipment, laboratories for science, library books and libraries. It is so simple, the opportunity-to-learn standards have not been addressed sufficiently.
            Yes, we have two new pieces of legislation, one in the Senate, one in the House, which are professing to be the last word on education reform. A lot of people are already applauding the legislation because it is finanzied, and before the President signs it. It is not the final word, I hope. If that is the final word, we are in serious trouble.
            The final word has to be dictated by the insistence of the American people out there, who have made education the number one priority for the last 5 or 6 years. When you ask the question, what, so to speak, Federal dollars be used for, where is the most Federal assistance needed, education continues to score right up there with other concerns like crime and Medicare and Medicaid. Usually education is ahead of them all.
            So the public is way ahead of the leadership. We must run to catch up with the leadership. What is happening right now gives us an opportunity to do that. As long as the bill is being held, as long as we do not go to conference, as long as we do not have a final signature by the President, then there is room for negotiation, as long as we are dealing with the appropriation process and it is understood that the glaring inadequacy of the present education legislation is in the area of resources, there is not enough money being guaranteed.
            Oh, yes, the money is authorized. There is a reasonable amount authorized. If you are going to double the title I funding from the present levels, and I will bet that in 5 years, that is a great increase. That is an increase worth voting for. But at the same time the authorizing legislation says we can do that, the appropriation and budget process says there is no money.
            I started by saying we have had two great legislative developments up to now in this session of Congress. One was the passage of the tax legislation, and the other was the passage of education legislation by both Houses, although the education legislation is not complete.
            They do relate to each other. The passage of the tax legislation has put us in a situation where, despite the fact we have authorized more money for education, and the other body, the Senate bill authorizes even more than the House bill, we cannot actually get the money and the resources unless there is a change in the appropriation process.
            Somewhere between now and the end of this session, more money has to be found in that budget; some new device has to be developed to increase the revenue; some changes have to be made, decreases in expenditures and other areas that are less important. Somehow we have to continue to press forward and make the case that brain power is the number one need for this Nation at this time. Brain power and the pools of people produced to qualify for, and run the major institutions of the country, and the country in the world, is the future. Nothing else is going to move forward unless we have the appropriate brain power. Therefore, brain power should be number one.
            If budget cuts have to be made somewhere else, we should make those budget cuts, or if we have to find some new source of revenue dedicated to education, then that has to be the case. We must save our schools, not only in New York City, from a growing meltdown; but we must understand that, the same process, the meltdown process, is occurring elsewhere, and only Federal funds can be utilized to stop it.

HMO REFORM

The SPEAKER pro tempore (Mr. LAHOOD). Under the Speaker's announced policy of January 3, 2001, the gentleman from Iowa (Mr. GANSKE) is recognized for 60 minutes as the designee of the majority leader.
            Mr. GANSKE. Mr. Speaker, I especially want to thank you for the time that you are spending in the Chair tonight, as you have many evenings with your spare time. The Members of this House of Representatives who come to the floor to give Special Orders are especially appreciated. I appreciate that. For the last few years, other Members have volunteered their time to sit in the Chair so that we could do our Special Orders.
            This is the beginning of our July 4th recess, and I will try to be somewhat briefer than the hour time that I am allotted for this.
            Well, we have had. Mr. Speaker, a great debate going on in the Senate this week on the Patients' Bill of Rights; and I have been watching this with great interest, because for the past 5 years I have been working on this issue, and I have been coming to the floor frequently, just about every week, in order to give a Special Order talk on the status of legislation to help protect patients from abuses by HMOs.
            I am looking forward to the day when we pass a strong Patients' Bill of Rights piece of legislation on this floor that will along with will be a strong Patients' Bill of Rights coming out of the Senate, that we marry those two bills together, that we add some important access provisions, such as an expansion of medical savings accounts, tax deductibility for the self-employed, and we move that down to the President's desk.
            I strongly encourage the President to sign that, because there have been some significant compromises over the last few years on this legislation that I believe meet the President's principles, and yet retains principles that he enunciated during the Presidential campaign, such as allowing for important State laws on patient protection to continue to function, laws like those in Texas, which appear to be working pretty well.
            Mr. Speaker, why are we continuing to talk about this? Well, we have had a large number of jokes and cartoons about HMOs. You do not see it so much anymore because, you know what? Everybody knows that this is a problem. In order for something to be humorous, there needs to be some element of surprise. But it is not surprising anymore

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that people have problems. You talk to your friends, family members, colleagues, and practically everyone can come up with that story about how an HMO has inappropriately denied treatment to a patient.

Remember the problem that we had a few years ago when one of the HMOs said, well, you know what? We do not think you need to stay in the hospital if you deliver a baby. Our plan guidelines say outpatient deliveries.

So you had this type of cartoon. The maternity hospital, drive-through window: “Now only 6-minute stays for new moms.” The person at the window saying, “Congratulations. Would you like fries with that?” as the mom holds a crying baby, and she looks more than a little frazzled.

Well, it was not so funny when you start to read the copy. What is the copy? The next line says, “What his parents didn’t know about HMOs may have killed this baby.” Or this headline from the New York Post that appeared a couple of years ago: “Condylar care HMO. How can I help you?” This is an operator at the end of one of those 1-800 numbers. She is repeating what she is hearing on the telephone, and she says, “Oh, you are at the emergency room and your husband needs approval for treatment.”

Then she repeats what the person is saying. “He is gasping, straining, eyes rolled back in his head. That doesn’t sound all that serious to me.”

Over on there it says, “Clutching his throat. Um-hum.”

Then she says, “Well, do you have an inhaler?”

Then she says, “He is dead?”

And then she says, “Well, then he certainly doesn’t need emergency treatment, does he?”

And finally the HMO reviewer says, “Gee, people are always trying to rip us off.”

Well, that was not too funny to this young lady. She fell off a 40-foot cliff about 60 miles west of Washington D.C. She broke her pelvis, her arm and had a concussion; nearly was dead. Fortunately, her boyfriend had a cellular phone. He phoned in the helicopter. They loaded her up, got her to the hospital, she was admitted through the emergency room, in the ICU on intravenous narcotics, and she got better.

But then do you know what the HMO did? They would not pay her bill. They said that she had not phoned ahead for prior authorization.

Does that strike you as a little funny? How was she supposed to know she was going to fall off a cliff and break her leg and have a concussion? Was she supposed to be able to read the tea leaves?

Oh, and this was an issue. This was one of the first issues we talked about on HMOs. Back in 1995 I had a bill called the Patient Right to Know Act, because it became known that HMOs were requiring doctors to phone them in order to get permission to tell the patient about any of their medical treatments that might be possible. So you would have a situation, for instance, where a woman comes in to see a doctor; she has a lump in her breast. Before the doctor tells her her three options, he says, “Oh, excuse me,” goes out in the hallway, gets on the phone and says, “HMO, can I tell this lady all about her treatment options?”

So here we have a doctor saying, “Your best option is cremation; $359, fully covered.” And the patient is saying, “This is one of those HMO gag rules, right?”

That HMO gag rule was not so funny to this woman. Her HMO tried to gag the doctors treating her. She needed treatment for breast cancer. She did not get it, and she died. And, do you know what? Under the current Federal law, if you receive your insurance from your employer and the HMO makes a decision like that, under Federal law, current Federal law, they are liable for nothing except the cost of care denied. And if the patient is dead, then they are not responsible for anything. Now this little girl and boy and the woman’s husband, they do not have their mom, because of what that HMO did.

Here is another cartoon. The doctor is taking care of a patient on the operating table. The doctor says “scalpel.” The HMO bean counter says “pocket knife.” The doctor says “suture.” The HMO bean counter says “band-aid.” The doctor says “scalpel.” The HMO bean counter says “call a cab.”

Let me tell you about a real case that was sort of a call-a-cab response. Down in Texas, after they passed the patient protection bill down in Texas, there was a fellow named Mr. Palosika. He was suicidal. He was in the hospital. His doctor thought he needed to stay in the hospital because, if he left, he might commit suicide. But the HMO said, no, we do not think he needs to stay in the hospital; we are not going to pay for it. If he wants to stay, fine. The family can pay for it themselves.

Well, when an HMO says that to most families, they do not have the money to pay for it. If they do it themselves, so they just took him home.

☐ 1945

That night, Mr. Paloska drank half a gallon of antifreeze and committed suicide.

Now, under Federal law, that HMO was supposed to, if they disagreed with the treating doctor’s advice, they were supposed to go to an expedited, independent review panel, but they did not do that, they just ignored the law. And remember that they said that they were dealing with patient protection legislation that we have a strong enforcement mechanism; not to create new lawsuits, but to prevent those lawsuits by making sure that the HMOs know that they will be responsible at the end of the day so they do not make decisions or so that they do follow the rules, or, I should say, in order to ensure that they do follow the rules.

Here is another one of those cartoons. This is the HMO claims department. The claims reviewer is saying, “No, we don’t authorize that specialist; no, we don’t cover that operation; no, we don’t pay for that medication,” and then apparently somebody says something to the operator, and she says, “No, we don’t consider this assisted suicide.”

Mr. Speaker, I hope I do not have to talk about this case much longer. I hope we really do pass a strong Patients’ Bill of Rights-Dingell, bill on this floor. This is a little boy that I know. He is now about 8 years old, but when he was 6 months old, he had a fever of about 104, and he was sick one night, and his mom phoned the HMO, a 1–800 number, probably thousands of miles away, and said, “My baby is sick. We need to get to the emergency room.” And the medical reviewer said, well, under our contract, I will only authorize you to take little James to this one emergency room. That is all we have a contract with. Mom and Dad lived way on the outside of Atlanta, Georgia. Mom said, well, where is it? This voice over the phone said, I don’t know, find a map. Made a medical decision, medical judgment, the reviewer didn’t think he was healthy enough to withstand a very long drive through Atlanta and bypass three hospitals with emergency rooms.

So Mom and Dad wrap him up. It is the middle of the night. They start their trek, they pass those emergency rooms where they could have stopped if they had authorization, but they were not health care professionals, they did not know how sick little James was, but he then suffered a cardiac arrest. Fortunately, they were able to keep him going until they pulled into the emergency room. Mom leaped out of the car screaming, save my baby, save my baby. A nurse ran out. She started an IV, they started mouth-to-mouth resuscitation, they gave him medicines, they saved his life, but they did not save all of this little boy. Because of that cardiac arrest, he ended up with gangrene in both hands and both feet, and, consequently, both hands and both feet had to be amputated.

Under current Federal law, an employer health plan that makes that kind of medical judgment that results in that kind of injury to this patient is
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liable for nothing except the cost of his amputations.

I will tell my colleagues something. Once in a while I read an article, an editorial in a newspaper, and I hear opponents to our legislation saying, oh, those are just anecdotes. Those are just anecdotes. That girl that fell off the cliff, that was just an anecdote. The young mom who died because she didn’t get the care from the HMO, that is just an anecdote. A little boy who loses both hands and one foot, that is just an anecdote.

Mr. Speaker, do you know what I say to those people? I say, you know what? If this little anecdote had a finger, and if you pricked it, it would bleed. I say, this anecdote has to pull his leg prostheses with his arm stumps every day. This anecdote needs help putting on both bilateral prostheses. This anecdote will never be able to touch the face of the woman that he loves with his hand. He will never be able to play basketball. Now, he is a pretty well-adjusted kid, considering everything. He is a pretty good kid. But I tell my colleagues, I want those people who write those op-ed pieces to meet this little anecdote and look him in the eye and tell him that we do not need a Patients’ Bill of Rights.

I will tell my colleagues this: There are not just a few anecdotes around the country. I get phone calls and letters from people all over the country. Just recently in Des Moines, Iowa, a woman came up to me and she said, I tell you what. I am fed up with our HMO. I have breast cancer. I have been battling this for a while. The treatments have made me worn out. But my doctor told me that I needed a test to see if the cancer had come back, and the HMO would not authorize it. Other doctors said the same thing, that I needed the test. It has not been made clear that that is not medically necessary. And under Federal law, they can define it any way they want.

That is why they had a big debate on this yesterday in the Senate, and they have managed to preserve language that says, if there is a dispute, an independent panel will make that decision and not be bound by the plan’s arbitrary guidelines. That means, if there is a denial of care, you get an honest-to-God chance that you will get the treatment you need.

I commend the Senators who voted to preserve that very, very important element of letting an independent panel determine medical necessity and not be bound by a plan’s guidelines. That does not mean that our law says, our bill says that employers cannot set up their own benefits package. We are very clear on that. We do not change that for ERISA at all. If an employer wants to purchase a plan where the plan says explicitly in the contract language, we do not provide heart-lung transplants, that is fine. It is not what I would recommend, but they can do that, and we do not change that. If a patient came along and needed that, then they would have to come up with that financing themselves because it has been made explicitly clear. But if it has not been made clear that that is something that is needed, then they cannot be bound by that.

We say in our bill, the Ganske-Dingell bill, that an employer is protected from liability. Under our bill, the Ganske-Dingell, the Bipartisan Patient Protection Act of 2001, we say that businesses are protected from liability. We have a standard in our bill that says, businesses will not be liable unless they enter into direct participation in the health plan’s decision. That is, if the HMO says no, but the patient’s doctors say yes, that there is a mechanism for resolving that dispute before anyone is injured, if necessary.

In that circumstance, in the Ganske-Dingell bill, you know what? We give the employee punitive damages relief to the health plan. We say, if this dispute goes to an independent panel, and a health plan follows the decision, then they cannot be held liable at all for punitive damages. That has been one of the major concerns, large punitive damage awards by the business community.

Some people attack our bill by saying, oh, it is going to increase the costs for health insurance premiums. We have the Congressional Budget Office has looked at our bill, the McCain-Edwards bill is the companion bill that is being debated in the Senate, they have looked at our bill and they say that the total cost would be 4 percent increase in premiums over 5 years, so less than 1 percent per year. The alternative, Frist-Breaux bill, the GOP bill in the Senate, would increase premiums by about 3 percent over the same period of time. There is no choice on care where the HMO says no, but the patient’s doctors say yes, that is a mechanism for resolving that dispute before anyone is injured, if necessary. I commend the Senators who voted to preserve that very, very important element of letting an independent panel decide whether treatment is necessary, going to an independent panel where the decision would be binding on the health plan.

Now, just this week there has been a big roll-out of an opposition bill to the Ganske-Dingell bill. It is called the Fletcher bill, the Fletcher-Thomas bill.
It is called the Fletcher bill, the Fletcher-Thomas bill. As a doctor, I know that you do not do a complete physical examination of the body under the clothing. So there were a lot of good words said by the opponents to our bill about the Fletcher bill, but I have looked at the body of that Fletcher bill.

I would tell my colleagues something, it is not pretty, except to the HMOs. When the Fletcher bill is stripped of its spin, the bones, and the sinews look like the old HMO protection bills that the opponents to real patient protection have tried to confuse the public with for several years.

For example, in the Fletcher bill, there are significant constraints on the independence of the medical reviewer. The standards of review would actually codify negligence with health plans practices. It would make them unreviewable.

The Fletcher bill’s designated decisionmaker language could be gamed by the HMO. They are working on designated decisionmaker language on the Senate side right now, Senator Snowe is working on that, and there is a way to write that language that is fine, it adds language that is protective for employers, but at the same time prevents that language from being used to deny patients the care they need.

Mr. Speaker, my friend, the gentleman from Georgia, goes on in his press release and says the Fletcher bill further proposes that all suits over improperly denied care be removed to Federal court, with the exception of cases in which HMOs violate Federal law by refusing to comply with legally binding decisions of medical review panels.

If the injury or death of a patient occurred prior to the ruling or through the delay imposed by the ruling, the patient loses their legal rights under the Fletcher bill, even their current limited right to sue under State law gained through the recent fifth court decision, upholding a portion of the liability provisions in the Texas patient protection.

The gentleman from Georgia continues in his press release, the new bill would accordingly preempt, preempt patient laws in Texas, Georgia, Arizona, California, Louisiana, Maine, Missouri, New Mexico, Oklahoma, Oregon, Washington, and West Virginia. Let me repeat that. My friend, the gentleman from Georgia, says the Fletcher bill would preempt patient protection laws in Texas, Georgia, Arizona, California, Louisiana, Maine, Missouri, New Mexico, Oklahoma, Oregon, Washington, and West Virginia.

Let us talk a little bit about the comparison of the Fletcher bill to the Ganske-Dingell-Norwood bill. Fletcher claims the plans face unlimited punitive damages in State court and $5 million punitive damages in Federal court, regardless of compliance with review process under the Ganske-Dingell bill.

Here is the fact. Under my bill, State level punitive damages awards are prohibited entirely if the plan follows the external appeals process. In addition, 33 States currently cap punitive and noneconomic damages. The law that could be the effect would be the law in those States.

Punitive damages are banned entirely in Federal court cases while $5 million in civil penalties are available in Federal court if the plan is proven by clear and convincing evidence to have acted in bad faith with flagrant disregard for the rights of the patients. That is what is in the Ganske-Dingell-Norwood bill.

Mr. Speaker, the opponents to our bill, the gentleman from Kentucky (Mr. FLETCHER) here, claims that our bill allows lawsuits, not only under ERISA, but also COBRA or HIPAA while the original Norwood-Dingell bill we debated a few years ago allowed ERISA cases only.

It is the fact. The Ganske bill removes contractual disputes to Federal court. Why do we do that? Number one, the Supreme Court has already said that is what should be done. We do it to preserve the ability of the Employee Retirement Income Security Acts uniform contract benefits. Our inclusion does not produce any additional causes of action under Ganske-Dingell. It does protect the ability of plans and employers to offer uniform health benefit plans Nationwide.

Let me repeat that. Our bill is not a bill that would prevent an employer who works in many States from devising his own uniform benefits health plans. That is the fact. He claims that the Ganske-Dingell-Norwood bill would allow patients to sue in both Federal and State courts for the same injury; that is not correct. Our bill, the Ganske-Dingell bill, assigns contract disputes to Federal court, medical disputes to State court, patients must specify the grounds of the dispute when they file. Under standard court procedure, suits cannot be filed in both courts over the same grounds.

Number two, the gentleman from Georgia (Mr. NORWOOD) said. The Fletcher bill appears designed for one goal, the confusion of the public and of Republican Members who want to vote for real patient protections.

There is what the gentleman from Georgia (Mr. NORWOOD) goes on and says any Member who supports this package, i.e., the Fletcher bill, does so for the exclusive benefit of the HMO lobby, quote, unquote.

Let me give you five quick comparisons between the Ganske-Dingell bill and the Fletcher bill. Number one, the Ganske-Dingell bill enables every American to choose their own doctor. The Fletcher bill does not give Americans the right to choose the doctor and puts the requirement that employees get an option to choose their own doctor on the employer.

Number two, the Ganske-Dingell bill ensures a fair review process. The Fletcher bill allows health plans to choose the reviewer at external review. Number three, the Fletcher bill forces the patient to get approval from an external reviewer before they can seek damages for injury in court. The Ganske-Dingell bill says that a reviewer’s decision must be considered as evidence, but does not create an absolute bar from damages.

Number four, the Fletcher bill will preempt 12 State laws that have been passed that allows HMOs to be held liable in State courts. The Ganske-Dingell bill protects those State laws, and
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that is exactly one of the principles that President Bush said was essential on HMO reform during the campaign.

Number one, the Ganske-Dingell bill allows cases regarding medical decisions to be heard in State courts. The Fletcher bill allows patients to go to State court when a plan does not follow external review and erroneously causes a medical decision. We call that breaking the law.

Further, the Fletcher bill allows the patient to forum shop, the Fletcher bill allows the patient to forum shop between Federal and State court, not the Ganske-Dingell bill.

These are some of the important differences that we are talking about between the Ganske-Dingell bill and the Fletcher bill.

That is why over 500 health groups, consumer groups, professional groups have endorsed the Ganske-Dingell bill and very few have said much about the Fletcher bill, other than that in some cases, in some parts of the language, maybe it is okay. But if you look at the difference between the real patient protection bill is the Ganske-Dingell bill.

Mr. Speaker, I believe, we will see this in large part passed with the McCain-Edward-Kennedy bill, which is the companion bill to our bill. I think in large part, it will pass in the Senate. I think with a pretty big vote.

Mr. Speaker, I applaud the hard work of the Senators who have worked on that and have shown a real concern for patient protections. I believe that will give us a big boost as we move into debate here on the House floor.

I am appreciative of the work that Senators like Mike DeWine and Olympia Snowe, Lincoln Chafee, and others, who have put into this bipartisan bill this debate. It has moved forward. Those changes, as far as I have seen so far, look very acceptable to the gentleman from Georgia (Mr. Norwood) and myself and the gentleman from Michigan (Mr. Dingell).

In the Senate, it would have been nice if they had added the expansion of medical savings accounts and the 100 percent deductibility for the self-insured. That is in our House bill, but under the rules in the Constitution, those types of provisions have to originate in the House so they did not debate those or pass those; but I believe they have wide bipartisan support.

Mr. Speaker, I think it showed that the Democrats were willing to move to a compromise on this bill. It is no secret, a lot of Democratic Members are not real keen on medical savings accounts, but under the Ganske-Dingell bill we expand those medical savings accounts. That is part of the compromised process. That is how you get things done in Washington. I will tell you what, a purely partisan vote in this House will not pass. The Fletcher bill is a partisan bill. There is one Democrat that supports it, maybe two, but what we have is a real core of Republicans who have been stalwarts for patient protection, who have withstood the blows of the $150 million campaign by the HMOs in this country trying to beat them down.

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They have shown independence and courage, and I salute them. I look forward to this debate when it comes to the House floor after the July 4th recess.

I know that the gentleman from Georgia (Mr. Norwood) is going to go off his diet and will eat a little bit of red meat steak before we hit the floor. I am looking forward to working with the gentleman from Michigan (Mr. Dingell) as we work on this bill here on the floor.

I am convinced that, if the Members will truly look at the bills, look at the bones and the sinews and the muscles, not just the clothing and the nice words, they will see that there is a significant difference. They should listen to the American Medical Association, and they should look at all the other groups that have looked at these bills and have said in very strong words the real patient protection bill, the bill that will help prevent situations like happened to this poor little boy is the Ganske-Dingell bill.

I ask my colleagues over the July 4th recess to examine their consciences, to talk to some of the patients and the health care advocates and the health care professionals that have to deal with HMOs that make those types of arbitrary decisions that result in problems for patients.

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Do not let it get hung up in committee, in a conference committee. Send it to the President's desk. I would love nothing better than for the President to look at the changes that we have done in the Senate debate and come to the conclusion that this bill, as I truly think it does, meets his principles and that he will sign it. That would be a very bright day for millions and millions of Americans.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Members (at the request of Mr. McNulty) to revise and extend their remarks and include extraneous material:

Mr. DEFAZIO, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. FALLONE, for 5 minutes, today.

Mr. GUTKNECHT, for 5 minutes, today.

Mr. NUSSELE, for 5 minutes, today.

Mrs. MORELLA, for 5 minutes, today.

ADJOURNMENT TO TUESDAY, JULY 10, 2001

Mr. GANSEK, Mr. Speaker, pursuant to House Concurrent Resolution 176, I move that the House do now adjourn.

Mr. Speaker, I believe, we will see this in large part passed with the McCain-Edward-Kennedy bill, which is the companion bill to our bill. I think in large part, it will pass in the Senate. I think with a pretty big vote.

Mr. Speaker, I applaud the hard work of the Senators who have worked on that and have shown a real concern for patient protections. I believe that will give us a big boost as we move into debate here on the House floor.

I am appreciative of the work that Senators like Mike DeWine and Olympia Snowe, Lincoln Chafee, and others, who have put into this bipartisan bill this debate. It has moved forward. Those changes, as far as I have seen so far, look very acceptable to the gentleman from Georgia (Mr. Norwood) and myself and the gentleman from Michigan (Mr. Dingell).

In the Senate, it would have been nice if they had added the expansion of medical savings accounts and the 100 percent deductibility for the self-insured. That is in our House bill, but under the rules in the Constitution, those types of provisions have to originate in the House so they did not debate those or pass those; but I believe they have wide bipartisan support.

Mr. Speaker, I think it showed that the Democrats were willing to move to a compromise on this bill. It is no secret, a lot of Democratic Members are not real keen on medical savings accounts, but under the Ganske-Dingell bill we expand those medical savings accounts. That is part of the compromised process. That is how you get things done in Washington. I will tell you what, a purely partisan vote in this House will not pass. The Fletcher bill is a partisan bill. There is one Democrat that supports it, maybe two, but what we have is a real core of Republicans who have been stalwarts for patient protection, who have withstood the blows of the $150 million campaign by the HMOs in this country trying to beat them down.

The following Members (at the request of Mrs. Morella) to revise and extend their remarks and include extraneous material:

Mr. GUTKNECHT, for 5 minutes, today.

Mr. NUSSELE, for 5 minutes, today.

Mrs. MORELLA, for 5 minutes, today.

ADJOURNMENT TO TUESDAY, JULY 10, 2001.

Mr. GANSEK, Mr. Speaker, pursuant to House Concurrent Resolution 176, I move that the House do now adjourn. The SPEAKER pro tempore. Pursuant to House Concurrent Resolution 176 of the 107th Congress, the House stands adjourned until 2 p.m. on Tuesday, July 10, 2001.

Thereupon (at 8 o'clock and 19 minutes p.m.), pursuant to House Concurrent Resolution 176, the House adjourned until Tuesday, July 10, 2001, at 2 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

2719. A communication from the President of the United States, transmitting requests for Fiscal Year 2002 budget amendments for the Department of Defense; (H. Doc. No. 107–92); to the Committee on Appropriations and ordered to be printed.


2721. A communication from the President of the United States, transmitting requests for the Department of Energy; (H. Doc. No. 107–1232); to the Committee on Appropriations and ordered to be printed.


2724. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Approval of section 112(d) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions; Risk
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Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 1407. A bill to amend title 49, United States Code, to permit air carriers to meet financial exigencies; to reduce flight delays, and for other purposes; to the Committee on Science.

Mr. SMITH of New Jersey (for himself, Mr. BUTTERFIELD, Mr. GREEN, Mr. RIGO, Mr. SMITH of Ohio, Mr. SHAW, Mr. SIMS, Mr. SOUTHWICK-ST왕, and Mr. WILKINSON): H.R. 2358. A bill to authorize appropriate 1966 to 1987 creditable for retirement purposes; to the Committee on Government Reform.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 1001. A bill to amend title 35, United States Code, to clarify the basis for reexamination of patents; with amendments (Rept. 107–120). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 1866. A bill to amend title 35, United States Code, to provide for appeals by third parties in certain patent reexamination proceedings (Rept. 107–121). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. CALVERT (for himself, Mr. HEFFNER, Mrs. BONO, Mr. FOLEY, Mr. RADANOVICH, Mr. FAIR of California, Mr. THOMPSON of California, Mr. BASS, Mrs. TAYLOR of Maine): H.R. 2354. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of crops destroyed by casualty; to the Committee on Ways and Means.

By Mr. TOM DAVIS of Virginia: H.R. 2355. A bill to amend subchapter III of chapter 83 of title 5, United States Code, to make service performed as an employee of a nonappropriated fund instrumentality after 1965 and before 1987 creditable for retirement purposes; to the Committee on Government Reform.

By Mr. SHAYS (for himself and Mr. MEEHAN): H.R. 2356. A bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; to the Committee on House Administration, and in addition to the Committees on Energy and Commerce, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. JONES of North Carolina (for himself and Mr. HOSTETTLER): H.R. 2357. A bill to amend the Internal Revenue Code of 1986 to provide that the Sunday and other houses of worship to engage in political campaigns; to the Committee on Ways and Means.

By Mr. BARTLETT of Maryland (for himself, Mr. UDALL of Colorado, Mr. BORIELLO, Ms. JACKSON-LEE of Texas, Mr. SMITH of Texas, Mr. SMITH of Michigan, Mr. MORELLI, Mr. EMLEIS, Mr. DELAHUNT, and Mr. WAMP): H.R. 2358. A bill to authorize appropriate environmental research and development, scientific and energy research, development, and demonstration, and commercial application of energy technology bioenergy programs, projects, and activities of the Department of Energy, and for other purposes; to the Committee on Science.

By Mr. SMITH of New Jersey (for himself, Mr. BUTTERFIELD, Mr. GREEN, Mr. RIGO, Mr. SMITH of Ohio, Mr. SHAW, Mr. SIMS, Mr. SOUTHWICK-ST왕, and Mr. WILKINSON): H.R. 2359. A bill to amend title 38, United States Code, to authorize the payment of National Service Life Insurance and United States Government Life Insurance proceeds to an alternate beneficiary when the first beneficiary cannot be identified, to improve and extend the Native American veteran housing loan pilot program, and to eliminate the requirement to provide the Secretary of Veterans Affairs a copy of a notice of appeal.
to the Court of Appeals for Veterans Claims;
to the Committee on Armed Services;

By Mr. NEY (for himself, Mr. WYNN, Mr. SWEENEY, Mr. MICA, Mr. REYNOLDS, Mr. LATTORF, Mr. PETTENKOFER, Mr. HOBSON, Mrs. DUNN, Mr. CUNNINGHAM, Mr. TAYLOR of North Carolina, Mr. TRAPiccANT, Ms. PHYCE of Ohio, Mr. BLUNT, Mr. REHKEMPER, Mr. NORTWOOD):

H.R. 2366. A bill to amend the Federal Elec-
tions, and for other purposes; to
availability of information on communica-
be made under such Act, to promote the
parties, to revise the limitations on the
of non-Federal funds by national political
mittee on Veterans' Affairs.

December 1, 2001, the rates of disability com-

Commerce.

By Mr. BORSKI (for himself, Mr.
KAPITZER, Mr. ROHRABACHER, Mr. LOFGREN, Mr. ROYCE, Mr. WOLF, and Mr. MILGAN):

H.R. 2388. A bill to promote freedom and
democracy in Vietnam, for International Relations, and in addition to the Committees on Financial Services, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SMITH of New Jersey (for him-
self, Mr. TOM DAVIS of Virginia, Ms. SANCHEZ, Mr. ROHRABACHER, Mr. LOFGREN, Mr. ROYCE, Mr. WOLF, and Mr. MILGAN):

H.R. 2376. A bill to expedite relief provided
for the purpose of reviewing the efficiency and public need for such agencies, and to pro-
vide for the abolishment of agencies for which a public need does not exist; to the Committee on Government Reform.

By Mr. CAMP:

H.R. 2374. A bill to amend the Internal Rev-

By Mr. MCCARTHY of Missouri, Mr. KIRK,

H.R. 2370. A bill to amend the Internal Rev-

By Mr. BOSWELL:

H.R. 2372. A bill to direct the Secretary of
the Department of the Interior to con-
vey the remaining water supply storage allocation in Rathbun Lake, Iowa, to the Rathbun Regional Water Asso-
ciation; to the Committee on Transportation and Infra-
structure.

By Mr. BRADY of Texas (for himself, Mr. DOGGETT, Mr. SCARBOROUGH, Mr. TURNER, Mr. Sessions, Mr. SUNunu, Mr. BASS, Mr. MOORE, Mr. FLORIDA, Mr. BASS, Mr. PAUL, Mr. DAVIS of Texas, Mr. GOODE, Mr. TRINDERBERG, Mr. DAVIS, Mr. HEPFELY, Mr. TENGELLE, Mr. DAVIS of Tennessee, Mr. COLLINS of Mississippi, Mr. HUTCHINSON, Mr. GREEN of Wisconsin, Mr. RODRIGUEZ, Mr. ISTOOK, Mr. ROYCE, Mr. ISAkSON, Mr. COOKsey, Mr. SCHAFFER, Mr. GOODLATTe, Mr. FLAKE, and Mr. TOMEY):

H.R. 2373. A bill to provide for the periodic re-
view of the efficiency and public need for Federal agencies, to establish a Commission for the purpose of reviewing the efficiency and public need of such agencies, and to pro-
vide for the abolishment of agencies for which a public need does not exist; to the Committee on Government Reform.

By Mr. RHYNE:

H.R. 2363. A bill to amend the Veterans' fif-
nary Disability Compensation Act of 1957, to provide for the establishment of centers a-
munity mental illnesses; to the Commit-
mittee on Energy and Commerce.

By Ms. CAPPS (for herself, Ms.
OLIVER, Mr. GREENWOOD, Mr. HUNTER, and Mr. ROYCE):

H.R. 2385. A bill to authorize Department of
Energy programs to carry out an acceler-
ment program for advanced clean coal tech-
nologies for use in coal-based electricity gen-

By Mr. FREEMAN (for himself, Mr.
SCHIFF, Mr. LANGEVIN, Mrs. TAUSCHER, Mr. JOHNSON of Connecticut, Mr. LARSEN of Washington, Mr. GEORGE MILLER of California, Mr. PETRI of Virginia, Mr. KENYER of Utah, Mr. BASS, Mr. BARTON of Texas, Mr. MOORE, Mrs. TAUSCHER, Mr. WOLF, Mr. COOKsey, Mr. SCHAFFER, Mr. GOODLATTe, Mr. FLAKE, and Mr. TOMEY):

H.R. 2365. A bill to authorize Department of
Energy programs to carry out an acceler-
ment program for advanced clean coal tech-
nologies for use in coal-based electricity gen-

By Mr. BORSKI (for himself, Mr.
BOHDE, Mr. SCHAFER, Mr. BERMAN, Mr. BLUMENAUER, Mr. ALLEN, Mr. CUCINICHI, Mr. KENNEDY of Rhode Island, Mr. LANGEVIN, Ms. BALDWIN, Mr. MOORER of Virginia, Mrs. NAPOLITANO, Ms. MCCOLLUM, Mr. SMITH of Washington, Mr. ISSLEE, Mr. LEWIS of Georgia, Mr. MOORE, Mrs. TAUSCHER, Mr. WOLF, and Ms. HOOLY of Oregon):

H.R. 2375. A bill to promote the conserva-

By Mrs. CAPPS (for herself, Ms.
OLIVER, Mr. GREENWOOD, Mr. HUNTER, and Mr. ROYCE):

H.R. 2371. A bill to authorize the transfer
for the purpose of reviewing the efficiency and public need for such agencies, and to pro-
provide for the abolishment of agencies for which a public need does not exist; to the Committee on Government Reform.

By Mr. CAMP:

H.R. 2374. A bill to amend the Internal Rev-

By Mr. MCCARTHY of Missouri, Mr. KIRK,

H.R. 2370. A bill to amend the Internal Rev-

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H.R. 2372. A bill to direct the Secretary of
the Department of the Interior to con-
vey the remaining water supply storage allocation in Rathbun Lake, Iowa, to the Rathbun Regional Water Asso-
ciation; to the Committee on Transportation and Infra-
structure.

By Mr. BRADY of Texas (for himself, Mr. DOGGETT, Mr. SCARBOROUGH, Mr. TURNER, Mr. Sessions, Mr. SUNunu, Mr. BASS, Mr. MOORE, Mr. FLORIDA, Mr. BASS, Mr. PAUL, Mr. DAVIS of Texas, Mr. GOODE, Mr. TRINDERBERG, Mr. DAVIS, Mr. HEPFELY, Mr. TENGELLE, Mr. DAVIS of Tennessee, Mr. COLLINS of Mississippi, Mr. HUTCHINSON, Mr. GREEN of Wisconsin, Mr. RODRIGUEZ, Mr. ISTOOK, Mr. ROYCE, Mr. ISAkSON, Mr. COOKsey, Mr. SCHAFFER, Mr. GOODLATTe, Mr. FLAKE, and Mr. TOMEY):

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the Department of the Interior to con-
vey the remaining water supply storage allocation in Rathbun Lake, Iowa, to the Rathbun Regional Water Asso-
ciation; to the Committee on Transportation and Infra-
structure.
H.R. 2377. A bill to require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, trade, or exchange of firearms, and to provide additional resources for gun crime enforcement; to the Committee on Ways and Means.

By Mr. DOYLE: H.R. 2382. A bill to extend the deadline for commencement of construction of a hydroelectric project in Pennsylvania; to the Committee on Energy and Commerce.

By Ms. DUNN (for herself, Mr. MATSUMURA, Mr. TOM DAVIS of Virginia, Mr. DEHERM, and Mr. WELLS): H.R. 2383. A bill to amend the Internal Revenue Code of 1986 to increase and modify the income tax preferences for energy efficient appliances; to the Committee on Ways and Means.

By Mr. GREEN of Texas: H.R. 2384. A bill to amend the National Flood Insurance Act of 1968 to provide a 50 percent discount in flood insurance rates for the first 5 years that certain low-cost properties are included in flood hazard zones; to the Committee on Financial Services.

By Mr. HANSEN: H.R. 2385. A bill to convey certain property to the city of St. George, Utah, in order to protect the protection and preservation of certain rare paleontological resources on that property for the benefit of the public; to the Committee on Resources.

By Mr. HANSEN (for himself, Mr. OTTEN, Mr. YOUNG of Alaska, Mrs. CUBIN, Mr. MURCIE, Mr. HAYES, Mr. SIMPSON, Mr. RADANOVICH, Mr. CANNON, Mr. LIBBON, Mr. PETTSON of Pennsylvania, Mr. REHBERGER, and Mr. DUNCAN): H.R. 2386. A bill to establish terms and conditions for use of certain Federal lands by outfitters and to facilitate public opportunities for the maximum enjoyment of such lands; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. HARMAN (for herself, Mr. LEWIS of California, Mr. SHEEAN, Mr. GARY G. MILLER of California, Mr. GEPHARD, Ms. ESHOO, Mr. BURBANK, Mr. DREIER, Ms. WATERS, Mr. CUNNINGHAM, Ms. SOLIS, Mr. GRAVES, Mr. FISHER, Mr. THOMPSON of California, Mrs. CAPP, Mr. CONDEE, and Ms. LUPTON): H.R. 2387. A bill to amend title 49, United States Code, to preserve nonstop air service to and from Ronald Reagan Washington National Airport for certain communities in cases of airline bankruptcy; to the Committee on Transportation and Infrastructure.

By Mr. HEFLEY: H.R. 2388. A bill to establish the criteria and mechanism for the designation and support of national heritage areas; to the Committee on Resources.

By Mr. HERGER (for himself and Mr. WALDEN of Oregon): H.R. 2389. A bill to provide for the completion of the Klamath Basin Project who were economically harmed as a result of the implementation of the Endangered Species Act of 1973; to the Committee on the Judiciary.

By Mr. HOSTETTLER (for himself, Mr. LARGENT, Mr. SCHAPP, Mr. TAHERT, Mr. DEIMONT, Mr. BARTLETT of Maryland, Mr. REHBERGER, and Mr. DUNCAN): H.R. 2390. A bill to prohibit the District of Columbia from using any funds to issue, implement, administer, or enforce any order invalidating the policy of the United States of America regarding the employment or voluntary service of homosexual troop leaders; to the Committee on Government Reform.

By Mr. HOSPITAL (for himself and Mr. YOUNG of Alaska): H.R. 2391. A bill to prohibit any Federal agency from issuing or enforcing certain rules that may be applied to restrict the transportation or possession of a firearm on a public Federal road; to the Committee on Resources.

By Mr. INSLEE (for himself, Mr. SHAYS, Mr. UDALL of Colorado, Mr. BAIRD, Mr. ALLEN, Mr. OLIVER, Mr. SMITH of Washington, and Mr. WYNN): H.R. 2392. A bill to amend the Internal Revenue Code of 1986 to provide, expand, or extend tax incentives for renewable and alternative electric energy, alternative fuels and alternative vehicles, energy efficiency and conservation, and demand management and demand response; to the Committee on Ways and Means.

By Mr. ISRAEL (for himself and Mr. CROWLEY): H.R. 2393. A bill to amend the Internal Revenue Code of 1986 to allow individuals a credit against income tax for energy conservation expenditures in residences and for purchases of energy efficient appliances; to the Committee on Ways and Means.

By Mr. KUCINICH (for himself, Mr. BROWN of Ohio, Mr. LAUDETTE, and Mrs. JONES of Ohio): H.R. 2394. A bill to amend the Defense Production Act of 1950 to establish the National Defense Preparedness Domestic Industrial Base Board, and for other purposes; to the Committee on Financial Services.

By Mr. LAFLRACE: H.R. 2395. A bill to provide grants for FHA-insured hospitals; to the Committee on Financial Services.

By Mrs. MALONEY of New York (for herself, Mr. TOM DAVIS of Virginia, Mr. WYNN, Ms. MORELLE, Mr. HOYER, and Mr. MORAN of Virginia): H.R. 2397. A bill to require the Office of Personnel Management to conduct a study to determine the approximate number of Federal employees and annuitants who are eligible to participate in the health benefits program under chapter 55 of title 5, United States Code, but who are covered neither by such program nor by any other health insurance, and for other purposes; to the Committee on Government Reform.

By Ms. MCCARTHY of Missouri (for herself and Mr. DREIER): H.R. 2398. A bill to establish a grant program to provide assistance to States for modernizing and enhancing voting procedures and administration, and for other purposes; to the Committee on House Administration.

By Ms. MCCARTHY of Missouri (for herself and Mr. SHIMKUS): H.R. 2399. A bill to require the General Services Administration to specify all potential electrical capacity at Federal facilities available from existing installed backup
generators, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. MCHUGH:
H.R. 2400. A bill to provide job creation and assistance for other purposes; to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, the Judiciary, Agriculture, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MCHUGH:
H.R. 2401. A bill to bridge the digital divide in rural areas; in addition to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MILLER of California:
H.R. 2402. A bill to provide for grants to assist value-added agricultural businesses, and to amend the Internal Revenue Code of 1986 to provide a tax credit for farmers' investments in value-added agricultural; to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MILLER of California:
H.R. 2403. A bill to direct the head of each executive agency to conduct a study on the improvement of employment readiness in the respective agency; to the Committee on Government Reform.

By Mr. MCHUGH:
H.R. 2404. A bill to authorize Federal agency participation and financial assistance for programs and for infrastructure improvements for the purposes of increasing deliverable water supplies, conserving water and energy, restoring ecosystems, and enhancing environmental quality in the State of California; to the Committee on Resources.

By Mrs. MORELLA (for herself, Ms. BISHO, Mr. PILORI, Mr. GREENWOOD, Mrs. LOWEY, Mr. SAVATY, Ms. DEGGETTE, Mr. UPTON, Mrs. THURMAN, Mr. SLAUGHTER, Mr. JACKSON of Illinois, Mr. WAXMAN, Ms. MILLER- MCDONALD, Mrs. MALONEY of New York, Ms. DE LAURO, and Mr. GEORGE MILLER of California):
H.R. 2405. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other sexually transmitted diseases; to the Committee on Energy and Commerce.

By Mr. NEAL of Massachusetts:
H.R. 2406. A bill to amend the Internal Revenue Code of 1986 to prevent the avoidance of gain recognition through swap funds; to the Committee on Ways and Means.

By Mr. GOINS:
H.R. 2407. A bill to amend the Public Buildings Act of 1959 to direct the Administrator of General Services to provide for the procurement of solar electric systems for use in public buildings, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. TRACY:
H.R. 2408. A bill to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for certain lands; to the Committee on Resources.

By Mr. OTTER (for himself and Mr. SIMPSON):
H.R. 2409. A bill to amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters; to the Committee on Resources.

By Mr. MARKET of Maryland, Mr. SMITH of Maryland, and Mr. TIAHTE:
H.R. 2410. A bill to amend the Internal Revenue Code of 1986 to allow the Hope Scholarship Credit to be used for elementary and secondary expenses; to the Committee on Ways and Means.

By Mr. PAUL (for himself, Mr. BART- LYT of Maryland, and Mr. TIAHTE):
H.R. 2411. A bill to amend the Internal Revenue Code of 1986 to provide for a tax credit against income tax to professional school personnel in grades K-12; to the Committee on Ways and Means.

By Mr. RAHALL (for himself, Mr. YOUNG of Alaska, Mr. GEORGE MILLER of California, Mr. KILDEE of Michigan, Mr. FALONE of New York, Mr. ABICHER of Idaho, Mr. FALLIN of Oklahoma, Mr. UDALL of Colorado, Ms. McCOLLUM, and Mr. KENNEDY of Rhode Island):
H.R. 2412. A bill to establish programs to improve energy development in Indian lands, and for other purposes; to the Committee on Resources, and in addition to the Committees on Energy and Commerce, Ways and Means, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RILEY (for himself, Mrs. TAUSCHER, Mr. MCKINNEY, Mr. KEN- NEHY of Rhode Island, Mr. FROST, Mr. MCGOVERN, Mr. EVANS, Mr. LAUDEN, Mr. SOUTHWICK of Pennsylvania, Mr. SIMMONS, Mrs. JONES of Ohio, and Mr. FORBES):
H.R. 2413. A bill to amend title 10, United States Code, to establish a program of employment assistance to cover military-related tuition assistance, for military spouses; to the Committee on Armed Services.

By Mr. ROEMER (for himself, Mrs. CLEMENT, Mr. GUTENHEIT of New Jersey, Mr. KIRK of Iowa, Mr. LARGENT, Mrs. MCCAR- THY of New York, Mr. MCHUGH, Mr. MOORE of Virginia, Mrs. MORELLA of New Jersey, Ms. RIVER- S, Mr. SHOWS, Mr. SIMMONS, Mrs. TOWNSHEND, and Mr. TURNER):
H.R. 2414. A bill to require any amounts ap- propriated for Members' Representation Allowances for the House of Representatives for a fiscal year that remain after all pay- ments are made from such Allowances for the year to be deposited in the Treasury and used for deficit reduction or to reduce the Federal debt; to the Committee on House Admin- istration.

By Mr. ROHRABACHER:
H.R. 2415. A bill to amend title 35, United States Code, to vest the appropriate to the Office for that fiscal year; to the Committee on the Judiciary.

By Mr. ROHRABACHER (for himself, Ms. BONO, Mr. CAL- VERT, Mr. EVANS, Mr. WELDON of Florida, Mr. PAUL, Mr. HART, Mr. COX, Mr. HORN, Mr. CONDIT, Ms. KAP- TUN, Mr. ROYCE, Mr. SOUTIER, and Mr. SANDERS):
H.R. 2416. A bill to amend the Internal Revenue Code of 1986 to provide incentives for the ownership and control of corporations by employees; to the Committee on Ways and Means.

By Mr. SHIMKUS (for himself and Mr. RUSH):
H.R. 2417. A bill to facilitate the creation of a new global top-level Internet domain that will be a haven for material that will promote positive experiences of children and families using the Internet, to provide a safe online environment for children, and to help prevent children from being exposed to harmful material on the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SHIMKUS (for himself, Mr. RUSH, and Mr. LANTOS):

By Mr. SIMMONS (for himself, Mrs. CHRISTENSEN, Mr. ABICHER of Idaho, Mr. GUCCI, Mr. ALLEN, Mr. BAIRD, Mr. JONES of North Carolina, and Mr. BALENGER):
H.R. 2419. A bill to amend the Internal Revenue Code of 1986 to provide a business tax credit against income for the purchase of fishing safety equipment; to the Committee on Ways and Means.

By Mr. SOUDER (for himself, Mr. ENGLISH, Ms. MCKINNEY, Mrs. JONES of Ohio, Mrs. MINK of Hawaii, Mr. UNDERWOOD, Mr. ABICHER, and Mr. BALLENGER):
H.R. 2420. A bill to require the Secretary of the Interior to conduct a theme study on the peopling of America, and for other purposes; to the Committee on Resources.

By Mr. STEARNs (for himself, Mr. TOWNS, Mr. DEAL of Georgia, and Mr. WALDEN of Oregon):
H.R. 2421. A bill to authorize the enforcement of United States Code, to clearly establish jurisdictional boundaries over the commercial transactions of digital goods and services conducted through the Internet, and to foster stability and certainty over the treatment of such transactions; to the Committee on Energy and Commerce, and in addi- tion to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consider- ation of such provisions as fall within the jur- isdiction of the committee concerned.

By Mr. STRICKLAND:
H.R. 2422. A bill to amend the Public Health Service Act to establish an Office of Correctional Health; to the Committee on Energy and Commerce.

By Mr. TRUNE (for himself, Mr. GUT- ENHEIT, Mr. OSBORNE, and Mr. GANSKE):
H.R. 2423. A bill to provide for the energy security of the United States and promote environmental quality by enhancing the use of motor vehicle fuels from renewable sources, and for other purposes; to the Committee on Energy and Commerce.

By Mr. TRUNE:
H.R. 2424. A bill to amend the Fair Labor Standards Act of 1938 to increase the Federal
minimum wage by $1.62 over 3 years; to the Committee on Education and the Workforce.

By Mr. TRAFICANT:

H.R. 2425. A bill to authorize assistance to establish a water treatment plant in Tirana, Albania; to the Committee on International Relations.

By Mr. UDALL of Colorado (for himself and Mr. GREENWOOD):

H.R. 2426. A bill to encourage the development and integrated use by the public and private sectors of remote sensing and other geospatial information, and for other purposes; to the Committee on Science.

By Mr. UDALL of New Mexico (for himself, Mrs. MINK of Hawaii, Mr. BALDASSI, Mr. MIKULSKI of Maryland, Mr. MCGOVERN, and Ms. SOLSKE):

H.R. 2427. A bill to provide emergency assistance for families receiving assistance under part A of title IV of the Social Security Act and low-income working families; to the Committee on Ways and Means.

By Mr. UNDERWOOD (for himself, Mr. ACEVEDO-VILA, and Mrs. DAVIS of Georgia):

H.R. 2428. A bill to require that the Director of the Office of Management and Budget explain any omission of any insular area from the document of the United States in statements issued by the Office of Management and Budget; to the Committee on Resources, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee to which referred.

By Ms. WATERS:

H.R. 2429. A bill to amend title 49, United States Code, to require the operator of Los Angeles International Airport to establish annual noise mitigation reports to residents in the area surrounding an airport; to the Committee on Transportation and Infrastructure.

By Ms. WATERS:

H.R. 2430. A bill to amend title 49, United States Code, to require air carriers to make contractual agreements with communities impacted by noise from Los Angeles International Airport; to the Committee on Transportation and Infrastructure.

By Mr. WATKINS:

H.R. 2431. A bill to amend the Internal Revenue Code of 1986 to provide that certain payments in lieu of taxes derived from treatment as part of the United States Code, to require the operator of Los Angeles International Airport to mail annual reports to residents in the United States; to the Committee on the Judiciary.

By Mr. BALDACCI, Mr. EVANS, and Mr. SMITH of New Jersey:

H.R. 2432. A bill to encourage the development and establishment of a National Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers; to the Committee on Government Reform.

By Mr. DELAHUNT (for himself, Mr. GILCHREST, Mr. GEORGE MILLER of California, and Mr. SMITH of New Jersey):

H.R. 2433. A bill to require the Secretary of Transportation to prepare and submit to Congress each year a report concerning the proposed and actual establishment of a National Health Center Week.

By Mr. EMERSON (for herself, Mrs. CLAYTON, Mr. SHOWS, Mr. MURTHA, Mr. FALKOMAVARIA, Mrs. JACKSON-LIE of Texas, Mr. MCDERMOTT, Mr. GREEN of Wisconsin, Mr. GRAVES, Mr. HODGSON, Mr. KEENON, Mr. TOWNS, Mr. POMEROY, Mr. PASTOR, Mr. ENGLISH, Mr. PETERSON of Minnesota, Mrs. CHRISTENSEN, Mr. McCOVERN, Mr. WATSON, Mr. STRICKLAND, Mr. HULSHOF, Mr. GIBBONS, Mr. UDALL of New Mexico, Mr. LUCAS of Oklahoma, Mr. BALDASSI, Mr. EVANS, and Mr. BLEYNI:

H.Con. Res. 178. Concurrent resolution expressing the sense of Congress regarding the establishment of a National Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers; to the Committee on Government Reform.

By Mr. BALLEGGER (for himself and Mr. DURING of North Carolina):

H.Con. Res. 179. Concurrent resolution expressing the sense of Congress regarding the establishment of a National Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers; to the Committee on Government Reform.

By Mr. DELAHUNT (for himself, Mr. GILCHREST, Mr. GEORGE MILLER of California, and Mr. SMITH of New Jersey):

H.Con. Res. 180. Concurrent resolution expressing the sense of the Congress that the United States should reaffirm its opposition to any commercial and lethal scientific whaling and take significant and demonstrable actions, including at the International Whaling Commission and meetings of the Convention on International Trade in Endangered Species, to provide protection for and conservation of the world’s whale populations to prevent trade in whale meat; to the Committee on International Relations.

By Mrs. EMERSON (for herself, Mrs. CLAYTON, Mr. SHOWS, Mr. MURTHA, Mr. FALKOMAVARIA, Mrs. JACKSON-LIE of Texas, Mr. MCDERMOTT, Mr. GREEN of Wisconsin, Mr. GRAVES, Mr. HODGSON, Mr. KEENON, Mr. TOWNS, Mr. POMEROY, Mr. PASTOR, Mr. ENGLISH, Mr. PETERSON of Minnesota, Mrs. CHRISTENSEN, Mr. McCOVERN, Mr. WATSON, Mr. STRICKLAND, Mr. HULSHOF, Mr. GIBBONS, Mr. UDALL of New Mexico, Mr. LUCAS of Oklahoma, Mr. BALDASSI, Mr. EVANS, and Mr. BLEYNI:

H.Con. Res. 181. Concurrent resolution expressing the sense of the Congress regarding the need to protect post offices; to the Committee on Government Reform.

By Mr. RANGEL:

H.Con. Res. 182. Concurrent resolution expressing the sense of the Congress that the United States Postal Service should issue a postage stamp commemorating Juan Nepomuceno Seguin; to the Committee on Government Reform.

By Mr. DELAHUNT (for himself, Mr. GILCHREST, Mr. GEORGE MILLER of California, and Mr. SMITH of New Jersey):

H.Con. Res. 183. Concurrent resolution expressing the sense of the Congress that the United States Postal Service should issue a postage stamp commemorating Juan Nepomuceno Seguin; to the Committee on Government Reform.

By Mr. BERKLEY, Mr. MEEKS of New York, Mr. BASS, Mr. MCWHIRTER, Mr. WICKER, Mr. DICKS, Mr. BOYD, Mr. NADLER, Mr. ROQUE, Mr. WATERS of Oklahoma, Mr. STRICKLAND, Mr. OLVER, Mr. JACKSON of Illinois, Mr. MARKY, Mr. BURD, Mr. PRICE of North Carolina, Mrs. MALONEY of New York, Mr. TIERNY, Mr. LANGevin, Ms. SANCHEZ, and Mr. SMITH of New Jersey:

H.Con. Res. 184. A resolution designating majority membership on certain standing committees of the House; considered and agreed to.

By Mr. GALLEGLY:

H.Con. Res. 185. A resolution supporting the implementation of the Good Friday Agreement as the framework for the peaceful settlement of the conflict in Northern Ireland; to the Committee on International Relations.

By Mr. GREEN of Texas (for himself, Mr. FROST, Mr. GONZALEZ, Mr. HINOJOSA, Mr. LAMPO, Mr. RODRIGUEZ, Mr. SANCHEZ, Mr. EDWARDS, Mr. ORTIZ, Mr. RANGEL, Mr. TURNER, Mr. STOKEM, Mr. SANDLIN, Mr. JACKSON-LIE of Texas, Mr. EDMONDSON, Mr. JOHNSON of Texas, Mr. BACA, Ms. SOLIS, Mr. MENENDEZ, Mr. DOUGHERTY, Mr. BONILLA, and Mr. BRYANT of Texas):

H.Res. 186. A resolution expressing the sense of the House of Representatives that the United States Postal Service should issue a postage stamp commemorating Juan Nepomuceno Seguin; to the Committee on Government Reform.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII, private bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. BERRETER:

H.R. 2432. A bill for the relief of Richard W. Schaffert; to the Committee on the Judiciary.

By Mr. BONIOR:

H.R. 2433. A bill for the relief of Thair Bihnam, Christine Bihnam, Jamie Alan Bihnam, and Natasha Bihnam; to the Committee on the Judiciary.

By Mr. PETRI:

H.R. 2434. A bill for the relief of Mohamet Asghir Musse; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 7: Mr. WOLF.

H.R. 12: Mr. KERNS.

H.R. 46: Ms. BALDWIN and Mrs. LOWEY.

H.R. 61: Mr. BROWN of Ohio and Mr. BONIOR.

H.R. 68: Ms. HOOLEY of Oregon, Mr. TRAFICANT, Mr. DUNCAN, Mr. CARSON of Oklahoma, Mr. LARGENT, Mr. ORTIZ, Mr. PETERSON of Hawaii, Mr. RYAN of Kansas, Mr. BERGERY, Mr. CANTOR, Mr. DEFAZIO, Mr. PHELPS, Mr. MASCARA, and Ms. ROS-LEHTINEN.

H.R. 97: Mr. OBERTSTAR.

H.R. 122: Mr. TOMOE, Mr. WAMP, Mr. MILLER, Mr. GRAHAM, Mr. SHIMKUS, Mr. BOUCHER, and Mr. HOBSON.

H.R. 123: Mr. LAHOOD, Mr. SOUDER, and Mr. WATKINS.

H.R. 218: Mr. LAHOOD.

H.R. 228: Mr. PASCARELL.

H.R. 236: Mr. FRELINGHUYSEN.

H.R. 267: Ms. KIPATTER

H.R. 709: Mr. BONAIR, Mr. DAVIS of Illinois, Mr. RANGEL, Mr. PASCARELL, and Mr. KERNS.

H.R. 717: Mr. BROWN of North Carolina and Mr. WALSH, Mr. MALONEY of Connecticut, Mr. ADAMS of Massachusetts, Mr. BACH, Mr. BAKER of Texas, and Mr. RANGEL.

H.R. 800: Mrs. NORTHERN, Mr. TAYLOR of Virginia, Mr. MATHEWSON, and Mr. HOLT.

H.R. 612: Ms. BERKLEY, Mr. MEKES of New York, and Mr. LANDY.

H.R. 619: Mr. BONIOR.

H.R. 691: Mr. LEE and Mr. HORN.

H.R. 688: Mr. LUTHER.

H.R. 687: Ms. WATERS.

H.R. 709: Mr. BONAIR, Mr. DAVIS of Illinois, and Mr. LANDY.

H.R. 717: Mr. BROWN of North Carolina and Ms. BALDWIN.

CONGRESSIONAL RECORD—HOUSE

June 28, 2001
Mr. BLUNT.

Ohio.

BEREUTER.

Mr. CLEMENT, Mr. KENNEDY of Minnesota, CONYERS, Mr. THER, and Mr. BLUMENAUER.

DIAZ-BALART, Mr. GORDON, and Mr. HALL of Pennsylvania, Ms. BERKLEY, Mr. BARRETT, Ms. BERKLEY, Mr. BARRETT, and Mr. PETERSON of Minnesota.

H.R. 1439: Mr. Sandlin and Mr. Tiahrt.

H.R. 1354: Mr. Sheehan, Mr. Sanxon, Mr. Clement, Mr. Fossella, Mr. Pickering, and Mr. Menendez.

H.R. 1377: Mrs. Myrick, Mr. Culberson, Mr. Tancredo, Mr. Balenberger, Mr. Watkins, Mr. Paul, Ms. Granger, Mr. Chamiliss, Mr. Rilley, Mr. Stearns, and Mr. Tancredo.

H.R. 1412: Mr. Thompson of Mississippi, Mr. Schakowsky, Mr. Moran of Virginia, Mr. Bentsen, and Ms. Granger.

H.R. 1429: Mr. Schiff.

H.R. 1434: Mr. Baca.

H.R. 1436: Mrs. Capito, Mr. Hall of Ohio, Mr. Cummins, Mr. Ross, Mr. Condit, Mr. Wu, Ms. Velázquez, Mr. Weiner, Mr. Rahall, Mr. Ose, Mr. Meerhan, Mr. Carson of Michigan, Mr. Elder, Mr. Hinchey, Mr. McGovern, Mr. Kennedy of Rhode Island, and Mrs. Tauscher.

H.R. 1517: Mr. Frank, Mr. Frost, Mr. Graham, and Mr. Haffner.

H.R. 1524: Mr. Peterson of Pennsylvania, and Mr. Weldon of Florida.

H.R. 1528: Mr. Nussle.

H.R. 1541: Mr. Hunter and Mr. Goodlatte.

H.R. 1556: Mr. Ducks, Mr. Pallone, and Mr. Murtha.

H.R. 1577: Mr. Nadler, Ms. Woolsey, Mr. Rangel, Mr. Burr, Mr. LaTourette, Mr. Northup, Mr. Leach, Mr. Burton of Indiana, Mr. Lucas of Oklahoma, Mr. DeMint, Mr. Balenberger, Mrs. Emerson, Mr. Cantor, Mr. Pence, Mr. Krens, and Mr. Bryant.

H.R. 1581: Mr. Graham and Mr. Army.

H.R. 1591: Mr. Lee.

H.R. 1596: Mr. Israel and Mr. Stump.

H.R. 1598: Mr. Wu.

H.R. 1600: Mr. Isakson.

H.R. 1609: Mr. Murtha.

H.R. 1613: Mr. Lampson.

H.R. 1615: Mr. Tiberi, Mr. Bass, Mr. Blagojevich, and Mr. Starns.

H.R. 1628: Mr. Udall of New Mexico.

H.R. 1636: Mr. Rehberg.

H.R. 1644: Mr. Mica, Mr. Roeper, and Mr. Hayworth.

H.R. 1657: Mr. Oberstar.

H.R. 1673: Mr. Faschull.

H.R. 1674: Mr. Ganske.

H.R. 1685: Mr. George Miller of California, Mr. Allen, and Mr. Lee.

H.R. 1688: Mr. Cooksey and Mr. Miller of Florida.

H.R. 1706: Mr. Ros-Lehtinen.

H.R. 1731: Mr. Jones of North Carolina, Mr. Largent, Mr. Owens, Mr. Green of Wisconsin, Mrs. Jo Ann Davis of Virginia, Mr. Ney, Mr. Hostetler, Mr. Graham, Mr. Keller, Mr. Vitter, Mr. Pence, and Mr. Sensenbrenner.

H.R. 1733: Mr. Fattah and Mr. Sherman.

H.R. 1744: Mr. Stupak.

H.R. 1754: Mr. Fossella and Ms. Hoyle of Oregon.

H.R. 1759: Mr. Krens.

H.R. 1764: Mr. Rodriguez, Mr. Peterson of Pennsylvania, Ms. Hoyley of Oregon, Mr. Wu, and Mr. DeFazio.

H.R. 1779: Mr. Range and Mr. Barrett.

H.R. 1780: Mr. Hillrey.

H.R. 1795: Mr. Hayworth, Mr. Burton of Indiana, and Mr. Shadegg.

H.R. 1808: Mr. King and Ms. Woolsey.

H.R. 1825: Mrs. Roybal-Allard, Ms. Schakowsky, and Mr. Sabo.

H.R. 1832: Mr. Bishop, Mr. McHugh, and Mr. Otter.

H.R. 1835: Mr. McHugh and Mrs. Morella.

H.R. 1839: Mrs. Joan Davis of Virginia, Mr. Wolf, and Mr. DeFazio.

H.R. 1849: Mr. Norton, Mr. Horn, and Ms. McKinney.

H.R. 1861: Mr. Snyder.

H.R. 1862: Mr. Blagojevich.

H.R. 1890: Mr. Souder, Mr. Vitter, Mr. Kolbe, Mr. Sam Johnson of Texas, Mr. Largent, and Mr. Graham.

H.R. 1897: Mr. Lowey, Mr. Kolbe, Mr. Wyyn, Ms. McCarthy of Missouri, Mr. Clement, Mr. Brown of Ohio, Mr. Brady of Pennsylvania, and Mr. LaFalce.

H.R. 1928: Mr. Blagojevich.

H.R. 1935: Mr. Platt, Mr. Murtha, Mr. Reyes, Mr. Otter, and Mr. Clement.

H.R. 1949: Mr. Kolbe.

H.R. 1950: Mr. Istook.

H.R. 1968: Ms. Slaughter and Mr. George Miller of California.

H.R. 1979: Mr. McCrery, Mr. Weller, and Mr. Evans.

H.R. 1983: Mr. Frost, Mr. Simmons, Mr. Stressing, and Mr. Unpton.

H.R. 1984: Mr. Deal of Georgia, Mr. Hyde, Mr. Souder, and Mr. Goodlatte.

H.R. 1986: Mr. Hilleary.

H.R. 1987: Mr. Blunt and Mr. Boehner.

H.R. 1988: Mr. Viscoli and Mr. Kucinich.

H.R. 1990: Mrs. Morella, Ms. Jackson-Lee of Texas, Mr. Scott, Ms. Wyn, Ms. Carson of California, Mr. Basile, and Mr. Ranger.

H.R. 1992: Mr. Unpton, Mr. Hinojosa, and Mr. Goode.


H.R. 2030: Mr. Pines and Mr. Stemholt.

H.R. 2032: Mrs. Thurman, Mrs. Johnson of Connecticut, Mr. Clement, Mr. Chambliss, Mrs. Emerson, Mr. Sessions, Mr. Hoyer, Mr. Otter, Mr. Cramer, Mr. Ford, Mr. Vitter, Mr. Boehner, Mr. Young of Alaska, Mr. Rehberg, Mr. Tiberi, Mr. Tancredo, Mr. Camp, Mr. Bartlett of Maryland, Mr. Gingrey, and Mr. Shull.

H.R. 2036: Mrs. Emerson, Mr. Weldon of Pennsylvania, Mr. Jackson of Illinois, Mr. Lipinski, and Mr. Rangel.

H.R. 2039: Mr. Blagojevich.


H.R. 2055: Mr. Ryun of Kansas and Mr. Stearns.

H.R. 2073: Mr. Gonzalez, Mr. Clement, Ms. Hooley of Oregon, and Mr. Moran of Virginia.

H.R. 2074: Ms. McCollum.

H.R. 2086: Mr. Largent.

H.R. 2096: Mr. Frost.

H.R. 2106: Ms. LaHood and Mr. Goode.

H.R. 2111: Ms. King, Mr. Borelli, Mr. Horn, and Mr. Walsh.

H.R. 2113: Mr. Evans and Mr. Weldon of Florida.

H.R. 2114: Mr. Hostettler.

H.R. 2117: Mrs. Mink of Hawaii and Mr. Tiberi.


H.R. 2125: Mr. Deal of Georgia, Mr. Shimkus, Mr. RaHall, and Mr. Forbes.

H.R. 2133: Mr. Dooley of California and Ms. Kilpatrick.

H.R. 2145: Mrs. Christensen and Mr. Hastings of Florida.
AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 2330

OFFERED BY: MR. BROWN OF OHIO

AMENDMENT No. 26. In title VI, in the item relating to "DEPARTMENT OF HEALTH AND HUMAN SERVICES—FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES", insert before the period at the end of the first paragraph the following:

Provided further, That the total amount appropriated, $6,000,000 is available for the purpose of carrying out the responsibilities of the Food and Drug Administration with respect to antibiotic drugs, in addition to other allocations for such purpose made from such total amount.

H.R. 2330

OFFERED BY: MR. BROWN OF OHIO

AMENDMENT No. 27. In title VI, in the item relating to "DEPARTMENT OF HEALTH AND HUMAN SERVICES—FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES", insert before the period at the end of the first paragraph the following:

Provided further, That the total amount appropriated, $2,500,000 is available for the purpose of carrying out the responsibilities of the Food and Drug Administration with respect to abbreviated applications for the purpose of carrying out the responsibilities of the Federal Food, Drug, and Cosmetic Act, and $250,000 is available under section 12296

CONGRESSIONAL RECORD—HOUSE

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H.R. 2148: Mr. Filner, Mr. LaFalce, and Ms. McNulty.
H.R. 2149: Ms. Granger, Mr. Bachus, Mr. Forbes, Mr. Eilers, and Mr. Grucci.
H.R. 2155: Mr. McNulty, Mr. McHugh, and Ms. Pelosi.
H.R. 2157: Mr. DeFazio, Mr. Blagojevich, Mr. Frost, Mr. Gibson, Mr. Baker, Mr. LaHood, Mr. Schaffer, Mr. Young of Alaska, Mr. Byrant, Mr. Cooksey, Mrs. Crenin, Mr. Osik, Mr. Walden of Oregon, and Mr. DeMint.
H.R. 2160: Mr. Horsdik and Mr. DeMint.
H.R. 2162: Mr. Shimkus, Mr. Wynn, Mr. Bono, Mr. McGovern, Mr. Frost, Mr. Traficant, Ms. Lofgren, Ms. Eddie Bernice Johnson of Texas, Ms. Woolsey, and Mr. Lantos.
H.R. 2166: Ms. Velázquez, Mr. Jackson of Illinois, Mr. Barrett, and Ms. Waters.
H.R. 2167: Mr. Delauro.
H.R. 2172: Mr. Stark.
H.R. 2173: Mr. G. N. Rogers.
H.R. 2181: Mr. McDermott and Mr. Stupak.
H.R. 2182: Mr. Mascara and Ms. Hart.
H.R. 2185: Mr. G. N. Rogers.
H.R. 2189: Mr. G. N. Rogers.
H.R. 2200: Mr. Sensenbrenner.
H.R. 2203: Mr. Tauscher, Mr. McGovern, Mr. Sheehan, Mr. Faleomavaega, Mr. Clement, and Mr. Frost.
H.R. 2211: Ms. McCaskill of Missouri and Mr. Waxman.
H.R. 2212: Mr. Sessions, Mr. Kenns, and Mr. Hobson.
H.R. 2222: Mr. McGovern, Mr. McKinney, Mr. Frost, Mr. Rangel, and Mrs. Jones of Ohio.
H.R. 2235: Mr. Lampson.
H.R. 2240: Mr. Shaw.
H.R. 2242: Mr. Sensenbrenner.
H.R. 2246: Mr. Lucas of Kentucky.
H.R. 2258: Mr. Reyes.
H.R. 2281: Mr. Jackson of Illinois.
H.R. 2291: Mr. LaFalce, Mr. Kucinich, Mr. Payne, Mr. Rahall, Mr. Birman, and Mr. Gilman.
H.R. 2294: Mr. Brown of Ohio, Mr. McNulty, Ms. Rivers, and Mr. Balducchi.
H.R. 2308: Mr. LaFalce.
H.R. 2310: Mr. Moran of Virginia, Mr. Brady of Pennsylvania, Ms. Mukasey of Florida, Mr. McKinney, Mr. Davis of California, Mrs. Thurman, Mr. Rahall, Mr. Etheridge, Mr. Kennedy of Rhode Island, Mr. Clyburn, Mr. Rangel, Mr. Mollohan, Mr. Fattah, Mr. McNulty, Mr. Mascara, Mr. Filner, Mr. Andrews, Mr. Oliver, and Ms. McCollum.
H.R. 2315: Mr. Kolbe, Mr. Lentz, Mr. Taylor of North Carolina, Mr. Upton, Mr. Cox, and Mr. Whitfield.
H.R. 2316: Mr. Crane, Mr. Ramstad, Mr. Hayworth, Mr. Hergen, Mr. Brady of Texas, Mr. Shay, Mr. Condit, Mr. Army, Mrs. Johnson of Connecticut, Mr. Kenns, and Mr. Thornberry.
H.R. 2322: Mr. Eilers.
H.R. 2329: Mr. Platts, Mr. Shaw, Mr. Kind, and Mr. Smith of New Jersey.
H.R. 2335: Mr. Kilpatrick.
H.R. 2339: Mr. Rahall, Mr. Wamp, and Mr. Brady of Pennsylvania.
H.R. 2344: Mr. Shadegg.
H.R. 2341: Mr. Riley.
H.R. 2342: Mr. Delaney.
H.R. 2343: Mr. Weldon.
H.R. 2344: Mr. Evans, Mr. Underwood, Mr. Abercombie, Ms. McKinney, Mr. Crowder, Mr. W. C., Mr. Ackerman, Mr. Sheehan, Mr. Honda, Mr. Faleomavaega, Mr. Kirk, Mr. Filner, Ms. Pelosi, Ms. Roybal-Allard, Mrs. Napolitano, Ms. Lofgren, Mr. Wexler, Mr. Pitstick, Mr. Kildee, Mr. Gilman, Mr. Doggett, Mr. Moran of Virginia, Ms. Eddie Bernice Johnson of Texas, Mr. Matsui, Ms. Solis, and Mr. Hilliard.
H.R. 2397: Mr. Nethercutt and Mr. Gerderick.
H.R. 2398: Mr. Con. Res. 97: Mr. English and Mr. Levin.
H.R. 2399: Mr. Con. Res. 116: Mr. Blagojevich.
H.R. 2401: Mr. Con. Res. 144: Ms. Dingell, Mr. Stupak, Mr. Coyne, Mr. Davis of Illinois, Mr. Pickering, Mr. Rogers of Michigan, and Mr. McHugh.
H.R. 2402: Mr. Con. Res. 169: Mr.icks, Mrs. Christensen, Ms. Watson, Mr. Geheerdt, Mr. Levin, Mr. Jefferson, Mr. Waxman, and Mr. Rush.
H.R. 2403: Mr. Con. Res. 173: Mr. Tienney, Mr. Larson of Connecticut, Ms. McKinney, Mr. Waxman, Mr. Capuano, and Mrs. Lowey.
H.R. 2404: Mr. Con. Res. 177: Mr. Farr of California, Mr. Sanders, Mr. Acevedo-Vila, Mr. Tienney, Mr. Woolsey, Mr. Frost, Mr. Evans, Mr. Melson, and Ms. Eddie Bernice Johnson of Texas.
H.R. 2405: Mr. Con. Res. 65: Mr. Kildee.
H.R. 2406: Mr. Con. Res. 72: Mr. Blagojevich, Mr. Maloney of California, Mr. Shays, Mr. Melson, and Mr. Frost.
H.R. 2407: Mr. Con. Res. 152: Ms. Kilpatrick and Mr. Goode.
H.R. 2408: Mr. Con. Res. 154: Mr. Hinchey, Mr. Costello, Mr. Meeks of New York, Mr. Frost, Mr. Ganske, Mr. Kucinich, Mr. Manzullo, Mr. Frank, Ms. DeGette, Mr. Balducchi, Mr. Filner, Mr. Bono, Mr. Holt, Mr. Hall of Ohio, Mr. Bentsen, Mr. Abercrombie, and Ms. Charlotte of North Carolina.
H.R. 2409: Mr. Con. Res. 181: Mr. Lantos, Ms. Ros-Lehtinen, Mr. Kennedy of Rhode Island, and Mr. Payne.

DELECTIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 2410: Mr. Pelosi.

DISCHARGE PETITIONS

Under clause 2 of rule XV, the following discharge requests were filed:

609(d)(2)(D) of such Act for the purpose of carrying out public information programs regarding drugs with approved such applications, in addition to other allocations for such purposes made from such total amount.

H.R. 2330
OFFERED BY: MS. DELAURO

AMENDMENT NO. 28: In title I, in the item relating to “FOOD SAFETY AND INSPECTION SERVICE”, insert at the end the following:

In addition, for the Food Safety and Inspection Service to improve food safety and reduce the incidence of foodborne illnesses, $50,000,000: Provided, That such amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That such amount shall be available only to the extent that an official budget request, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress.

In title VI, in the item relating to “FOOD AND DRUG ADMINISTRATION—SALARIES AND EXPENSES”, insert at the end the following:

In addition, for the Food and Drug Administration to improve food safety and reduce the incidence of foodborne illnesses, $163,000,000: Provided, That such amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That such amount shall be available only to the extent that an official budget request, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress.

H.R. 2330
OFFERED BY: MR. SMITH OF MICHIGAN

AMENDMENT NO. 29: Add before the short title at the end the following new section:

SEC. 11. None of the funds appropriated or otherwise made available in this Act may be used to pay the salaries of personnel of the Department of Agriculture who permit the payment limitation specified in section 1001(2) of the Food Security Act of 1985 (7 U.S.C. 1308(2)) to be exceeded pursuant to any provision of law, except, in the case of a husband and wife, the total amount of the payments specified in section 1001(3) of that Act that they may receive during the 2001 crop year may not exceed $150,000.
The Senate met at 9:15 a.m. and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Thank You, dear Father, for infusing Your nature in the Senators You have called to lead our beloved Nation. You have reproduced in them Your concern and caring for the health and healing of all of our people. Thank You for Your compassion expressed in the legislation for patient protection in America.

The Senators may differ on aspects of the implementation of this concern but are one in seeking unity on what is best for citizens across our land. Be with the Senators today as all aspects of this crucial legislation are focused and voted upon. Thank You for the managers on both sides of the aisle who have worked so long and tirelessly to review all possibilities for the best potential for all Americans.

Now as the Senators seek to complete debate and take conclusive votes, may they sense the unity of a common concern for a crucial cause of caring for our people. Place Your hand upon their shoulders and remind them that You are the magnetic center who draws them to unity for the welfare of our Nation. You are the healing power of the world who uses the medical professions to heal. Help the Senators to complete legislation that will assure the best care for the most people.

You, dear God, are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BIPARTISAN PATIENT PROTECTION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report. The legislative clerk read as follows: A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

Pending:

Thompson amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.

Collins amendment No. 826, to modify provisions relating to preemption and State flexibility.

Breaux amendment No. 830, to modify provisions relating to the standard with respect to the continued applicability of State law.

A recognition of the acting majority leader.

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I ask that the time I use not be charged against either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. REID. Mr. President, we will resume consideration of the Patients’ Bill of Rights. We are going to have a vote at approximately 10 to 10. We have a unanimous-consent agreement in effect that will take us throughout the early afternoon, with votes scheduled throughout that period of time. We expect votes all evening. The leader would very much like to finish this bill today. Certainly the end is in sight. If not, we will work through the night—into the night, not through the night—we will come back tomorrow, and hopefully we don’t have to come back Saturday.

What the leader has said is that we are going to complete this legislation.

We are going to complete the legislation, plus the supplemental appropriations bill before we go home.

He said he would work Saturday, Sunday, Monday, and Tuesday and Wednesday, the 4th—take that off—and come back after that to complete our work. We are cooperating and doing our very best to meet the requests of Senators BYRD and STEVENS. Their last unanimous consent request has been cleared on this side as far as the filing of amendments. We applaud the four managers who have been working on this bill. We look forward to continuing to work today.

AMENDMENT NO. 826

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 30 minutes for debate to be equally divided between the Senator from Maine, Ms. COLLINS, and the Senator from Louisiana, Mr. BREAUX, prior to a vote on or in relation to the Collins amendment No. 826.

Who yields time? The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senator from Virginia, Mr. ALLEN, be added as a cosponsor of the Collins-Nelson amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. COLLINS. I yield 6 minutes to the Senator from Kansas, Mr. ROBERTS.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, here is the issue: The ability of States to determine what is best for themselves. That is the issue. Sure, the issue is the Patients’ Bill of Rights. But if Kansas or Nebraska or Maine or Massachusetts or Louisiana or Connecticut—as I look at Members in the Chamber—have an effective patient protection system that is working, why impose new Federal regulations that will force them to overhaul the system they have in place?

The Collins-Nelson-Roberts, and others, amendment would simply give the State of Kansas and other States the flexibility to provide patient protection required under this bill in a way that best fits each State. For example, last year in Kansas we implemented a new law that assists patients who get into a dispute with their insurance company over the refusal to pay for medical procedures. It is a long process, but the independent reviewer will make a decision and reply within 30 business days after an appeal procedure.

This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
According to Kathleen Sebelius, our very good Kansas State Department of Insurance Commissioner, there were 22 cases last year; 12 were fully decided in favor of the HMO and 10 overturned the decision made by the HMO. Now that more Kansans are aware of their ability to receive this external appeal and receive independent review, more cases will be filed with the Kansas Insurance Department. Simply put, our State commissioner, Kathleen Sebelius, and the Kansas State Department of Insurance are doing a good job looking out for the best interests of Kansans covered by HMOs.

So the question is, Why does the Federal Government need to tell our State we have to completely scrap what we are doing and put into place a Federal layer of new Washington-knows-best requirements? How good is this really for families in Kansas, or your States’ families? In fact, Kansas has a large number of patient protections that have been in place for years, and the list is impressive. The list includes a comprehensive bill of rights, the internal and external appeals I have already described, consumer grievance procedures, emergency room services, OB/GYN access, prompt payment, continuity of care, a ban on gag clauses and financial incentives, screening and breast reconstruction, prostate cancer screening, maternity stay, drug and alcohol abuse treatment, standing referral, and the list goes on and on and on.

Under the bill we are debating today, many of these effective consumer protections Kansas has in place will have to be thrown out and we will have to start all over.

Our Kansas State Insurance Commissioner, Kathleen Sebelius, also serves as the president of the National Association of Insurance Commissioners. Kathleen has written a letter that clearly lays out the devastating effects the Washington one-size-fits-all plan will have on State insurance markets, and she warns—listen to this, colleagues—that this is going to be administered by an outfit called the Center for Medicare and Medicaid Services. It used to be called HCFA. If you really want to turn over your state regulations to HCFA, that is another issue that we can talk about for at least an hour or two. The commissioner stated in her letter:

I think she nailed it right on the head. I am an original cosponsor of the Collins-Nelson amendment because it clearly states that there are already doing well. If these standards are not met, only then would the Federal Government come in and impose its standards, and the State would then be required to meet a higher standard in order to be made eligible for the Patient Quality Enhancement Grant Program. Other amendments will have a stuck; this is a carrot. I prefer a carrot; other Senators may prefer a stick.

Let me just say, in summing up, can any other Member of this body honestly tell me what is in this bill is better than what the State of Kansas already has in terms of patient protection? Do you know better than our commissioner, Kathleen Sebelius, or Governor Granholm of Kansas? The answer is no. My colleagues, support this amendment and give States a chance to apply the standards they have currently in place, that are working. The external and internal appeals I have already described, consumer grievance procedures, emergency room services, OB/GYN access, prompt payment, continuity of care, a ban on gag clauses and financial incentives, screening and breast reconstruction, prostate cancer screening, maternity stay, drug and alcohol abuse treatment, standing referral, and the list goes on and on and on.

As Senator Kennedy said last night, if you had the Collins-Nelson amendment, there would be no guarantee that States would have a Patients’ Bill of Rights. They would not have to do anything if they so chose. A State could say they are not interested in guaranteeing patients within their borders any rights at all, period. We don’t think it is the right thing to do. We are not doing it. The only thing that they would suffer, if they decided to take that approach under the Collins-Nelson amendment, is that they would lose grant money that is being authorized in this legislation.

Well, I think that is unfortunate in the sense that we are talking about a national program to guarantee patients the rights they should have under this legislation. I think there is strong agreement nationwide that there is a need to have some kind of a national guarantee that covers all Americans, not just some Americans, not just a few Americans, not just a handful of Americans, but all Americans, in dealing with their health insurance program.

Our compromise amendment does accomplish that goal, and it does it in a way that gives the maximum ability of the States to do what they think is necessary in crafting their Patients’ Bill of Rights. The language that we have put forth says that State plans would not be superseded. They will continue to operate efficiently today, if they substantially comply with the patient protection requirements that we are instituting on a national level for all Americans.

That doesn’t mean their plan has to be exactly the same as the Federal requirements. It has to substantially comply. That is a legal term used in Congress on many other occasions. On the SCHIP program for providing insurance to children, which we have overwhelmingly supported, the Federal requirement is that a State can run their own program if it substantially complies with the Federal requirements for all Americans that were instituted by this Congress.

On the Medicare Program, folks here in Washington understand how to apply that terminology. It is working. My State of Louisiana runs its own plan. I am very confident that any State of Louisiana that continues to operate as they do today, if they substantially comply with the Federal requirements for all Americans that were instituted by this Congress.

They can design those rights on States that will be tailored to the needs of that particular State, and the only requirement is that it have the same or similar features. That is not too strong a guideline to the States or a requirement on behalf of the States. I think it can work. Most of the States, if not every single State, that have adopted a Patients’ Bill of Rights will find their plans in their respective States will stay intact and will still be the State Patients’ Bill of Rights under that legislation.

If a State decides for some reason they do not care, they are not going to do anything, there should be the ability for us to make sure all Americans are guaranteed the rights we are talking about today; that they are enforceable; there is an opportunity to go to court to enforce them; and that there is an appeals process when they are being abused.
This is what the Breaux-Jeffords amendment will allow. That is why it is a realistic compromise compared to the other two. My good friends, Senator NELSON and Senator COLLINS, with whom I have worked on many occasions and who continue to do so in various areas such as health. They are trying to do the right thing. Their amendment will allow some States to do nothing. Potentially thousands of Americans will not have any coverage whatsoever if that is the decision of the State.

We are writing legislation for all Americans, and I suggest the Breaux-Jeffords bill is a proper compromise that can bring this about.

I yield the floor.

The ACTING PRESIDENT pro tempore, The Senator's time has expired.

The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, how much time is remaining on our side?

The ACTING PRESIDENT pro tempore. Nine minutes.

Ms. COLLINS. I yield 5 minutes to the Senator from Nebraska.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska is recognized for 5 minutes.

Mr. WILSON of Nebraska. I thank Senator Collins for her strong support for this amendment, and I commend my colleague, Senator Breaux from Louisiana, for his strong support and consistent efforts to find a compromise.

Certainly, the effort is an improvement over where we had been. One area I want to point out I disagree with my friend from Louisiana is his suggestion that maybe the States will not do anything. If you take a look at the charts that the Senator from Nebraska and I put up when you look at all the checks, I suggest the States have been doing something and they will continue to do something if the Federal Government does not come in and take away both the incentive and the opportunity by putting in what is termed affectionately “a floor,” a minimum.

The problem is these minimums very often become the ceiling or they become, if you will, the top of whatever is being done because the States will not have the same opportunity, nor will they have the same willingness with the Federal deregulation, of the federalization of the regulation of State insurance as it applies to these health plans.

Generally preemption occurs when the States have not acted. I cannot imagine we are now preempting what the States have done on the basis of their not doing so a good job that we were able to pick and choose from the best of those protections to create this bill and now we say to them: It's a job well done; thank you very much, and, by the way, we will impose these on you and we will make sure your laws will have to be either substantially equivalent or consistent with, according to Frist-Breaux, or, with the compromise, substantially compliant. I can understand our desire to take over the role of the States in this area if the States have not done anything, but I cannot understand the desire to do it when the States have done such a good job that we have picked and chosen from the best of those efforts to compromise our bill.

It does not make sense to preempt under these circumstances. That is why many of us would like to see the States have the opportunity to opt out so we will have continuing experimentation under the Jefferson principle that the States are the laboratories of democracy. I am not against all pre-emptions, but I do have a question about it. If we allow the States to continue to make sense under the circumstances with the progress that the States have made.

The charts will show the States have been active. They have worked very hard; they have been continuing to do so. Delaware just last week enacted additional patient protection laws. What we need to do is make sure we continue to permit the States to experiment.

I am also worried that with the application of these standards to the States, we will not have further experimentation, we will not have further development of patient protections. I hate to think we are at a point where the status quo will be sufficient for today as well as for tomorrow. I worry this effort in having a floor will result in it becoming a ceiling.

If you look at the charts, you will see to one degree or another, whether it is emergency room care or whether it is the external appeals or the internal appeals, that nearly every State is doing it. Many States have decided not to do everything under every set of circumstances. I do not think they ought to be penalized where they have made a conscious decision that that is not going to work within their State. We ought not to have, in my judgment, a one-size-fits-all approach. We have not found, if you will, the Holy Grail as it relates to what patient protection truly is. We cannot continue to experiment, we will find that they will be innovative and they will come up with new methods of providing even better patient protections. After all, this is coming from the grassroots; this is coming from the bottom up.

I think we are making a mistake trying to drive it from the top down which will stifle and create the opportunity for stagnation rather than experimentation. I hope that will not be the case, but I do not see it really any other way.

The National Association of Insurance Commissioners, the president of the National Association of Insurance Commissioners, the National Council of State Legislators all agree with this approach.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Who yields time?

Mr. BREAUX. I yield 5 minutes to Senator Jeffords.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized for 5 minutes.

Mr. Jeffords. Mr. President, I commend the Senator from Maine for keeping this issue alive. It is critically important that we defer as much as we can to the States because they are already set up for it. Why not let them do it?

On the other hand, this is a Federal Patients' Bill of Rights. That means equal rights to everyone in this country, so different states that may or may not be uniform as well as to make sure we get a firm and even enforcement of this bill.

A lot has been said about HIPAA and using HIPAA as an example of bad policy and it was badly done and it was totally different. HIPAA dealt with portability of insurance in the case of people being laid off work.

They said, if you do not do it, HCFA will come in and do it, and five States said let HCFA do it, and it made a mess of it. This is different. We are talking about the enforcement of rights, an even enforcement across the country. Yet we do recognize it is important for the States to do it themselves. Many, if not most of them, are already doing a legislative enforcement to require the appropriate and fair enforcement of the rights of individuals on health care.

This is an important difference. HIPAA was a mess, but this has nothing to do with that. This is quite different from HIPAA.

We all support the Patients' Bill of Rights. The question is who ought to enforce it. We say, yes, let the States that want to do it do it. On the other hand, we need to make sure it is done fairly and uniformly across this country. We do give the authority to the Secretary to review it, and we also say he should lean over backwards to make sure the States do it if at all possible. It is not a HIPAA-type situation; we ought to give the States that want to do it the opportunity to do it.

It is important that we also recognize that the compromise requires States to have protections that are “substantially compliant with” Federal protection and defines this standard as having the “same or similar provisions and the same or similar effect.” The Secretary must approve the State's certification of compliance in a manner that is in deference to existing State laws. If he does not act on the State application within 90 days, it is automatically approved. States that have their certification disapproved may challenge that disapproval in court.
The amendment developed by Senator Breaux and myself requires State flexibility to implement strong patient protections while guaranteeing a basic level of protection for all Americans in all health plans. Requiring the States to be in substantial compliance with the Federal law—not exact compliance but substantial compliance—provides States with the flexibility they need to implement strong patient protections while ensuring that all patients receive the Federal floor of protections. Under this amendment, States can keep their own laws as long as their basic intent is similar to the Federal standard and will have a similar effect.

The Secretary is required to be deferential to the States—give them every break you can but make sure that the bill of rights will be enforced. Give them every possible opportunity to do it themselves rather than having to go to court. However, this requirement does not infringe upon the Secretary’s authority to determine whether current State laws will provide the basic level of protections promised to all Americans in the health plans under the Patients’ Bill of Rights.

So HIPAA is just a totally different situation. It is a mess; we agree with that; but it is totally different. Do not get confused on the HIPAA example.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore, Who yields time?

The Senator from Maine.

Ms. Collins. How much time is remaining on my side?

The ACTING PRESIDENT pro tempore. Three minutes forty-seven seconds.

Ms. Collins. Mr. President, I yield 2½ minutes to the Senator from Ohio, Mr. Voinovich.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. Voinovich. Mr. President, I thank my friends from Maine and Nebraska for offering this important amendment. I believe the Collins-Nelson amendment will allow the Senate to move forward and pass a strong Federal patient protection bill without suffocating the patient protections States have adopted over the last several years.

I wholeheartedly agree that the Senate should take action to protect those Americans not covered under state plans. While the States were in front protecting the majority of those insured individuals through state regulation, the federal government has dragged its feet.

However, a federal patient’s bill of rights should not preempt the patient protection laws already have been passed by the states. There are more than 117 million Americans who are covered under fully insured plans, governmental plans and individuals policies, which are all regulated under state law.

My colleagues supporting the McCain-Kennedy legislation believe that the federal mandates in the bill should apply not only to ERISA plans, but also to those 117 million Americans in state regulated health plans. Apparently, they think that the states, which have already acted and are already protecting millions of Americans, are competent enough to do the job. Instead, they think that the federal government will do a much better job.

My colleagues on the other side of this debate want the public to believe that all Americans need to be covered under a federal patient protections bill or else the quality of their health care will be jeopardized. The fact of the matter is that the majority of Americans are already covered under very good, very comprehensive state health care laws.

As a former Governor of Ohio, I was on the front lines in the fight to give working men and women in Ohio real health care choices. As governor, I signed into law five legislative measures and pushed through several administrative improvements to protect families who rely on state-regulated plans for their health care coverage.

The majority of states, including Ohio, have moved aggressively—certainly more quickly than the federal government—to reduce health care inflation, expand access for the working poor, enhance consumer protections and bring greater accountability to the system.

If the states had waited for the federal government to step to the plate to provide patient protections, 117 million Americans would not have the patient protections they currently enjoy.

The simple truth is that the states have been out in front of the federal government in providing sound protections for its citizens. The following facts prove this point:

42 states have already enacted a comprehensive Patient’s Bill of Rights;

50 states have mandated strong patient information rights;

50 states already have an internal appeals process and 41 states have included an external appeals process;

49 states already enforce consumer protections regarding gag clauses on doctor-patient communications;

47 states already have regulations regarding prompt payment; and

44 states already enforce consumer protections for access to emergency care services.

The states are already getting the job done for the majority of insured Americans. But if we do not pass this amendment, we will be turning over to the Health Care Finance Administration (HCFA) the enforcement of state sponsored protection plans that are not substantially equivalent with the federal bill.

The fact is, HCFA already has its hands full. Administering and regulating Medicare and Medicaid has already overburdened this federal agency. Think about it. HCFA has already under its purview over 70 million Americans through these federal programs. Now, my colleagues want to place the health care of an additional 170 million Americans on HCFA’s shoulders.

The simple fact is that HCFA cannot handle the burden.

Those individuals on the front lines of protecting the 117 million Americans with state regulated insurance know what will happen if the federal government is given the responsibility to oversee these state regulated health insurance plans.

In fact, the National Conference of Insurance Commissioners has made clear its concerns about the McCain-Kennedy bill as, “...federal legislation that will largely preempt important state laws and replace them with federal laws that...the federal government is ill-prepared to monitor and enforce.”

Additionally, the National Association of Insurance Commissioners has made clear its concerns about the McCain-Kennedy bill as, if the federal government unilaterally imposes a one-size-fits-all standard on the states, it “could be devastating to state insurance markets.”

The amendment that Senators Collins and Nelson have offered will give true deference to state laws and the traditional authority that states have had to regulate insurance.

By “grandfathering” all state patient protection laws, Senators Collins and Nelson recognize that the vast majority of states have enacted comprehensive patient protections laws, as Ohio has done.

The amendment also encourages states, through Patient Quality Enhancement Grants, to review their current patient protection and, if the state legislature and governor so desire, take action to mirror federal patient protections.

I want to relay to my colleagues that I truly believe that this will be the most important federalism vote that the Senate takes this year.

In conclusion, it has been the traditional role of States to regulate the needs of our States. However, both the McCain-Kennedy bill as written and the Breaux amendment seek to preempt what the States have accomplished in protecting patients. The underlying bill as written would step over the 10th amendment which says: the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The bottom line is that the States have been involved in protecting patients a lot longer than the Federal
Government, and they are doing a good job with the protections they have put in place. They debated them in their State legislatures. Their insurance departments are doing a good job of enforcing those laws. The Breaux amendment and the underlying bill gets the States out of their role. We will have a dual system of enforcement—State insurance commissioners and HCFA. And I can tell you, anyone who knows anything about HCFA in terms of the responsibilities they have, knows they have a hard-enough time doing their job now. We should not get them involved in a system that is already working on the State level.

I beg my colleagues not to go along with federalizing this issue. Let's take care of the Federal people who have been exempted over the years because we haven't done the job we are supposed to do, and let the States continue to do the job they have been doing.

I thank the Chair.

The ACTING PRESIDENT pro tempore. Mr. BREAUX. I yield 2 1/2 minutes to my good friend, the Senator from Connecticut.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Louisiana. I commend him and the Senator from Vermont for their compromise proposal we will be voting on shortly. I reluctantly oppose my friend from Maine, my fellow New Englander. I have joined with her on so many issues and have such great respect for her.

There is a title to this bill. It is not titled casually; it is called the Patients' Bill of Rights. Obviously we are all most familiar with our Constitution and the Bill of Rights we embrace and cherish so richly as American citizens. But if we are going to have a bill of rights when it comes to basic fundamental health care, as has been pointed out by the Senator from Louisiana and the Senator from Massachusetts and others, then there ought to be a floor that applies across the country to all 50 States. That is what we are really advocating.

If the Collins amendment is adopted, then what you are developing is a trapdoor in that basic floor that exists. Let me make the case just by pointing to one particular provision of this bill. That is the access to emergency room care, Mr. President.

I have this chart to make the point. In the States that are in red in this chart, they have laws that are weaker than the underlying bill when it comes to access to emergency rooms. We are not talking about some grandiose new plan. We are talking about a fundamental right that you can have access to the closest emergency room. In 27 States, they have a much weaker provision than is in this law. We are saying when it comes to a Patients' Bill of Rights, access to clinical trials, specialists, emergency rooms, this is the floor across the country. If you want to pass laws at the State level that are substantially in compliance with that, we welcome that. If you want to do something more than we are doing here, we welcome that. But if you are going to say that we are going to allow weaker laws to exist in the access to a gynecologist, to a pediatrician, to a clinical trial, to a specialist, or to an emergency room, then we don't think that is right.

If you are for the Collins amendment, in many ways you are going against this bill. I understand that. I appreciate the fact that people do not want to pass Patients' Bill of Rights and just leave it up to each State to decide. But if you believe, as a majority of us do, and an overwhelming majority of the American public, that there ought to be a Patients' Bill of Rights, a basic floor that provides this basic standard, then you must vote to adopt the Breaux-Jeffords compromise amendment and retain the integrity of this bill.

The ACTING PRESIDENT pro tempore. Mr. President, the time has expired. Who yields time?

Mr. KENNEDY. I imagine the Senator would like to close the debate, would she not?

I believe I have 2 1/2 minutes.

Mr. President, this is a very simple and very basic and very fundamental debate. It is whether all Americans are going to be covered as included in this legislation. We do not believe it should depend upon where you live. We believe the American people have a right to have a floor that is substantially in compliance with that standard. They have acted without any prod or mandate from Washington. If you are going to allow weaker laws to exist in the access to a gynecologist, to a pediatrician, to a clinical trial, to a specialist, or to an emergency room, then we don't think that is right.

Ms. COLLINS. Mr. President, one of the myths in this debate is that unless the Federal Government preempts State insurance laws, millions of Americans will be unprotected in their disputes with HMOs. That is simply untrue. Ironically, my friend from Connecticut makes the point on emergency room care. Forty-four States have enacted legislation guaranteeing access to the nearest emergency room. But they have crafted their laws in different ways depending on the needs of those States. Why should the Federal Government second-guess those laws, substitute its judgment for the judgment of State legislators and Governors' offices all over this country? It does not make sense. The proposal of the Senator from Louisiana would be both burdensome to States and ineffective for consumers.

Does anyone really believe that a consumer with a problem with his or her insurance policy is better off calling the HCFA office in Baltimore than dealing with their own State bureau of insurance?

The States have more than 50 years of experience in regulating insurance. They have acted without any prod or mandate from Washington to enact good, strong patient protection laws. Let's honor their work. Let's build upon the good works of the States rather than preempting, second-guessing, and superseding their laws.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. COLLINS. Is there any time remaining?

The ACTING PRESIDENT pro tempore. The Senator from Maine has 24 seconds.

Ms. COLLINS. I yield back the remainder of my time if the other side is ready to yield back.

I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. All time is yielded back. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

Mr. REID. Mr. President, I move to table the Collins amendment and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alabama (Mr. SHELBY) are necessarily absent.

Mr. PREVOR. Mr. President, I move to table the model amendment. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:
CONGRESSIONAL RECORD—SENATE 12303

[Roll Call Vote No. 202 Leg.]

YEAS—83

Akaka             Dodd             Levin            Maffei
Baucus            Durbin            Lieberman       McClintock, R.
Bayh              Durbin            Lincoln         McMorris, R.
Bingaman          Edwards           McCain          McCurdy
Boxer             Feinstein         Miller          Michaud
Breaux            Fitzgerald        Murray          Moosic
Cantwell          Graham           Nelson (FL)     McCollins
Carnahan          Harkin           Reed            Moseley
Carper            Hollings         Reid            Morano
Chafee            Inouye           Reid            Morse
Clailand          Jeffords         Rockoff         Morgan
Clinton            Johnson         Sarbanes        Murray
Conrad             Kennedy         Schumer         Nelson (NE)
Corinne            Kerry            Stabenow        Nunn
Daschle            Kyl              Stevens         Norbeck
Dayton            Kyl              Thomson         Nunn (GA)
DeWine             Landrieu         Wellstone       Oles
Dodd              Leahy            Wyden

The motion was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. INOUYE, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 830

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes for debate equally divided prior to a vote on or in relation to the Breaux amendment No. 830.

Who yields time?

Mr. BREAUX. Mr. President, I do not mind using the time allocated for remarks, but in light of the previous vote, after the remarks could we just vitiate the rollocall vote and have a voice vote on this amendment? I ask unanimous consent that that be in order.

The PRESIDING OFFICER. The yeas and nays have not been ordered on the Breaux amendment No. 830.

Mr. BREAUX. That would be my suggestion. We have the time allocated for comments on it, and then have a voice vote on it afterward.

Mr. KENNEDY. Mr. President, I think we will have the Senator from Minnesota speaking for 2 minutes, and then I think we will voice the Breaux-Jeffords amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BREAUX. I yield 2 minutes to the Senator from Minnesota.

Mr. WELLSTONE. I thank my colleague for his graciousness.

Mr. President, I understand the need to compromise, and I think we are moving forward in a very positive way. I do want to point out for the record that what we are now saying is that a State need only be “substantially compliant” with Federal protections as opposed to “substantially equivalent to.” My big worry is that if you look at this amendment, we are also saying we need to give deference to the State’s interpretation of its own law and its compliance with Federal protections.

I say two things to colleagues. No. 1, I think, in the best of all worlds, consumers would also have a right to appeal if they believe the State is in error.

To be fair, we want to give deference to what States are doing, as long as we have strong consumer protections for everyone regardless of where they live. I also believe if we are going to do that, we have to make sure not only that the States are given their proper due but so are consumers.

This amendment weakens the bill somewhat. I have said that to Senator BREAUX. Frankly, more than anything, it would be helpful to have an ombudsman office or something such as that in every State, where people would know where to make a phone call, know what their rights are. There are ways we can strengthen this.

I do not believe this amendment takes us in a strong consumer direction. It is a good compromise in terms of where we are. I wanted to speak out and express my concerns.

The PRESIDING OFFICER. All time on the amendment has expired.

The question is on agreeing to amendment No. 830.

Mr. KYL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 64, nays 36, as follows:

[Roll Call Vote No. 203 Leg.]

YEAS—64

Akaka             Edwards           McCain            Maffei
Baucus            Ensign            Mink            McMorris, R.
Bayh              Feingold          Miller            Moe
Bingaman          Fitzgerald        Moran            Murphy
Boxer             Fitzgibbon        Murray            Pascrell
Breaux            Feingold          Moss             Peterson
Byrd              Fitzgerald        Murray            Peters
Cantwell          Harkin           Nelson (FL)     Pomeroy
Carnahan          Hutchison        Nelson (GA)     Pomeroy
Carper            Johnson           Noonan           Pugh
Chafee            Johnson           Perdue          普京
Clailand          Johnson           Johnson           Wilson
Clinton            Johnson         Smith (OK)     Sessions
Conrad             Kohls             Smith (TX)     Sessions
Daschle            Leiberman        Smith (WA)     Sessions
Dayton            Levin             Smith (WA)     Sessions
DeWine             Levin            Snowe            Specter
Dodd              Lieberman         Snowe            Specter
Dorgan             Lincoln           Snowe            Snowe

NAYS—36

Allard            Durbin            Coburn           Sessions
Allen             Grassley          Inouye            Sessions
Bennett           Harkin           Hagel             Sessions
Bond              Hatch            Johnson          Sessions
Brownback         Helms            Johnson          Sessions
Bunning          Helms            Johnson          Sessions
Burns             Hutchison        Johnson          Sessions
Cochran            Inhofe          Snowe            Sessions
Collins            Inhofe          Snowe            Sessions
Craig             Lieber           Snowe            Sessions
Crafo             Leiberman        Snowe            Sessions
Cranston          Lieberman        Snowe            Sessions
Crafo             Lincoln           Snowe            Sessions

NOT VOTING—3

Biden            Domenici          Shelby

The amendment was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. DORGAN, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire, or his designee, is recognized to offer an amendment relative to liability on which there will be 1 hour of debate.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 831

Mr. BOND, Mr. President, I send an amendment to the desk on behalf of myself, Mr. ROBERTS, and Mr. HELMS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. ROBERTS, and Mr. HELMS, proposes an amendment numbered 831.

Mr. BOND, Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To ensure that patients receive a minimum share of any settlement or award in a cause of action brought by a participant or beneficiary (or estate) under this Act.)

On page 154, between lines 2 and 3, insert the following:

“(11) MINIMUM SHARE OF SETTLEMENT OR AWARD.

“(A) IN GENERAL.—Except as provided in subparagraph (B), a participant or beneficiary (or the estate of such participant or beneficiary) shall receive not less than 85 percent of any award made as a result of a cause of action brought by the participant or beneficiary (or estate) under this subsection, after subtracting the amount of any attorney’s fees from the total amount of such award.

“(B) EXCEPTION.—This paragraph shall not apply where the amount awarded as a result of a cause of action brought by a participant or beneficiary (or estate) under this subsection is less than $100,000.
CONGRESSIONAL RECORD—SENATE
June 28, 2001

Mr. BOND. Mr. President, several days ago in debate in this Chamber, I talked about how employees of small businesses might lose their health care coverage if the provisions of McCain-Kennedy went into effect unamended. The junior Senator from North Carolina indicated that I was interested only in protecting the businesses.

Unfortunately, he misconstrued my arguments because we are concerned about patients. We hope the employees of small businesses will continue to get the benefit of health insurance coverage by their employers. I spoke about employees, however, because if this bill is not significantly amended, there are not going to be patients covered by this bill; they are going to be thrown out of health care coverage. We are concerned about patients.

It is not only small businesses that should be worried about this bill, but employees of small businesses should also be worried about this bill. This amendment I offer today provides additional protection to patients. It provides protection to patients from trial lawyers, so we will find out whether my colleagues are more interested in taking care of patients or ensuring that the rights to sue by trial lawyers are unabated.

There are a lot of words in the McCain-Kennedy bill, but there are also some heavy-duty new lawsuits that are authorized.

The Federal claim of action really begins on page 140. It starts off: "In general.—..." It goes on to say: "The amendment effectively prohibits..." I can't see that being objectionable. It provides that if you are hurt, doesn't it make sense to receive 85 percent of it? A person's attorney is not threatened. It is not only small businesses that should be worried about this bill. We are concerned about patients covered by this bill. If you are hurt, doesn't it make sense to receive 85 percent of it? I can't see that being objectionable. The amendment effectively prohibits obscene contingency fees where large judgments are won and the plaintiff's attorney takes 30 or 40 percent after deducting all the expenses.

Some may say lawyers will not take the cases. When we talk about setting a patient minimum, we need to be cautious. Just as it doesn't help to have a patient minimum unless we actually do have a patient minimum, it doesn't help to have a provision that says if it means no attorney will take your case. This amendment includes two strong protections to make sure access to attorneys is not threatened.
CONGRESSIONAL RECORD—SENATE

June 28, 2001

Mr. DORGAN. Mr. President, this amendment is one more in a series of amendments designed to try to derail the Patients’ Bill of Rights, or the Patients’ Protection Act. This amendment ultimately prevents injured patients from finding the adequate legal protection they need in order to confront a managed care organization. Congress has passed over 300 laws allowing attorney fees, and the laws are described for every Senator to see in a Congressional Research Service report No. 94-878-8. I commend any one to that CRS report which describes these laws.

I have not found any Federal law on attorney’s fees that is as restrictive as is proposed in this amendment. I repeat, there isn’t any Federal law on attorney’s fees that is as restrictive as is proposed in the morning on the Patient Protection Act.

Why, when we have this issue of managed care organizations not providing the care required for patients and we have the opportunity in this legislation to hold the managed care organization accountable, why is it that those who don’t like this Patient Protection Act try to carve the ground out from under patients once again with a restrictive proposal that almost certainly would diminish the opportunity of a patient to acquire access to an attorney to make that HMO accountable?

I find it also interesting that the concern behind this Bond amendment is apparently excessive attorney fees. There are striking excesses with respect to managed care organizations. Let me mention just a couple.

What about excessive salaries, excessive stock options? I don’t hear anyone coming to the floor of the Senate complaining about $50 million in compensation that the CEO of a managed care organization receives. I don’t hear anybody saying that is an excessive salary for an individual to receive. How is it these CEO’s get to be rewarded in amounts a large as $50 million? By pinching on access to care that ought to be delivered to patients.

The opponents of our patients protection bill are not here on the floor saying that $50 million paid to the president of a managed care organization is excessive. We just hear them out here to say we are worried about an excessive fee received by an attorney who is representing a patient trying to hold an HMO accountable.

Mr. REID. Will the Senator yield for a question?

Mr. DORGAN. I will be happy to yield, of course.
Mr. REID. Is the Senator aware that William McGuire of UnitedHealth Group owns $41.1 million last year?

Mr. DORGAN. I am aware of that.

Mr. REID. Is the Senator aware that there were unexercised stock options worth an additional $88 million by various people with that company, but McGuire held the most stock options, worth $358 million? Is the Senator aware of that?

Mr. DORGAN. I am aware of published reports that say that, yes.

Mr. REID. Did I hear the Senator say he has not heard any debate on the Senate floor this past 10 days about this excessive, exorbitant amount of dollars to the people who run these companies and not helping the patients? I have not heard that; has the Senator?

Mr. DORGAN. The Senator from Nevada is correct. We have not heard one word from opponents to our patients protection bill about the salaries, stock options, and the compensation paid to those who run the managed care companies.

Let me go back to the intention of our Patients’ Bill of Rights, and then bring it to this amendment. The reason we are here in the first instance is because too many people in managed care organizations are not getting the care they need. Too many people do not get the care they need or expect from their health care plan, and they are not able to hold the health care plan accountable for it.

This legislation says there ought to be protections in place for patients. Patients ought to be able to know all their options for medical treatment, not just the cheapest option. That is a patient’s right. That is what we say in this legislation.

Some people do not want that. The managed care group does not want that. The insurance companies do not want that. We say a patient ought to have a right to emergency room treatment when they have an emergency. That is a right that is in this bill that we are trying to get passed. I understand why the managed care groups don’t want that. I understand why there are some who oppose it here in the Senate because they stand with the insurance companies and the managed care groups. We stand with the patients saying there ought to be basic protections in place.

This amendment is one more attempt, by our opponents, in a series of attempts just to undermine this bill, to say no, we don’t want with patients, we don’t stand with patients in order to allow them to exercise the rights that are in this bill. What our opponents would like to do is ship away and carve away at the foundation of this bill so at the end of the day the patients do not have these protections and the patients do not have these rights.

This amendment, if it were genuine, if it were really concerned about fees, would not just address attorney’s fees. They would address the compensation paid to those who run these organizations, who make $50 million, $10 million, or $250 million in stock options. Is that excessive? We don’t hear anyone on the floor of the Senate talking about that.

Why? Because this is not about fees. It is about with whom do you stand. It is about people who really do not want this legislation to pass. They have been dragging their feet now, day after day after day, bringing out amendments to try to defeat the Patients Protection Act. In every case, in every circumstance, they have failed. This amendment is the latest attempt to do that. The amendment limits attorney’s fees, as I understand it, to an amount below all other attorney’s fees that are now written in Federal law. We have it in a number of places in Federal law. I have referenced the CRS report. All Senators can look at it.

This amendment proposes we limit attorney’s fees below all those other areas mandated by federal law. Why? Because here we are talking about patients. We are trying to advocate on behalf of patients. Why would anyone want to take away the patients’ rights when they are confronting big organizations?

One of the interesting things is I hear all this talk about a patient who would hire an attorney to make a managed care organization accountable. I hear no discussion about the legion of attorneys who are hired by managed care organizations to deal with patients.

Do you think the big insurance companies and big managed care organizations do not have a battalion of lawyers they pay? Of course they do. Maybe you want to limit their opportunity to use lawyers? I don’t think so. I don’t propose that.

Then why would you want to limit the opportunity of patients to use attorneys to make an HMO accountable? This just makes no sense on its face. It is one more step, one more attempt to try to defeat this bill. We have had it day after day after day, amendment after amendment. I hope my colleagues will understand the last thing we ought to do is weaken the ability of the American people, who as medical patients expect certain care but did not get it, to be able to hire an attorney and make that managed care organization accountable.

I would say one more thing. I would like those who offered this amendment, who are indeed concerned about “fees,” to be concerned about all fees. If they are concerned about lawyer’s fees, good for you. Then be also concerned about $50 million, and $250 million in compensation paid to a CEO who runs a managed care organization. Be concerned about those fees as well. You would be concerned about bringing both amendments to the floor and let’s debate both amendments.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mrs. CARNahan). Under the previous order, the Senator from Iowa is recognized for 10 minutes.

Mr. REID. The two leaders are on the floor. I think they are about ready to propose a unanimous consent request. If they are not now, would the Senator mind yielding when they are ready?

Mr. GRASSLEY. I would rather wait. Hopefully, they will do it right now.

Mr. REID. Madam President, I suggest the absence of a quorum and I ask unanimous consent to have the time run equally on this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. Madam President, I support the Bond amendment and want to speak specifically to that point. It also deals with the point I have made in other speeches—that this is a very good bill. But during the process of considering giving patients a bill of rights against insurance companies, I think we always have to keep our eye focused upon the fact that we want to give treatment for patients and not tribute for lawyers.

This amendment takes a very good approach in fixing the Kennedy-McCain bill’s provisions dealing with the liability parts of the bill, which, in my view, amount to nothing less than a trial lawyer’s pot of gold.

I have always believed that medical malpractice liability laws should provide adequate compensation for those who are truly injured while reducing frivolous lawsuits.

I firmly believe that it is a principle of any case, including patients against insurance companies, that people who are harmed ought to be made economically whole. But there has to be a balance between frivolous lawsuits and making sure that people can be made whole if harmed.

I think the Kennedy-McCain bill fails to strike that very carefully needed balance and instead creates a lottery for trial lawyers, which not only inflates the cost of health insurance for all of us but also leads to more and more hard working Americans losing health coverage.

We shouldn’t do anything in this bill that will cause people to lose their
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health insurance. We already have 42 million uninsured Americans. The best opportunity for affordable health insurance would come from the self-insured plans that employers offer. The case is that most of these self-insured plans come from small business more so than large corporations. We should not be putting these employers and their employees in a situation where the threat of suit under this bill and losing a generation and a lifetime of savings in that family business, will not want to take a chance of losing his investment which has been built up through a family working together and investing everything they can regardless because of a threatened lawsuit. If that is a threat, then you can understand why the employer might just eliminate their self-insurance and in the process throw the employees into a situation of having no health insurance, resulting increases in the number of 42 million people in this country who now do not have such insurance.

Here is how I believe this will inflate costs, and thus cause employers and employees to not have health insurance coverage. Except for the $5 million cap that is in this bill on punitive damages in Federal courts, the Kennedy-McCain bill sets absolutely no limits on what damages trial lawyers can collect.

When it comes to patients and those harmed because of lawsuits, it ought to be an axiom of all of our public policy that the people harmed, not lawyers, should get most of the money from a lawsuit.

Of course, the Bond amendment then makes this more true than under the existing practice. You have to consider that trial lawyers generally collect 40 percent of their clients' recoveries. In fact, in many cases, you can have the lawyer's fees plus other court costs work out to where the person harmed is getting less than 50 percent of what the jury might award.

Trial lawyers generally collect 40 percent of their clients' recoveries. Incentivized by bringing cases regardless of merit are then extremely high. It is a perverse incentive to go to court and to go to trial.

But the real jewel in the trial lawyer's crown is this bill's provision that allows the same suits for the same claims brought by the same trial lawyers, whether they proceed in State or Federal courts.

Even though this debate is supposed to be about patients, the Kennedy-McCain liability scheme isn't about patients at all. It is about trial lawyers. In fact, as you can see, I call this the "trial lawyers lottery ticket." I want to show where five out of six opportun-

nities for monetary awards are virtually jackpots for lawyers.

Take a closer look. I would like to just look at the trial lawyer's lottery ticket and see what the lawyer gets. Let's start with medical costs.

Peel off the lottery ticket top, both for State court and Federal courts, you will see "bingo"—no limit on what trial lawyers can collect in both State and Federal court. That is a jackpot that ought to make any lawyer happy. But why quit when you are ahead? Let's take a look at what is in store on pain and suffering. Peel that lottery ticket, and you can see what you get on pain and suffering. It is another jackpot—unlimited damages in State and Federal courts.

The sky is the limit. That is where the trial lawyers are really winning big.

Now, for the trial lawyer's favorite damages, punitive damages, they stand to reap tens of millions of dollars. Let's see what this ticket offers the trial lawyers. So we pull off the punitive damages square. You can see unlimited damages in State court, and up to a $5 million cap in damages as far as the Federal courts are concerned.

This is another big win. Talk about good luck: unlimited punitive damages in State courts, and in the Federal courts almost unlimited—a $5 million cap. If you ask me, that is hardly any limit at all.

Mrs. BOXER. Will the Senator yield for a question?

Mr. GRASSLEY. No, I will not. I only have 10 minutes. And we lost some other time on this situation of waiting for the leader.

Mrs. BOXER. On my time. I would ask a question on my time.

Mr. GRASSLEY. Finally, if I could, let's not forget about class action law suits where multimillion-dollar damages are the name of the game. So here again we peel off the lottery ticket. You can have class action lawsuits in State courts. You can have class action lawsuits in Federal court.

So bingo again. Kennedy-McCain has no limits on class action lawsuits. It even creates new grounds for bringing class action cases.

As you can see, everybody wins—every lawyer, that is—with the trial lawyers' lottery ticket.

What we get back to then is that we are more concerned about treatment for trial lawyers, not treatment for patients. It seems ironic that the very individuals this bill claims to protect are the ones who lose. Despite what its sponsors say, the bill before us exposes employers to the constant threat of litigation, even for simple administrative and clerical errors.

What is the ultimate result? What everybody says they do not want to ever happen. People lose coverage. When this sort of perverse incentive is put out there to threaten small business, particularly those that are self-insured—because they do not want to put in jeopardy their lifetime of work but that is going to be the end result when these self-insured plans are dropped. Then, of course, the employees become the biggest losers in this lottery.

So I urge my colleagues to reject this lottery and to support the Bond amendment, which creates much needed patient minimums and ensures that patients, not lawyers, get fair compensation for their losses.

I reserve the remainder of the time and yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. So the ranks of the uninsured are going to go up. There are 42 million uninsured now. Do we want to increase that? No, nobody wants to increase that, but that is going to be the end result when these self-insured plans are dropped. Then, of course, the employees become the biggest losers in this lottery.

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The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I would like to take 1 minute of that 3½ minutes.

Mr. GRASSLEY. I object to that. There is plenty of time on that side for the Senator to take her time. I am taking time off our side. Madam President, how much time do I have left?

The PRESIDING OFFICER. There are 3½ minutes left for the sponsor.

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The PRESIDING OFFICER. Who yields time?

The Majority Leader.

The Majority Leader.

Mr. DASCHLE. Madam President, I will use my leader time and not take any time off the agreed-upon time allocated for the amendment.

Madam President, I would just say on the amendment, there is nothing in there that would limit the lawyers' fees for the insurance industry. Those are unlimited. While they limit the legal fees for lawyers defending patients, there is nothing to limit the legal fees for lawyers defending HMOs and insurance companies. I find that quite ironic.

Mr. DASCHLE. Madam President, I want to propound a unanimous consent request. I will not do that at this time because I have been talking with the distinguished Republican leader. But I want to propound a request, as I had indicated, I would, to lock in the debate for the supplemental.

There are a number of amendments that have been suggested. I know the unanimous consent agreement has been
cleared on our side now for I think 3 days. We have been unable to get consent from our Republican colleagues for the first 3 days.

Now I am told they may object to even going to the supplemental, at least initially. If that happens, of course, I will be forced to file a motion to proceed. But I think it is important.

There was a story in the Washington Times dated June 26, and I think for the RECORD it would be helpful if I just read it because I think it does capture the urgency with which we address the supplemental. So I will take just a moment to read it:

The U.S. military would be forced to curtail or cancel training exercises, facility repairs and equipment maintenance if Senate Majority Leader Tom Daschle holds up a pending emergency budget bill until late July, according to Pentagon projections.

The Pentagon provided a list of hardships at the request of Senate Minority Leader Trent Lott. He used the list yesterday to criticize Mr. Daschle for threatening to delay action on a $6.5 billion supplemental budget bill until the Senate completes work on a contentious patients’ bill of rights. That delay would push approval of the fiscal 2001 defense legislation until late July or beyond.

"If we don’t get this bill completed by mid-July, we’re going to have canceling of base-property maintenance, [and] holding some of our deployed units where they are overseas until the end of the fiscal year," said Mr. Lott, "So we’re really pushing the envelope when it comes to the needs of our military personnel in health as well as in steaming hours."

Picking his first confrontation with Democrats since they took control of the Senate, Mr. Lott also accused Mr. Daschle of sacrificing the nation’s urgent energy needs in order to push through the health care bill.

Mr. Lott said he suggested the Senate OK the $6.5 billion supplemental. That delay would push approval of the fiscal year defense legislation until late July or beyond.

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Neglecting energy and defense has “very dangerous implications for the security and prosperity of the American people,” the Mississippi Republican said.

Nearly all the budget bill’s funding goes to replenishing military training accounts, such as pilot training, steaming hours, fleet exercises and air combat training maneuvers. The Air Force and Navy would ground some pilots and aircraft.

Perhaps hold deployed units overseas until the new fiscal year begins Oct. 1. Cancel training for units getting ready to deploy for peacekeeping duties.

Stop or slow down maintenance of equipment at large regional depots.

"This will lead to the loss of jobs for many Americans," Mr. Lott’s office said.

The Joint Chiefs of Staff originally wanted about $9 billion in emergency funding in January, but incoming Defense Secretary Donald Rumsfeld nixed the request. The White House scrubbed the numbers and presented the $6.5 billion proposal. The House already has approved that number, as did the Senate Appropriations Committee.

Mr. Lott said he suggested the Senate OK the emergency defense bill by unanimous consent, since both chambers approved Mr. Bush’s list of spending requests without adding home-state projects, as was the practice with supplemental bills the past few years. But Mr. Lott said Mr. Daschle, South Dakota Democrat, rejected that idea.

Mr. Daschle, despite earlier indications that he would allow a speedy vote on the spending bill, told colleagues Friday that he would not bring it to the floor until the Senate completes work on a patients’ bill of rights. Republicans have been slowing down final passage of that legislation, raising concerns about emergency funds and increasing Leon Panetta’s chances of being secretary of defense. Mr. Daschle made clear that he would take up the emergency funds bill after he completes work on the patients’ bill of rights, Republicans have been slowing down final passage of that legislation, raising concerns about emergency funds and increasing Leon Panetta’s chances of being secretary of defense.

Congress is in recess for the entire month of August, meaning that the Senate would not take up the administration’s energy plan until September at the earliest.

Mr. Daschle spokeswoman Molly Rowley said he would not take up the administration’s energy plan before he leaves. That delay would push approval of the fiscal year defense legislation until late July or beyond.

"We need to get this defense and other important supplemental defense needs out of committee, because it is critical for nonessential operations like pilot training, steaming hours, fleet exercises," Mr. Lott said, "I’m very worried about that by not acting on the defense supplemental appropriations bill we’re asking for more delay and even more problems with our defense needs."

Mr. Daschle has been threatening to cancel the Senate’s vacation to compel Republicans to finish work on the health care bill.

Reps. and Democrats have been sniping politely about legislative priorities ever since the power shift in the Senate. Republican lawmakers have been pressing for passage of President Bush’s energy plan, but Mr. Daschle has expressed more interest in the health-care legislation, as well as increasing the minimum wage and passing a hate crimes bill.

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Mr. Lott said yesterday that Democratic leaders do not intend to address the energy issue by the end of July. Congress is in recess for the entire month of August, meaning that the Senate would not take up the administration’s energy plan until September at the earliest.

House and Senate Republicans met with White House energy representatives today and agreed to call attention to Democrats’ inaction on an energy plan over the recess next week. The meeting took place in the office of House Majority Whip Tom DeLay, Texas Republican.

Mr. DASCHLE. Madam President, Senator STEVENS and Senator BYRD came to me a couple of weeks ago and asked for a special exemption from the understanding we have been working under here in the Senate that no official action can take place on any legislation until we have broken the impasse on the organizing resolution and assigned each committee its full complement of members. I, of course, agreed. But in the lull of the recess, the Appropriations Committee to work its will and to finish this supplemental, which is what it did. I applaud both of them for taking the action they did.

The House, of course, has now acted. Now it is up to us. A couple of days ago the President called me and said: Above all, I hope that you will pass the supplemental before you leave. I gave
Mr. DASCHLE. The Senator is correct. As I understand it, this bill was not subject to amendment in the Senate, that it was completed in a very short period of time. I don’t know why we would have to elongate or unnecessarily prolong the debate on this side.

Whatever length of time may be required to consider this bill, we will do that. All I am saying is that we have to do it before we leave.

I see both the ranking member of the Appropriations Committee and the distinguished Republican leader are on the floor.

I ask unanimous consent that the majority leader, following consultation with the Republican leader, may proceed to the consideration of Calendar No. 76, S. 1077, the supplemental appropriation bill that the President has proposed to us. There are some considerations under the following limitations: That only first-degree amendments in order other than a managers’ amendment be the following list which is at the desk—I won’t read the list at this point—that any listening first-degree amendment be subject to relevant second-degree amendments, that any time limitation for debate on a first-degree amendment be specified in this agreement, then any second-degree amendment to that amendment be acceded the same time limit; that upon disposition of the above amendments, the bill be advanced to third reading; the Senate then proceed to the consideration of Calendar No. 77, H.R. 2216, that all after the enacting clause be stricken; that all the above first-degree amendment be subject to relevant second-degree amendments, that any time limitation for debate on a first-degree amendment be specified in this agreement; then any second-degree amendment to that amendment be accorded the same time limit; that upon disposition of the above amendments, the bill be advanced to third reading; the Senate then proceed to the consideration of Calendar No. 77, H.R. 2216; that all after the enacting clause be stricken; that all the above first-degree amendment be subject to relevant second-degree amendments, that any time limitation for debate on a first-degree amendment be specified in this agreement; then any second-degree amendment to that amendment be accorded the same time limit; that upon disposition of the above amendments, the bill be advanced to third reading; the Senate then proceed to the consideration of Calendar No. 77, H.R. 2216; that all after the enacting clause be stricken; that all the above first-degree amendment be subject to relevant second-degree amendments, that any time limitation for debate on a first-degree amendment be specified in this agreement; then any second-degree amendment to that amendment be accorded the same time limit; that upon disposition of the above amendments, the bill be advanced to third reading; the Senate then vote on passage of the bill with no intervening action or debate.

Finally, I ask unanimous consent that S. 1077 be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object, Madam President.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. First of all, I think it is important that we dispose of this issue as quickly as possible so that we can get back to the debate on the amendment. I think that we are still a number of very important amendments that Senators wish to offer with regard to the Patients’ Bill of Rights. I know the Senator from Nevada has been working on this issue and knows that. These are substantive and important amendments.

When it was suggested by the Senator from North Dakota that most of the major amendments have already been offered and considered, I don’t believe so. Of course, I am sure how important they are in the eye of the beholder or the offeror of the amendment. I think it is important that we address this issue and get back to having debate and hopefully votes this afternoon and into the night, however long it takes to deal with important issues that still need to be addressed.

We still believe very strongly that this bill has not been corrected in terms of its major problems in the likelihood of loss of coverage and increased premiums, and when, how, where lawsuits are going to be filed instead of making sure patients get the health care coverage they need. We can resolve this relatively quickly and then go back to that.

With regard to the organizational resolution, we continue to exchange ideas. I think it is possible that it could be handled with only one vote, or it may take three, but we are hoping we can get that worked out. I know there are a couple of letters that are being reviewed now on both sides that might make it unnecessary to have three recorded votes. I think we are going to have that with the question of public disclosure of the blue slips which can be used by Senators to block a judicial nomination. There is a strong belief on both sides that those should be made public and not just handled secretly, as has sometimes been the case but not always the case, in the past.

Also, we are looking to see if we can get some agreement in writing that we would continue to do what the precedents are with regard to Supreme Court nominees. I believe going back all the way to 1881, the whole Senate has voted on Supreme Court nominees even when the committee has voted on a tie or negatively. But we are working on that, and I would like us to get that resolved in the next 24 hours myself.

With regard to this unanimous consent request, I had really hoped we could do it Monday. I thought it could have been. I believe it could have been done Monday in a very limited period of time without this rash of amendments. I think we could have gotten an agreement that there be no amendments. That didn’t happen for whatever reason.

Senator BYRD and Senator STEVENS had indicated they would like to have done it even last night so that we could have done it quicker and so we could perhaps have gotten into a conference with the House. The problem now is that if we don’t take this up immediately, right now, we are not going to be able to get a conference agreement. There is no chance of a conference agreement until after the Fourth of July recess, even if the Senate should act sometime tomorrow or Saturday. I really had hoped we could do it earlier so we could get into conference, get it completed, and send it to the President. That now appears not to be likely, unless the Senate wants to turn
right now to consider this very important supplemental appropriations resolution. I would like that to be considered.

Failing that, I think we are not going to object to agreeing to this unanimous consent request, but there are 35 amendments now—34 or 35. Some of them clearly are important to Senators involved on both sides of the aisle. Senator Bond has a couple of them. Senator Boxer has one I think she probably feels very strongly about. Senators Cleland, Roberts, and others have amendments with regard to the B-1 bomber. Senator Conrad, I haven't talked to him, but he has one on Turtle Mountain Indians. As you look down the list, some of them are not just relevant, some of them are amendments about which Senators are going to care greatly and let it lie with me as to what you are talking about an extended period of time at this point to complete action on this legislation. I regret that.

If we could get an agreement to go to it now—I see Senator McCain. I know he has an amendment he feels very strongly about—if we could do that now, maybe we could get some time agreements and move to completion.

I see the distinguished Senator from Alaska, the senior member of the Appropriations Committee on the Republican side, who wants to speak. I am glad to yield under my reservation, Madam President.

Mr. Stevens. Madam President, I am here to urge that the Senate take the bill up now. I think if we took it up now, working with the people who have those amendments, we ought to be able to finish it today. I think if we finish today, the House will stay, and we could complete this before the recess. If we wait until Monday after the House goes home, it will be very difficult to get them back, even from the point of view of getting travel arrangements for the House to come back on Monday or Tuesday.

I cannot speak for the chairman, but I can say that we both have sought for the last 2 weeks to try to have this bill become law in time to meet the needs of the armed services. Very clearly, they have been demonstrated now. There is no question that if we do not get this bill passed, there is going to be an impact on the armed services. I will commit myself to both leaders to work with all Members to see what we can work out, to constric the time and finish it tonight, if we can take it up now. That might put pressure on the other bill, too.

I urge that the organization resolution get resolved. I personally say to both leaders, my Kenai Peninsula is on fire. That is where I want to go fishing next week, too. So there is a disaster and the urgent call of the pink salmon to respond to.

I pledge myself to work even harder than Senator Reid does to find some way to constric this time so we can vote on this and get it to the House and bring it back so we can all vote on the bill. I will work with the leaders to let us have the rems for a few hours and see what we can do. I think we can finish this bill tonight.

Mr. Lott. Madam President, under my reservation, I will propound as an alternative unanimous consent agreement the same proposal the majority leader has made, except that in the first paragraph under consultation with the Republican leader, I would add “may proceed immediately to the consideration of Calendar No. 76, S. 1077.” I make that in the form of a unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. Daschle. Madam President, reserving the right to object, I have offered this to our Republican colleagues now for several days. I have said, give me a definitive list that will allow us to finish our work on the Patients' Bill of Rights. We will proceed immediately to the Floor and then return to the Patients' Bill of Rights with the understanding that we will complete work on that as well.

Unfortunately, our Republican colleagues have been unable to do that. My offer still stands. Give me a definitive list that we can complete before we leave, and I will go immediately to the supplemental. I have offered it privately to Senator Lott. I have offered it to our other colleagues. That offer still stands. Until we get that assurance, I will object.

Mr. Lott. Under my reservation, I have one inquiry. I thought we had a definitive list. It may be big, but I thought we had a list of amendments still pending out there. Mr. Lott. We have not seen it.

Mr. Lott. We will work on that.

The PRESIDING OFFICER. Is there objection to the original request?

Mr. Reid. While the two leaders are here, if I may chime in, first of all, Senator Daschle has read the importance of this supplemental. If it is as important as has been read into the RECORD, it would seem to me the House should hang around a little while longer.

I say to the Republican leader and our majority leader, I haven't seen a list of amendments. Everybody knows we have just a few important amendments to finish the Patients' Bill of Rights. If we are given a list of amendments that is large in number, I don't think that is in keeping with what I think should be the general agreement to finish the legislation. If we are given a list of 10, 20, 30, 50 amendments, I suggest to the majority leader, that is not the list we can work with. We have a few amendments left to go.

Mr. Lott. If Senator Daschle will yield to respond briefly, I thought you had been given a list. I am going to make sure you have it and then we can evaluate that and work on it.

Mr. Daschle. Madam President, I object to that. Obviously, I have to consult with the managers of the legislation on our side about the amendment list, which is very long, and I have it now, and about what is possible in terms of completing it. I don't think it is possible at all to set an arbitrary time, in view of the very serious amendments that are pending on the Patients' Bill of Rights. So I object to that request.

Mr. Lott. Madam President, I object to that. The original request of the majority leader is still pending. Is there objection?

Mr. Stevens. Reserving the right to object, Madam President, I am constrained to say with due respect to the Republican leader and the majority leader and majority whip, I find it very difficult to deal with the concept putting ahead of this supplemental the completion of two very controversial items. We know the House is going home, and having spent 8 years here on the floor as leader, I can tell you I have never seen the time when any Senate could dominate the House. We have a bipartisan agreement to go home. They have told me they will stay if we get this bill done and over there today.

I do believe that the interest of national defense should come ahead of concepts that we are dealing with here in terms of whether it is the Patients' Bill of Rights or organization of the Senate. We know they have told they cannot train in July and August unless we get this bill done this week. It is not something on which we have been dilatory. We have been trying for a long time.

I have great respect for the leader and the assistant leader, but I cannot stay silent and have a concept that because the leader has stated these things must be done, they must be done before the supplemental is brought up. That is unacceptable to this Senator. I think it is unacceptable to the Senate. I hope it is.

I say with great humility now that the needs of our people in the armed services must come ahead of concepts of scheduling or prerogatives here on the floor. These needs are very real. We have twice held hearings now where the chiefs have told us what is going to happen if this bill is not signed by the President before the Fourth of July.

Even the concept of taking up and passing it now and letting it wait for the House to come back is unacceptable to me because, again, we all travel and we know you can't let the House go home and expect they will come back
here on July 3 just before the Fourth of July. You can’t travel in this country that easy during that period.

So the majority leader, let us proceed with this bill. We should put aside all other desires. There is no timeframe on the Patients’ Bill of Rights that matters to this country. It is a bill that must be passed, and I am going to vote for it. But it does not have the urgency of this supplemental.

This supplemental deals with more than that. It now deals with matters that are emergencies coming out of the disasters that have happened in this country this spring.

I hope the leader will accept my comment that I mean no offense to him. I have served under several leaders, and I admire both Senator DASCHLE and Senator REID for what they are doing. But I think we are under no obligation to put this bill aside in terms of a request that has come on a bipartisan basis to put this bill aside for a few hours and pass a bill as important to the military of this country as is this supplemental.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Madam President, I remind my dear friend and colleague, the Senator from Alaska, in 1999, we took up the Patients’ Bill of Rights under a unanimous consent request and passed it in 4 days, with 17 amendments. Now we are told we can’t do it in 2 weeks. While we may differ on whether the supplemental is more or less important than the Patients’ Bill of Rights, I would hope we could all agree that completing action before we leave on a supplemental dealing with the safety of our troops is a top priority. The Pentagon places an extraordinary priority on this legislation—so much so that the Commander in Chief called me last week that it be done this week. Certainly we can agree it is more important than fishing or any other kinds of vacation we could be taking next week. While there may be some differences on other issues, I would think there would be unanimity that getting the supplemental done is more important than taking a vacation.

So that is what the issue is. We are not going to take a vacation until we have completed action on the supplemental. We are not going to leave until this is done. This is something that not only has been requested by the Pentagon but by the Commander in Chief as well; I would hope if the President makes additional calls, he will call the House and say: Don’t leave until we get this done. You have heard the Pentagon. Don’t leave until this is done. Vacations are secondary to work. We have to get it done.

I yield the floor.

The PRESIDING OFFICER. Has an objection been heard?

Mr. STEVENS. Reserving the right to object, that is a little bit of a cheap shot. I am not talking about a vaca-

ion. I am willing to stay here as long as any other Senator. I am talking about the realities of the House. Leader, I am not going to forget that. That was a cheap shot, and for the time being, I object to the request.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. Who yields time on the amendment? The Senator from Missouri.

Mr. BOND. Madam President, I reserve the remainder of my time. I believe there is more time on the other side. I want to give the other side their remaining 19 minutes, but I believe we only have 2 minutes. I reserve those 2 minutes for the end of the debate, and I do have a couple of minutes after they have had an opportunity to present their case.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. REID. Madam President, with the consent of Senator KENNEDY, I yield myself such time as I may consume recognizing the Senator from North Dakota wishes to be recognized. I will not take long.

Many years ago, before I came to Congress, I practiced law. I was a lawyer. I was a trial lawyer. I am very proud of that fact.

With that brief background, I received a call last night from a lifetime friend. I have not talked with him in a while, but we went to high school together. We played ball together. We were inseparable friends. He did not have my phone number. I had moved. He called my office and said it was urgent.

He called because his son was in trouble. Why? Because they had hired a cheap lawyer. His son was in trouble, and they hired a cheap lawyer. The young man is now in jail.

My friend from Missouri is a lawyer, a fine lawyer, I am sure. I refer to the pending amendment as the “cheap lawyers amendment.” You cannot find decent lawyers to take a case for 15 percent. Almost 50 percent of the cases in our Federal court system take 4 years to litigate, with files stacked as high as my desk. People work to prepare those papers representing people who are injured, hurt, and need an attorney. That is why we have contingent fees. It is hard to find lawyers to take even a good contingent fee case because they have to consume so much time and effort.

Of course, there are some people who are paid too much. I am sure, because they put in the time and it is a contingent fee. I sold my home in Virginia within the past year. The woman who sold my home was a good realtor. I tried to get a contract from her. I signed a contract with her. She made a ton of money on my home. She worked about a week. I don’t know, but she probably took a lot of time off during that week.

My home sold in a week. She made a lot of money for the few hours she spent on my home, but that is the way America works.

If we have people who need help, we need to have the full panoply of lawyers available so they can get a good lawyer.

My friend from Iowa had a chart and pecked off medical bills: These people are going to get their medical bills. Well, isn’t that too bad. If someone does something wrong, should they not pay your medical bills? Do you need to have a lottery, as he says, a lottery to get your medical bills paid? I hope not.

We have heard mentioned several times, if we are concerned about attorney’s fees, how much are these attorneys for these big HMOs making to prevent people from getting medical care? Let’s talk about that.

We talk about these cases in the abstract, but the fact is that attorneys, whom everyone wants to hate, are necessary; they help. I am proud of the fact I was a lawyer. I have four sons. Every one of them is a lawyer, and I am proud of the fact that they followed in the footsteps of their father. My daughter is a schoolteacher. She married a lawyer. I am very happy for that.

We do not have to be shameful, concerned, or embarrassed about some lawyers getting paid a contingent fee. That is how people who are injured and hurt are allowed to take those cases.

Fifteen percent will discourage representation by good lawyers. My friends on the other side of the aisle talk about the sanctity of contracts. Why do we want to step in and tell States what lawyers can be paid based on a contract they get?

This amendment is only to protect HMOs as all the amendments from the other side, to try to derail this legislation. This amendment is a frivolous amendment. It has nothing to do with the merits of this legislation.

Mr. DORGAN. President, will the Senator from Nevada yield?

Mr. REID. I will be happy to yield to my friend from North Dakota.

Mr. DORGAN. The Senator from Nevada and I had a brief discussion previously about this issue. He is correct that this amendment attempts to limit the ability of patients to hold HMOs accountable.

The discussion by those on the other side who have offered this amendment talks about lawyers in a pejorative way on behalf of patients. Does the Senator know of any attempts by those who have offered this amendment to limit HMOs, managed care organizations, from using lawyers, or is this just saying we will limit patients from using an attorney to go after a managed care organization that did not provide the care they promised, but we will not limit managed care organizations from using attorneys to do whatever they want to do?
Mr. REID. Madam President, I answer as follows: Of course, there is nothing in the way of amendment to limit what attorneys for these wealthy, big, sometimes brutal HMOs are paid. But remember, I say to my friend, that people who are seeking help from a lawyer are looking for a lawyer who will do it not on an hourly basis but who will do it on what is called a contingent-fee basis. They have no money to hire one of the big HMO lawyers, so they look around and find somebody who will take their case on a contingent-fee basis.

I say to my friend, a 15-percent contingent fee will not get a good lawyer. It will be like my dear friend who called me last night. In effect, the client will not wind up in jail but will end up with no compensation.

Mr. DORGAN. I ask my friend from Nevada to yield further for a question.

Mr. REID. I will be happy to yield to my friend for a question.

Mr. DORGAN. Isn’t it the case that this entire process, this debate on the Patient Protection Act, is an attempt to balance things a bit; that patients do not have the ability to confront a big managed care organization?

The Senator from Nevada knows the story we have talked about coming from his State: Christopher Roe, a circumstance where a 16-year-old boy was fighting cancer at the same time he was fighting his managed care organization for treatment and care he needed. That is not a fair fight, asking a young boy to fight an insurance company and fight for his life at the same time. That young boy lost his life on his 16th birthday.

The question is: Do those patients and their families have the right to get an attorney to hold the managed care organization accountable to deliver the care they promised? Do they have that right?

We have an amendment pending that says: No, we are going to limit the rights of the patients, we are going to limit the rights of citizens, but we are not interested in limiting the rights of the managed care organizations because we want to stand for them rather than standing for patients, and that is the issue.

Mr. REID. In answer to my friend, I have a CRS report that talks about attorney’s fees by Federal courts and Federal agencies. It is big. I know of no other Federal attorney fee statute that affects a State system.

This amendment is wrong. I appreciate very much my friend from North Dakota being a lawyer, standing up and speaking for the injured people and the potentially injured people of America.

Mr. KENNEDY. Madam President, I ask for 3 minutes.

Mr. BOND. How much time remains?

Mr. KENNEDY. I don’t think so. It depends on what the Senator says. We don’t intend to at this time.

Mr. BOND. How much time remains on the other side?

The PRESIDING OFFICER. Five and a half minutes.

Mr. BOND. I yield myself the remaining time. I think some of the things that have been said deserve to be answered.

Our efforts are not to undermine a bill but to deal with very bad provisions in the bill which skipped the committee, did not go through committee markup. We are marking up a bill now which we should have marked up in committee. It has come to the floor and we are a committee of the whole.

There are things that are in there that are very bad for patients, employees, particularly of small business. Why are we inserting the Federal Government into restricting attorney’s fees? The States in this Nation have limited attorney’s fees because they recognize the abuses of the trial lawyers. Under this bill, we are inserting
the Federal Government into areas that the States have already acted on, and it is not a form that they have acted on and provided limits on the amount that trial attorneys can take so the injured party can recover.

We have heard about the powers of special interests. Let me state who the special interests are that have a big stake in this, the four top trial lawyer PACs: Trial Lawyers Association of America; Williams & Bailey; Ness, Motley; and Angelos Law Offices, have given over $80 million, more money than all the HMOs together have given in political contributions.

If you want to talk about special interests, there are special interests on the other side, as well.

We believe the measures we brought forth are good for employees, for people who do not only want to be able to appeal the decision of an HMO, but they want to have health coverage.

Somebody suggests there have not been problems with fee structures. They are not in this bill. We know from the State experiences that there can be a tremendous amount of money available.

I urge my colleagues to support this measure.

I yield to my distinguished colleague from Tennessee.

Mr. FRIST. Madam President, I rise in support of the Bond amendment. This is a Patients’ Bill of Rights and we should focus on the patient. We are talking about a patient who has been harmed or injured, gone through an appeals process and through the court. If there is a multimillion-dollar suit, it should be to help the patient, not to fund the pockets of the trial lawyers.

This is a Patients’ Bill of Rights, not a trial lawyer bill of goods.

Mr. KENNEDY. Madam President, every time you pay the HMO lawyers, that comes out of patient protections. So the point raised is, if you put a limitation on the trial lawyers because they are going to get the benefits, why not put a limitation on the attorneys for the HMOs so it doesn’t come out of patient protections?

But they won’t do it. They won’t do it.

I yield the remainder of our time.

Mr. REID. What is the matter before the Senate now?

The PRESIDING OFFICER. Amendment No. 831.

Mr. REID. All time is yielded back?

The PRESIDING OFFICER. Time has been yielded back.

Mr. REID. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 62, nays 38, as follows:

| Alaka  | Aumua  | Band  | Biakko  | Bloggs  | Byrd  | Cantwell  | Caraballo  | Carper  | Chafee  | Collins  | Conrad  | Corzine  | Crapo  | Daschle  | Dayton  | Derrick  | Dryden  | Eagle  | Emmer  | Enzi  | Fitzgerald  | Franks  | Frank  | Frist  |
|-------|--------|-------|---------|---------|-------|-----------|------------|---------|---------|----------|--------|----------|-------|---------|--------|---------|--------|-------|-------|----------|--------|-------|-------|
| Akaka  | Aumua  | Band  | Biakko  | Bloggs  | Byrd  | Cantwell  | Caraballo  | Carper  | Chafee  | Collins  | Conrad  | Corzine  | Crapo  | Daschle  | Dayton  | Derrick  | Dryden  | Eagle  | Emmer  | Enzi  | Fitzgerald  | Franks  | Frank  | Frist  |
Mr. WARNER. Madam President, I will do something unusual. I am actually going to read the amendment myself such that colleagues and those observing floor operations from their offices can have a clear understanding of exactly what is in the amendment.

Further, I don’t desire to consume a great deal of time in the debate because we have just had a very thorough debate on the generic subject of attorney fees. Therefore, the Senate has pretty well framed in their minds the parameters in which they will or will not accept an amendment that has the effect of, in my judgment, preserving a reasonable amount of attorney’s fees and at the same time allowing such awards as those attorneys obtain for their clients to be given; again, with the thought that it is a Patients’ Bill of Rights and they have a right to get a reasonable amount of such recovery as is obtained from them.

I shall read from the amendment—it is very short—and say a few words, and then rest my case.

On page 154, insert the following: Limitation on award of attorneys’ fees—

(A) In general.—Subject to subparagraph (C), with respect to a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under this subsection and prevails in that action, the amount of attorneys’ fees that a court may award to such participant, beneficiary, or estate under subsection (g)(1) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved by the court in such action)—

In other words, that would be awardable by the court without any restriction except to the court itself may not exceed the sum of the amounts described in paragraph (B).

The sums I am about to recite, we carefully researched all types of actions similar to this to get a scale of attorney fees which I felt was clearly reasonable.

(B) Amounts Described.—For purposes of subparagraph (A), the amounts described in this subparagraph are as follows:

(i) With respect to a recovery in a cause of action described in subparagraph (A) that does not exceed $100,000, the amount of the attorneys’ fees awarded may not exceed an amount equal to 15 percent of such excess recovery above $500,000.

(ii) With respect to a recovery in a cause of action that exceeds $500,000, the amount of the attorneys’ fees awarded may not exceed an amount equal to 15 percent of such excess recovery above $500,000.

(C) Equitable discretion.—A court in its discretion may adjust the amount of an award of attorneys’ fees required under subparagraph (A) as equity and the interests of justice may require.

In other words, a judge may look at this fee schedule and decide, this particular counsel has done a great deal of work and, therefore, I believe I should raise his fee within the parameters of the section itself.

Further:

(9) Limitation on Attorneys’ Fees.—

(A) In general.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys’ fees, subject to subparagraph (B), a court shall limit the amount of attorneys’ fees that may be awarded under section 502(n)(11)

Further:

(C) Equitable discretion.—A court in its discretion may adjust the amount of attorneys’ fees described in paragraph (B) as equity and interests of justice may require.

This amendment simply sets, in my judgment, a reasonable category of fees. I have tried, as best I can, not to tread, by virtue of States rights, on the judgment, a reasonable category of attorneys’ fees. I have tried, as best I can, not to tread, by virtue of States rights, on the judgment of another bar and the like. I felt that discretion should be given to the trial judges, Federal and State, such as they can adjust that schedule of fees as they see fit.

The Senate, again, has, in a very thorough discussion under the Bond amendment, covered these issues and has in mind, again, its own framework wherein we can legislate on this matter by amendment or not legislate.

At this point, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Madam President, I thank the Senator from Virginia for his efforts. I think there is an agreement that there needs to be a cap on attorney’s fees. It is my strong sense and belief that if we had a cap of 33.3 percent that applied to Federal and State courts, that would be accepted by the majority of this body.

What I worry about is us just going back and forth with escalating amendments. There are very few benefits of old age. One of them is to remember what happened in the past. When we were doing the tobacco bill, we had amendment after amendment, a series of amendments, on caps on lawyer’s fees. It got a little ludicrous. We finally had a majority vote for $1,000 an hour. It was clearly not an effort at legislating, but it was an effort at some kind of political advantage. I know that is not the intention of the Senator from Virginia.

I hope that once this is debated and, if it is not accepted, that perhaps we could move to an amendment after Senator Snowe’s amendment that would be around 33.3 percent, State, Federal court, and it. That is going to be acceptable to everybody. But I think it would be something that we could all support and then get this issue off the table and get to the very important issues such as resolution of exhaustion of appeals that Senators Thompson and Edwards are working on, liability issues. Senator Frist has some important amendments, again, on liability issues, which we are narrowing down.

Hopefully, we can move forward. I thank the Senator from Virginia for his input.

Mr. WARNER. Madam President, if I might reply to my friend and colleague, there was no intention of the Senator from Virginia to repeat what is an historically important case on tobacco. I studied that case very carefully. There were three votes. My recollection is it was $4,000 per hour, at which time the Senate finally accepted. I would not participate in such a process. I just struck the one-third for the lower amounts of the recovery and basically scaled it to 25 and the other percentage as the rate of recovery, increase. I would be happy to work with colleagues.

It goes to the question of just how much will be eventually given to the recipients who need these funds.

Mr. REID. Will the Senator yield for a question?

Mr. WARNER. Yes, of course.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The Senator from Arizona and the Senator from Virginia are on the right track.

This amendment, with all due respect to my dear friend from Virginia, is really—we have another 15-percent limitation in here above a certain amount. I think that the most expeditious thing to do would be to set this aside, for the time being, and get some of the lawyers and nonlawyers to sit down and see if they can work something acceptable to the managers. I am sure if it were acceptable to the managers, we could accept this.

I ask my friend from Virginia, who believes he has talked enough on this, that we withdraw this amendment, for the time being, in anticipation of working something out that is clear and accept on the face of it.

Mr. WARNER. That is exemplified by the leadership the Senator shows time and time again on this floor. I don’t view this as a partisan issue. This is an honest effort by the Members of the Senate to recognize that individuals should be given their rewards and the attorneys should be given fair compensation. Therefore, Madam President, unless other Senators wish to speak at this time, I will——
Mr. McCAIN. If the Senator will yield, I say to my colleague from Virginia, the outcome of this amendment is not to the Senator’s satisfaction, then I hope we can enter into negotiations that on a reasonable level—again, I just plucked 33\frac{1}{3}\% percent because it is in there in one category, across the board, simple, two lines, and perhaps move on.

I know the Senator from Virginia, as well as the rest of us, don’t want to be hung up on a series of votes that are iterations over the same issue. It seems that we can sit down and come to some reasonable agreement, which the other side of the aisle would strongly resist applying to State court, and this side would resist it on Federal court. It is something to have a substantial majority vote for. I hope the Senator agrees to enter into those negotiations.

Mr. WARNER. Madam President, I ask for the yeas and nays before I take the action.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. REID. Madam President, if the Senator really wants a vote on this, we will be happy to give it to him right now. I don’t think it is the right thing to do. I suggest to the manager and my friend from Virginia, why don’t we set this aside for a few minutes to see if we can work something out to get the matter resolved. I think as the Senator from Arizona indicated—

Mr. WARNER. I am agreeable. I ask unanimous consent that this amendment be set aside.

The PRESIDING OFFICER. Without objection, the amendment is set aside.

The Senator from Nevada.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mrs. CLINTON.) Without objection, it is so ordered.

Mr. REID. Madam President, it is my understanding, under the order that is in effect, we will go to the Snowe amendment with the purpose of offering the amendment under a 4-hour time agreement.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Maine.

AMENDMENT NO. 834

(Purpose: To undo provisions relating to causes of action against employers)

Ms. SNOWE. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE], for herself, Mrs. LINCOLN, Mr. DEWINE, Mr. NELSON, Ms. SNOWE of Nebraska, Mr. SPECTER, and Mr. MCCAIN, proposes an amendment numbered 834.

Ms. SNOWE. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is located in today’s RECORD under Amendments Submitted.)

Ms. SNOWE. Madam President, I rise today to ordain along with my colleagues Senator DeWine, Senator Lincoln, and Senator Nelson, who worked so hard, so diligently in crafting this compromise. Senator McCain and Senator Specter are co-authors of this amendment.

The amendment we are offering today is designed to bridge the gap that exists between the supporters of the McCain-Edwards-Kennedy approach to employer liability in the Breaux-Frist-Jeffords.

The amendment is so proposed that the result was to provide employers with varying levels of liability protection depending on their involvement in the decision-making process in terms of the provisions of health care for their employee beneficiaries, and perhaps more important, will patients have legal recourse should they have a grievance concerning the care they receive through their health care plan.

The goal we all share in designing and crafting this amendment to the McCain-Kennedy-Edwards legislation is how best we protect patients for their medical care without creating an expansive bureaucracy adding to the cost of providing that health care and generally creating an incentive to drive away employers from providing health insurance, and of those who have insurance, employers voluntarily provide health coverage to more than 172 million Americans. Obviously, what we do today is significant, and it will matter.

We cannot afford to have employers suddenly opting out of providing insurance to their employees because we do not want to create the unintended consequence that adds to the rolls of the unemployed in America. I think that is something on which we all can agree, and that is a very real risk. In fact, there was a recent poll taken of businesses in America, and it said that 57 percent of small businesses said they would drop coverage rather than risk a lawsuit.

As one businessman in my State wrote to me recently: We’re not an HMO or an insurance company. We are an employer. We cannot afford the time, expense, and aggravation of litigation. And, please, make no mistake, that is what this is about.

So we approach the issue of reconciling the differences between the two approaches by addressing the question: What language will deliver us to that mutual goal? We assess what was really the best qualities of the McCain-Edwards-Kennedy legislation, as well as the Breaux-Frist-Jeffords issues.

Ultimately, the solution we came to was a melding of the two approaches. The result was to provide employers with varying levels of liability protection depending on their involvement in the decision-making process but regardless, patients will have the legal recourse they deserve, no matter what.

There are many other issues that need to be resolved in this legislation. I realize this represents one facet, the liability question, that has been raised by others with respect to this legislation, and this is not intended to address all of those questions, but clearly it does address a most important issue when it comes to subjecting employers to litigation and liability.

Let me take a moment to explain the differences between the McCain-Edwards-Kennedy legislation and the Breaux-Frist-Jeffords approach and the approach we are taking in the amendment we have offered to S. 1052 and
how our amendment affects the underlying legislation and addresses the concerns that have been raised about the net legal impact on employers.

Essentially, there are several categories we are attempting to address today when it comes to employer-sponsored health care insurance.

First, there are employers that contract with an insurance company that, in turn, pays beneficiary claims and administers the plans and the benefits. Second, there are employers that fund a plan but leave the actual administration of the plan to an outside entity, generally an insurance company.

Third, there are those who both self-insure and self-administer, in essence creating their own insurance company within their existing business.

The McCain-Edwards-Kennedy legislation as written allows a suit against any employer if it directly participates in a decision that harms or results in the death of a patient. Direct participation is defined as the actual making of a medical decision or the actual exercise of control in making such a decision or in the conduct constituting the failure.

The bill then goes on to offer specific circumstances that do not constitute direct participation, including any participation by the employer or other plan sponsor in the selection of the group health plan or health insurance coverage provided by the third party administrator or other agent, or any engagement by the employer or other plan sponsor in any cost-benefit analysis undertaken with the selection of or continued maintenance of the plan or coverage involved.

While the bill language does not provide an exhaustive list of exceptions, it does allow an employer to offer into evidence in their defense that they did not directly participate in decisions affecting the beneficiaries of the health care plan.

That suggests while employer protections would be provided under the legislation, an employer would still have to go to court to make its defense. As with any such legal language, direct participation obviously can be open to legal interpretation, and that precisely is the circumstance which we are seeking to avoid and prevent.

Under the Breaux-Frist-Jeffords legislation that was introduced, the language provides for a designated decisionmaker, or DDM, which in most cases would be the insurance company an employer contracted with to be the party responsible for medical decisions and, therefore, the party could be subject to liability. In other words, the employer would designate the DDM as the responsible party to shield itself from that liability. If an employer chose not to designate a DDM, they would have no protection from that liability.

An argument that has been made against the Breaux-Frist-Jeffords language is if the DDM is a person designated within a company that self-insures, for example, they could under the existing law they could escape liability by claiming that ultimate decision came from the employer; that they, as a DDM, did not make a final decision on a particular beneficiary’s case. In an effort to improve the Breaux-Frist-Jeffords language, that when a contract is signed with the employer, the DDM cannot mount any such defense, that somehow they defer the liability, defer the suggestions that the employer somehow participated in making the decision.

In an effort to improve the employer liability provisions, we encompassed key provisions of both models in the legislation while addressing their inherent weaknesses so we can attain our shared goals.

First, our amendment allows employers that turn their health care coverage to outside insurance companies, that their insurance company will automatically be their designated decisionmaker unless they specifically choose not to have a DDM. This is built directly on the Breaux-Frist-Jeffords model in which the decisionmaking authority shifts to the DDM, which will in most cases be the insurance company. Under this approach, an employer would not have to take the extra steps to secure a designated decisionmaker and would not be required to go to court to file papers or to make defenses against any actions they may have taken. In other words, they would not have to do anything different than what they are doing today with a contract with an insurance company.

When they sign up with an insurance carrier that will provide benefits to their employees and administer the benefits, essentially, a designated decisionmaker, and they are signing up as well for a safe harbor from liability in both medical as well as contractual decisions.

Where we depart from the existing Breaux-Frist language is we clarify since the DDM, which is also the insurance company, has assumed full responsibility at the time the employer and the insurance company signed a contract, the designated decisionmaker would be prevented from turning around and assigning the employer for some failure that resulted in a lawsuit from a beneficiary. In other words, the dedicated decisionmaker can’t transfer liability to the employer because of something the employer does or failed to do.

The legislation we have introduced today to modify the McCain-Edwards-Kennedy legislation delineates specifically that employers responsible for medical decisions and, therefore, the party responsible for a contractual arrangement as well as exclusive authority for any medically reviewable decisions.

For employers that choose not to have a dedicated decisionmaker, for whatever reason, and for those employers that prefer to be self-insured but contract out the administration of their health care plan, we leave in place the general McCain-Edwards model in the underlying bill that protects employers insofar as they do not directly participate in the medical decisionmaking process.

Again, as I outlined earlier, direct participation is defined as the actual making of a medical decision, the actual exercise of control in making such a decision or in the conduct constituting the failure. These are two of the changes we have made in the amendment we are presenting today from the underlying McCain-Edwards legislation.

Moreover, our amendment, we eliminate one element of the bill that would have potentially led to the filing of lawsuits on a variety of grounds unrelated to specific medical decisions impacting individual beneficiaries. The language is, essentially, Breaux’s terms, broad and nonspecific and potentially exposes a defendant to a wide array of nonlegal actions.

If additional grounds for lawsuits should be added to the legislation, we should delineate and specify them and not have broad language that essentially leads to a legal potpourri.

Striking this language does not affect the ability of the patient to seek remedy in court for medical decisions made in their particular circumstance. But it does prevent a whole new arena of lawsuits from being created that would heighten an employers’ exposure to liability.

In addition, our amendment also modifies the underlying legislation to ensure that self-insured, self-administered plans do not have the ability to assign liability to a dedicated decisionmaker. As a result, they may opt to simply stop offering insurance for employees altogether rather than risk a substantial judgment on a contractual matter. That, in a result, again, we simply cannot afford if we are going to ensure that people have the kind of health insurance plans in America in which they will continue to be insured, and that employers are the ones providing predominantly the health insurance in America today.

To describe our amendment in another way, we essentially are saying as an employer that is not self-insured, you can hand over all your decisionmaking responsibility to a dedicated decisionmaker which will, in all likelihood, be your insurance company when you sign your contract with your insurance company. There is
nothing more you need to do to protect your business from liability for the decisions that are made. For those self-insured and for those who do not self-insure as an employer, you would still have the protections afforded under the underlying legislation if you don’t directly participate in those decisions. In other words, employers who contract out their health insurance have a clear choice under our amendment, although once again I stress that under this amendment patients will still have the legal recourse regarding questions over appropriate medical care and medical decisions related to the beneficiary’s plan, no matter which option the employer chooses.

The bottom line is we seek to protect employers from liability in cases where they are not making the medical decisions that represent or result in death while still protecting parents rights, which after all is the goal of this legislation.

Finally, let me assure my colleagues, under this amendment, dedicated decisionmakers would have to demonstrate that they are financially capable of fulfilling their responsibilities as the party liable in causes of action. They could not be shell entities or sham individuals or organizations without the ability to actually pay the event of lawsuits.

The criteria the Secretary of Health and Human Services will require relating to the financial obligations of such an entity for liability should also include an insurance policy or other arrangements secured and maintained by the dedicated decisionmaker to effectively insure the DDM against losses arising from professional liability claims, including those arising from servicing designated decisionmakers. A DDM would have to show evidence of minimum capital and surplus levels that are maintained by an entity to cover any losses as a result of liability arising from its service as a designated decisionmaker. It would have to show that they themselves have coverage adequate to cover potential losses resulting from liability claims or evidence of minimum capital and surplus levels to cover any losses.

Once again, I think we have designed an approach that represents a workable approach, that addresses some of the more serious and significant concerns that had arisen in the various pieces of legislation that had been introduced here in the Senate and with the underlying legislation we are seeking to amend today.

We try to meld the best of both approaches, to balance the concerns of businesses that do seek to voluntarily provide this most important, critical benefit to their employees. That is an incentive we want to maintain and reinforce in every possible way. But we also understand there are going to be those circumstances in which the employee has received inappropriate care that has resulted in significant harm, injury, or even death, and that they should be able to seek legal redress for that inappropriate care or denial of care. That is the kind of consideration we want to ensure in this legislation, without creating the unintended consequences or the disincentive for employers to say we just simply cannot afford to provide this health insurance for our employees anymore because we are going to be subject to litigation, to endless losses, and we do not want to put ourselves in the position of that kind of exposure.

I think this approach has been examined on both sides of the political aisle. More important, I think it has been embraced by this bipartisan group in the Senate, my colleague Senator DeWine, based on the good work that he did, Senator Lincoln whom I see on the floor, and Senator Nelson. They have worked very diligently on behalf of this amendment to assure that we address all facets, all potential implications and ramifications associated with this approach, to hopefully address it in a way that will ultimately yield the best effect for both the employer as well as the employees.

I yield the floor. I will be glad to yield time to my colleague.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DeWine. Madam President, let me thank my colleagues, Senator Snowe and Senator Lincoln, whom I see on the floor, and Senator Nelson, who have worked long and hard on this amendment.

The issue in front of us today is how do we help shield businessmen and businesswomen from liability at the same time providing access to the courts for people to sue HMOs. Everyone I think agrees, one of the things we worry about as we deal with this legislation is that we will do something that would cause businesses in this country to decide not to insure employees. That would be a very bad unintended consequence, so we have to be very careful as we write this legislation.

The amendment in front of us today is really a compromise. It is a compromise on the Frist-McCain bills. It is a compromise on the issue of employer liability, how we best protect the employers while at the same time ensuring people their right in court. I think we have really blended these bills. I think we have the best of both worlds. The situation and the language are clarified and made simpler.

We started this debate with some basic principles on which everyone agreed. In both bills we agreed we wanted to try to protect businesses but at the same time we wanted to allow suits in limited circumstances against HMOs. The President agreed to that principle, and the two underlying bills do as well. This amendment, I believe, achieves that. This amendment effectively takes out 94 percent of business provides them great protection. When you compare our amendment versus the underlying bill, it helps and improves the situation for the other 6 percent. We will talk about that in a moment.

My colleague from Maine has talked about this concept of the designated decisionmaker. What do we mean by that? What we mean is let’s just make it simple and let’s make it plain; let’s have the employer say who is going to make those decisions and therefore who will be sued. In essence, what we are saying is once that decision is made, that employer is no longer going to be subject to suits; the designated decisionmaker will be.

How will this work in the real world? Let’s say we have a small hardware company that的技术 have talked about this concept of the designated decisionmaker. What do we mean by that? What we mean is let’s just make it simple and let’s make it plain; let’s have the employer say who is going to make those decisions and therefore who will be sued. In essence, what we are saying is once that decision is made, that employer is no longer going to be subject to suits; the designated decisionmaker will be.

How will this work in the real world? Let’s say we have a small hardware company that says they employ 12 people, and let’s say what they do is they provide some health insurance and they do that by going out in the market, finding the best deal they can, and buying this group coverage for their 12 employees. Under this amendment, once they contracted with that insurance carrier, they would have automatically made that designated decisionmaker decision. They would have designated that automatically, that group as being the designated decisionmaker. They would have to do nothing. They cannot make a mistake. It takes no affirmative action on their part. That is going to improve the language we have in front of us.

The other way of doing it, the way the underlying bill did it, was to talk about direct participation. Frankly, I think the language in the bill was pretty good. But I think it needs to be improved. By having the designated decisionmaker, it is a lot more clear. What we are trying to do is this. As we all know, anybody can sue anybody. We cannot prevent suits, but we certainly can discourage them, and we certainly can provide when suits are filed against a business, the business has the ability to get out of that lawsuit very quickly. So by using the concept of the designated decisionmaker, as a practical matter, if a suit were brought against a businessperson, if a lawyer were foolish enough to file that suit, the business would simply have to go into court and file a copy of that designated decisionmaker decision and would be dismissed from the case. As a practical matter, this language significantly improves the underlying bill and will make a big difference.

Our amendment does build on the two bills in front of us, the two bills we have been talking about and have been considering, the Frist-Breaux bill and the underlying bill we have in front of us today, the McCain-Kennedy bill.
I believe our amendment would protect business owners from needless lawsuits as well as protect patients who rely on quality health care plans for their medical needs. I believe this amendment brings together the best of all worlds by providing certainty, much-needed certainty to employers, employees, and, yes, to health care providers. That is what health care desperately need in any patient protection bill.

Based on the designated decisionmaker concept in the Frist-Breaux-Jeffords bill, our amendment would automatically, as I have indicated, remove liability from small business owners and shift it to health care providers or other designated entities. In addition, our amendment stipulates this designated decisionmaker must follow strict designated decisionmaker would be capable of assuming financial responsibility for the liability coverage. This means the designated decisionmaker could not be a hollow shell, unable to come up with the money, the assets, to defend against potential lawsuits and financial damages and be able to satisfy those losses. Our language ensures that the designated decisionmaker cannot be a straw man, cannot be a sham that has no ability to pay a patient in the event a lawsuit is filed and that damages are in fact awarded.

In creating the designated decisionmaker process, it makes it easier for employers that provide health insurance coverage to be protected. We think that is a major step forward for businesses, and especially for patients. I say that because the fear of being sued often becomes so great that employers simply stop offering health care coverage. We don't want that to happen under this bill. We simply can't let that happen. The reality is in this country that already there are more than 42 million Americans, including 10 million children, who have no health care coverage. The last thing we want to do is add to this number.

Our amendment greatly diminishes the likelihood that employers will stop offering health care coverage. Again, we believe it is the best of both worlds as it allows patients the ability to sue the designated decisionmaker if they are denied medical benefits to which they are entitled by their health plans. But at the same time it protects employers from unnecessary and costly lawsuits.

Under our amendment, employees would have the comfort of certainty and the comfort of knowing that the designated decisionmaker is ultimately responsible for health care decisions and, therefore, that individual or that entity bears the liability for a lawsuit. In another effort to keep employees insured, our amendment also adds language to the underlying McCain-Kennedy bill to limit the liability of business to self-insure and self-administer their health care plans. The fact is that these employers are assuming additional liability by having the ability to self-administer health care coverage to employees. To that extent, I believe we must take their unique circumstances into consideration. This amendment does that.

Ultimately, our objective is to encourage employers to offer and to continue to offer their employees health care coverage. We don't want to discourage them out of fear that they will be sued.

The reality is that these self-insured and self-administered plans are doing some very good things for their employees. We want them to continue to do these good things. Our amendment will help them keep their employees, their markets, that is when employers are insured. That is what the Patients' Bill of Rights should be all about.

Further, our amendment improves the original Frist language by making very clear exactly who is liable. The amendment eliminates ambiguity because it would not allow the designated decisionmaker to be broken into sub-decisionmakers. One, and only one, entity would be the sole bearer of liability. We think that is an improvement.

Finally, our language would strike vague and ambiguous language in the underlying McCain-Kennedy bill that is of great concern to employers. This language is a catch-all section of the bill that could open employers to a flood of lawsuits simply because of the imprecise nature of the language.

Let me read the exact language currently in the McCain-Kennedy bill in regard to the cause of action relating to provisions of health benefits. There is the (ii) section. This is what is in the underlying bill:

Or otherwise fails to exercise ordinary care in the performance of the duty under the terms and conditions of the plan with respect to the participant or beneficiary.

We believe this language is simply too vague. We eliminate it in regard to businesses and their potential liability. This language that I just quoted creates an explicit cause of action. This means employers could be the subject of a lawsuit even when they currently has any way to anticipate. The language is broad. It is too broad as currently drafted. Our amendment would completely remove this section.

Finally, I think we must recognize what this amendment does, but also we need to be very clear about what it does not do. Does this amendment solve every problem with this bill? The answer is that it does not. It does what we have said it does. It deals with the liability problem in regard to businesses, but it does not solve all the problems.

I think it is important for us to have truth-in-labeling with this amendment. It is a good amendment. It is a probusiness amendment. It is an amendment that will encourage businesses and women to do what we want them to do, which is good public policy, to insure their employees. It will give them important protections. It will give them more assurances. That is why we sought to pass this amendment. It is a significant improvement over the underlying bill that is in front of us.

But it does not solve all the problems. It only deals with a portion of the pie. It does not deal with the caps issue. It does not deal with where the lawsuits should be brought and the issue of whether they should be brought exclusively in the Federal court or in the State court. It does not deal with the class action question, about which I am very concerned. And I know my friend from Tennessee has been working on this issue as well. It does not deal with the class action issue. I intend to have an amendment later today or tomorrow in regard to the class action issue.

We want to say what it does. It helps businesses do the right thing. It encourages people to continue to insure their employees. But there are many things it does not do.

I would be more than happy to yield to my colleague.

Mr. GREGG. Madam President, I appreciate the Senator's effort. I haven't had a chance to digest all of it. I understand the intent and the thrust as described by the Senator from Ohio, which I think is appropriate and good.

As I look at the first section, I am wondering. It appears to me that under the definition section it draws union plans in, and they are being given a special status which is really higher than a self-employed plan is given. I am wondering why union plans are suddenly being raised to a special status under the amendment.

Mr. DEWINE. I would be more than happy to answer the question.

In the original language that we have been negotiating for the last few days, we could not figure out any way to really help the roughly 6 percent of businesses that self-insure and self-administer.

My colleague Senator LINCOLN has brought to our attention and businesses have brought to our attention the fact that this amendment as originally written really did not help those 6 percent. Why? Why originally didn't it help? The basic problem is they do make medical decisions. They are really effectively operating as their own HMO.

We thought about how to protect them and give them some help while at the same time preserving their employees' rights to sue just as everybody else has. We came up with a compromise. My colleague Senator LINCOLN may want to get involved in this and explain it a little bit. But basically it
says for those self-insured, self-administered plans, we carve out a special exemption for them because of the special principles that they are in a basket and exempted from lawsuits brought in the Federal court on the nonmedical decisions based on the contract decisions. That is a break they are getting. We think it can be justified by what they do because we want to encourage them to continue to do what they do.

Why is the other group that you have mentioned included? They are included because they operate basically the same way the self-insured, self-administered businesses do. They basically take the risk. They basically make the medical decisions.

I appreciate the question, but I would disagree with my colleague the way he has categorized it. This is no special break to go out and get their health people who operate the same way the same way in the language. I cannot come up with any way to justify carving them out and not giving them the exception because they are operating under the same principles that they are basically self-insured and are basically making the medical decisions, and doing it the same way.

So when you compare apples to apples, you ought to treat them the same. That is why we did it. We think it makes sense. The option, candidly, would be not to give the 6 percent of businesses this break, not to give them the encouragement to try to get them to continue to do what they are doing. But we came to the conclusion that we should try to help them. We are not helping them immensely, but we are helping them.

Mr. GREGG. If the concept here is to treat everybody in the basket the same, then you have not necessarily done it because union plans do use third-party administrators and therefore can designate, and a single-employer plan would therefore be more identifiable with the union plan. Yet, under your proposal, the single-employer plan basically is still liable. And that is 56 million people, by the way. Fifty-six million people fall into that category.

So you have exempted out the Wal-Marts of the world, maybe, that allow people to go in and get their health care, and then they come back and get their approval. And that exemption makes sense, but that exemption is not consistent with what unions do. So don’t come here and represent to this Senate that it is because it is not. You have raised the unions to a brand new level of independent liability protection. So please do not make that representation.

Mr. DEWINE. I will reclaim my time. I thank my colleague for his comments.

The intention of the language is to treat people equally. If a union does in fact make the medical decisions and if they are operating in the same way that the Wal-Marts of the world are, they ought to be treated the same way. If they are operating the same way, then they should not be treated the same.

Ms. SNOWE. Will the Senator yield?

Mr. DEWINE. Yes. The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. The Senator from Ohio is exactly correct. We are treating all employers the same. In this instance, in this particular category, it is those employers who do not have a designated decisionmaker. That is the intent of this particular provision: To treat them equally so they are not subjected to liability when it comes to contractual matters, whereas other employers are not who contract with insured and self-insured, self-administered plans. I do not think that is fair either because, obviously, they have a different kind of program, and we want to encourage that. We commend them for the kind of benefits they are providing their employees. They happen to be large employers, and they want to design their own internal program. But we don’t want to subject them to litigation to which other employers are not going to be subjected. So that is the reason for the intent of this particular provision that happens to include union plans that are designed similarly.

Mr. FRIST. Will the Senator yield?

Mr. DEWINE. I am more than happy to yield to the Senator from Tennessee. The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. This is an important point, and therefore I think the colloquy is important so we can address it.

We have just seen the language for the first time a few minutes ago. The way I understand it, we have about 170 million people out there we are talking about in an employer-sponsored plan. There are about 6 million people who are in what are called self-insured, self-administered plans. Over the last 2 to 3 years, as we have tried to figure out how to treat these 6 million people in a fair way, we have struggled because it is hard. We have produced the designated-decision-maker model—which I am a great believer in; and I believe most people in this body, if they step back and look at it, are great believers in—but what you have in your bill is you have carved out those 6 million people and addressed the issue directly, but in addition to that, you carve out the unions.

The argument that was made is that the unions are self-insured, self-administered plans like the other 6 million; that these are union plans, and therefore they should be treated the same as self-insured, self-administered. I think the Senator from New Hampshire and I would argue that the unions should not be carved out as well because—a few may be self-insured and self-administered—the majority of them are not. So you are giving this privileged position to the unions that are not self-insured and self-administered like the 6 million whom you targeted initially? That is the question I think the Senator from New Hampshire and I wish to ask you, because we like very much more the designated-decision-maker model.

I guess the question is, Are you contending that the union plans that you have carved out are self-insured and self-administered plans?

Mr. DEWINE. If I could reclaim my time to answer the question.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I can tell you what the intent was. And, as you know, we have been drafting the language, and it has been going on and on, I can only tell you what the intent was.

I am more than happy to take a minute and look at that language again with your comments in mind. The intent was to treat people who operated one way equally. In regard to unions, the intent was we would cover union plans that were the same as the Wal-Marts of the world which are self-insured and self-administered. That was the intent. It was not the intent to go one inch beyond that or to cover one group or one plan beyond that.

I will bluntly say, if the language in here is not consistent with that intent, then we need to go back and look at the language. That was the intent of the four or five of us who were working on this issue. That was the specific intent, and that was the instruction that was given to staff. If the lawyers did not come back with that language, and I did not catch it when I read it, I apologize, and we will look at that. But it is going to take us a few minutes to get the language out.

My understanding of what my colleague has said is that if a union does in fact operate a plan, and they are in fact self-insured and self-administered, he believes they should be treated the same way; anybody who runs a plan with those two qualifications should be treated the same way. Is my understanding correct?

Mr. FRIST. We have to be very careful.

Mr. DEWINE. If those are the facts.

Mr. FRIST. We need to be careful whom we carve out. And then whatever definition we use for the carve-out, we need to apply consistency to it.

Mr. DEWINE. I agree.
Mr. FRIST. I believe we should go back and look at the way the bill is written.

Mr. DEWINE. Let me suggest we take a look at that as we continue this debate. We have a little time to debate. Let us look at the language.

I again want to reiterate something, though. And I do not want any of my colleagues who are watching this back in their office or who are in this Chamber to misunderstand this. This is a limited carve-out. This is not a huge carve-out.

Basically, what this carve-out says is, because of the unique situation of the self-insured, self-administered plans, we are going to exempt them from lawsuits, based on contract, in Federal court—they are not going to be exempt from other lawsuits and in State courts, and based on medical decisions. So it is a limited carve-out. I do not want anybody who is watching this debate to think this is some huge carve-out. It is a carve-out on a limited basis. Our intent was to treat people equally who were in that unique circumstance.

I know my colleague from Tennesse has been wrestling with this for a couple years: How do you deal with these folks who have this unique problem?

I yield to my colleague from New Hampshire, this may not be perfect, but we think it improves the status quo. That is sort of what we are about today: Trying to improve the status quo.

Mr. GREGG. Will the Senator yield?

Mr. DEWINE. No, I will not yield yet.

We have had criticism of this amendment from people who say it does not solve all the problems. I came to this Chamber and said, no, it does not solve all the problems, but we are trying. And we are trying with this amendment. If we can improve the amendment, and if we can get the language more precise that does it, I will be more than happy to do it.

Yes, I yield to my colleague.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I think the language, as presently drafted, is in your definitional section of the amendment where you find "(ii) (II)." It says:

I yield to my colleague from Maine.

Ms. SNOWE. The Senator from Ohio is making exactly the correct point. This particular provision was intended for those insurers, self-insured and self-administered plans, that obviously do not have a designated decisionmaker. I should further emphasize, all employers are treated equally when it comes to the idea that they participate in medical decisions on behalf of their employees. They are all treated the same. This particular area of the legislation is with respect to contractual decisions. We are attempting to craft out for self-administered, self-insured plans, and that includes union health plans that conform to that particular organization, that they would not be subjected to litigation that other employers would not be subjected to because they had designated decisionmakers.

We know self-insured, self-administered plans do not have designated decisionmakers. So we did not want to expose them to that kind of litigation in this particular section that delineates the causes of action. We were trying to treat all of the employers equally.

Mr. DEWINE. Madam President, I re-
claim my time.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, we have stated our intent. I think we ought to get about our business and come up with the language to do that, some possible language that we could use. It is always dangerous to try to draft language on the fly on the Senate floor.

I will at least throw this out for possi-
ble discussion. We could add "to the extent the Taft-Hartley Plan Act applies to self-insured, self-administered plans," something to that effect of basically qualifying so that you would get down to whatever the number is—I don't know what the number is—that are self-insured and self-administered. We certainly could do that. "There is no reason that cannot be done.

Mr. GREGG. Is the Senator suggest-
ing that additional definition? Is the Senator suggesting that definition, that expansion of the definition, that expanded language be placed on the definition section?

Mr. DEWINE. We could do it that way. If the Senator has a suggestion of how better to do it, I would be more than happy to take the suggestion.

Mr. GREGG. That may well resolve the problem.

Mr. BREAUX. Will the Senator yield for a question?

Mr. DEWINE. I yield to my colleague from Louisiana.

Mr. BREAUX. If the Senator would further yield, the point made by the Senator from New Hampshire is absolutely correct in the sense that on page 3 of the Senator's amendment line 18, when he talked about that group health plan—basically the Taft-Hartley group health plans, as I understand it—you didn't have that limitation of those that would also be self-insured and self-administered. I think if you added that to that definition, you would correct the problem. I think it would be in keeping with what the Senator wants to do and certainly something I could support.

Mr. DEWINE. I appreciate my col-
league's comments. I think they are well taken. We will get about the business of dealing with that. The point is very well taken.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Ten-
nessee.

Mr. FRIST. Madam President, I yield myself approximately 15 minutes on the opposition time for the time being.

The PRESIDING OFFICER. The Senator from Maine has 7 minutes remaining in her time on the proponent's side.

Mr. FRIST. Madam President, is this 4 hours evenly divided?

The PRESIDING OFFICER. There are four 1-hour segments. The Senator from Tennessee controls 1 hour of the 4-hour time. The Senator from Maine controls 1 hour. She has 7 minutes remaining on her hour. The Senator from New Hampshire controls 1 hour, and the Senator from Massachusetts controls 1 hour.

Mr. FRIST. Madam President, I ask unanimous consent that for the first hour, it be equally divided so we can continue the debate for those in opposi-
tion.

Mr. REID. Madam President, I am sorry. What was that request?

Mr. FRIST. For the first hour of the debate, which we are about, I guess, 20 or 30 minutes into the opposition has not had the opportunity to speak. I was saying for the first hour, in which about 25 minutes has been used, if we can have 30 minutes on either side.

The PRESIDING OFFICER. The de-
bate has already consumed 53 minutes of the proponent's time controlled by the Senator from Maine.

Mr. REID. The Senator from Ten-
nessee has an hour. He can use it any way he wants.

Mr. FRIST. Madam President, I un-
derstand I have an hour on my side. I will use time off our side at this jun-
cure. I yield myself such time as nec-

amendment would not relievers them-
seleves of being subject to litigation for written plan based on medical neces-
sity under the Patients' Bill of Rights bill we are adopting.

Mr. DEWINE. The Senator is abso-
lutely correct. We believe the language does reflect that, but that is clearly not the intent.

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June 28, 2001

CONGRESSIONAL RECORD—SENATE

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. Frist. Mr. President, first of all, let me put perspective on this because we have had the amendment introduced, and there are basically three points I want to make.

No. 1, I applaud the Senator from Ohio. The Senator from Maine, because they have, for the first time in the debate, addressed this issue of suing employers—this issue of who is responsible, who gets sued, if there is harm or injury or cause of action. As one can tell from their earlier discussion, there has been a lot of debate in struggling with how best to address who you sue and when you sue them and what entity. There is not very much certainty out there. Do you sue the plan? Do you sue the employer? Do you sue the agent of the plan? Do you sue the physician or the hospital when there has been harm or injury?

In the McCain-Edwards-Kennedy bill, there are exclusions for the physician and the hospital. However, the argument over the debate on the last one or 5 days has made it clear that you can sue the employers if they directly participate. And what has now been brought to the floor in a very positive way, I believe, is this concept of giving certainty to all that through a model that is called the designated-decision-maker.

Really all that means is that since somebody is going to be sued—and the way it is designed now, you don’t know who it is; that doesn’t give anybody certainty—the easiest thing to do is for an employer to walk away. It might be me that is sued. It might be the entity that is administering my plan. It might be an agent of that plan. That is so confusing and puts so much risk out there, and you never know whether you are at risk or not, or somebody else, or who the lawyers will be going after.

The designated-decision-maker says: We are going to all get in a room and say there is one entity responsible. If there is a lawsuit, you are going to go after that entity. That entity has to bear the risk, and also whatever value there is for that risk will have to be either purchased or sold. That gives certainty to the overall liability issue.

The second point—I will come back to this—that is very positive in the underlying amendment is this broad cause of action which is being struck from the underlying bill. That is where the underlying bill, when you go to the Federal level in the underlying bill, there is a cause of action called “duty under the plan.” Unfortunately, if you leave that cause of action in there, it sweeps in all sorts of things, whether it is the HIPAA regulations or the COBRA regulations, and all of a sudden for those sort of indications, you don’t have just compensation, but you are exposed to these unlimited lawsuits out there. So it is very positive, in the amendment that has been put on the floor by the Senators from Maine and Ohio, to take that cause of action out of the bill.

The third point is that the Senator from Ohio made the point that this is not the answer to liability. Liability involves exhaustion of appeals. And we have an amendment pending on the floor addressing whether there should be caps; and that entire debate, once you get to courts, whether it is non-economic damages or punitive damages, involves whether you go to Federal court or State court and then this whole idea of who do you sue. Can the employer be sued? And that last point is what the designated decision-maker selectively looks at, that aliver of the pie of liability.

So far in the debate, over the last 4 or 5 days, we have not addressed Federal versus State jurisdiction, whether or not there are caps, full and complete exhaustion, or should there be class action suits. The Senator from Ohio made that point. It is critically important to address. If you read the press on this, this decision-maker model will take care of the liability. But it does not answer the questions on the part of myself and many others.

The history of the designated-decision-maker model is interesting as well. It is in the Frist-Breaux-Jeffords bill. The amendment on the floor is very similar to what is in the Frist-Breaux-Jeffords bill in that you give certainty; you have to name an entity to be the designated-decision-maker. That is who you sue. The Frist-Breaux-Jeffords bill based that on what already passed the Senate about a year and a half ago. A designated-decision-maker amendment passed this body. That amendment came from the conference report. The Democratic and Republican sitting around a table addressing how to come up with a system that best addresses this problem of having employers being sued out here when you really want to go after HMOs. How do you delink employers versus HMOs?

Basically, you make one entity responsible. It could be the employer, if they meet certain financial criteria; it could be the HMO; or the HMO might contract with another entity. But somebody has the risk. They have to have the financial wherewithal that equals that risk or the potential of that risk. So I love the designated-decision-maker model. It is clearly needed and necessary.

Let me take a minute. We keep drawing references to the Frist-Breaux-Jeffords bill and the way that worked, because whether or not I can actually end up supporting the amendment of the Senators from Maine and Ohio really depends on how close in my own mind we get to the underlying model that is in the Frist-Breaux-Jeffords bill. I believe that gives the most certainty—to the employer and also certainty to the employee, at both levels. The way that provides ways in there is an internal and external appeals process. Under the Frist-Breaux-Jeffords bill, you can’t opt out of that and go directly to the court as you can in the McCain-Edwards-Kennedy bill. We are trying to fix that through another bill.

In the Frist bill, once you go through the internal and external appeals and you go to court, you are going to end up going to Federal court. If there is a lawsuit in advance, prospectively—not after the fact—a designated-decision-maker has been identified. If there is a lawsuit, there is no question of whether you sue the employer or the HMO or the agent of the plan or the hospital or the doctor. Indeed, you sue one person. The Senator from Ohio made that point. It is critically important to address. If you read the press on this, this decision-maker model will take care of the liability. But it does not answer the questions on the part of myself and many others.

Let me take a minute. We keep drawing references to the Frist-Breaux-Jeffords bill and the way that worked, because whether or not I can actually end up supporting the amendment of the Senators from Maine and Ohio really depends on how close in my own mind we get to the underlying model that is in the Frist-Breaux-Jeffords bill. I believe that gives the most certainty...
Portability and Accountability Act, which we passed in this body several years ago, and COBRA, whereby em-
ployers are allowed to delegate admin-
istrative duties, under those laws, to anyone else, by law. You can’t. So the liability for those administrative duties, because you can’t delegate, would fall on the employer, thus allowing the employer to be sued. So that is very positive, I think. It was addressed directly in the amendment, and I commend them for that.

Third is that we need to understand throughout this debate, as we hope-
fully can refine this amendment and pass it if we can resolve some of the specific issues in the language. We need to be crystal clear again that addressing the designated-decision-maker addresses the employer aspect of liability but does not address the many other factors of liability, which I think we have a responsibility to address on this floor, since this bill never went through committee and, in truth, we are marking up and writing this bill for the first time on the floor. We need to talk about Federal versus State courts, class action suits, whether or not there should be caps in a noneconomic dam-
age or should there be punitive dam-
ages. All of those other issues have not yet been addressed. Now I am quite pleased we are addressing the des-
ignated-decision-maker aspect of em-
ployers being sued.

Several quick examples. There need to be clear and effective limits, I be-
lieve, on class action lawsuits. There need to be firm requirements that we fully exhaust internal and external re-
vies before initiating any lawsuits. There are a lot of broad exceptions. We talked about some of them as the Thompson amendment was on the floor and was addressed. Those need to have complete exhaustion as we go through.

Second, if an independent external medical reviewer, who is a doctor, which is in the Frist-Breaux-Jeffords plan, as well as in the McCain-Ed-
wards-Kennedy plan, upholds the plan’s denial, then the plan should not be sub-
ject to liability. We need to discuss that on the floor. In the underlying McCain-Edwards-Kennedy bill, a pa-
tient could require that the plan cover treat-
tment that neither the treating physi-
cian nor the plan ever contemplated or even recommended, this reviewer who maybe over the telephone is reading it, is going to be able to modify it. It bothers me because it becomes binding, and we all know it becomes binding. When it becomes binding and you have not had that direct experien-
tial observation, to me it is not right. It needs to be corrected.

I will give another example: The em-
ployer in the plan would be subject to simultaneous litigation in Federal and State court. Again, speaking to the under-
lying bill, we have to address that because we all know when we have law-
suits which result in—take a $120 mil-
lion damage award such as there was 2 years ago. A $120 million award is a large award. Some will say it is too much; some will say it is too little. But a $120 million damage award results in total premiums being paid for about 55,000 enrollee-
s. I do not want to correlate the two, but $120 million is a lot of money, and, at least in my mind, I come back to the uninsured and the number of enrollees who could go out and buy insurance.

Example 3 is going to be about encour-
aging shopping between the Federal courts and State courts, and once you get to the State courts, from State to State. Maybe tomorrow, Saturday, Sunday, or Monday we will come back to that and talk about it. Clearly, if you are an attorney, for a single event, you have multiple causes of action, you can question that, but in addition to that, you have multiple venues: the Federal court, the State court, or from State to State to State. That is our inter-
pretation. That is our attorneys’ inter-
pretation. It has to be fixed.

In closing, I support the designated-decision-maker model. The Senators from Maine and Ohio are to be con-
gratulated, I think, in this Chamber addressing in a sophisticated, appropriate way how to clarify the un-
certainty about suing employers versus suing HMOs.

I support the model. It is in the un-
derlying Frist-Breaux-Jeffords bill. We are looking at the language, as we always have to be issue-oriented, and why they are specifically carved out. That needs to be addressed. We hope to have factual information. We will read the language, and I look forward to work-
ing aggressively with the authors of this amendment so we can all rally around it.

Mr. Dewine. Will the Senator yield?

Mr. Frist. Yes.

Mr. Dewine. If I can respond to the Senator’s comments about why we crafted the bill, it was to give the em-
ployer a choice as to whether or not they would go under the designated de-
cisionmaker or under the language of the other bill, which is direct partici-
pation.

Frankly, I do not think this is a huge deal. The reality is that the vast ma-
ority of businesses will go under des-
ignated decisionmaker, and, in fact, we provide in the bill that it is automatic. That will just happen unless they make a conscious decision to say: We do not want to do the designated decision-
maker; we want to go under the direct participation language.

We are in an unknown area, and I do not think anyone knows how this is going to play out entirely in the real world and what decisions they are going to make. Some people come up with some scenarios under which they would not want to designate someone as a designated decisionmaker. The vast majority are. We wanted to pro-
vide this as a fallback position, more options.

I do not think it is going to make it more ambiguous or less definite be-
cause we provide automatically it is going to be designated decisionmaker unless they make an action and say: No, we do not want designated deci-
sionmaker; we want to go with our model because for some reason it works that way. We can look at the language and talk about it.

In explanation to our colleague from Tennessee, that is what our thinking was. We do not know where the world is going with this new language, and we wanted to give as many options to businesses as we could. That is why we did it.

Mr. Dewine. If I can respond to the Senator’s comments about why we crafted the bill, it was to give the em-
ployer a choice as to whether or not they would go under the designated de-
cisionmaker or under the language of the other bill, which is direct partici-
pation.

Mr. Frist. Mr. President, I claim my time.

The PRESIDING OFFICER. The Sen-
ator from Tennessee.

Mr. Frist. I guess this decision of cer-
tainty—I usually like choice coming through, and it appeals to me. I am a 50-person convenience store operator and have three or four convenience stores in the area, and I have people barely scraping by, working minimum wage. I would be one to recognize giving people some insurance goes a long way. Some people say it does not matter; you still have your care. If you have insurance, you end up getting better care in the
Mr. DEWINE. To respond, as envisioned by the Senator's original bill—and the Senator from Tennessee is the one who came up with the language of the designated decisionmaker and I applaud him for it because no one has come up with one better. This is the model that the language is prettiest with the Frist bill. But in the Senator's example, the designated decisionmaker is going to automatically—you have this company that has three or three convenience stores; they have who knows how many employees; they buy insurance. Their designated decisionmaker is automatically going to be the group handling the insurance. They will not have to make a conscious decision at all. It will just happen. That is the glory of the way it is written in the Senator's original language, that it is automatic; it is going to happen. They are not going to have to look for a designated decisionmaker.

Under the language of the Senator from Tennessee, it is going to take care of itself. That is the strength of it.

Mr. FRIST. May I use 1 minute and then I will yield on that issue. I want to respond to that.

Mr. KENNEDY. May I ask a question? We are two of the other co-sponsors of the amendment. They have yet to have a word.

Mr. FRIST. How much time has been used by this side?

The PRESIDING OFFICER. The Senator from Tennessee has consumed about 22 minutes.

Mr. FRIST. How much has the other side used since we have been on the amendment?

The PRESIDING OFFICER. The other side has used 53 minutes.

Mr. FRIST. They have used 53 minutes, and we have used 22 minutes.

Mr. KENNEDY. How much have we used?

The PRESIDING OFFICER. The Senator from Massachusetts has used none.

Mr. FRIST. I was speaking in opposition to the amendment.

Mr. KENNEDY. I think the presenters ought to be entitled to whatever time they have remaining. I am a strong believer in that. I would like to make sure I have a word to have a word.

The PRESIDING OFFICER. The Senator from Tennessee still has the floor.

Mr. FRIST. Thank you, Mr. President. A matter of clarification, in speaking in opposition to the amendment, as Senator Gregg, we have used how much time?

The PRESIDING OFFICER. Twenty-three minutes.

Mr. FRIST. Twenty-three minutes since we have been on the amendment.

Clarification: The proponents have used how much?

The PRESIDING OFFICER. Fifty-three minutes.

Mr. FRIST. I will be happy to yield the floor in a moment. Clarification on the designated-decision-maker model: We would not necessarily assume the insurance company is the designated-decision-maker. You would have to designate that, and that is part of our Frist-Breaux legislation, just to clarify that.

Ms. SNOWE. Will the Senator yield? The PRESIDING OFFICER. Who yields time?

Ms. SNOWE. Will the Senator yield on that point?

Mr. FRIST. I will be happy to.

Ms. SNOWE. It is important to emphasize in this amendment as we have drafted it includes a provision that starts out with automatic designation: That a health insurance issuer shall be deemed to be a designated decision-maker for purposes of subparagraph (A) with respect to participants and beneficiaries of an employer or plan sponsor.

That is important to emphasize, and it automatically occurs so we remove the ambiguity, extra steps, cost, and so on, with respect to that particular requirement.

Mr. KENNEDY. I yield such time as he desires to the Senator from Nebraska and then the Senator from Arkansas, two lead sponsors.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I thank the Senator from Massachusetts for the opportunity to speak on behalf of the Frist-Breaux legislation. There has been a lot of confusion recently and believe most people's heads are swimming about what a DDM is and what the purpose of this amendment truly is.

The purpose of this amendment is to make sure, whether you are a plan sponsor or an employer, that if you are self-insured and self-administered, that you are treated the same. You have to treat one and all the same. That is what is about. I believe there is some language being worked on that probably will be offered shortly to make it clear that is exactly what is intended by this amendment. It does not specifically carve out one group or another. It carves out all groups where there are plan sponsors or employers who are self-insured and self-administered. All other employers are in a position to have a DDM, designated decision-makers, or they have an insurer which is a designated decisionmaker.

The whole purpose of this legislation is to be able to provide additional rights and opportunities for insurance. This does it. What it also does is make sure that employers are not entrapped in unnecessary litigation and that if they don't make decisions about health care and make decisions about claims, they are not involved in litigation.

Specifically, this amendment narrows it down to not being brought into Federal causes of action. It does not absolve employers or plan sponsors from any kind of litigation that may come through State courts.

While it may be difficult to follow the roadmap, there is one thing that needs to be clarified and that is, it does not treat any one group in any special way. It treats all plan sponsors and all employers who self-insure and self-administer, the same way. If they choose to get a third party administrator, when it becomes a designated decisionmaker, they will be absolved from liability from litigation unless they somehow participated in the claim-making process, which they would not do if they had a designated decisionmaker. This is intended to make sure we balance the interests of the right of the individuals, the right of the patients to sue, with the opportunity for employers not to be entangled in litigation where they should not be entangled. It also means that, in balancing these interests, there will be fewer cases of uninsurability, and there will be fewer employers deciding to get out of the business of providing health insurance benefits to employees.

We have heard from employer after employer about their concern—as a voluntary provider of these benefits, now suddenly they can be sued. This makes it clear they will not be sued and it also makes it clear that those who are plan sponsors will not also be sued unless they participate in making decisions about health care claims. That is what this is all about.
I have enjoyed working with them. I appreciate everyone’s patience and encour-
gagement in this process. We have to be very careful, to bring others in to make sure this language is exactly that: It is giving the protection and the comfort level to the employers of this Nation that are doing an excellent job in providing health care to their employees.

I also ask unanimous consent that Senator BAUCUS be added as a cospon-
sor to this amendment, and I yield.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. I yield the Senator from Michigan 5 minutes.

Ms. STABENOW. Mr. President, I rise first of all to ask unanimous con-
sent to add my name as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I thank my colleagues on both sides of the aisle for their hard work and the innovative language that is put to-
gether in this amendment. For those of us who are sponsors of the Patients’ Bill of Rights, we have said since the beginning this was in no way intended to allow lawsuits to be brought against employers, this was about making sure those who make medical decisions were held accountable for those medical de-
cisions.

As we said so many times on the floor, it is really about closing a loop-
hole in the law as well. We have indic-
iated over and over again, when you have only two groups of people in this country who are not held accountable for their behavior and their decisions, one being foreign diplomats, the other being HMOs, it doesn’t make any sense.

We know this was a loophole that was created by the outgrowth of HMOs and development of new ways of managing health care, and basically the Patients’ Bill of Rights is meant to clarify that and make sure those who are making medical decisions are held accountable for the outcomes of those medical deci-
sions, just as are doctors and nurses and other medical professionals.

What I think is important about this amend-
ment is it very clearly states to each and every employer, large and small, that in fact we will make sure if they are not making medical deci-
sions—and in the vast majority of times an employer is not making a medical decision—the intent of the Pa-
tients’ Bill of Rights is not to create a liability for the employer. We have em-
ployees, many in Michigan—hundreds of thousands of them—who are respon-
sible employers, providing insurance for their employees. We want to en-
courage and support and salutate them for doing that and for nothing getting in the way of that continuing.

I again thank my colleagues from both sides of the aisle who have put in
a tremendous amount of work on this amendment. There has been a wonderful job done on clarifying this. I hope we have not been able to put to rest what was unfortunately a common misperception, something said over and over again to employers of this country, that somehow this opens them up to lawsuit. It never was the intent. This amendment clarifies that and reiterates it.

I hope this will allow us to move forward, to pass this very strong Patient Protection Act that says to each and every family: When you have insurance, you can have the confidence, whether it is in the emergency room or the doctor’s office or the hospital, that you will have the care available that your family needs.

I will yield the floor.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

Both the Snowe amendment and the Frist amendment attempt to protect lawyers using the designated decisionmaker language. However, the fact that they use similar names can’t mask the dramatic differences between these two amendments. Senator Snowe’s amendment helps employers without hurting patients.

There are two important differences between the designated decisionmaker language in the Snowe amendment and the Frist amendment. Senator Snowe’s amendment ensures that the person an employer designates as responsible and will be liable for all damages caused by any wrongful benefit determinations the patient gets under our bill. This is exactly what employers want and deserve: a clear way under the law to protect themselves.

The Snowe amendment allows employers to name an HMO or health insurer or plan administrator as their designated decisionmaker and not have to worry anymore about being sued. That is what President Bush wants, and that is what we want. If employers give up all control over medical decisions in individual cases such as this, Senator Snowe’s language helps guarantee employers will not be sued, period.

Senator Frist’s designated decisionmaker language is much weaker. Under his proposal, the only entity that can be sued is the designated decisionmaker. While the designated decisionmaker is supposed to have exclusive authority to make benefit determinations, a court or jury remains free to find in fact another person or company influenced the decision that caused the harm. People who are not designated decisionmakers may in fact influence decisions and share liability. But the Frist language leaves victims no way to hold these outsiders accountable. That is because, unlike the amendment of Senator Snowe, the Frist amendment never deems the designated decisionmaker liable for the acts of or omissions of other entities that may affect benefit determinations. This is the most critical difference between the two proposals.

The other important difference is that under Senator Snowe’s amendment, only employers can name designated decisionmakers: HMOs cannot. After all, the entire point of having designated decisionmakers is to ensure employers have a clear, easy way to avoid all possibility of being sued, not to protect HMOs.

Of course, the effect of allowing HMOs to have a designated decisionmaker is to enable them to escape liability for part or all of their actions. Under the Frist-Breaux amendment, if a judge finds someone in an HMO harmed a patient and that person working for the HMO was not a designated decisionmaker, the HMO escapes liability.

I think the amendment is sound. I think it has been a matter of discussion and debate. I think those of us who were involved in the development of the initial legislation sought to achieve what this amendment does enormously fairly. It also treats the various Taft-Hartley aspects equally with the other parts, so we have equality for one and equality for the other.

Another important feature of Senator Snowe’s amendment is that it protects employers and Taft-Hartley plans which self-insure and self-administer claims. The Frist alternative contained in S.889 fails to address this issue. The Taft-Hartley plans have a long history of providing quality health care for their members. In their unique structure, employee advocates comprise half of the decisionmaking board. The record shows that this has been an excellent protection even for beneficiaries who have extraordinary health care needs. In structuring this legislation, we wanted to be certain that we didn’t impose any inappropriate burdens on these plans.

I commend the Senators. They spent a great deal of time on this amendment. One would think it would be easy in the drafting of it, but I know they have been challenged with it. I commend them for really advancing this whole issue in a very positive, constructive way, a way which really reflects what this President has elucidated and a way which we had hoped to include in our legislation. There was a significant question about it. Legitimate issues were raised. I think this is one of the important contributions in helping move this process. I commend all those on both sides who were very much involved in its development.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 5 minutes.

The PRESIDING OFFICER. The Senator from North Carolina, Mr. EDWARDS.

Mr. EDWARDS. Mr. President, this amendment is a wonderful example of what can be done when we work together to solve problems. The beneficiaries of the work that has been done by Senators Snowe, NELSON, DeWINE, and LINCOLN are not Members of the Senate but the people of this country, the families who need quality health care, and the employers that need to be protected from unnecessary lawsuits and unnecessary litigation.

First, I thank Senator Snowe for her leadership. She has taken the lead on this issue from the beginning. Her work has been absolutely crucial.

My friend, Mr. DeWine, the Senator from Ohio, has also lent tremendous leadership and expertise to the work on this effort.

I also thank my colleague seated near me, Senator NELSON from Nebraska, who not only brings great expertise to this issue but both as Governor and as insurance commissioner of the State of Nebraska, but he has been dogged in his determination to ensure that the small employers, particularly, and employers generally, of America are protected in this legislation.

This effort could not have been achieved without his leadership and without his dogged involvement in this issue. He has been involved in so many of the issues with respect to this legislation. He and I have worked together. He and I and Senator MCCAIN have worked together. He has been involved in this patients’ rights protection act from the very beginning. We thank him for all of his work and important contribution.

Also, the Senator from Arkansas, who has expressed a concern about employers from the very first moment, and I have talked about this issue. She cares deeply about patients and deeply about doctors making medical decisions, having a very well-trained physician in her own family, that being her husband. She has firsthand experience with that. But in addition to that, she has shown great concern for small employers and, as has Senator NELSON, has made it very clear to Senator McCAIN and myself and Senator KENNEDY that the only way she could support this legislation is if we did what was necessary to protect employers. She has been absolutely crucial in achieving that goal.

Without the work of Senators LINCOLN, NELSON, Snowe, and DeWINE, the employers of this country would be in a different place than they are today. I think they will be after this amendment is voted on.

They have achieved two very important purposes:

No. 1, they have insured that there are real and meaningful protections for employers through the designated decisionmaker model which we have already talked about, which essentially
means the small employers that we have talked about are 100-percent protected. They cannot have liability under the original language of this amendment, which is crucial. It is a goal and a principle that we have all shared from the beginning but, again, couldn’t have been done without their work. They have also managed to do it in a creative and innovative way that, while protecting employers, does not leave the patients and the families high and dry, which is exactly what needed to be done.

Honestly, it is a very difficult task, but they have worked doggedly on this issue. All of them managed to reach a bipartisan agreement.

The most important thing from the perspective of the overall legislation is that this is another in a series of obstacles languages, so we have now been able to reach some consensus.

They have followed sort of one by one, starting with the issue of scope, which Senator Breaux, Senator Jeffords, I, and others worked on, reaching a crucial compromise going to the issue of independence of medical panels to make sure that those panels are, in fact, independent.

We have reached a resolution of that issue. On the issue of medical necessity, the Presiding Officer from Delaware, along with my friend, the Senator from Indiana, were crucial in being able to reach a resolution that shows proper respect for the sanctity of the contract and the specific language of the contract but some flexibility, where necessary, for the independent review panel with respect to patients, keeping in mind the interest of patients on the one hand, which I know you care about deeply, and the importance of the contract in keeping costs under control.

Without your work and Senator Bayh’s work, that would not have been achieved.

The Senator from Tennessee and I, as we speak, are attempting to finalize an agreement on the exhaustion of appeal. Both of us believe, as do most Members of this body, that it is a sensible thing to have a patient go through the internal and external appeal before any case goes to court. We have tightened up that language; working together on it. We know it is important.

The Senator from Tennessee, Mr. Thompson, and I are resolving this issue of the exhaustion of appeal. All of us believe that the appeals process is crucial to getting patients the care they need.

If this bill works the way Senator McCain and Senator Kennedy and I believe it should, the ultimate goal will be achieved if there were never a lawsuit brought. The bulk of what would happen is the appeals process would have worked and the patients would have received the care they needed. That is what this is about.

We want patients to use this appeals process. The Senator from Tennessee and I are finalizing an agreement on exhaustion of remedies.

I also want to thank our colleagues on this specific amendment because that is another crucial obstacle. Scope, independence of the panel, protecting employers, medical necessity, and exhaustion of appeals are crucial issues in this legislation about which we have been able to reach consensus.

As I said earlier, the important result is not what is happening within this Chamber but that the families of this country will have more control over their health care, and we will actually have a more realistic possibility of getting the legislation they so desperately need passed.

I thank all of my colleagues for all of their hard work. This amendment could not have been achieved.

I yield the floor.

The Presiding Officer. The Senator from New Hampshire.

Mr. Gregg. Mr. President, let me begin by saying that this amendment is moving in the right direction. I believe, with some of the changes which we have discussed with the Senator from Ohio and the Senator from Maine, that we can make real progress on improving it. Unfortunately, the amendment came late. It is complicated. The issues involved are considerable. But before getting into the specifics of the amendment and how it may or may not play out in a positive way relative to producing a quality bill, let me make the point that this amendment addresses an important but not a broad part of the issue.

This amendment doesn’t, for example, address some very real and significant issues about area of liability. It doesn’t address the issues of those 56 million people who are in self-insured plans.

It does not, therefore, solve the overall liability question, which if you were to rate the five issues that I think the Senator from North Carolina has appropriately highlighted, although I am not sure he mentioned liability—he probably wasn’t thinking in those terms, but he certainly hit the floor if you put liability on the table—liability is probably the key issue for a lot of people in this Chamber.

Issues such as forum shopping, class action, damages, punitive versus compensatory damages, are major issues that we still have to address. I think we recognize that there is still a fair amount of distance to go in the liability area.

But this amendment takes up the designated decisionmaker language. It takes a portion of the Frist-Jeffords-Breaux bill in this area and tries to basically graft that on to what is the McCain-Kennedy bill—a good and appropriate attempt, although I must admit that with just a quick reading of it I think there is going to be some real confusion on the part of employers between what they can do as a designated decisionmaker and direct participation. I had hoped that the language would have a firewall in there. But as a practical matter, at least the movement is in the right direction to give some insulation for designated decision makers and people who use designated decision makers.

As to the issue of union liability, there has been a lot of talk around here about making businesses liable. And they are liable. Small businesses and large businesses are all liable—and making HMOs liable.

If you are a union employee and have a union plan, and your union tells you you can’t get some sort of treatment that you need and should get, unfortunately, the unions ended up, under this bill, the HMOs. But if you were to take out the Frist model in this area, which States have spent a huge amount of time. It is a real specialty. It is an art form to look at these insurance companies and determine whether or not they have the depth and the ability to cover the costs if they get hit with a whole series of claims.

I would hate to see the Federal Government step into this area where the States have been responsible and suddenly take it over. But under this amendment, as originally drafted, that would be the case: the Federal Government would now basically take all that responsibility away from the States.

We discussed this with the Senator from Maine and the Senator from Ohio and their staffs to try to straighten this out. They recognized the issue.

I think the Frist model in this area is the right model. It essentially says: Where the States have responsibility, where they are the insurer, then they
will have the ability—and retain the ability—to evaluate the insurer. But where it is a new Federal cause of action, or a new Federal event, then the Federal Government will come in and do the evaluation. That seems to be a reasonable bifurcation of responsibility and will be an improvement if it is accepted.

I understand language is being developed which hopefully will be accepted. That is all very positive, in my opinion.

As I mentioned, this amendment, if we can get these issues worked out—and there are one or two other small ones—becomes a much more positive event for moving the bill in the right direction. The question becomes: What do we have left to do in that we have taken up a lot of amendments? Unfortunately, we still have a lot of amendments to go. Most of them are in the liability area. Some of them are in tangential areas. But I do expect we will have amendments, as we move into the evening, which will address such issues as the small employer who decides to cash out their employees and what type of protection they get. Senator ENZI happens to have that amendment.

There will be amendments dealing with class action suits. I think Senator DEWINE actually has an amendment in that area. There will be amendments dealing with coverage and liability. I have an amendment on punitive damages which essentially says if an employer lives by the terms of the external review, they should not be subject to punitive damages. There are a variety in that area. There will be amendments on forum shopping. I think Senator SPECTER has an amendment in that area that he may bring forward.

So there are still a fair number of issues, especially involving the liability questions, which have to be resolved, after we get past the language which the Senator from Maine and the Senator from Ohio have brought forward, which, as I mentioned, I think with some adjustment—which is major to the amendment, but which would be positive; and it appears to be acceptable to the sponsors—hopefully, will move the process in a better direction.

At this time I will yield to the Senator from Wyoming for such time as he may need from my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If the Senator from Wyoming will yield for a brief inquiry of the Republican manager, it is my understanding that because of some people being at the White House and a conference that is going to be held by the minority at 3 o'clock, the minority does not wish to vote until 3:45 or 4 o'clock.

Mr. GREGG. I believe there is still approximately an hour and a half left on the amendment. I would hope that once we reach an agreement, and we have the language from Senator SNOWE and Senator DEWINE relative to the issue of coverage for union plans and liability, the liability of the Federal responsibility for reviewing the adequacy of liability, and there is one other issue—once we have that language, I personally would think we could start yielding back time and go to a vote. I think it would be hard to get to a vote before 4 o'clock because of other commitments. It would be my hope we could vote at around 4 o'clock on this amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, this bill is really a strange one for me to be working on at all. Wyoming has one HMO. It is owned by some doctors. So far as I know, there are not any complaints on it. But there are some basic problems here that people in Wyoming are asking about.

Because of Wyoming's makeup, I usually talk about small companies, because under the Federal definition of '500 employees or less,' we do not have a single company headquartered in Wyoming that would be considered 'big business.' But on this amendment I have to talk about big business.

I have been hearing from the accountants of a number of these companies. They are a little bit concerned about what is going to happen to their health care. They work for those companies. They can see what the costs are going to be on their companies. I have to say that this amendment before us now does not address the problem. I would like to think that it did.

I would like to be able to pass this. I would like to not have to talk about a big company. There are the Caterpillars and Motorolas and the Pitneys Bowes and the Hewlett Packards. There are about a dozen of these big companies in the United States. Again, none of them is headquartered in Wyoming. I am pretty sure that none of them operates in Wyoming. But they are self-funded, and they are self-funded. Where they make their big savings is in self-administration. Where they make their big savings is in self-administration.

Now we are talking about having a designated decisionmaker. That means they are going to shift the administration to somebody else, which might still be done at 5 percent, but there is this new liability factor that goes with it. The guy that is over here, who is the designated decisionmaker, is going to have to charge them for their potential liability in the decisions that he makes incorrectly. He will not do that for 5 percent. He will need a lot more because what he is selling is liability insurance. So it is going to drive up the costs.

I have asked some of these companies what those costs would be. They have said that, quite frankly, what they will have to do is get group plans for their employees that have less benefits, to fit in the same cost level that they have right now, because this little bit of a liability factor drives up the price astronomically. So in this particular provision that is before us, we are not taking care of the self-insured and the self-administered.

I do have a proposal that I may offer after this one is finished, one that will provide some mechanism for them to continue to do that, and for those employees who they have, who are more concerned about their ability to sue than they are about the current benefits that they have, would have a choice. In exchange for that choice, this company would not have to hire a designated liability holder because that is what a designated decisionmaker would be.

For most of the firms that have the Cadillacs of the industry, most of them will have to change to a designated decisionmaker. That additional cost will be considerably more than 5 percent, because they are currently paying to handle administration, that 5 percent that they do partly because they have employee committees that get involved in the decisions. And those employee committees are not going to want to be sued, so they are going to need some relief. I am here in the uncomfortable position of speaking up for the companies that are in your States, not mine, to protect the kind of health insurance they have at the present time and not drive up the cost, forcing them to go to a lower benefit plan with a designated decisionmaker.

This is not the solution. I hope you will pay attention to the solution when that amendment comes forward.

Mr. DEWINE. Will the Senator yield for a moment?

Mr. ENZI. I will yield on the time of the Senator from Ohio. I was just given pretty limited time.

The PRESIDING OFFICER (Mrs. LINCOLN). Who yields time? The Senator from Wyoming still has the floor.
Mr. ENZI. I yield the floor and re-
serve the remainder of my time.

The PRESIDING OFFICER. Who
yields time? The Senator from Maine
has approximately 7 minutes remain-
ing.

Ms. SNOWE. Madam President, we
are awaiting modifications to the un-
derlying amendment. Unless there are
any other speakers on the floor, I sug-
gest the absence of a quorum.

The PRESIDING OFFICER. Is there
objection?

Mr. REID. I object. We have to move
this thing along.

The PRESIDING OFFICER. Objec-
tion is agreed to and will require no vote.

Ms. SNOWE. I ask unanimous con-
sent that the time not be taken from
either side at this point.

The PRESIDING OFFICER. The
Senator from New York is recog-
nized.

The PRESIDING OFFICER. On whose
time?

Ms. SNOWE. I yield the floor.

The PRESIDING OFFICER. The Chair
notes, if no one yields time, time is
charged equally to all sides of the de-
bate.

The PRESIDING OFFICER. The Sen-
ator from Nevada.

Mr. REID. Mr. President, I suggest
the absence of a quorum.

The PRESIDING OFFICER. The clerk
will call the roll.

The assistant legislative clerk pro-
ceeded to call the roll.

Mr. REID. Mr. President, I ask unan-
imous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. REID. Mr. President, I ask that
the time be charged equally between
the parties since we still have time left
under the agreement which is before the
Senate.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. REID. Mr. President, I suggest
the absence of a quorum.

The PRESIDING OFFICER. The clerk
will call the roll.

The bill clerk proceeded to call the
roll.

Mr. GREGG. Mr. President, I ask
unanimous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unan-
imous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. GREGG. Mr. President, for the
edification of our colleagues, the pro-
jected order of events is that Senator
GRAMM and Senator MCCAIN are going
to offer an amendment which I believe
is agreed to and will require no vote. We
will lay aside the Snowe amend-
ment, and then Senator ENZI is going
to offer an amendment. We will debate
the Enzi amendment for whatever time
he requires, but I note sure it will be
that long. Then Senator SPECTER will
offer an amendment after laying aside
the pending amendments. We will de-
bate that and then probably go to a
vote on the Specter, Snowe, and Enzi
amendments later this evening—hope-
fully early evening.

Mr. REID. Mr. President, I would like
to speak to the majority leader, but
this sounds fine. It is my under-
standing—I have spoken with the prin-
cipals; I have spoken with Senator
KENNEDY and Senator SNOWE, and that
matter appears to have been worked out
so we can have a satisfactory reso-
lution of that tonight as soon as Sen-
or Frist gets back.

Senator Frist had to leave the Hill
for a minor matter. He has some dental
work that has to be done tonight. We
understand that certainly. It is a valid
reason for leaving.

What the Senator from New Hamp-
shire has suggested is appropriate. We
will go to another McCain amendment
and then the Enzi amendment and then
the Specter amendment.

Mr. GREGG. I think it is a Gramm
amendment actually.

Mr. REID. There is no unanimous
consent request at this time, but I
think what the Senator from New Hamp-
shire has outlined is appropriate. I
will check with the majority leader.
If he has any problems, I will report
back accordingly.

Mr. GREGG. I suggest the absence of
a quorum.

The PRESIDING OFFICER. The clerk
will call the roll.

The bill clerk proceeded to call the
roll.

Mr. REID. Mr. President, I suggest
the absence of a quorum.

The PRESIDING OFFICER. The clerk
will call the roll.

The bill clerk proceeded to call the
roll.

Mr. GREGG. Mr. President, I ask
unanimous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unan-
imous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unan-
imous consent that the order for the
quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unan-
imous consent to be excused from the
voting in the Senate because there is
a wedding in the family that
requires me to travel to Juneau, AK. I
will try to be responsive to the leader-
ship in whatever the calendar turns out
to be. But I wanted to put the Record
on notice of my absence and the reason
for my absence.

I suggest the absence of a quorum.

The bill clerk proceeded to call the
roll.

Mr. REID. As under the previous
order, I ask unanimous consent that the
time be equally charged.

The PRESIDING OFFICER. Without
objection, it is so ordered.

The bill clerk proceeded to call the
roll.

The Senator from Wyoming [Mr. ENZI]
pro-
poses an amendment numbered 840.

Mr. ENZI. Mr. President, I ask unani-
mos consent reading of the amend-
ment be dispensed with.

The PRESIDING OFFICER. Without
objection, it is so ordered.

The amendment is temporarily set
aside, and the Senator from Wyoming
is recognized.

AMENDMENT NO. 840

Mr. ENZI. Mr. President, I call up
amendment No. 840.

The PRESIDING OFFICER. The clerk
will report.

The assistant legislative clerk read
as follows:

The Senator from Wyoming [Mr. ENZI] pro-
poses an amendment numbered 840.

Mr. ENZI. Mr. President, I ask unan-
imous consent reading of the amend-
ment be dispensed with.

The PRESIDING OFFICER. Without
objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide immunity to certain
self-insured group health plans that pro-
vide health insurance options)

On page 172, between lines 15 and 16, insert
the following:

SEC. 304. IMMUNITY FROM LIABILITY FOR PROVI-
SION OF INSURANCE OPTIONS.

(a) In general.—Section 502 of the Em-
ployee Retirement Income Security Act of
1974 (29 U.S.C. 1132), as amended by section
302, is further amended by adding at the end
the following:

"(p) IMMUNITY FROM LIABILITY FOR PROVI-
SION OF INSURANCE OPTIONS.—

"(1) In general.—No liability shall arise
under subsection (n) with respect to a partic-
ipant or beneficiary against a group health
plan described in paragraph (4) if such plan
offers the participant or beneficiary the cov-
erage option described in paragraph (2).

"(2) Coverage option.—The coverage op-
tion described in this paragraph is one under
which the group health plan, at the time of
enrollment or as provided for in paragraph
(3), provides the participant or beneficiary
with the option to—

"(A) enroll for coverage under a fully in-
sured health plan; or

"(B) receive an individual benefit payment,
in an amount equal to the amount that

SEC. 305. IMMUNITY FROM LIABILITY FOR PROVI-
SION OF INSURANCE OPTIONS.

(a) In general.—Section 502 of the Em-
ployee Retirement Income Security Act of
1974 (29 U.S.C. 1132), as amended by section
302, is further amended by adding at the end
the following:

"(p) IMMUNITY FROM LIABILITY FOR PROVI-
SION OF INSURANCE OPTIONS.—

"(1) In general.—No liability shall arise
under subsection (n) with respect to a partic-
ipant or beneficiary against a group health
plan described in paragraph (4) if such plan
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erage option described in paragraph (2).

"(2) Coverage option.—The coverage op-
tion described in this paragraph is one under
which the group health plan, at the time of
enrollment or as provided for in paragraph
(3), provides the participant or beneficiary
with the option to—

"(A) enroll for coverage under a fully in-
sured health plan; or

"(B) receive an individual benefit payment,
in an amount equal to the amount that
Mr. ENZI. Mr. President, we have spent more than a week debating this version of a Patients’ Bill of Rights which would affect the health care coverage of more than 160 million working families who are currently provided insurance by employers on a voluntary basis. We have specifically debated the matter of protecting employers from the new liability in the bill. To that end, Senators GRAMM and HUTCHISON offered an amendment that mirrored the employer protection provision of Texas, which currently contracts out. That amendment was unfortunately defeated. So we are still in the same predicament. We have employers that are providing health care coverage that may think twice about doing so if the liability in the bill weren’t addressed.

Now, everyone, including the sponsors of the bill, acknowledges that this bill’s stas at an employer protection from frivolous lawsuits needs to be fixed. The Senators are now talking about how we protect the good actors. These are employers that are doing right by their employees offering health care coverage but not playing a role in denying medical care to which their employees are entitled under the insurance contract.

My hope is that in the course of these discussions everyone will settle on a comprehensive liability fix that includes the designated decisionmaker model presented in the Frist-Breaux-Jeffords bill. As many of my colleagues have said, that certainly seems to do the job. I agree it certainly seems to. In fact, I agree that the designated decisionmaker mechanism must be part of an amendment to successfully resolve the problems in the underlying bill.

However, while the designated decisionmaker model does present itself as the most reliable proposal for protecting most employers, there remains a small segment of the market that will continue to go unprotected. Ironically, it’s this self-employed health plans that may represent the best of the best. These are the plans that we all should envy. They are plans better than we have in the Senate. They are referred to as the self-insured, self-administered employer plans. They comprise roughly 5 percent of the entire ERISA market.

Five percent is not a small number because that is still 6 million people, but the problem under the Kennedy-McCain direct participation model and even a designated decisionmaker model as we have been debating in the last few minutes is that these employers will have to dramatically alter their health plan because they do the plan administration in-house. That means the employer is doing everything, and it means they cannot just designate their third party administration or insurance company because they don’t currently contract with such entities for the purpose of processing claims. That is the difference between the self-administered and the fully insured employer plan.

We can reasonably expect the fully insured employer plan to be able to designate the final decision on a claim for benefits because that is generally how they function now, having the insurance company administer the plan, with the employer participation ranging from full plan design to advocating for a sick employee. But that is not the way the self-administered plan operates. So none of the proposals protect them.

My fear is that none of the proposals ever preserves that kind of a plan. Let me explain why that is a problem. These are the employers who are few and far between, probably a dozen in the entire United States. But they are the big companies, the companies that operate probably in everybody’s State but mine. Usually I am the advocate for small businesses because all of my businesses are small. There is not a single company headquartered in Wyoming that would be considered big business by the Small Business Administration. This issue has come to my attention from companies that participate all over the United States, and they have brought me the stories of how it will affect their plan, what the costs will be. It does require a fair bit of capital to administer a health plan and also requires that the employer wants to be actively involved in the caliber and range of benefits their employees receive. They receive more benefits than almost anyone else. And they want to practice a wide, often unique range of benefits to suit the specific needs of their employees. Because the employers have the in-house resources to do so, they are actually able to be more cost-effective in what they provide than they provided in their own health plan. They would rather have the health benefits than the administration benefit. It is not that they can just provide the same benefits cheaper and more efficiently; they actually provide a richer benefit package.

The benefits some of these employers provide include extensive mental health counseling, on-site wellness routine that may include cancer, osteoporosis, and domestic violence counseling, and the list goes on. These employers often use employee review boards to evaluate disputed claims for benefits, which is also a practice used by a number of employee union operated health plans. These are clearly benefits and administrative practices designed to help employees get the highest quality health care available. In fact, these employer plans are often referred to as Cadillac of plans. As I said before, isn’t it ironic that these are the health plans hardest hit by this bill? That doesn’t make any sense to me. And it clearly doesn’t make any sense to me to leave these employers unprotected as we identify a way to protect employers.

For that reason, the amendment I offer today is a solution that I think is reasonable and will force us to ask ourselves a few tough questions about the purpose of a Patients’ Bill of Rights. The amendment would require a self-insured, self-administered employer to offer their employees one or both of the following options, in addition to the self-insured, self-administered option, which would also afford them access to a cause of action. The employee chooses if he or she wants that to be a component of their health benefit.
Under the amendment, self-administered, self-insured employers would be required to offer at least one of the following options. The first would be a fully insured product, under which an employee could exercise the cause of action in this bill against the insurance company administering the health plan; or, the employer would provide a self-administered plan currently provides if form of an “individual health benefit,” the amount of their employer’s annual premium contribution under the self-administered employer plan. This would have to be used to buy health care, which is done in the State regulated individual market. They have the right to sue.

If an employer offers one or both of these choices to employees, then the employer would not be subject to the new option that provide the self-insured, Bill of Rights. Any new civil monetary penalties would apply to these employers for violations of the act, and the external appeals determination would be binding on the employer, but enrollees would not be able to pursue damage awards against the employer under the new cause of action. As under the Frist-Breaux-Jeffords bill, this provision would not preempt any medical malpractice action currently available in state court.

It would not do that. This is very clear. An employee makes the choice to either keep the caliber of benefits under the self-administered plan, or to choose a plan specifically for the right to sue. Those employees that choose the fully insured product will be able to hold their plan accountable under the new cause of action. And, those employees that choose to purchase their own plan through the “individual health benefit” are similarly able to hold their plan accountable under state law.

The argument has always been that ERISA is unfair because it “traps” employees in the employer sponsored plan, affording that option alone, where damages lawsuits aren’t available. This proposal solves that dilemma without jeopardizing access to top-notch employer sponsored health care for those employees. Have any of you been hearing from the major companies that provide the self-insured, self-administered employer plan? No, you have not. They have not been asking for that right to sue. They like the range of benefits they have. They like the personal way it is handled.

The arguments you will hear against the amendment, I believe, actually make the case for it. It is very simple. It will be argued that employees will never be able to get the rich benefit packages that their employer’s self-administered plan provides. If they opt into the individual market by taking the “individual benefit,” and while it may be better than the individual market under the fully insured option, surely it won’t compare to the self-administered option.

That is not right. If they spend the same amount of money and add a liability part to it, you do not get as much insurance. I am trying to preserve their insurance, not the right to sue, by giving them the flexibility. Any employer that ever had a bad actor incident in their company would have all of their people go out into the individual market under this plan.

This bill would eliminate the best employer plans out there because we feel compelled to sue them instead of making the decision to eliminate self-administered plans by a lawsuit from Washington. Why don’t we let the employees make the choice for themselves? Every time a window of choice opens they can opt into this other plan if they think it is a good way to go.

But I will tell you why the businesses cannot do what is being mandated under this bill. If they have to have a designated decisionmaker, they are hiring somebody to take the liability risk. They are not just hiring somebody to administer the plan. That is only a 5-percent cost. This will drive their prices up dramatically if we do not give this option, and people who are receiving the best care in the United States at the present time will have to settle for something else.

I believe we have made a concerted effort through the amendment. It is one we talked about a lot last year in the Patients’ Bill of Rights conference committees. We made an attempt to amend the process, to remedy the problems of the entire liability section under the underlying bill, including protecting employers and including protecting small employers.

It is not only the small ones; this is worry about the big ones who are providing the best of the best. I do not believe we will be doing a good job unless we include this amendment.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. If no one yields time, time will be charged against both sides.

The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I understand what my friend from Wyoming is trying to do. We appreciate his work on this issue. This is a subject matter that was covered previously by the Snowe-Nelson-DeWine-Lincoln amendment on which we reached consensus on the floor a few hours ago. That amendment was specifically designed to strike the proper balance between protecting employers on the one hand and making sure we also protected the rights of employees. So this is a fundamental problem in the provision covered, about which there has already been great discussion, work, and compromise across party lines, Democrats and Republicans, and about which we are soon to have a vote. It is an issue about which we already have consensus. We have widespread support for that consensus.

The reason for that widespread support is we have protected employers while at the same time kept alive the rights of employees and patients. We have struck in a very creative way a solution to that problem.

This specific amendment has at least two major problems. No. 1, what it does is take away the rights of employees, patients, and families, to hold anybody accountable if one of two things occurs. The problem with that concept is that it is in violation of the President’s principle, which we have talked about at great length on the floor of the Senate, which is that employers be protected but that somebody be held accountable if the employee, the patient, is injured as a result of a medically reviewable decision. The President specifically said that in his principle. That principle is completely complied with in this amendment. This bill amends the Snowe-Nelson amendment because in that amendment we create a situation where we protect the employees right to recover if, in fact, they are injured by a medically reviewable decision, while at the same time providing protection for employers. So that is the reason that consensus was reached. That is the reason both Democrats and Republicans support it across party lines, and that consensus is consistent with the President’s principle.

This is an issue about which we have already talked and an issue about which we have reached some agreement.

In addition to that, there are at least two other problems with this specific amendment.

No. 1, it provides the employees with a false option. It says for self-insured, self-administered plans, if either of two things occurs, the employee, the family, and the patient lose their right to hold anybody accountable. One of those options is that they go out, get a voucher, and buy their own health insurance. But there is absolutely no requirement that the voucher be adequate to buy quality health insurance plans.

Second, they may provide a comparable plan. But there is nothing to require that the benefits of that plan be equal to the benefits the employee would otherwise have.

The bottom line is there are no protections that require that under these options the employee or the patient end up with the same quality health care plan. In many regards, it is a false option that is being provided to them.

Another fundamental problem is that there is a provision in the amendment—this is the B-1 exclusion from income—which says section 106 of the Internal Revenue Code of 1986 is amended by adding at the end the following. Of course, an amendment to
the Internal Revenue Code creates a blue slip problem. This issue has to originate in the House, which means, if adopted, this entire legislation could be sent back to the Senate from the House.

We have a number of problems. I understand what my colleague is trying to do. I think his purpose is very well intentioned. But I say to my colleagues, No. 1, this is an issue about which we have already reached consensus in the Snowe-DeWine-Nelson amendment. We have reached that consensus for an important reason. We have complied with the President’s principle. We have complied with the fundamental principle, with which many of us on both sides of the aisle agree, which is we need to protect employ-ers and provide the maximum protection possible, but, in that process, not leave the patients behind. That is the reason we have an amendment to be able to reach consensus.

No. 2, the choices that are being provided in this particular amendment we believe are false choices, and—hey would not require that the employee or the patient receive the same quality plan they would get with the employer.

No. 3, it creates a blue slip problem, which means the entire Patient Protection Act could be sent back to the Senate since it involves an amendment to the IRS Code.

There are a number of fundamental problems. I appreciate my colleague’s work on this issue. I think this does not move us in the right direction. We have an amendment that already addresses this issue. It is an amendment that provides protection for employers while at the same time keeping alive the rights of patients and employees. I urge my colleagues to vote against this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. ENZI. Mr. President, I want to briefly refresh the memory of the Senator from North Carolina.

I would not have entered into the time agreement had I known he wasn’t listening when I debated the Snowe-DeWine arrangement where I clearly pointed out that it is not considered thereunder. I think this is a sticking point that the President would see as being very difficult.

We are talking about companies such as Hewlett-Packard, Firestone, Motor-ola, Caterpillar, Pitney Bowes—big companies that are providing this. I have checked on the costs. Their costs will go up from $40 million to $70 million if the Snowe-DeWine amendment is the only defense they have.

I yield the remaining time to the Senator from Texas.

Mr. GRAMM. Mr. President, first of all, this problem has not been fixed. The amendment we will adopt is win-
dow dressing and has no impact on this problem. What the Senator has pro-
posed is a solution to an assault on the best health care plans in America. The biggest companies with self-insured plans that employees love will be destroyed by this bill.

All the Senator is saying is that if Wal-Mart employees love their plan, and they want to keep it and agree to not require Wal-Mart to be liable to be sued, and if Wal-Mart gives them the option of going into a fully-insured plan with liability so that they do not have to be in the Wal-Mart self-insured plan, they can choose to remain in it, and Wal-Mart will not be forced by liability costs to cancel their plan. This is an important issue that addresses a very real shortcoming in this bill. The incredible paradox is that this bill will do the most damage to the best health care plans in America—plans that are self-insured, that are large, and that provide terrific coverage. Under this bill, there is no question about the fact that the employer is liable. That liability fear will end up forcing them out of these plans.

The Senator has offered us a third way. The third way is if every em-
ployee is offered an alternative plan, there is liability available, then those who choose to stay in their health plan and say, I love my Wal-Mart plan and I don’t want to sue Wal-Mart, would have a right to do it. That is what the Senator’s amendment does. All of the rest of these arguments have nothing to do with the amendment.

Do you want to destroy the best health care systems in America? If you do, you want to vote against the Enzi amendment. If you do not, vote for the Enzi amendment which guarantees that a Wal-Mart employee will have an option of another health care plan where everybody is liable. But if they choose a better plan with fewer law-
suits, aren’t they better off by definition by choosing?

The Senator from North Carolina says if you do not get lawsuits, you ought not to be happy. Maybe not everybody agrees with the Senator from North Carolina.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, what is the time situation?

The PRESIDING OFFICER. No time remaining on Senator Enzi’s side, the sponsor of the amendment, and 8 minutes 44 seconds remain in opposition to the amendment.

Mr. GREGG. I understand the Senator from Texas has an amendment, which has been agreed to by both sides, and she needs about 3 minutes to present it. Is there any objection to setting aside the Enzi amendment and allowing the Senator from Texas to go forward?

Without objection, it is so ordered.

The PRESIDING OFFICER. Is there objection?

The amendment (No. 839) was agreed to.

Mr. GREGG. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 839) was agreed to.

Mrs. HUTCHISON. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.
Mr. EDWARDS. Mr. President, let me respond briefly to a couple of the comments that were made about the Enzi amendment.

First of all, no argument was made that I heard about the blue-slip problem, so I presume there is agreement that if this amendment is included, it would require the entire Patient Protection Act to be sent back.

Second, I say to my friend from Wyoming, I actually did listen to his comments in the debate. And not only that, I sat in hours of meetings with Senators Snowe and DeWine, and others, working out the language of the Snowe-DeWine-Nelson amendment.

The Senator is factually incorrect about one thing; that is, that what Snowe-DeWine-Nelson does is, No. 1, provide this country in the Snowe-Nelson amendment, which we have been working on for several days now. No. 1, they are completely carved out. Self-insured, self-administered plans are totally carved out of the Federal cause of action in the Bipartisan Patient Protection Act. They cannot be held responsible for contractual, administrative responsibilities, period. They are out.

Second, we have provided that if they choose to do so, they can pick a third party designated decisionmaker and send all liability to that decisionmaker by which they are completely protected.

And finally, we have provided that if they have what many of these large employers have, which is a system where they simply make a decision, yes or no, on paying the claim after the treatment has already been provided—that the patient goes and gets the treatment; then they decide whether they are going to pay for it or not—they cannot be held responsible.

So I say to my friend and colleagues, what we have done is provide complete protection for 94 percent of the employers in the country. Almost every small employer is totally protected. But we left in place for patients. The employers are completely protected.

For the self-insured, self-administered employers, we have also provided specific protections in this amendment, which we have been working on for several days now. No. 1, they are completely out. Self-insured, self-administered plans are totally carved out of the Federal cause of action. They cannot be held responsible for contractual, administrative responsibilities, period. They are out.

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charge as much money as they think this will cost, and they are going to guess because they don’t know.

It is kind of like playing Russian roulette. They might be lucky and not have any suits so whatever they charge will be profit. Conversely, if there is one bad suit and they are found liable, they are assuming this liability and they are going bankrupt. So they are going to be trying to err on the high side.

The net result, for everybody who thinks this is going to exonerate employers and all they have to do is designate somebody else to accept their liability, I tell my colleagues, as an employer, that is not going to happen. An employer may say: You handle this, third party; you assume our liability. And that third party is going to say: OK, I got you for it, and I am going to charge you more than enough to make sure that we don’t go bankrupt in the process.

Maybe they can buy insurance themselves or maybe they can’t. My guess is we are going to find out. Some people have said: CBO says that the liability provision under this bill is .8 percent. I would be willing to bet anybody the premiums that are going to come out as a result of this liability in third party administrators assuming liability is going to be a lot more than .8 percent. My guess is you are going to be looking at premium increases of 4 and 5 percent just to cover the liability before someone will take this because the liability is not defined. It is unlimited, unlimited noneconomic, unlimited economic.

The contract coverage, well, you may have to cover just about anything. We never did tighten up medical necessity so if I am going to find out, some people have said: The contract coverage, well, you may have to cover just about anything. We never did tighten up medical necessity so if I am going to find out, some people have said: CBO says that the liability provision under this bill is .8 percent. I would be willing to bet anybody the premiums that are going to come out as a result of this liability in third party administrators assuming liability is going to be a lot more than .8 percent. My guess is we are going to find out. Some people have said: CBO says that the liability provision under this bill is .8 percent. I would be willing to bet anybody the premiums that are going to come out as a result of this liability in third party administrators assuming liability is going to be a lot more than .8 percent. My guess is you are going to be looking at premium increases of 4 and 5 percent just to cover the liability before someone will take this because the liability is not defined. It is unlimited, unlimited noneconomic, unlimited economic.

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some questions answered. It simply does not lend itself to that kind of time constraint.

Mr. REID. If I could say to the Senator from Pennsylvania, how about if he has an hour and we have 20 minutes?

Mr. SPECTER. Mr. President, I am prepared to start the debate and to make it as expeditious as possible. But I am not prepared to negotiate time to an hour and 20 minutes total. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas is recognized for 5 minutes on his amendment.

Mr. GRAMM. Mr. President, I have sent an amendment to the desk. The amendment has been read.

Let me explain to my colleagues what the amendment does, why it is important, and then I will thank our distinguished Arizona colleagues for agreeing to this amendment.

Under the bill that is now before us, under the language of the current bill on page 35, the bill says that contracts are binding. But then it makes those contracts binding unless they are subject to amendment of medical facts and they are subject to medical review.

This creates an extraordinary ambiguity and, for all practical purposes, makes the contract not binding. That creates a situation where every health insurance company in America will realize that these outside medical reviewers, based on medical necessity, could invalidate every health insurance contract in America and, as a result, put everybody under the high option plan whether they pay for it or not. The net result would be an explosion in health care costs. In fact, if this provision is not fixed, it is at least as explosive in potential cost as the liability section, which we have talked about many times before.

The amendment I have offered makes the contract binding, and it provides language that says the contract is binding as long as the contract does not violate the language of the bill. Let me explain very briefly what that means. If, as we do under the bill, we say that if you provide emergency room coverage, you have to have a prudent layperson standard for that emergency room coverage, so you have to do that if you provide the coverage no matter what this amendment says; or if we say under the bill that if the plan has pediatric care for children, that can be the primary physician, then it would have to be the law that would govern.

Within that very limited proviso, this amendment makes the contract binding. I think it is a dramatic improvement in the bill.

I thank our distinguished colleague and my old and dear friend from Arizona for helping me work this provision out. It is something I have worried about. I do think it improves the bill, and it certainly would not have happened without the reasonableness of our dear colleague from Arizona. I thank him for that.

I yield.

Mr. MCCAIN. Mr. President, I thank the Senator from Texas for causing this amendment to happen. It really is to ensure the sanctity of the health care contract. Concerns were raised under the current Medicare-Kennedy legislation, independent medical reviewers can order a health plan to provide items and services that are specifically excluded by the plan.

That was not the intention of the law. The Senator from Texas pointed out that it could have been interpreted in another way, and clearly this amendment I think tightens that language to the point where it is clarified that the bill doesn’t do this and its specific limitations and exclusions on coverage must be honored by the external reviewers.

There are numerous safeguards already in the bill to ensure that external reviewers cannot order a group health plan or health insurer to cover a service that was specifically excluded or expressly limited in the plain language of the plan document and that do not require medical judgment to understand.

So I think this language is important in its clarification. I understand Senator GRAMM’s concerns. I know this will not bring him to the point where he is willing to vote for the bill, but I do hope it satisfies many of his concerns, and we will continue to work with him to try to satisfy additional concerns. I appreciate his cooperation and that of his staff. I believe my friend from Texas would agree this is probably the 35th draft we have of this maybe 9-line amendment, but each word is important nowadays as we work our way through this bill. I believe the appropriate place is on page 36, line 5.

By the way, I thank Senator KENNEDY and Senator EDWARDS and their staffs for agreeing to this amendment. I share the opinion of the Senator from Texas that it is an important amendment.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I urge that we accept this amendment. As in other areas, there has been a desire to provide clarification to the language we had in the bill. One of the issues that has been debated is the power and authority of the review medical officer in the review process. It was never the intention to include benefits that were not outlined in the contract. It was going to be limited to the contract, but it was also going to give discretion in terms of medical necessity. So this is a clarification of that, and I think it is a useful and valuable clarification. I hope the Senate will accept it.

Mr. GRAMM. Mr. President, I seek only to do good, not to have it recorded through a recorded vote. So I ask unanimous consent that the amendment be adopted.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 843) was agreed to.

Mr. MCCAIN. The amendment that I offered today with Senator GRAMM helps to clarify the intent of how this bill deals with medically reviewable decisions.

Mr. KENNEDY. The Senate should understand that the language in the McCain-Edwards-Kennedy bill is based on language from a bipartisan compromise between JOHN DINGELL and CHARLIE NORWOOD. Every member of our conference signed off on our approach the last Congress, from DON BASSLER to PHIL GRAMM to JOHN DINGELL and me.

Our approach is based on a very important concept. It assures that the external reviewer cannot be bound by the HMO’s definition of medical necessity. This does not mean that the reviewer cannot sign off on anything that is explicitly excluded by the health plan. If the plan covers 30 days in the hospital the reviewer cannot approve 100 days. However, where a coverage decision requires medical judgment to determine whether of not what the patient is requesting is the type of treatment or services that is explicitly excluded, we intend for that determination to be eligible for independent review.

Mr. MCCAIN. The amendment we are drafting here—that merely restates what is in the underlying bill—is not intended to change our fundamental approach, just to clarify our intent. Our overall bill still clearly states that coverage decisions that are subject to interpretation or that are based on applying, medical facts and judgment should be reviewed. This includes those decisions that require the application of plan definitions that require that interpretation.

Mr. KENNEDY. Absolutely—the reviewer should be looking at those cases. The amendment is intended to clarify that we never meant to have the independent reviewer approving a benefit that is explicitly excluded in all cases. However, in the case where there is some dispute about whether it is a medically reviewable benefit, we do want the case reviewed.

Mr. MCCAIN. Right, just as in the case we have heard about a child with a cleft palate. The plan says they do not cover cosmetic surgery, but the doctor argues that there is specific health risks for not having this surgery. That is something the independent reviewer would look at to determine if it is covered in this case.

Mr. KENNEDY. Under the bill the external review process is first designed to determine whether a denial by the plan or issuer is based on a particular
On page 156, strike line 15 and 16 and insert the following:

"(D) LIMITATION ON CLASS ACTION LITIGATION.—

"(1) LIMITATION.—

"(A) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, derivative action by the group of claimants is limited to the participants, beneficiaries, or enrollees with respect to a group health plan established by only 1 plan sponsor or with respect to coverage provided by only 1 issuer. No action maintained by such class, such derivative action claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative action claimant, or group of claimants or consolidated for any purpose with any other proceeding.

"(B) DEFINITIONS.—In this paragraph, the terms 'group health plan' and 'health insurance coverage' have the meanings given such terms in section 733.

"(2) EFFECTIVE DATE.—Paragraph (1) shall apply to all actions that are pending and have not been finally determined by judgment or settlement prior to the date of enactment of the Bipartisan Patient Protection Act, and all actions that are filed not earlier than that date."

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

"(2) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.—Section 1964(c) of title 18, United States Code, is amended—

(A) by inserting ''(1)'' after the subsection designation; and

(B) by adding at the end the following:

"(2) A(n) no action may be brought under this subsection, or alleging any violation of section 1962, if the action seeks relief concerning the manner in which any person has marketed, provided information concerning, established, administered, or otherwise operated or provided a group health plan, or health insurance coverage issued in connection with a group health plan. Any such action shall not be brought under the Employee Retirement Income Security Act of 1974.

"(ii) In this subparagraph, the terms 'health care provider' and 'health insurance issuer' have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

"(3) CONFORMING AMENDMENT.—Section

Mr. SPECKER. Mr. President, I decline to enter into a time agreement because this is an amendment which deals with the complete subject of jurisdiction. I have long been a cosponsor for a Patients’ Bill of Rights, and I was surprised to learn many years ago of the Federal preemption which precluded an injured patient—for example, where the family recommended a specialist and the HMO refused to provide the specialist to the person and the person was injured, or perhaps died, and had no redress in the Federal courts because of the so-called preemption under ERISA.

Mr. SPECKER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. SPECKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require that causes of action under this Act be maintained in Federal Court)

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

"(10) STATUTORY DAMAGES.—The remedies set forth in this subsection (n) shall be the exclusive remedies for causes of action brought under this subsection. In such actions, the court shall apply the tort laws of the State in determining damages. If such damages are not limited under State law in actions brought under this subsection against a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan), then State law limiting such damages in actions brought against health care entities shall apply until such State enacts legislation imposing such limits against group health plans (and issuers). Nothing in this section shall be construed to require a State to enact legislation imposing limits on damages in actions against group health plans and issuers."

On page 160, between lines 2 and 3, insert the following:

"(D) ACTIONS IN FEDERAL COURT.—A cause of action described in subparagraph (A) shall be brought and maintained only in the Federal district court for the district in the State in which the alleged injury or death that is the subject of such action occurred. In any such action, the court shall apply the laws of such State in determining liability and damages. If such State limits the amount of damages that a plaintiff may receive, such limits shall apply in such actions.
quagmire because if you have a case such as the following where a child is born to a mother who has a plan under an HMO which seeks to limit the hospital stay to 24 hours. The patient is then discharged and an unfortunate result happens to the child. There will be both claims under the so-called quantity interpretation of the contract and quality on medical malpractice.

That is illustrated in the case of *Bauman v. U.S. Healthcare,* 1 F.3d 420, a case which was heard in the United States District Court for the District of New Jersey in 1998. In that case, and this illustrates the kind of an issue I am referring to, the HMO plan had policies which encouraged the discharge of a mother and a newborn within 24 hours after birth. Mrs. Bauman was discharged after that time elapsed and the next day the Baumans' daughter fell ill.

The Baumans contacted the HMO and requested a home visit by a nurse. The HMO refused to send a nurse, and the daughter died of meningitis the same day. The Baumans brought an action against the HMO, the doctor, and the hospital, and they went into State court. The HMO removed the case to Federal court as they had a right to under ERISA.

The Federal court made a determination that counts under the complaint relating to the discharge decision were "quality-of-care" decisions, and the counts would be remanded to the State court. The district court said that the failure to provide the nurse was a "quantity" decision and, therefore, was preempted totally.

On appeal, the United States Court of Appeals for the Third Circuit, in a case captioned *In re U.S. Healthcare,* Inc., 193 F.3d 151, reversed the district court holding that the claim was a quality decision.

The Bauman case illustrates the point about how hard it is to decide whether a claim is a "quantity" claim or a "quality" claim.

Under the McCain bill, the claim that the Baumans would bring if the McCain bill were enacted, would be in the Federal court on the issue of plan coverage because that is a determination of the "quantity" of medical care, but that the other claims would be brought in the State court. I suggest obviously that is a procedural quagmire.

The point is further illustrated by an opinion of the Court of Appeals for the Third Circuit in a case called *Lazorko v. Pennsylvania Hospital,* 237 F.3d 222, decided just last year, where the underlying facts show the plaintiff's wife was hospitalized for attempted suicide. She was released but continued to have thoughts of suicide. Her doctor refused to remove her from the hospital, and thereafter, regrettably and unfortunately, she killed herself.

In the State court, the plaintiff sued the HMO. The case was removed to the Federal court where the counts on direct liability against the HMO were dismissed. The case was then remanded to the Federal court and then removed again by the HMO to the Federal court.

The Federal court dismissed some of the counts against the HMO but remanded the case to the State court because of the various vicarious liability claims which the plaintiff had against the HMO. On appeal, the circuit court reversed the district court on one liability count and remanded the case to the district court.

That is legalese, obviously, and very hard to present in the course of a floor statement in a Senate debate on this subject, but it is illustrative of a point that where you have a situation where an HMO covers certain kinds of treatments for medical illness and you have a question as to whether they are covered, under the McCain bill that claim would go to the Federal court, but if there is a claim on malpractice, failure of the doctor to exercise ordinary care, that case would go to the State court.

There is another important aspect to the litigation in the Federal court because of a feeling of a greater confidence in the Federal judicial system in some State court judicial systems. This is a touchy point, but it is one which the Judiciary Committee examined in some detail last year in considering the question of amending diversity jurisdiction in class action cases. Class action is when plaintiffs join to sue a defendant. There had been, for illustrative purposes, a case which had been denied class action status by the Court of Appeals for the Third Circuit, and the plaintiffs then went to Louisiana, to a favored county, and instituted the class action case and had the class action certified.

Diversity jurisdiction is easily defeated in a class action matter because if you have many plaintiffs, as you do in a class action, and a single defendant, all you have to do to avoid diversity jurisdiction is to have one of the plaintiffs a resident of the same State as the defendant. In order to have a diversity jurisdiction in the Federal court, all the plaintiffs have to be from a State other than the residence of a defendant.

In the Judiciary Committee report on this subject, the following facts of findings were made:

"Some State court judges are less careful than their Federal court counterparts about applying the procedural requirements that govern class actions."

is a resident of another State. A simple illustration would be if a patient from Camden, NJ, is treated in a Philadelphia hospital by a Philadelphia physician and there is an allegation of malpractice, negligence on the part of the physician and the hospital, then the resident of the State of New Jersey sue in the Federal court without requisite jurisdictional amount, but it would be the law of Pennsylvania which would govern, or the plaintiff could sue in the State court of Pennsylvania. State courts would have jurisdiction.

Once you bring the HMO into the picture and you have what is traditionally under ERISA, it has to start out in the Federal court at least as the contract interpretation and "quantity of care." That is why it is my point, as a legal judgment, that it is necessary to avoid the procedural quagmire to have the Federal court have jurisdiction over the entire matter.

The question has been raised as to choice of law and venue, the question raised by my distinguished colleague from Tennessee, and I specified in the legislation that it would be the place of the incident which would determine the applicable law. Again, liability varies from State to State and venue has an important place. We want to avoid the potential of judge shopping so that the choice of law and the determination of venue would be where the incident occurred.

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In the Judiciary Committee report on this subject, the following facts of findings were made:

"Some State court judges are less careful than their Federal court counterparts about applying the procedural requirements that govern class actions."
That appears on page 16 of the report of the Judiciary Committee reporting this bill on June 24, 2001.

On the next page, page 17, appears the following statement:

"A second abuse that is common in State court class actions is the use of the class device as "judicial blackmail." That is a fairly strong condemnation in citing that criticism of the State courts. I do not suggest the impugning of all State court judges everywhere. But there is a considerable difference in the quality of the courts where you have electoral process in many States, contrasted with the Federal system of life tenure, where I believe it is fair to say it is generally accepted that the caliber of the Federal courts is better, at least as a generalization.

There has been a great deal of concern expressed by some about the unlimited potential that would be present in a Patients' Bill of Rights in exposing defendants, HMOs, and employers to very high verdicts which would increase the cost of health care. So there is some assurance, I think fairly stated, by having the cases brought in the Federal courts.

I think it useful to cite a couple of other illustrations about the underlying concern which I have about the procedural quagmire which occurs. One of the two cases I intend to cite additionally—but I shall not cite many of the other cases, and there are many illustrative of this proposition—is the case of Prysbyowski v. U.S. Healthcare, Inc., 245 F.3d 266, decided by the Court of Appeals for the Third Circuit earlier this year. The plaintiff had back problems, sought surgical treatment, the HMO delayed a decision for months, the plaintiff went to State court, suing the HMO for medical complications occasioned by the delay. The HMO removed the case to Federal court and the Federal court dismissed the claims against the HMO, finding that they were "quantity determinations" and therefore preempted under ERISA. The court concluded that the HMO gave medical advice, but in the context of making a determination as to the availability of the benefits under the plan, and as such the court found the Corcorans' claim was preempted by ERISA.

So there you have a curious situation of what might have been a medical malpractice claim which might—telephone pre-certification from the HMO for a hospital stay. The HMO denied the request and authorized only 10 hours per day of health nurse services at home. Subsequently, the fetus regrettably died at a time when the home health nurse was not on duty. The Corcorans, parents of the deceased child, brought suit in the State court against the plan, the HMO finding that they had not made a medical decision on "quantity" but only a decision as to what benefits were covered under the health plan which was preempted by ERISA. The court concluded that the HMO gave medical advice, but in the context of making a determination as to the availability of the benefits under the plan, and as such the court found the Corcorans' claim was preempted by ERISA.

I am a cosponsor of the bill, and I too, intend to support the bill. But I do not intend to litigate a case on the floor. So that is a section where you have an HMO, which defined the rights of the parties involved in the contract, and the interpretation of the plan, would be tried in the State court. And I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor; the Senator from Massachusetts does not.

Mr. SPECTER, did the Senator from Massachusetts suggest the absence of a quorum?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor; the Senator from Massachusetts does not.

Mr. SPECTER. Madam President, I would press the question as to the interpretation of the insurance contract, which defined the rights of the parties under the plan. Isn't it true that under his bill, a claim which might arise out of the same occurrence, which involved malpractice, or a "quality" case—would that not, under his bill, be brought under the State court?
would be the issue, as to interpretation of a contract to determine coverage.
I asked the Senator from Massachusetts if that was not an accurate citation of the Senator’s bill?
Mr. KENNEDY. No. No, it is not. The Senator would be reading it out of context:
Cause of action must not involve a medically reviewable decision.
The Federal cause of action excludes the medically reviewable decision. That is on page 142, line 6.
Mr. SPECTER. If I might have the attention of the Senator from Massachusetts, on the preceding page, 139, section 302 talks about the “availability of civil remedies.”
(a) Availability of Federal Civil Remedies in Cases Not Involving Medically Reviewable Decisions.
Mr. KENNEDY. Yes.
Mr. SPECTER. Going on to 140.
Mr. KENNEDY. The Senator is correct, and that is consistent with my earlier remarks.
Mr. SPECTER. If I may be permitted to finish my sentence, since I do have the floor——
Mr. KENNEDY. If the Senator wants a response, I am trying to respond to those highly technical questions the best way we can.
Mr. SPECTER. I do want a response, but not in the middle of my sentence or the middle of my question.
But to go forward here on the availability of Federal civil remedies in cases not involving medically reviewable decisions, this covers, line 24–25: regarding whether an item of service is covered under the terms and conditions of the plan or coverage,[]
My question to the Senator from Massachusetts: Isn’t that an explicit conclusion that, if it is a medically reviewable decision, that is a Federal remedy? That is what it says in black and white, doesn’t it? I ask Senator KEN
Mr. KENNEDY. The Senator is wrong. That is taking it out of context. The fair way is to read the complete paragraph and go on to the next page.
Mr. SPECTER. Madam President, if the Senator cares to read the next paragraph, where he makes a claim of being taken out of context, I would be interested in hearing him read any such paragraph.
Mr. KENNEDY. I have referred to that earlier, page 142, line 6. The coverage decision depends on a medically reviewable issue. On the matters dealing with the medically reviewable issue, the Supreme Court has indicated that it would be decided in the State courts. That is essentially what we have included in this language.
Mr. SPECTER. Madam President, I agree with the general delineation that it was a medically reviewable decision.
That is called “quality of care,” as I have said before, and is a malpractice issue. But the question which I have directed to the Senator from Massachusetts is a much narrower question.
To repeat, is this not a question on the interpretation of the contracts, specifically where an item of service is covered under the terms and conditions of the plan for coverage? That is my question. The interpretation of “an item of service is covered under the terms and conditions of the plan for coverage” is a matter for the Federal court.
I believe it is plain from the language on 139 to 141 that it is a Federal matter. But if you move to an interpretation of what is medical malpractice or a breach of duty by a doctor on what is a medically reviewable decision, then that is the matter which goes to the State courts. And this legislation does not continue the preemption of existing law.
If I might have the attention of the Senator from North Carolina, Madam President, this is an issue which my distinguished colleague from North Carolina and I have been discussing for several days. And this morning in my hideaway we discussed the complications, at least as I saw them, on having the provisions of the pending bill which deal with this complex dichotomy of an interpretation of contract coverage, which is set forth at line 24, 25 on page 140 over to lines 1 and 2 on 141, which comment regarding an item of service covered under the terms and conditions of the plan for coverage which comes under the category of availability for Federal civil remedies. Then if you move over to a medically reviewable decision on medical malpractice, there is the difference.
Is my interpretation correct that the legislation provides for cause of action in different courts, No. 1? It is the coverage of the contract, or what the courts have called “quantity” malpractice and what the courts have called “quality.”
Mr. EDWARDS. If the Senator would repeat the question, it is difficult for me to hear.
Mr. SPECTER. I would be glad to repeat the question. As the Senator and I are in agreement with, is, how is it going to work? I characterized it, while the Senator was off the floor, as a procedural quagmire.
If you have a case—and I cited a couple of them—where a child is born, and the mother has an HMO which encourages release from the hospital within 12 hours, and the child, unfortunately, dies—and I cited a specific case—and then you have a series of claims which were brought by the plaintiff and one of the claims involves interpretation of the contract, is that care covered by the contract?
Then if there are other claims for negligence on the part of the doctor or the hospital, that would then fall under the jurisdiction of the Senator from North Carolina under State court jurisdiction.
I cited another case where you had a woman who was suicidal, she was released from the hospital, the doctor didn’t put the HMO wouldn’t let him do that. She committed suicide. A suit was brought and the HMO defended it on the ground that it wasn’t covered. That went from
the Federal court. They dealt with the exclusive preemption under 502. But the aspect of “quality of care” is a State court action. You have perpetuated that.

It is very difficult, obviously, to move totally away from Federal jurisdiction under ERISA on the interpretation because there is so much law on the subject. I know my colleague will agree with me on that generalization.

What happens when you have the suicide? The mother of the infant is released from the hospital within 24 hours, and the claims are made. They are essentially the same claims. They are claiming that they are covered under the contract. They are claiming personal injuries, loss of earning potential, or for the woman who has committed suicide, loss of earnings, loss of consortium, the whole range.

Having litigated some of these cases, you more recently than I. But the essence is going to be the same: Personal injuries for both the claim for coverage and “quantity of care” as opposed to the claim for “quality of care” or malpractice.

So how is it going to be resolved with two separate courts, Federal court having jurisdiction over “quantity,” and State court having jurisdiction over “quality”?

Mr. EDWARDS. I think

The PRESIDING OFFICER. The Chair reminds Members to address each other in the third person and to address the questions through the Chair. Mr. SPECTER. Nunc pro tunco.

Mr. EDWARDS. I would answer the Senator’s question by saying that under the examples given, if I understood them correctly, most of those examples would involve interpretation of contract language in the context of a medical fact.

So I believe under our legislation those, in fact, go to State court. I say to my colleague, if there is any medical fact interpretation involved, I believe those cases go to State court. So I think under the examples given, all of the cases would end up in State court.

Having said that, though, in fairness to the Senator, I can imagine circumstances—I don’t think the Senator’s examples meet it—where there could be a medically reviewable decision which would go to State court and also there could be a claim that the contract was breached separate and apart from that, which I think is the issue the Senator is raising.

Mr. SPECTER. Madam President, I would accept the modification by my colleague from North Carolina. I think the citation I gave has a contract claim. But rather than disagree about that, since the Senator from North Carolina acknowledges there could be some cases, I will take another case whereas the Senator from North Carolina says there could be that kind of distinction.

I ask the Senator, through the President, then in your bill what do you do in that situation where you have Federal factors?—in the language of the statute—“whether an item or service is covered under the terms and conditions of the plan or coverage” and other aspects of the same set of facts are covered under medically reviewable factors? Mr. GREGG. Madam President, will the Senator yield for a question?

Mr. SPECTER. I would be glad to yield as soon as I get this answer.

Mr. GREGG. It is just a technical question. The answer might be better if he has time to think about it.

Mr. SPECTER. Well, it is too late now to retain the continuity without yielding, so I do yield.

Mr. GREGG. I thank the Senator and apologize for disturbing the continuity. I think building the record on this issue is very important.

We are trying to get a sense of the situation, so we can tell our membership what they are going to be doing. After your amendment is completed, we will have three votes lined up. I wonder if we could agree that we would begin the vote on those amendments at sometime around 6:45.

Mr. SPECTER. Madam President, I am not able to specify when because the Senator from North Carolina and I are in the midst of what I consider to be an important colloquy. But I will try to keep it as brief as possible.

Mr. GREGG. I thank the Senator.

Mr. SPECTER. The question, Madam President, that I ask the distinguished Senator from North Carolina is, in taking his conclusion that there are some cases which would involve contract interpretation, and the same case would involve a malpractice determination, what do you do when the contract interpretation has jurisdiction in the Federal court and the medical malpractice has jurisdiction in the State court?

Mr. EDWARDS. Madam President, I would say, in answering my colleague’s question, that in fact I am having difficulty imagining a case right now. The vast majority of cases similar to what we have just been discussing would fall within the category of a contract interpretation involving a medically reviewable fact. So I think, at least of all the examples that occur to me as I stand here, those cases would all end up in State court.

As the Senator and I have spoken about on a number of occasions, he has a concern—and I understand it—about the possibility of there being some confusion about which cases go to State court and which cases go to Federal court. We think we have defined that very clearly in the Edwards bill. And then the express language of the Edwards bill has a delineation between medically reviewable decisions on malpractice and a category—“whether an item or service is covered under the terms and conditions of the plan or coverage.”

So I would direct perhaps only two more questions to my colleague from North Carolina to argue that it is not a commonplace occurrence to have specific cases arise where under his bill they would go to different courts. And then the express language of the Edwards bill has a delineation between medically reviewable decisions on malpractice and a category—“whether an item or service is covered under the terms and conditions of the plan or coverage.”

So I would direct perhaps only two more questions to my colleague from North Carolina—and I say perhaps.

The first question is:—are we going to address this question through the Chair—isn’t it conclusive where the Edwards bill has language which distinguishes “whether an item or service is covered under the terms and conditions of the plan or coverage,” as distinguished from medically reviewable decisions, that the Edwards bill contemplates these two categories, which under the Edwards bill are going to go to two different courts?
Mr. EDWARDS. Again, if I correctly understand the Senator's question—
Mr. SPECTER. I can understand the difficulty, Madam President, when people are whispering to him all the time. That is why I keep my people off the floor.
Mr. EDWARDS. I am trying very hard to listen to the Senator.
Madam President, if I may respond to the Senator's question, the answer to the question is: I really think there is a fundamental question that the Senator and I may have some disagreement about, which is contract interpretations that involve medically reviewable facts under our legislation go to State court. I believe that all of the examples the Senator has mentioned and all the examples I can think of would fall in that category.
Specifically as related to his concern about the possibility of there being two separate courts with jurisdiction, I think, in fact, that is not only highly unlikely, I don't think the problem the Senator is referring to. I believe the Senator is referring. I don't think the problem the Senator is referring. I believe I may respond to the Senator's question. There are—two potential causes of action. If it involves any issue relating to medical care, specific medical fact, those cases go to State court. We treat the HMOs just as the doctor because they are engaging in the practice of medicine. If, on the other hand, the issue is one of were they covered for 60 days as the contract provided, do they meet some other specific contractual requirement, those are purely contractual issues that have been decided in Federal court for many years under ERISA. So we left those cases where they have traditionally been decided, which I think is the appropriate place to leave them.
Mr. SPECTER. Madam President, if you do have those contract decision, isn't it entirely possible that there may be a factual situation arise where there is a matter of malpractice or a medically reviewable decision involved in the same occurrence?
Mr. EDWARDS. I would answer my colleague's question exactly the way I have before, which is, absent a presumption in our bill that if there is an involvement of a medically reviewable fact, I think the Senator's concern would be one that I would share. But we have dealt with that issue by specifically saying where the contract interpretation involves a medically reviewable fact, those cases go to State court. Those, in my experience and in my judgment, I believe will be the same cases that the Senator is describing as cases. I think he used the term, of medical malpractice.
Mr. SPECTER. Madam President, as they say in Oklahoma, we have gone about as far as we can go on this colloquy. I would advise the managers of the bill that I will be prepared to conclude my argument by 6:45.

Mr. GREGG. We are going to vote on the Specter amendment at 6:45.
Mr. GREGG. We are going to vote on the Specter amendment.
Mr. REID. At 6:45.
Mr. GREGG. We are going to vote on Snowe and then Enzi and then Specter.
Mr. REID. We do need Senator Snowe here.
Mr. GREGG. She will be here. So 10 minutes on the Snowe amendment would begin at 6:45.
Mr. REID. Or when she arrives.
Mr. GREGG. Or when she arrives.

Mr. REID. Madam President, these are on or in relation to the amendments as per the previous oral agreement?
Mr. GREGG. Right.

Mr. REID. I thank the Chair. The Senator from Pennsylvania has the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.
Mr. SPECTER. Madam President, I believe the colloquy with the Senator from Massachusetts and the Senator from North Carolina have made my point. That point is that there is jurisdiction created under the McCain-Edward-Kennedy bill in two courts. There really is no doubt about that because section 302 provides for the availability of Federal civil remedies, and that covers whether an item of service is covered under the terms and plans and conditions, and later there are medically reviewable decisions in State courts.

Although there can be an inconclusive colloquy, as there is no confession or admission on the floor of the U.S. Senate, I think it is pretty plain that there are cases—and I have cited a whole series of specific cases in my presentation. Bauman, Pryzbowski, Lazorko, and Corcoran—where you had factual situations where you have an interpretation of a plan which would
come under Federal jurisdiction—such as the mother's stay covered for more than 21 hours, the suicidal woman's coverage extended for hospitalization under that circumstance—then a combination of failure to have a plan coverage and also medical malpractice. And you have both claims brought.

And under the McCain-Kennedy-Edwards bill, it is plain that those two claims would be brought in separate courts beyond any question. It is not a matter of what the distinguished Senator can imagine. You have case after case which have had these interpretations, contract interpretation and “quality of care,” and that goes to the Federal court. And then you have “quality of care,” and that goes to the State court.

I am not unaware of the realities of votes in this Chamber where a coalition has been formed, and there is a mindset. But I do hope that the managers of this bill will revisit this situation after this vote and when the bill goes to conference because having both these courts available is going to double the burden on plaintiffs who are injured—to make a contract interpretation claim in the Federal court and to go to the State court to make a medical malpractice claim—and it is going to require double expenses by the HMO, by the doctors, and by the hospitals—although you might have the doctors and hospitals eliminated from the Federal litigation, but the HMOs will certainly be there; and that is highly undesirable.

I have a grave concern about the speed of passage of this bill. Now, it is true we have been considering the Patients' Bill of Rights for a long time—many years. Too long. But this bill has come without the benefit of committee action, without the benefit of a markup; and what there has been is sort of a moving target markup of this bill on the floor by the committee of the whole, as we have gone through many amendments. But it simply cannot be denied that there are two sections of this bill, one conferring Federal jurisdiction and one conferring State jurisdiction, and the same factual situation would raise questions under both court systems, and this bill would require litigation in two courts. That is very wasteful and very confusing. To call it a procedural quagmire is not an overstatement. The answer is fundamental, and that is to provide for exclusive Federal court jurisdiction, which I have in this legislation. You might argue that it could go to the State court and that would be an improvement rather than have both State and Federal courts. But it is very hard to move exclusively to the State court except you the longevity of law built up under ERISA as to what is a plan's coverage. So given the fact that you are going to inevitably end up in the Federal court, the Federal court ought to be exclusive jurisdiction. And as the amendment provides, the damages will be determined by State law, no purely Federal caps, but whatever State caps there were would be in effect.

I see my colleague from Illinois on the floor. He commented to me that he agreed with the provision that there ought to be unitary jurisdiction, but thought it ought to be in the State court. I will yield to the Senator from Illinois if he cares to use the limited time remaining.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. FITZGERALD. Madam President, I did want to, in part, agree with my colleague from Pennsylvania. I think he has identified an important problem that exists in the underlying bill. I have long favored creating liability for HMOs that harm someone because of their negligence. Right now, HMOs are protected. They are immune from liability, and that is a protection that almost no other individual or corporate has in this country, and I don't think it is defensible.

For the last 2 years, I have been voting regularly to make HMOs liable where they have been negligent. But I do think we have a problem in this bill in that we create State court tort liability by repealing the ERISA immunity in one part of the bill. That is on page 157, I believe. But then, at the same time, we create also tort liability, as well as more contract liability, and there already is contract liability under ERISA in Federal court.

The problem I see is that there are tort causes of action authorized in this bill both in State court and in Federal court. I have always thought the playing field was tilted in favor of HMOs, and that playing field needs to be leveled. But I am concerned now that if this effect in the underlying bill is not remedied, the playing field will be tilted in the opposite direction.

The PRESIDING OFFICER. The hour of 6:45 having arrived, under the previous order, the Senator from Maine is to be recognized.

AMENDMENT NO. 831, AS MODIFIED

Ms. SNOWE. Madam President, I ask unanimous consent to modify the amendment that has been offered by Senator DeWINE, Senator LINCOLN, and Senator NELSON and send a modification to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 831), as modified, is as follows:

(Purpose: To make technical corrections concerning the application of Federal causes of action to certain plans) On page 2 of the amendment, between lines 9 and 10, insert the following: “On page 144, lines 7 and 8, strike ‘or under part 6 or 7’."

On page 3 of the amendment, strike line 14 and all that follows through line 21 and insert the following: "’’(ii) DEFINITION.—A group health plan described in this clause is—’’

(1) a group health plan that is self-insured and self-administered by an employer (including an employee of such an employer acting within the scope of employment); or

(2) a multiemployer plan as defined in section 3(37)(A) (including an employee of a contributing employer or of the plan, or a beneficiary of the plan, acting within the scope of employment or (fiduciary responsibility) that is self-insured and self-administered.

On page 11 of the amendment, line 16, insert after the period the following: “The provisions of this paragraph shall not apply in the case of a designated decisionmaker that is a group health plan, plan sponsor, or health insurance issuer and that is regulated under Federal law or a State financial solvency law.’’

Ms. SNOWE. Madam President, it is modified in the following way. First of all, the question was raised about the original intent of the amendment in regard to the self-insured, self-administered plans. Specifically, in regard to contractual dispute, it will only exempt from liability employer and union plans that are self-insured and self-regulated, again applying symmetry to all of the plans regarding self-insured and self-administered, so we do not make any exceptions. So we address that by modifying it to ensure that both employer and union plans are consistent with the legislation.

Secondly, because insurance plans are already regulated at State and Federal level with regard to assets and other issues, we assure that these regulated plans are not subject to a new Federal solvency plan to qualify as a designated decisionmaker. As a result, the solvency standard in this amendment applies only to non-health insurance designated decisionmakers.

Finally, we also make a technical correction in the legislation to ensure that the causes of action are not inadvertently opened to other statutes that are already a matter of law. This change reflects the intent of our amendment to prevent the filing of lawsuits in a broader, more undefined number of issues.

I urge adoption of the modification as well as the underlying amendment.

Again, I remind my colleagues that this was an effort to address many of the legitimate issues that were raised regarding employer liability. It was a consensus that was drafted along with my colleagues from Ohio, Senator DeWINE, Senator LINCOLN, and Senator NELSON. I also thank Senator MCCAIN, Senator KENNEDY, Senator EDWARDS, as well as Senator GREGG and Senator FRIST, for working together to make this amendment possible. We thought it essential that we develop precise and clear guidelines in terms of how we establish employer liability but at the same time protecting patients' rights.
with their ability to seek legal redress when there is inappropriate care or denial of care.

We think we have developed and crafted the amendment in a way that creates the bright line and the firewall so that we do provide the necessary protection to employers, so that we limit and, in fact, in most instances I think prevent any exposure to liability. They can confer that liability and risk to the designated decisionmakers and therefore they will have that kind of liability protection, and patients will have their ability to be able to sue in those instances where they have been denied care or there has been wrongful injury, personal injury, or even death.

I think it strikes the right balance. The consensus represents the optimum approach to providing the kind of basis for removing an employer’s exposure to litigation when they are not directly participating in medical decisions. We hope this will satisfy the concerns that have been raised by the original legislation. We think we crafted the best approach, borrowing both from the McCain-Edwards-McCain legislation as well as the Breaux-Frist-Jeffords approach.

Again, I urge adoption of this amendment, as modified, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, I am proud to cosponsor amendment No. 834 with Senator SNOWE and my other colleagues. It addresses an issue important to all of us here—protecting employees from undue liability. This amendment clarifies any confusion about who is responsible for medical decision-making.

Under this amendment, employers who previously do not make medical decisions anyway—will be able to name a designated decision maker. If they contract with an insurance company, that company is automatically given the status of designated decision maker. The employer doesn’t have to take any further action.

Once designated, this entity will have the authority to make medical decisions. And with this authority, the designated decision maker—now the employer—will have the responsibility for those decisions if they result in harm to the patient.

I believe this amendment serves as an important compromise. It enables employers to feel comfortable offering their employees health benefits. And that’s certainly something we want to encourage. But it also protects patients, and ensures that they receive all the protections provided under the Patient Bill of Rights.

Mr. GREGG. Madam President, I understand the Parliamentarian has ruled that I have 5 minutes.

The PRESIDING OFFICER. There is 5 minutes in opposition.

Mr. GREGG. Madam President, unless somebody else is seeking that time, I will speak. I congratulate the Senator from Maine and the Senator from Ohio for adjusting this amendment. The changes they made in this amendment are very positive. The amendment moves in the right direction.

However, it must be made clear this amendment targets one narrow aspect of the concerns of this bill, and, in fact, there are still some issues in that aspect. Specifically, employers are going to have a very difficult problem figuring out whether they are a direct participant or whether they fall under the designated decisionmaker safe harbor.

There are issues within this narrow issue that are very significant. The greater issues on the question of liability still remain very viable. It is of serious concern to those of us who look at this as extremely expensive legislation in the sense it will drive up health care costs and result in a lot of people losing their health insurance. Employers will drop the health insurance because of the liability aspects being thrown at employers in this bill and the costs employees simply are not going to bear. They will drop health insurance or reduce the quality of health insurance.

The estimates of CBO are in the range of 3.1 million, and OMB estimates are in the range of 1 million to 4 million people will lose health care. I think it will be literally tens of millions of people who will see the quality of their health care insurance degraded as their employers start to adjust. As to this specific amendment, which is a narrow amendment, not an expansive amendment, the movement by the Senator from Ohio is to be congratulated. I thank them for it.

I yield back my time, and I yield the floor.

The PRESIDING OFFICER. Time is yielded back. The question is on agreeing to amendment No. 834, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The amendment (No. 834), as modified, was agreed to.

Mr. GREGG. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Ms. STABENOW). There are now 2 minutes equally divided on the Enzi amendment.

The Senator from Wyoming is recognized.

AMENDMENT NO. 840

Mr. ENZI. Madam President, under the amendment we just agreed to, we made some progress on handling liability. But there is a group of businesses that were left out. You will never hear me in this Chamber talk about big businesses. I always talk about the small ones. None of these is headquartered in Wyoming. But I am compelled to put in an amendment that will take care of a major problem which will take care of health care at the level they know it for 6 million people in the U.S. who work for the big, self-insured, self-administered companies, such as Hewlett-Packard, Caterpillar, Wal-Mart, and Pitney Bowes. None of those is in my State.

This provides an option to allow one of two ways of providing insurance to their people so individuals can get the right to sue if they want that right or they can stay with the plan which they presently get all the benefits from without any difficulty. This provides that option for them.

This is providing an option so that the company can avoid liability by providing a liability option for their people.

I ask for your support on this amendment to clear up what the people in your State need.

I also believe it is my right to divide the amendment on page 3, line 18.

The PRESIDING OFFICER. The amendment is so divided.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, let me mention what this amendment is all about.

If an employer gives options to any employee, it can offer a program that
The motion was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 846 DIVISION II WITHDRAWN

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I ask unanimous consent to withdraw division II of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader, Mr. DASCHLE. Madam President, I announce to our colleagues that this will be the last vote of the evening. We will begin voting tomorrow morning at 9 o’clock on a series of votes on amendments that will be offered this evening. There is one more vote, but after that there will be no more votes.

AMENDMENT NO. 84

The PRESIDING OFFICER. There are 2 minutes now evenly divided on the Specter amendment.

Who yields time? Who seeks time?

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I ask for the yeas and nays.

The yeas and nays have been ordered.

The question is on agreeing to amendment No. 84.

The motion to lay on the table was agreed to.

AMENDMENT NO. 84

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The question occurs on division I.

Mr. REID. Madam President, I move to table the whole amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. GREGG. I thank the Chair.

The PRESIDING OFFICER. The question is on the motion to table division I.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—55

NAYS—45

[Names of Senators]
Mr. KENNEDY. Mr. President, in just a few moments, I believe there will be a consent requested by the minority floor leader to outline a series of amendments to consider and outline the order in which to take them up this evening, with disposition of those on the morrow.

The objection is not the intention, as we have gone through amendments, to second degree them. We are not prepared to say that until we have an opportunity to see those amendments. We are trying to work through the amendments at the present time. I hope perhaps we can get started on the discussion, and then in a few moments time when we have a chance to see each of the amendments, we can come back with the leadership proposal for an agreement on time and order this evening.

Mr. GREGG. Mr. President, we are ready to enter into an agreement relative to time and reserve the issue of second-degree amendments until the Democratic leader has had the opportunity to review the amendments. If we can get times locked in, that will be very helpful.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, parliamentary inquiry: Does the Senator from Virginia have an amendment pending or at other debate?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 833, AS MODIFIED

Mr. WARNER. Mr. President, I send to the desk a modification to that amendment.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 833), as modified, is as follows:

On page 154, between lines 2 and 3, insert the following:

"(D) NO PREEMPTION OF STRICTER STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a more restrictive law with respect to the amount of an attorney’s contingency fee that may be allowable for a cause of action brought pursuant to this subsection or the amounts recovered and attorney’s fees awarded in similar cause of actions.

The amendment was ordered to the desk.

Mr. GREGG. Mr. President, I ask for a time agreement on, as well, the Senator wants to mention them.

Mr. GREGG. Of course, at this time we cannot proceed past the Santorum amendment until we get an agreement on that. At least I renew my request subject to the reservations of the Senator from New Hampshire, to which I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, and I do not intend to object, I appreciate what the Senator from New Hampshire is attempting to do. We have every inclination to support that proposal up to this point, but we reserve possible second-degree amendments and a tabling motion. We do not intend at this time to exercise those until we see the amendments, but we are going to operate on a good faith measure.

We are thankful for the leadership of the Senator from New Hampshire proceeding with those first two.

There are some others we might be able to get a time agreement on, as well, if the Senator wants to mention them.

Mr. GREGG. Of course, at this time we cannot proceed past the Santorum amendment until we get an agreement on that. At least I renew my request subject to the reservations of the Senator from Massachusetts, to which I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous consent request, as modified, for consideration of the amendments of Senators DEWINE and GRASSLEY?

Without objection, it is so ordered.

AMENDMENT NO. 82

(Purpose: To limit class actions to a single plan)

Mr. DEWINE. Mr. President, I have an amendment at the desk.
The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio (Mr. DeWine) proposes an amendment numbered 842.

Mr. DeWINE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it so ordered.

The amendment is as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 303. LIMITATION ON CERTAIN CLASS ACTION INJURY.

(a) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

"(o) LIMITATION ON CLASS ACTION LITIGATION.—

"(1) In general.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with such plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only one plan sponsor. No action maintained by such class, derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms 'group health plan' and 'health insurance coverage' have the meanings given such terms in section 733 of this title.

"(2) Effective date.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.

(b) RICO.—Section 1964(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by inserting at the end the following:

"(2)(A) No private action may be brought under this subsection, or alleging any violation of section 1962, where the action seeks relief in a manner in which any person has marketed, provided information concerning, established, administered, or otherwise operated a group health plan, or health insurance coverage in connection with a group health plan. Any such action shall only be brought under the Employee Retirement Income Security Act of 1974. In this paragraph, the terms 'group health plan' and 'health insurance issuer' shall have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

"(B) Subparagraph (A) shall apply to private civil actions that are filed on or after January 1, 2002.

Mr. DeWINE. Mr. President, I allowed the clerk to read because I wanted my colleagues to hear the essence of the amendment. It is a very simple amendment.

My amendment in a very rational way specifies the plans action suits that could be filed as a result of this bill. The goal of the patient protection legislation under consideration, both the McCain-Kennedy bill and the Frist-Breaux-Jef- ford's bill, is, of course, to protect patients. We cannot be unmindful of the cost. Obviously, we have to be concerned about the cost, and we have to worry if any parts of this bill do in fact drive up the cost because ultimately this will impact how many employers do in fact offer health insurance. It is something with which we have to be concerned.

I believe my amendment offers a very simple way to curtail some of these increased costs. The problem is that the underlying bill will increase the cost of health care because the bill currently contains no language to limit the scope of class action lawsuits. This very possibility could lead to increases in the filing of onerous, burdensome, costly class action suits.

My amendment ensures that class action lawsuits can be brought in a very responsible way. I think my colleagues would agree that class actions can be very effective and can be efficient and can be a valuable tool to achieve justice.

As we also know, unfortunately, these suits sometimes are subject to abuse. That is why I believe we need to limit the target of these class actions. That is what our amendment does.

The reality is that within every company there exists unique relationships between the company, the employees, and the health care plans. Because of that, it is impossible to compare different companies that happen to offer similar health care plans. The fact is that every company negotiates every contract differently. There may be similarities. Every situation is, obviously, different.

Now, at the same time, employees within the same company, with the same health care plan, who suffer the same way as a result of being denied entitled benefits, should have the right to band together to form a class and to file suit. The amendment would recognize class actions within one company against one plan.

Our language essentially says this: One employer, one health care plan, one class action suit. It is that simple. Here is how our amendment works if adopted. Suppose Ford Motor Company offers its employees the hypothetical Aetna Health Care Plan A. General Motors has this plan. Assume, also, that Chrysler has the same plan. Now, if employees of Ford and those of General Motors band together in a class action against Aetna because they all believe they suffered harm because of the same denial in entitled benefits, they can go ahead under our amendment and do that. Similarly, if employees at GM or Chrysler also believe they have suffered as a result of denial of the same benefits, GM and Chrysler employees can file their own class actions against Aetna. But employees at Ford, GM, and Chrysler can’t join together in one suit against the health care provider.

This means class actions would be limited to employees within one company against one health care plan. Ultimately, we need this because abuse of class action lawsuits is not a road to assuring access to quality health care. If we want the bill before the Senate not to add unnecessary litigation and costs, I encourage my colleagues to adopt this amendment.

I reserve the remainder of my time. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. MCCAIN. I repeat the request for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. REID. If the Senator from Ohio wishes the yeas and nays, we would be happy to give those to him with the agreement that we will vote tomorrow.

Mr. DeWINE. I renew my request for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Are Senators prepared to yield back time on the amendment?

Mr. DeWINE. I believe we have an understanding to reserve several minutes tomorrow morning for summation.

Mr. EDWARDS. Mr. President, there are a couple of issues and I have just seen this amendment—a couple of issues raised immediately.

One, the entire Patients’ Bill of Rights is about treating everybody the same. This, of course, carves out a special treatment for HMOs on the issue of accountability.

Second, this amendment makes a special exception under RICO for HMOs and under rules of procedure.

Third, it has been some time since I looked at the rules, I confess but I seem to recall under class action law, rule 23 of the Federal Rules of Civil Procedure, there is a numerosity requirement, that you have to have a sufficient number of employees involved to satisfy the class action requirement, and I am not sure under the language the Senator has drafted that would be possible because I believe, if I understand the Senator’s amendment correctly, he has limited it to one employer for purposes of class actions.

Mr. DeWINE. Obviously, the amendment does not change what the rules say as far as the number of people required for a class action. The Senator
is correct; it does limit it to one company.

Mr. EDWARDS. I thank the Senator for his answer.

There is at least a serious question about that and we would need to go back and look. Under the Class Action Rules of Civil Procedure, it is my recollection there is a numerosity requirement that means a class has to be of sufficient size to be able to be certified as a class action, and I am not certain, if you limit the actions to one employer, that you don’t effectively eliminate the possibility of a class action because that requirement cannot be met.

I confess to the Senator, that is from memory, and I will have to go back and look to be certain.

I have concerns about the fundamental question that the principle of this legislation is that we treat HMOs, for accountability purposes, as everyone else. And the notion of doing something specifically to protect them from class actions and to limit class actions and to carve out special treatment for them, I think creates something that would violate that principle of which I would want my colleagues to be aware.

I yield the floor.

The PRESIDING OFFICER. Do the Senators yield back time?

Mr. DEWINE. I inquire, how much time remains?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. DEWINE, I will respond to my colleague and I appreciate his comments. He is closer to the courtroom in time than I am, and it has been many years since I have practiced law.

What this comes down to is that we are creating new opportunities for lawsuits that do not exist in this bill. When we are about is a balancing test, a balancing question. It is a matter of public policy. We have to decide. As we create new causes of action, new opportunities to file lawsuits, I think it is legitimate to look around and say: How expansive do we want to allow class actions to be under this new cause of action?

It seems to me language we have included, which is basically—basically, I say—what was in the Frist bill originally, is a rational way to do it. It doesn’t ban class actions but basically says we are going to limit them. I think it is a balancing test and Members are going to have to make their own decision whether they think it is worth providing people with the opportunity to have nationwide class actions. Candidly, with the tremendous cost this is probably going to incur, that ultimately is going to be paid and ultimately going to drive up health care costs. I think Members have to make that decision.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio yields the remainder of his time. The Senator from North Carolina has 10 minutes 48 seconds.

Mr. EDWARDS, if I may respond briefly to the comments of my colleague, the one issue he did not address, at least in his last answer—he may have discussed it earlier—is the issue of civil RICO. I believe I am correct in saying there are some State medical societies that have pending actions against them, civil RICO actions against HMOs, where they believe, obviously, the requirements of that statute have been met and there have been improper and illegal activities by the HMOs. Particularly as we go forward, if any State medical society believes those problems continue to exist, they may want to avail themselves of the civil RICO statute, a law that exists in part for that purpose.

Again, as you would be we are carving out special treatment for HMOs. Having said that, I do not disagree with the fundamental principle that is part of this process; it is public policymaking. We hope to balance the interests on both sides. I think that notion makes sense. My concern is we are carving out the HMOs from this particular statute when we are not carving anyone else out from this particular statute.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Just to respond to my colleague—and I do appreciate his comments about RICO—again it is a balancing question each Member is going to have to decide. Just to clarify things, I want to make it clear, the way this is drafted, we do not affect any pending issues, so those suits would not in any way be affected.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I yield my time.

Mr. DEWINE. I wonder if I may inquire whether or not there was a unanimous consent as far as the vote tomorrow morning at any time?

The PRESIDING OFFICER. There was no consent.

The Senator from Nebraska.

Mr. REID. Senator Daschle has indicated we will come in at 9 o’clock in the morning and start voting. The first vote will be 15 minutes, and if there are other votes stacked, which I am confident there will be, there will be 10-minute votes on whatever is debated tonight. There is 10 minutes for the subsequent votes. There would be 4 minutes between each vote to debate.

Mr. DEWINE. Would that include the first vote?

Mr. REID. Yes.

Mr. DEWINE. So we would have in the morning then 4 minutes evenly divided prior to the first vote?

Mr. REID. That is right.
to underwrite the costs of customs commercial operations. But today in this bill, the fees are not being used for that purpose. The money being used is offset the cost of the Patients’ Bill of Rights to the tune of $7 billion. I think this is unacceptable and violates the comity that one committee ought to have towards the other.

It also is unacceptable because when you have constituents who pay customs user fees for the purpose of having an efficient and effective operation of the Customs Service, so you can enter this country in an expeditious way, for those fees not to be used for what they were intended—for expedited entry to the country, to police illegal entry to the country, to police illegal drugs coming into the country, generally to make the customs agency’s personnel, more efficient and better able to do their job so the United States can be a sovereign nation protecting its borders the way it should—if these fees are extended, and I want to emphasize the word “if,” they should be extended in a thoughtful way, not as some budget trick to make the costs of this bill fit within the confines of the Federal budget.

I am not the only one who thinks so. I have received numerous letters from companies, from associations that are very concerned about this—Liz Claiborne, Inc., the National Association of Foreign Trade Zones, the Joint Industry Group, the National Retail Federation, the American Electronics Association, and also a memo from the U.S. Customs Service. They are all raising concerns because these are folks who pay this customs user fee, a fee that is meant to pay for bringing things into the country. They believe since the Customs Service is so outdated, so slow moving, not working in an expeditious way, the revenue ought to be used for the improvements in the customs operation that were anticipated when these fees were put in place. I ask unanimous consent these letters and memos be printed in the RECORD.

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

LIZ CLAIBORNE INC.,
Hon. CHARLES E. GRASSLEY,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRASSLEY: We write in opposition to a provision in the Patients’ Bill of Rights (S. 1052) that would extend the merchandise processing fee, or “mpf,” for eight additional years. This is a trade-related measure, a user fee levied against import transactions, or “entry.” When it was passed 15 years ago, it was designed to avoid purposes of undermining the costs of commercial operations at the US Customs Service. In fact, however, it has never been used for that purpose. Instead, we have observed the government act and act as a revenue source to balance the costs of other governmental programs. As of FY2001, the trade community has paid nearly $7.2 billion for merchandise processing, far exceeding Customs’ commercial operations budget.

In truth, the fee is really a tax on US imports and, from the beginning, we have objected strongly. It has been illegal under GATT and then World Trade Organization (WTO) rules, although the federal government has indulged in the fiction that it is a “user fee.” Now, under the terms of S. 1052, all pretense has been dropped and it is being offered as an offset to the costs of the Patients’ Bill of Rights.

The fee is indeed due for renewal by 2003 and it is the trade communities’ intention to seek its termination. While, before, the nation was experiencing a serious deficit, the reasons for its passage have since disappeared. Now, it is simply a tax on American citizens who buy imported products, whose price is increased by the mpf. It is unconscionable to continue to tax Americans in this manner and we intend to seek repeal in the appropriate committee jurisdiction.

In the meantime, however, we ask that you assist us in removing the mpf funding from the Patients’ Bill of Rights. The merchandise processing fee has no place in this debate. The fee will not be viewed on the merits in these proceedings, but is instead being used—cynically—as a “pay-for” a totally unrelated program.

Sincerely,
FRANK KELLY,
Vice President, International Trade Compliance and Government Affairs.

NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES,
Hon. CHARLES E. GRASSLEY,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRASSLEY: The National Association of Foreign Trade Zones (NAFTZ) has learned that S. 872, Sec. 602 the “Bipartisan Patient Protection Act” provides for the extension of the Merchandise Processing Fee (MPF) beyond the 2005 expiration. The bill established the fee to offset the cost of the commercial operations of the U.S. Customs Service. Not only does the proposed legislation continue the practice of allocating the MPF to the general fund of the U.S. Treasury with no relationship to the purpose of the fee, it completely eliminates the relationship of the fee to the Customs Service. We have serious reservations as to whether this is permissible through the General Agreement on Tariffs and Trade, and the World Trade Organization.

The MPF is not opposed to the imposition of a fee for services rendered. We do believe, however, that any such fee must correlate to the discernible cost associated with the service provided. We are concerned that at a time when Congress is struggling to find the necessary funding to cover the cost of programs already designated by Congress for that purpose are being diverted.

Since the purpose of the MPF, as established by Congress, is to fund the commercial operations of the U.S. Customs Service, we are strongly opposed to any extension of the MPF without designating the revenue to that purpose. We respectfully request that you drop the merchandise processing fee extension from S. 872.

CONGRESSIONAL RECORD—SENATE

Thank you for your attention and consideration of our views. If you have any questions, please feel free to contact me.

Sincerely,
RANDY P. CAMPBELL,
Executive Director.

JOINT INDUSTRY GROUP,
June 20, 2001, Washington, DC.
Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: The Joint Industry Group (JIG) expresses its opposition to a provision in the Bipartisan Patient Protection Act (S. 1052) that would automatically extend the U.S. Customs user fee from 2003 to 2013. The JIG members account for millions of dollars paid yearly in merchandise processing fees. Every year, Customs collects over $1 billion from companies importing goods into the United States. Additionally, companies are burdened by administrative costs associated with the fee, since Customs imposes complex reporting and accounting requirements on companies in the course of collecting fee payments. All this is occurring at a time when tariffs on products are declining and approaches zero.

The Customs Service is to continue collecting this user fee it MUST directly fund improvements to Customs processing, specifically the Automated Commercial Environ- ment (ACE) and other initiatives that are greatly needed to improve the trade process. Improving Custom’s ability to handle trade will become more critical as the amount of trade entering the United States is expected to continue its double-digit rate of growth. While Section 502 of S. 1052 does not earmark user fees for health care purposes, it does use the fee as de facto justification for the revenue neutrality of the bill. JIG is greatly concerned that this approach will prevent user fees from being applied to the commercial operations of the U.S. Customs Service for which they are intended.

Use of the fee to offset the revenue impact of S. 1052 could also increase potential for a WTO dispute. In the late 1980’s, a WTO panel found that the user fee was GATT-illeg- al because it was being collected in amounts exceeding the cost of Customs processing. While the US addressed that problem by placing certain caps on the fee, it was clear from the panel that any change of the fee to the cost of Customs commercial operations is of seminal importance to the question of GATT legality. If our trading partners believe Customs user fees are being used to fund health-care related goals, another GATT challenge is virtually certain to surface in the WTO.

For the reasons cited above, JIG would have no choice but to support such a challenge. It is clear that the proposed action in
S. 1052 violates the WTO provisions to which the United States is a signatory. The United States is a signatory.

We therefore urge that the user fee extension be removed from S. 1052. We need the opportunity to debate the merits of this fee when it comes up for renewal in 2003. If you have any questions about our views on this issue or wish to discuss the matter further, please contact Alan Atkinson at (202) 466-5490. Thank you for your consideration.

Sincerely,

RONALD SCHOOF,
Chairman, Joint Industry Group.

DEAR SENATOR GRASSLEY. The National Retail Federation (NRF) was surprised to learn that section 502 of the Bipartisan Patient Protection Act (S. 1052) contains an eight-year extension of the Customs Merchandise Processing Fee (MPF). The MPF is an administrative fee levied on imports into the United States, through which U.S. retailers and other importers pay hundreds of millions of dollars a year.

NRF and the U.S. retail industry object most strongly to inclusion of this provision and, for the following reasons, we urge that the provision be stricken from the bill.

The Senate Finance Committee, which has jurisdiction over the MPF and other customs issues, was not consulted about this provision in S. 1052 and has had no opportunity to consider the merits of extending the fee as currently structured.

The MPF was created to offset the administrative costs of the Customs Service's commercial operations, and any attempt to use it for other purposes, as this bill would do, is against the rules of the World Trade Organization.

The Finance and Ways and Means Committees have been working for some time with Customs and the importing community on renewal of the MPF program to restructure the MPF program in a way that will be both fair and reasonable.

It is the opinion of the MPF has been slipped into a health bill without the approval of the Committee of jurisdiction or the knowledge of those in the private sector that will be most directly affected as a result. At the same time, we are struggling to provide Customs Service with sufficient funds for a new computer system to allow Customs to modernize its operations and protect our nation's borders. If this provision in S. 1052 is allowed to stand, it will be impossible for the Senate Finance Committee to restructure the MPF program in the way it was intended—to finance the costs of Customs' operations. Accordingly, we ask for your help in insisting on the removal of this provision when S. 1052 comes to the full Senate for consideration.

The National Retail Federation (NRF) is the world's largest retail trade association and represents 22 national and 50 state associations representing retailers abroad.

Sincerely,

STEVE PFISTER,
Senior Vice President, Government Relations.


Hon. CHUCK GRASSLEY,
Chair, Senate Finance Committee.

TO WHOM IT MAY CONCERN:

S. 1052—Bipartisan Patient Protection Act. (S. 1052) (B) MA. EDWARDS (D) NC. The President strongly supports passage of a patients' bill of rights this year and has been working with members of both parties to make sure that the Administration forges a compromise. Congress has been divided on this issue for far too long at the expense of patients and their families. The President believes that Congress must pass a strong patients' bill of rights for this year that provides meaningful protections for patients, not a windfall for trial lawyers or a threat to Americans' ability to afford quality care.

On February 7, 2001, the President transmitted to Congress his principles for a bipartisan patients' bill of rights and urged Congress to move quickly on this important issue.

The President's principles called for passage of a patients' bill of rights that ensures Americans enjoy protections, including: access to emergency room and specialty care; direct access to obstetricians, gynecologists, and pediatricians; access to needed prescription drugs and approved clinical trials; access to health plan information; a prohibition of “gag clauses”; consumer choice provisions; and continuity of care protections. The President also recognizes, however, that many States have passed strong patient protection laws already, some of which have been in force for over a decade. To the extent possible, a Federal patients' bill of rights should give deference to these effective State laws.

The President's principles emphasized the importance of providing patients with access to medical care with the right to a fair, prompt, and independent medical review, which will ensure that disputes are resolved quickly and inexpensively, and that patients receive the quality care they deserve.

The President stated that only after this independent review decision is rendered should we resort to the costlier, time-consuming remedy of litigation in Federal courts to ensure that health plans are held liable for wrongful decisions.

The President's principles also reminded Congress of the necessity of avoiding unnecessary and frivolous lawsuits, which will only serve to drive up costs and leave more individuals without insurance coverage. S. 1052 will significantly increase health insurance premiums and the number of uninsured. The President's bipartisanship is best exemplified by the Office of Management and Budget's September 30, 2001.

The President is encouraged by efforts in the Senate, like those of Senators Frist, Breaux, and Jeffords, to develop a common sense compromise that forges a middle ground on this issue and meets the President's principles.

The President strongly supports a comprehensive and enforceable patients' bill of rights and has been working with members of both parties to enact legislation this year that makes sense.

The President's principles, which offer a common-sense compromise that forges a middle ground on this issue and meets the President's principles, are based on the President's principles.

The President is encouraged by efforts in the Senate, like those of Senators Frist, Breaux, and Jeffords, to develop a common-sense compromise that forges a middle ground on this issue and meets the President's principles.

The President objects to the liability provisions of S. 1052. The President will veto the
bill unless significant changes are made to address these concerns. In particular, the serious flaws in S. 1052 include:

— 8. 1052 circumvents the independent medical review process in favor of litigation. The President believes that patients should be given the opportunity to appeal to at least 50 different inconsistent State laws within 25 years of Federal law that provides uniformity and certainty for employers who voluntarily offer health care benefits for millions of Americans across the country. The liability provisions of S. 1052 would, for the first time, expose employers and unions to at least 50 different inconsistent State law standards. The result will inevitably be that employers and unions will be forced to pay for different benefits from State to State, even within a particular State, based on varying interpretations of Federal law and leading to inconsistent standards of care for patients. Further, S. 1052 imposes no limitations on State court damages, and it is not clear that the State laws would apply to the broad, new causes of action in State courts that S. 1052 creates.

S. 1052 also would allow causes of action in Federal court for a violation of any law under the plan, creating open-ended and unpredictable lawsuits against employers for administrative errors. These new federal claims do not take into account on the amount of noneconomic damages, creating virtually unrestrained damage awards that are limited only by an excessive $5 million cap on any such allegation will force a costly and unpredictable funding shortfall for the Customs Service.

Section 502 of the bill states: Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “2003 and in any plan year:” and inserting “2003 through 2011 and in any plan year:” except that the fees may not be charged under paragraphs (9) and (10) of such subsection after March 31, 2006”. The COBRA fees collected by Customs are used both to reimburse Customs appropriations for certain costs, such as overtime compensation, and to offset a portion of the Customs Service Salaries and Expenses Appropriation (S&E). As an example, our FY 2001 collections will offset approximately $1 billion or almost 50 percent of Customs appropriation this year. Authorizing a COBRA extension to offset costs for something other than the Customs Service could negatively impact our available funding. Additionally, the Merchandise Processing Fee authorized in the COBRA extension would allow importers for the processing of merchandise by the Customs Service. Directing the funds collected from this fee for something other than Customs operations would pose GATT interpretation issues.

While Customs supports the extension of the COBRA fees, we also acknowledge that changes are warranted with the manner in which we collect those fees. We intend to review this issue in the near term.

Mr. GRASSLEY. I want to speak specifically to what one company wrote:

"The merchandise processing tax fee—there is no place in this debate. The fee will not be viewed on the merits in this proceeding, but is instead being used—cynically—as a ‘pay-for’ for a totally unrelated program.

Obviously, the totally unrelated program is the Patients’ Bill of Rights that is before us.

Our experience today—in other words, how we handle this issue of customs user fees today—will only hurt us in our deliberation of what ought to be done to encourage more efficient transportation to our country. It is going to hurt us when that policy debate comes up sometime down the road—weeks, months, but sometime.

 Customs modernization is a very important priority.

My point is that there are important Customs modernization issues that should no longer be ignored. Let’s not have a rush to pay for this Patient's Bill of Rights today and blind us towards the real public policy questions we have on the Customs Service and their problems tomorrow.

Are you concerned about drugs at our borders? Are you concerned about illegal transshipment of textiles, import restrictions on steel and lumber, and backup of trucks at our borders? If you vote for extending fees, there will be no committee consideration if Customs is using the fees for these or other Congressional priorities.

I would like to tell you that extending these fees will definitely have an impact on the Customs Service and its operations around the borders of our country, even in the interior of the country where we have Customs operations.

I would like to read what the Customs Commissioner had to say about this. He wrote on June 20, this year:

Any scoring which would limit in any way the ability to fund or offset Customs activities would likely cause—

a critical funding shortfall for the Customs Service.

And it is highlighted—

The merchandise processing fee has no impact on future Customs appropriations. The result will inevitably be that employers and unions will be forced to pay for different benefits from State to State, even within a particular State, based on varying interpretations of ‘direct participation,’ forcing employers to adhere to different standards in every State.

S. 1052 fails to provide a fair and comprehensive remedy to all patients. The President believes the new Federal law should establish a comprehensive set of rights and remedies for patients. S. 1052 instead encourages costly litigation by providing no effective limitations on frivolous class action suits and allows trial lawyers to go on fighting expeditions to seek remedies under other Federal statutes.

S. 1052 subjects physicians and all health care professionals to greater liability risk. S. 1052 would expand liability for physicians and all health care professionals in State courts well beyond traditional medical malpractice by permitting new, undefined causes of action in State courts for denials of medical care and expanded litigation against physicians and all health professionals will create an opportunity to circumvent State medical malpractice caps that may not apply to these new causes of action.

—Extraneous User Fee Provision. The Administration objects to inclusion in S. 1052 to an unnecessary and inappropriate user fee (section 502), which extends for multiple years Customs charges on transportation, passengers, and merchandise arriving in the country.

PAY-AS-YOU-GO SCORING

S. 1052 would affect direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB’s preliminary scoring estimate of the bill is under development.
the policing of that entry of product into the country. A fee levied for a certain purpose ought to be used for that purpose or it might violate the WTO because it should not be a source of general revenue any more than taking money from the gas tax and putting it into the general fund of the United States.

Here is what the Customs Service writes on this issue.

The merchandise processing fee is a fee that is paid by importers for the processing of merchandise by the Customs Service. Disregarding the funds collected from the fee for something other than Customs' operations could pose GATT interpretation issues.

While it is not clear that a WTO case would arise or that a challenge would be successful, it seems to me that this is a warning bell that should certainly be heard.

No Senator should vote against this motion to strike unless they are prepared to face the possibility of a WTO challenge and take responsibility accordingly.

We should strike this provision from the bill. Before blindly supporting section 502, we should have time to consider its broader implications.

I urge my colleagues to support this amendment to strike.

Turning to the other provision of their bill that my amendment strikes, section 503, that would delay payments to Medicare contractors by one day thereby shifting $235 million in Medicare part B spending from fiscal year 2002 to fiscal year 2003 is simply a budget gimmick.

I am troubled by this provision because it comes within the jurisdiction of the Senate Finance Committee and also because we are trying to work to make Medicare a better program, not do things to harm it.

First, I point out to my colleagues that, again, the Finance Committee has jurisdiction, not the Committee on Health, Education, Labor and Pension. It is the Finance Committee that authorizes and oversees the Medicare Program and the Federal agency that runs it, now known as the Center for Medicare Services.

It is the Finance Committee and not the Health, Education, Labor, and Pension Committee that is in the best position to know how changes in the Medicare Program, such as this one-day payment delay in section 503 of this bill that will affect our senior citizens, will affect our health care providers and will affect the integrity of the Medicare trust fund.

With all due respect, when it comes to Medicare and Medicaid and other Federal entitlement programs, it seems terribly ridiculous to ignore the committee that has the very expertise in these programs, meaning the Senate Finance Committee.

The second reason that I am proposing to strike the Medicare payment delay in section 503 of the bill is that the delay itself, which may not seem serious to some, could actually have serious consequences for Medicare contractors and providers.

Delaying payments by one day and moving them into the next fiscal year just to finance this bill is fuzzy math, to say the least. But it unfairly subjects the already fragile Medicare Program and its health care contractors to accounting disruptions and to administrative uncertainties.

Medicare providers already have it hard enough just dealing with the Medicare Program in the first place. They are overwhelmed by paperwork, confused by conflicting regulations, and frequently left hearing that “the check is in the mail.”

Can you imagine the Federal Government saying to our providers, “You’re out of your mind!” when it comes to timely payments of their reimbursements?

Subjecting those providers to any additional delay, even if just for a short period of time, is simply unfair. We need to make things easier for providers to do business with Medicare.

Think about it. No one wants to do business with late payers, and health care providers are no exception.

Think about it for a minute. No one wants to do business with late payers, and health care providers are no exception. We should not be giving Medicare an additional opportunity to delay for one minute—let alone a longer period of time—their obligations to promptly pay providers.

For the last 3 months, Senator Baucus and I have been working hard to develop a Medicare reform proposal that strengthens and improves the program by adding prescription drug coverage and making the entire benefit package more responsive and accountable to seniors and providers. We want to send a message to providers that they will be treated fairly and professionally by Medicare.

Unfortunately, the delay provision in section 503 does exactly the opposite. It sends an entirely wrong message and undercuts our bipartisan effort to make Medicare a better business partner for today’s providers.

For these reasons, I cannot support the inclusion of section 503 in this bill. Neither 502 nor 503 belong in this bill. They are both outside the jurisdiction of the Health, Education, Labor Committee and a long way away from the subject of this debate, which is patients’ rights. Both sections should be stricken from this bill entirely. Consequently, I urge my colleagues to support my amendment.

Mr. KENNEDY. Mr. President, I will take just a few moments of the Senate floor.

The fact is, this provision, as stated on page 179, does not even go into effect until the year 2003. There is plenty of time for the Finance Committee to work it out if this isn’t a satisfactory way of dealing with this issue. It is basically a bookkeeping issue. There is a judgment that is made by CBO that the value of a wage package is “X,” and if you are going to guarantee additional kinds of benefits in terms of health care, then the wages are going to go down, which is going to mean less money in terms of Social Security.

This is actually a balance from the Budget Committee’s point of view to make sure that the bookkeeping will be balanced.

To the time, we will hear from the chairman of the Budget Committee who will describe this and, at the appropriate time, make the point of order.

I point out, though, it is my understanding that this has no impact or effect on the Customs Service. They will still receive the money. If they want to go through with their modernization, they will still be able to do that. But it basically ensures that this is going to conform to the budget consideration. That is the reason that this was put in there. There will be sufficient time for the Finance Committee to make any other kinds of adjustments and changes.

To make it very clear, the resources that are collected in this are not to pay for the bill. It is basically a bookkeeping offset to what will be anticipated to be the shortfall in terms of the payments under the CBO estimate of the wage package because of the enhanced value, which I think ought to be encouraging for workers of their health benefits. So we will hear more from the Budget Committee tomorrow. At that time, the chairman of the Budget Committee will make a further comment about speaking for the Budget Committee. They are in support of our position.

Mr. GREGG. Is the Senator yielding back his time?

Mr. KENNEDY. I am glad to yield back the time.

The PRESIDING OFFICER. The Senator from Massachusetts yields back the remaining time on the Grassley amendment.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays were ordered.

Mr. KENNEDY. I ask unanimous consent that this amendment and all amendments that have the yeas and nays ordered tonight be stacked for a vote tomorrow morning, with the appropriate time of 2 minutes to each
side, or whatever is agreed to, before each amendment is voted on.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GREGG. Mr. President, at this time I would like to outline the remainder of the evening, if acceptable to the parties, relative to our side, which would be that Senator SANTORUM would go next with his amendment. He would have 10 minutes; the Senator from California, Mrs. BOXER, would have 10 minutes. Then we would go to Senator NICKLES. He would have 10 minutes; and 10 minutes to whoever is in opposition. Senator BROWNBACK would come next. He would have an hour divided, as is traditional. And Senator Ensign would then follow with two amendments, the physician pro bono amendment, and the genetic discrimination testing amendment.

I believe the Democratic membership has all these amendments. I would hope we could also agree there would be no second degrees.

Mr. KENNEDY. The Ensign amendment we have just received. I have no objection to the earlier request. I am sure we will agree with this, but we would like for that, as far as it being locked in terms of no second-degree amendments, just to have an opportunity to——

Mr. GREGG. I would reserve my request on the second degrees relative to the Ensign amendments but ask unanimous consent that the unanimous consent agreement include that there be no second degrees on DeWine, Grassley, Nickles, SANTORUM, or Brownback.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The Senator from Pennsylvania is recognized.

AMENDMENT NO. 814

Mr. SANTORUM. Mr. President, I have amendment No. 814 at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

"Amendments Nos. 814 and 815—To amend United States Code, is amended by adding at the end the following:

"8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant:"

(a) In GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

"88. 'Person', 'human being', 'child', and 'individual' as including born-alive infant:"

(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species homo sapiens who is born alive at any stage of development.

(b) As used in this section, the term 'born alive', with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, caesarean section, or induced abortion.

(c) Nothing in this section shall be construed to affect, deny, expand, or contract any legal rights applicable to any member of the species homo sapiens at any point prior to being born alive as defined in this section.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

"8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant.'"

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from Pennsylvania is recognized for 10 minutes.

Mr. SANTORUM. Mr. President, this is an amendment that I think really goes to the heart of this bill: Patient protection. This bill is purported to deal with trying to take care of patients. What this amendment does is make sure that every living human being is protected by this act as well as all other acts of Congress.

This is a very simple amendment that says—I am quoting from the amendment:

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words "person", "human being", "child", and "individual", shall include every infant member of the species homo sapiens who is born alive at any stage of development.

That is a rather simple amendment. Obviously, I think it is an amendment that should be broadly accepted.

The reason I offer this amendment is really twofold. No. 1 is the concern about how certain little children—little infants—are treated particularly those who are born alive after an abortion, an abortion that was not successful in the sense that the child was not killed before the child was delivered outside of the mother's womb.

So what we want to do is make sure those children in particular, as well as others, are treated with the same dignity and are covered by the same laws as all other people in America.

There are, unfortunately, many disturbing examples of how these little children are not treated the same and are not given the proper respect that is required under the laws that we have passed in this Congress.

I am going to use a couple of examples that were given by nurses in congressional testimony. Last year, we had testimony from Allison Baker, who is a registered nurse, who witnessed three induced abortion survivor incidents. For one of them, she says:

"I happened to walk into a 'soiled utility room' and saw, lying on the metal counter, a fetus, naked, exposed and breathing, moving its arms and legs. The fetus was visibly alive, and was gasping for breath. I left to find the nurse who was caring for the patient and this fetus. When I asked her about the fetus, she said that she was so busy with the mother that she did not have time to wrap and place the [baby] in the warmer, and she asked if I would do that for her. Later I found out that the fetus was 22 weeks old, and had undergone a therapeutic abortion because it had been diagnosed with Down's Syndrome. I did wrap the fetus and place it in a warmer and for 2½ hours he maintained a heartbeat, and then finally expired."

The second incident involved a 20-week-old fetus with spina bifida who lived for an hour and 40 minutes until she died.

She continued:

"The third case occurred when a nurse with whom I was working was taking care of a mother waiting to deliver her 16 week Down's Syndrome fetus. Again, I walked into the soiled utility room and the fetus was fully exposed, lying on the baby scale. I went to find the nurse who was caring for this mother and fetus, and she asked if I could help her by measuring and weighing the fetus on the chart given the circumstances. When I went back into the soiled utility room, the fetus was moving its arms and legs. I then listened for a heartbeat, and found that the fetal heart still was alive. I wrapped the fetus and in 45 minutes the fetus finally expired."

We have other stories, disturbing stories of cases where children were born alive and basically discarded as trash in soiled utility closets or laying on tables fully exposed at a very tender age.

This is a story from Jill Stanek, another registered nurse:

"One night, a nursing co-worker was taking an aborted Down's Syndrome baby who was born alive to our Soiled Utility Room because his parents did not want to hold him, and she did not have time to hold him. I couldn't bear the thought of this suffering child lying alone in a Soiled Utility Room, so I cradled and rocked him for the 45 minutes that he lived. He was 21 to 22 weeks old, weighed about 1⁄2 pound, and was about 10 inches long. He was too weak to move and very much expending any energy he had to breathe."

This is the current problem, and this is the reason we are introducing this legislation. Frankly, I have concerns that this may be even more of a problem in the future based on court decisions. The court decision I refer to is
the recent decision by the U.S. Supreme Court in the Nebraska partial-birth case. In that case, in a concurring opinion, two Justices said two things: One, Justice Stevens with Justice Ginsburg concurring, and the other, Justice Ginsburg with Justice Stevens concurring. I am going to quote two things that should send a chill down the spine of any person who believes what it comes to what the future could have in store for us if we do not pass legislation such as this.

This is what Justice Stevens said in this decision:

The holding [of Roe]—that the word "liberty" in the 14th Amendment includes a woman's right to make this difficult and extremely personal decision—makes it impossible for me to understand how a State has any legitimate interest in requiring a doctor to follow any procedure other than the one he or she reasonably believes will best protect the woman in her exercise of this constitutional liberty.

For the notion that either of these two equally gruesome [abortion] procedures—such as, this late abortion of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one or not the other, is simply irrational.

What that says very clearly is, according to these two Justices, that any procedure that the doctor determines is in the best "health interest of the mother" can be used without question. So it gives the best way to safely perform this abortion is to deliver a live baby and then subsequently kill it because it is the safest way for the mother's health to have that done, under this rationale, under this reasoning, that would be legitimate. I think we have to make it very clear that that is not legitimate; that after delivering a baby, once the baby is outside the mother, it is no longer legitimate to consider that child just a piece of property. This is disposed of, or massivably cells to be disposed of when it is a living, breathing individual.

Justice Ginsburg's opinion says the following:

Such an obstacle [to abortion] exists if the State stops a woman from choosing the procedure her doctor "reasonably believes will protect the woman in [the] exercise of [her] constitutional liberty."

Again, it is an open door to whatever procedure the doctor wants to use, irrespective of the baby, which again leaves the door open certainly for the doctor to say that he or she reasonably believes that the mother's health will be served if the baby is delivered and then killed at that point, or shall we say, treat that child within the context of the law as we would treat any other child or any other person in America.

With that, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from California.

Mrs. BOXER. Mr. President, my colleagues in his discussion of this amendment, does attack the landmark case of Roe v. Wade which simply said, in the 1970s—and women have had the right since then—that in the early stages of a pregnancy, the government should play no role in the very personal, private, medical, maternal and her family and her doctor and her God would make without the interference of government. But his amendment certainly does not attack Roe in any way.

His amendment makes it very clear that nothing in this amendment gives any rights that are not yet afforded to a fetus. Therefore, I, as being a pro-choice Senator on this side, representing my colleagues here, have no problem whatsoever with this amendment. I feel good about that. I feel good that we can, in fact, vote for this together. It is very rare that we can.

Simply put, this amendment says it all in its purpose: "To protect infants who are born alive." Of course, of course. My colleague goes on to say that simple statement, which is very important, is in fact, he said, the heart of this bill. I think the heart of this bill is yes, protecting infants; it is also protecting children, protecting teenagers, protecting people as they get older, until they are very old and very frail and are fighting for their life.

So this bill really should protect all at every stage of our lives, from the earliest days until the final days. I hope that my colleague will join with us in supporting this Patients' Bill of Rights because it does, in fact, protect all of us. And it will, in fact, give all of us at any stage, at any age, the quality health care that we need, protecting infants and all of us the protections that we need against HMOs that often-times put dollar signs ahead of our vital signs. That is wrong to do. Some women's children or babies or families who don't have a lot of money, who don't have a lot of power, who are going against HMOs where the CEO makes hundreds of millions of dollars. But they say: Gee, we are not going to give that little baby the care he needs. I had a case I talked about on the floor where a child was denied a medicine. She was 3 years old and had cancer. It was $54 for the medicine and the HMO denied that medicine. That child suffered so with nausea and all the rest, while the head of that HMO, because of a huge merger—and I asked my staff to check this because I could hardly believe it—made $800 million in the course of that merger. But they denied a drug to a little baby suffering from cancer—$54.

I heard my colleagues on the other side—some of them against this bill—say: We can't legislate by anecdote. Well, I have to tell you, when you hear one story, and then another and another, from people you never heard of, and you hold hearings and the people come out and tell the stories, then we know there is a need to pass this Patients' Bill of Rights. So I would vote
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for this to protect the infants, and then I will vote to protect everyone in this country because everyone deserves protection. All the HMOs who put them on the bottom line ahead of people’s health.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, I am going to urge the Senate to accept the amendment tomorrow. I think we have had a good discussion about it. I hope that we will move ahead and accept it. I am prepared, when the Senators yield the time or use the time, to do that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I thank the Senator from California for her comments and support of this amendment.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The amendment is as follows:

AMENDMENT NO. 866

Mr. NICKLES. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read the amendment as follows:

The amendment as follows:

(Purpose: To apply the bill to plans maintaining pursuant to collective bargaining agreements beginning on the general effective date)

Beginning on page 173, strike line 19 and all that follows through line 14 on page 174, and insert the following:

(2) TREATMENT OF COLLECTIVE BARGAINING AGREEMENTS.—The amendments made by sections 201(a), 301, 302, and 303 (and title I of which might be 5, 10 years, or even longer and they will be respected in the same way just as we do regarding collective bargaining. I hope this amendment will not be accepted.)
Mr. NICKLES. Madam President, I appreciate my colleague’s statement, but I totally disagree. Some of us have argued for collective bargaining agreements, if you read the language on page 174, it is not until the contract or the agreement terminates. And then the second part of it says that even if they comply, it shall not count as a termination.

You could have collective bargaining agreements exempt under this provision indefinitely for 12 years. They may never terminate the agreement. They may continue rolling it over, so it is years and years and years and years. One I mentioned does not expire until the year 2010. If they renegotiate it between now and next year, the duration of the contract will be exempt. We are telling everybody else in the private sector: Get your act in order, and by the end of next year you have to have these new patient protections, oh, unless you are a member of a collective bargaining agreement.

This is not the only exemption we found. We did not cover Federal employees. Maybe I will have an amendment dealing with Federal employees. All these great patient protections do not apply to Federal employees. They do not apply to Indians in our hospitals. They do not apply to veterans.

These are patient protections that are so important for the country, but we do not give them to publicly funded plans; we only do it for private sector plans.

What about unfunded mandates? What about union plans, collective bargaining? We leave them out. We leave out Government plans; we leave out the private sector. Unions, this does not apply to your collective bargaining agreement, and if it does not terminate, you are never covered.

I think that is a serious mistake, so I urge my colleagues to support the amendment.

I thank my friend and colleague from Nevada for his support of the amendment as well.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Senator ought to read page 174 because this language is very clear, precise, and exact. It does not permit what he just said it permitted, and that is the rollovers. It just does not permit it. The Senator can state it, and he can misrepresent it, which he just has, but it is not the fact. On line 5, it says: “relating to the plan terminates,” and that is when it ends. That is when it has to be implemented.

This idea that it can roll over and over, for 10, 15 years, is not what the legislation says. The fact is, with insurance, many start in January, many others start in July. We have tried to say when that contract plan year, which is a term of art that refers to when that insurance transitions, we will implement it at that time, and the same should be true with the collective bargaining agreement.

I would think if the overwhelming majority of the workers and employers would be eager to get these protections. We are going to find out many will work out arrangements so they get the protections.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. I yield to the Senator from Nevada such time as he desires.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I have a story that was told by the junior Senator from North Dakota on the Senate floor the other day. It is about a young man named Christopher Thomas Roe, who is from Nevada. He was attending Durango High School and was diagnosed with acute lymphocytic leukemia. As anybody who has had a child with that terrible disease knows, sometimes the treatments are not very successful.

During the course of his treatment, the doctors were recommending a certain type of experimental treatment, and that was included throughout this bill, sometimes that experimental treatment has to be had at a certain time of treatment, and waiting for its approval sometimes leads to that treatment not being able to be given to that patient. That is exactly what happened to Christopher Thomas Roe. He was not able to receive this type of a treatment in a timely manner.

His father is a school district employee in the State of Nevada. He is not a teacher, but he is an employee of the school district. There is an employee trust fund that has been set up to provide health insurance to school district employees. Based on our discussions with the Department of Labor, the trust fund, because of the way it was set up, would not be covered under the provisions of this bill.

Similarly, the 30 million people Senator NICKLES is talking about who deal with collective bargaining agreements are not covered under this bill. If we are going to say to other people that they deserve these rights, we believe that people who are in unions deserve the same patient protections.

These patient protections right now do not just deal with lawsuits, they deal with provisions that everybody and everybody else, and the right of a woman to choose an OB-GYN as her primary doctor; the right of a family to say their children’s primary care doctor is a pediatrician; the right to a reasonable layman’s interpretation of whether the emergency room care should be covered for when they have an emergency.

These patient protections we believe are very important to give not only to the 170 million people who are covered by the underlying bill, but also those who are covered in collective bargaining agreements.

If there is tweaking of the language that needs to happen with this amendment, then let’s tweak the language. The bottom line is this is not an anti-union agreement. This amendment says we want union workers to have the same rights as other people.

I would think the other side of the aisle, who are generally in favor of union workers, would be on our side on this amendment. If the other side thinks this amendment needs a little tweaking, maybe we can do that, but right now as we read the bill, as we have had some of the legal experts look at the bill, collective bargaining agreements would supersede and not allow union workers who are covered under those collective bargaining agreements to be covered under this Patients’ Bill of Rights.

I urge our colleagues to work with us and to make sure those union workers get the same protections as other people in America are going to receive.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, how much time do I have?

The PRESIDING OFFICER. Six minutes.

Mr. KENNEDY. I did not understand, did the Senator say that public employees were not covered? Does he understand that to be the case?

Mr. NICKLES. The Senator is correct. Federal employees are not covered by the underlying McCain-Kennedy bill.

Mr. KENNEDY. I understand he was talking about teachers in Nevada; public employees is the example he gave. I find this enormously interesting because both Senators voted for the Collins amendment that excluded 138 million Americans. They only included 56 million. They were going to have the protections. The others were going to be dependent upon whether the States actually moved ahead and passed the various protections.

Mr. KENNEDY. A group of the groups that was left out of the Collins amendment was public employees, such as firefighters, school teachers, and others. We resisted that. No one has fought harder to make sure
we are going to have comprehensive coverage since day 1 of this program. Now, of course, being flyspecked because we somehow think that the unions who, under certain circumstances, are going to come into these protections on a different calendar.

Madam President, we have tried to include people who are going to have coverage from insurance. We are going to respect the contract. When those insurance contracts expire, whether it is in January, whether in July, the protections go into effect. The same is true of the collective bargaining agreement. We have done that in other times. It has worked, and worked effectively. As I say, I believe the consumers, as well as employers—the employers from whom we have heard, and we have had many examples—indicate they want to wait to get these protections in place. It isn’t that people will delay getting in; it will be because they want to get in and get in more quickly.

The PRESIDING OFFICER. Leader time has expired.

Mr. NICKLES. A couple comments. The average length of collective bargaining agreements: 66 percent of collective bargaining agreements with over 1,000 employees—that is over 1,200 collective bargaining agreements—the average length is 3 to 5 years; 28 percent are 2 to 6 years; an additional 7 percent are 6 to 8 years.

My point is these things last for years. People renegotiate their health care plan. Federal employees do this every year. My friend puts in a rider on the contract every year. So for the health care plan for everybody else in the private sector, you have to comply by next October, 12 months from now, maybe even January of next year; you will have to comply. But if you are in a collective bargaining plan, you wait until the plan terminates.

We asked the Department of Labor, does the plan terminate if renegotiated and rolled over? Not necessarily. In collective bargaining, you are talking about 30 million Americans who will not receive the so-called benefits under this bill. That is a fact.

Another fact: My colleague said we supported an amendment by Senator Collins that said let the States use their State protections. I strongly agree with that. That is a reason I will vote against the underlying bill, because I don’t think we should preempt States as the Kennedy-McCain bill does. I believe in that strongly. I know my colleague from Massachusetts have a different belief. We could debate that for hours.

My point is, if the patient protections are so good—and I heard many sponsors say we should cover all Americans—the bill does not cover all Americans. As a result of the language we have in the bill, collectively bargaining agreements are exempt for years. The bill we are debating now does not cover public plans; it does not cover Medicaid; it does not cover Medicare; it does not cover public employees; it does not cover the military; it does not cover veterans; it does not cover Federal employees.

We have control over Federal employees. If the patient protections are so good for the private sector, why not for collective bargaining plans as well?

Mr. KENNEDY. Madam President, it is interesting to listen to my friend and colleague. The fact is, the last President, President Clinton, put those in through Executive orders to cover them. Those in for delay of the Republican leadership in letting us get through this bill over the last 5 years. So rather than wait and wait and wait, we had a Democratic President put them into effect.

Now if a collective bargaining unit or contract expires on October 2, they go in prior to the time of the insurance coverage. They will go in months ahead of the insurance. If the contract expires on October 5, that goes in before July of the next year. So they get more protections than those being covered by the insurance.

This is just a way of saying if the contracts are out there, we are going to respect the termination of those contracts, whether it is in the insurance or in collective bargaining. Evidently, the Senator wants to use this as a device to punish some of their enemies, the unions in this case, to try to use the legislative process to do so. I hope we will reject that.

Mr. NICKLES. I yield myself 5 minutes off the leader time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. A couple comments. The average length of collective bargaining agreements: 66 percent of collective bargaining agreements with over 1,000 employees—that is over 1,200 collective bargaining agreements—the average length is 3 to 5 years; 28 percent are 2 to 6 years; an additional 7 percent are 6 to 8 years.

My point is these things last for years. People renegotiate their health care plan. Federal employees do this every year. My friend puts in a rider on the contract every year. So for the health care plan for everybody else in the private sector, you have to comply by next October, 12 months from now, maybe even January of next year; you will have to comply. But if you are in a collective bargaining plan, you wait until the plan terminates.

We asked the Department of Labor, does the plan terminate if renegotiated and rolled over? Not necessarily. In collective bargaining, you are talking about 30 million Americans who will not receive the so-called benefits under this bill. That is a fact.

Another fact: My colleague said we supported an amendment by Senator Collins that said let the States use their State protections. I strongly agree with that. That is a reason I will vote against the underlying bill, because I don’t think we should preempt States as the Kennedy-McCain bill does. I believe in that strongly. I know my colleague from Massachusetts have a different belief. We could debate that for hours.

My point is, if the patient protections are so good—and I heard many sponsors say we should cover all Americans—the bill does not cover all Americans. As a result of the language we have in the bill, collectively bargaining agreements are exempt for years. The bill we are debating now does not cover public plans; it does not cover Medicaid; it does not cover Medicare; it does not cover public employees; it does not cover the military; it does not cover veterans; it does not cover Federal employees.

We have control over Federal employees. If the patient protections are so good for the private sector, why not for collective bargaining plans as well?

Mr. KENNEDY. Madam President, it is interesting to listen to my friend and colleague. The fact is, the last President, President Clinton, put those in through Executive orders to cover them. Those in for delay of the Republican leadership in letting us get through this bill over the last 5 years. So rather than wait and wait and wait, we had a Democratic President put them into effect.

Now if a collective bargaining unit or contract expires on October 2, they go in prior to the time of the insurance coverage. They will go in months ahead of the insurance. If the contract expires on October 5, that goes in before July of the next year. So they get more protections than those being covered by the insurance.

This is just a way of saying if the contracts are out there, we are going to respect the termination of those contracts, whether it is in the insurance or in collective bargaining. Evidently, the Senator wants to use this as a device to punish some of their enemies, the unions in this case, to try to use the legislative process to do so. I hope we will reject that.

Mr. NICKLES. I yield myself 5 minutes off the leader time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Thank you, my friend, Senator Brownback. I am the third Senator to speak, it seems, in front of him, and he shows great patience. I will be brief.

My colleague from Massachusetts said President Clinton gave these protections to Federal employees because he couldn’t wait for the delay of the Republican Congress to pass them.

The facts are, Federal employees do not have patient protections that are nearly as expensive, as aggressive, as intrusive as we are getting ready to impose on the rest of the private sector. I may have an amendment tomorrow to address that so we can save that for tomorrow’s debate.

The patient protection that President Clinton passed is not nearly this big. It goes to OPM, Office of Personnel Management; they go to their employer. When they have an appeal process, they do not go to an independent party; they go to OPM, Office of Personnel Management; they go to
or stigmatized by wrongful or unsuccessful human germline modifications of themselves or their ancestors.

(4) The negative effects of human germline manipulation would not be fully known for generations, if ever, meaning that countless people will have been exposed to harm probably often fatal as the result of only a few instances of germline manipulations.

(5) The right to have been conceived, gestated, and born without genetic manipulation.

SECTION 3. PROHIBITION ON HUMAN GERMLINE MODIFICATION

(a) IN GENERAL. Title 18, United States Code, is amended by inserting after chapter 40 the following:

"CHAPTER 16—GERMLINE GENE MODIFICATION"

"Sec. 301. Definitions.
"(a) "Germline gene manipulation" means the intentional modification of DNA in any human cell (including human eggs, sperm, fertilized eggs, zygotes, blastocysts, embryos, or any precursor cells that will differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including inserting, deleting or altering DNA from any source, and in any form, such as cellular, chromosomal, nuclear, mitochondrial, and synthetic DNA. The term does not include any modification of cells that are not a part of and will not be used to create human embryos. Nor does it include the change of DNA involved in the normal process of sexual reproduction.

"(b) "Somatic cell"—The term 'somatic cell' means a cell that contains only a single copy of each of the human chromosomes, such as eggs, sperm, and their precursors.

"(c) "Human haploid cell. The term 'human haploid cell' means a human cell that contains only one copy of each human chromosome.

"(d) "Human diploid cell."—The term 'human diploid cell' means a human cell that contains two copies of every human chromosome, such as eggs, sperm, zygotes, blastocysts, embryos, or any precursor cells that will differentiate into gametes or can be manipulated to do so.

"Sec. 302. Prohibition on germline gene manipulation. (a) It shall be unlawful for any person or entity, public or private, in or affecting interstate commerce—

"(1) to perform or attempt to perform human germline gene manipulation; or

"(2) to intentionally participate in an attempt to perform human germline gene manipulation; or

"(3) to ship or receive the product of human germline gene manipulation for any purpose.

(b) "Importation. It shall be unlawful for any person or entity to import the product of human germline gene modification for any purpose.

(c) "Penalties.—(1) Any person or entity that is convicted of violating any provision of this section shall be fined under this section or imprisoned not more than 10 years, or both.

"(2) "Civil Penalty. Any person or entity that is convicted of violating any provision of this section shall be subject to, in the case of a violation of a provision relating to the derivation of a pecuniary gain, a civil penalty of not less than $1,000,000 and not more than an amount equal to the amount of the gross gain multiplied by 2, if that amount is greater than $1,000,000."

(b) CLERICAL AMENDMENT. The table of chapters for part I of title 18, United States Code, is amended after the item relating to chapter 15 the following:

"16 Germline Gene Modification ......... 301".

Mr. BROWNBACK. Madam President, I rise today to offer an amendment to the Patients' Bill of Rights. This amendment is about human germline gene manipulation. That is a long way of saying—and I will go into this for a period of time—stopping people from attempting to modify the human species with genetic material. It may seem strange. It happens in livestock, genetically modified organisms. Some people are researching and discussing this within the human species to create better people. I think it should be stopped, prohibited, removed.

I looked for a better vehicle for this amendment, for another bill that was a closer fit. It is a medical issue on the medical front, but not germline genetic modification.

My amendment prohibits human germline gene modification. That is to that? Technically, it is the process by which the DNA of an individual is permanently changed in such a way that it permanently affects his or her offspring. Normally this is a DNA modification in either the egg or the sperm, or the embryo. The term "germline genetic modification" is carried in that person and in future generations, in future people. So it starts at this single stage, the egg or the sperm, or the embryo, molded together and multiplied in future generations.

This is not about genetic therapy; it is not about stem cell research; it is not about human cloning. All those are other issues for another day that do need to be considered but not here. My amendment in no way hinders genetic therapy or other medical interventions that treat patients suffering from diseases.

My amendment is about eugenics. For those not familiar, that is the process or means of race improvement previously tried by many diabolical means, such as selective breeding or other medical intervention, well aware that many of my colleagues understandably may be unaware of these so-called advances being made in the field of biotechnology and the impact those advances will inevitably have on the human race.

I come from an agricultural background. I used to be a Secretary of Agriculture in Kansas. These are things we commonly do now in plants, and we are having research done extensively in animals. People are talking about bringing some of this technology to humans. It has to be stopped and should be stopped.

Many of the advances promise great achievement for mankind and a betterment of human conditions. Some of the advances in biotechnology do not. Human germline gene manipulation is one of those. It is one of those advances discussed mostly in theoretical terms until recently. More disturbingly, it is the realization of the age-old quest to design better people. Germline gene manipulation is the summit of the eugenics movement. One of the groups we have consulted with prior to preparing this amendment is a group chaired by Claire Nader, the sister of former Presidential candidate Ralph Nader. It is a group she has been associated with, the Council for Responsible Genetics. They are unequivocally opposed to human germline gene modification.

The Council states this:

"We strongly oppose the use of germline gene modifications in humans.

They continue:

"Today, public discussion in favor of influencing the genetic constitution of future generations has gained new respectability with the increased political intervention. Although it is once again espoused by individuals with a variety of political perspectives, modern eugenic programs are now designed to be driven by personal need and choice. But the doctrine of social advancement through biological perfectionability underlying the new eugenics is even more potent than the older version. Its supporting data seem more scientifically sophisticated and the alignment between the state, through its support of the market and the individual exercising so-called free choice, is unprecedented.

The Council goes on to state further:

"These considerations make the social and ethical problems raised by germline gene modification very different from those raised by other genetic manipulations, that target certain nonreproductive deficiencies in organs of patients, again in somatic cell gene modification.

As the Council states in very clear terms:

"The underlying political philosophy of those who support genetic modification has been sanitized with new terms, but is in reality the same old eugenic message. It is the 20th century version of the 19th century eugenics movement, which was ultimately a destructive and direly afflicted. In numerous conversations that I have had with Dr. Francis Collins, who..."
heads the National Human Genome Research Institute. In Washington, who has had a fantastic report that was out last year on the Human Genome Project, reported out a beautiful array of the complexity of the genetic structure in each and every one of our 10 trillion cells. And if we printed out that genetic structure in each and every one of our 10 trillion cells and if we printed out that genetic structure in each and every one of our 10 trillion cells and if we printed out that genetic structure in each and every one of our 10 trillion cells and if we printed out that genetic structure in each and every one of our 10 trillion cells and if we printed out that genetic structure in each and every one of our 10 trillion cells.

We have talked about the beauty of the human genome and also talked about the potential for problems in its manipulation, as that could be carried onto future humans.

Moreover, human germline gene modification is not needed to save lives or alleviate suffering of existing people. Its target population is prospective people who have not been conceived. The cultural impact of treating human beings biologically perfectible artifacts would be entirely negative. People who fall short of some technically achievable ideal would be seen as damaged goods, while the standards for what is genetically desirable would be those of the society economically and politically dominant group. We have heard these themes before. This will only increase prejudices and discrimination in a society which already has too many of these.

There is no way to be accountable to those in the future generations who are going to be harmed or stigmatized by the wrongful or unsuccessful human germline gene modification of their ancestors. The negative effects of human germline modification would not be fully known for generations, if ever, meaning that countless people will have been exposed to harm, probably often fatal, as a result of only a few instances of post-conception genetic manipulation.

All people have the right to be conceived, gestated, and born without genetic manipulation. Human germline gene manipulation will only serve to turn human beings into commodities with attributes that are determined by technicians, and parents who want to exert genetic tyranny over their offspring. This is a step too far. This is grossly unethical for it to happen. I urge the Senate to adopt my amendment to prohibit it once and for all.

Again I put forward, in layman's terms, what this is about. This is about getting and adding outside genetic material to the human species, whether it be plant—tomato—or animal—chicken—from a tree somewhere that a snippet of genetic material would be added in, at the egg or the sperm level. Once added in there, when the union occurs and the egg and the sperm come together, that genetic material would be added in, at the egg or the sperm level. Once added in there, when the union occurs and the egg and the sperm come together, that genetic material would be added in, at the egg or the sperm level. Once added in there, when the union occurs and the egg and the sperm come together, that genetic material would be added in, at the egg or the sperm level. Once added in there, when the union occurs and the egg and the sperm come together, that genetic material would be added in, at the egg or the sperm level. Once added in there, when the union occurs and the egg and the sperm come together, that genetic material would be added in, at the egg or the sperm level.

I think everybody would look at this and say that is not a road we want to go down. Yet some people today are contemplating doing this. I want to add a couple of other points. The European Council on Biomedics has stated its opposition to this human germline gene modification. I think the civilized world really needs to step up right now, before people get going and go forward, saying: We could make people taller. We could make people live longer by this modification. We found a gene line in trees that we could put in earlier, to the human species, and cause this to happen. We have a way to manipulate or change this—without knowing in any way down in future generations what this impact is.

We can send a strong, clear signal at this point in time that we want nothing to do with this, that this is wrong, this is eugenics, this is the height of eugenics, and it should not take place. The Europeans are moving that way. We should as well as much of the rest of the civilized world, and say we want no part of this. So I urge the Senate, saying this is wrong. I know people differ on some of these other biotechnology issues, such as cloning. That is not addressed. That is left for another day. The language in this bill is clear, specific; it is easy to understand. We may have differences on some of the other issues we may get into over a period of time, but this is one, as I have searched around, where there is a broad coalition, left and right, that says yes, this one should be banned. That is why we worked closely with Ms. Nader's group, consulted with biotechnology groups, who were saying: Yes, this is not a place we want to go either. Here is a place we can stop this.

This is the only vehicle I could see where there was some connection bringing this up. If we could do it on a freestanding bill at some time on the floor, where there is a debate, I would go do that with a clear, I hope unanimous, vote of the Senate, saying this is wrong.

I want people to consider the facts. There are great numbers of genetic diseases, and there are great numbers of inherited diseases. Those that come to mind quickly are cystic fibrosis and muscular dystrophy, Tay-Sachs, Cooley's disease, and many others in the cystic fibrosis area.

It is basically an issue involving a single gene. That is also true in muscular dystrophy.

Just think if we were able to get to the point where a parent would be able to see the alteration of that gene so that the child that was going to be born would be free from muscular dystrophy or from cystic fibrosis by altering the DNA.

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Just think if we were able to get to the point where a parent would be able to see the alteration of that gene so that the child that was going to be born would be free from muscular dystrophy or from cystic fibrosis by altering the DNA.
Mr. REID. Madam President, will the Senator yield?

Mr. KENNEDY. Yes.

Mr. REID. I would like to ask the Senator a question. A couple of years ago when I was chairman of the Democratic Policy Committee, one of the issues that time was cloning, for lack of a better description. We had a lunch on at the Democratic Policy Committee. This may not be directly in point, but it points up what the Senator is saying. This is a very complex issue. We need more time and medical expertise to respond to this.

But the Senator will remember that we had a hematology professor from Harvard. We had the leading expert on gene therapy at NIH. The Senator will recall a number of things. The thing that is so vivid in my mind is the Harvard professor, who was of course a practicing physician, gave an example of how progress is being made in the medical field and in the areas that need more study.

He pointed out that a young woman with leukemia was referred to him. I do not know the scientific name nor the type of leukemia. He did the examination and looked at the information he had been given.

The Senator will recall that the doctor asked this young lady if she had a brother or sister. She said no. He said that right then he knew she was in big trouble. She probably couldn't make it and would die.

The next day, the Senator will recall, another teenager came in with leukemia. It was the same process. He asked this young man if he had a brother or sister. He said no, and paused for a second. He said: I am a twin. The doctor said that he knew right then that the young man was going to live as long as anybody in this room because they could do a bone marrow transplant and regenerate those cells.

I do not fully understand what the Senator from Kansas is advocating with his amendment. I know he is candid and is well placed. I know after having listened to the woman from NIH and the professor from Harvard that I have great hope progress is being made on some of the most dreaded diseases that face especially children in America today.

The Senator from Massachusetts and I know how well-intentioned the Senator from Kansas is. I think we should defeat this amendment and wait for a later day so we can have more opportunity to examine this more closely.

The Senator remembers that meeting in the room right down the hall here? Mr. KENNEDY. I do remember. All of us as Members of this body get a chance to go out to NIH and visit with the researchers and listen, watch, and hear about those extraordinary, dedicated men and women who are dealing with so much of the cutting edge research.

I think we want to make sure that we are very careful in the steps we are going to take that in some way would inhibit research. There are obviously strong ethical issues which we constantly have to examine and consider.

But I am very much concerned about the kind of prohibition that this type of amendment would include.

I want to make it clear that the amendment that the Senator from Kansas puts forward does not ban cloning, but it would ban similar cutting edge research.

That is what our concern is and why we will oppose it tomorrow.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I would like to correct some miscalculation with the Senator from Massachusetts. I want to read from the amendment because he represented a couple of examples that we specifically state in the bill we are not prohibiting.

On page 3, it states under “construction,” it states specifically that:

Nothing in this Act is intended to limit somatic cell gene therapy, or to effect research involving human pluripotent stem cells.

This somatic cell gene therapy is what you are talking about where you have already the sperm and egg, and you have a full chromosome. That is where you may want to make changes, and that is where the research is focused. Now they can deal with some of the dreaded diseases the Senator from Massachusetts says we should rightly try to deal with. I agree that we should.

We specifically added that. We covered that point the Senator raised and about which he has concern because we don’t want to impact that area. We talk about this on page 3. It says:

The term “human germline gene modification” means the intentional modification of DNA in any human cell for the purpose of producing a genetic change which can be passed on to future individuals.

In this amendment we are saying: Do we really want to change the human species without knowing what the impact is going to be down the road? Maybe we have a shot at changing this bill through to passage—I appreciate both his work and the work of the Senator from Nevada on just continuing to press forward. They have done a very good job. But I point out to them that we have significant limitations on doing this to animals. Right now, if you wanted to take a fish and put a tomato germine in it, or something from a tomato gene—actually this is being done—this is a heavily regulated area by FDA, and the USDA, as well it inhibits that research.

But the Senator from Kansas is. I think we should rightly do super fish out here that could swim and do things and take over a whole area of species? They are actually concerned. It may sound scientific, like this is just off the wall. But this is happening today.

We have these deep concerns within our society. You do not have to listen to me. The Senator from California knows what is taking place this week in southern California. People are deeply concerned about this being done with animals and plants.

All I am talking about with this amendment is to say, the careful thing for us to do right now is to prohibit it in humans.

As the Senator from Massachusetts knows, in any future legislative session we can remove that prohibition. We could do that next year. But wouldn’t the careful, thoughtful thing be to say right now: “We don’t want to modify the human species”? It has no regulatory or scientific review on it today. People are out there doing these things.

Wouldn’t the really thoughtful position be that we should stop this because we don’t know its impact down the road—stop this now—and then, if the researchers really convince us this is the right thing to do, we can open it back up? I think we open up an incredible Pandora’s box if we allow this unregulated area of human experiment to be continued at this time. And that is what is being defended here.

I think this should give us some thoughtful consideration. This is limited in its drafting. We have worked with a number of groups on its drafting. It is very specific. This has to do with the being passed down to future generations. This is something that we should prohibit at this time.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, there are several organizations that draw different conclusions about the Senator’s amendment. You have the
Biotechnology Industry Organization that says:

Unfortunately, the Brownback amendment reaches far beyond germ line modification. It attempts to regulate genetic research—a complex and dynamic field of science that holds great potential for patients with serious and often life-threatening illnesses.

And from the Association of American Medical Colleges:

Much more troubling, however, the amendment extends beyond germ line modification. Taken on its face, the amendment would prohibit other areas of research into gene therapy as well.

I ask unanimous consent an analysis be printed in the RECORD.

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

MEMORANDUM

JUNE 28, 2001

To: Michael Werner, Esquire, BIO Bioethics Counsel.

From: Edward L. Korwek, Ph.D., J.D.

Re: Some Initial Comments/Analysis of the Brownback Amendment. The Brownback Amendment is poorly worded and confusing as to its precise coverage. It uses a variety of scientific terms and other complex language both to prohibit and allow certain gene modification activities. Many of the sentences are composed of language that is incorrect or ambiguous from a scientific standpoint. A determination must be made of what each sentence of the Amendment is intended to accomplish. As to a few of the important definitions, the term “somatic cell” is defined in proposed section 301(i) of Chapter 16, as “a diploid cell (having two sets of the chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development.” What does “of almost all body cells” mean? Is this an oblique reference to the haploid nature of human sex cells, i.e., sperm and eggs? Also, why is it important to describe in such confusing detail from where the cells are derived (in contrast to simply saying, for example, a somatic cell is a human diploid cell)? From a scientific standpoint, the definition of somatic cell is not dependent on whether the cell is derived from or used on living or dead human beings. More importantly, as to this human source issue, when does a “human body” exist such that its status as “living” or “dead” or its “stages of development” become relevant criteria for determining what is a “somatic cell.”

Similarly, the definition of “human germline modification,” especially the first sentence, is very convoluted. The first sentence states:

“The term ‘human germline gene modification’ means the intentional modification of DNA in a normal cell (including human sperm, eggs, fertilized eggs (i.e., embryos, or any early cells that will differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.” To what part of the first sentence defining “human germline modification” is this language referring?

Does the last sentence of the definition, “Nor does it include the change of DNA involved in the sexual reproduction” prohibit in vivo fertilization? Does any other part of the Amendment prohibit or allow in vivo fertilization? What genetic technologies are covered, if any?

Similarly, the second sentence in the definition, stating what is not covered by the definition of human germline modification, is also confusing as to its precise coverage. What does “part of” mean? Are (fertilized) sex cells “part of” an embryo?

These and other problems leave the bill unsupported in form. Due to this imprecision, the amendment’s impact is unclear and seemingly far reaching.

Mr. KENNEDY. Madam President, a memorandum by Hogan & Hartson says:

The Brownback Amendment is . . . confusing as to its precise coverage. It uses a variety of scientific terms and other complex language both to prohibit and allow certain gene modification activities.

And it gives a several-page analysis of this.

The fact is, as I understand it, there is a moratorium now at NIH. NIH does not permit research in transferring of the materials in terms of genes at the present time.

I just mention quickly, on page 3 of the amendment, on lines 10 and 11, it talks about “for the purpose of producing a genetic change which can be passed on to future individuals . . .” That ought to be a matter of concern to parents because that is an area of very great potential in terms of parents who have the gene—in terms of genetic counseling. . . . That very area is a matter of enormous importance and consequence.

I know the Senator has given this a lot of thought. It is enormously important. I respect him for it. I know that he revisits these issues continuously. We will look forward to continuing to work with him. I know he is incredibly concerned about the broad areas of ethical issues. In those areas of ethical concern . . . there are many answers. There is enormous division, significant divisions, in many different areas.

But it does seem to me that in the time that we have available to consider this, and in the context of the particular legislation, and with the very strong opposition of the research community generally, that it would be unwise for us to add this at this time to the legislation.

The PRESIDING OFFICER. The Senator from Kansas.

MR. BROWNBACK. Madam President, I would just note once more for my colleagues that the area of genetic manipulation, germline therapy, is regulated in animals and in plants but is completely unregulated—there is nothing on this human.

Is that a responsible way for us to go? There is nothing on it. If we want to do it right now on the human species in the United States, go ahead, fine. If you want to do that, release that into us, into the human species but, for one minute, fine, go ahead. If you want to do it in fish, we have a series of hoops that you have to jump through and filings that you have to make and limitations on where this can take place all up and down, everywhere. But it’s not the same fine. I guess if we are going to eat it, we are concerned about it. But if it is one of us, OK.

I have deep respect for the Senator from Massachusetts. He is a very thoughtful and one of the most productive Members of this body, probably in the history of this body. But I would seriously ask him to look at this area. Is this something we want to do in this society? Is this only technologically or theoretically feasible today; it can be done today. It has been done in the animal line for years now. This has been going on for 10 years-plus, 15 years in animals. The genetic lineage in animal versus human is not that much different. Totally unregulated, no limitations—go ahead and do it in humans, not in cattle.

I would hope we could at least get some agreement that this is going to be further considered during this legislative session. If we want more limited language, I am more than happy to work with individuals in drafting more limited language. If we are talking about gene therapy on it, I am willing to draft it and not as tight as they want to on gene therapy. That would be just fine by me. But to let this go on now, you are inviting people to step up. If we need to work with the groups the Senator listed to draft it more tightly, I am happy to do that.

This is a serious matter. We have more and more people in the streets protesting about this very thing. I think we should wake up on that particular point, if nothing else. We saw the protest that took place in Seattle. We saw what it did to the World Trade talks. That was on food. We are seeing what is taking place in the Biotechnology Expo in Southern California right now.

This issue is not going away. It is something that we are going to have to confront. I would hope and I would think we would be far wiser to do it sooner rather than later. I am happy to work with anybody on any language to see that that takes place.
CONGRESSIONAL RECORD—SENATE
June 28, 2001

Mr. KENNEDY. I will include the regulations which are in existence now. I ask unanimous consent they be printed in the RECORD.

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

[From pages 90–92—NIH Guidelines for Research Involving Recombinant DNA Molecules]

Appendix K–VII–K. Pathogen. A pathogen is any microbiological agent or eukaryotic cell containing sufficient genetic information, which upon expression of such information, results in a disease or injury to healthy people, plants, or animals.

Appendix K–VII–L. Physical Barrier. A physical barrier is considered any equipment and/or interest that is directly applicable to a specific gene therapy research issue.

Appendix M. Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Research Participants (Points to Consider)

Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M (see Section I–C. General Applicability).

The acceptability of human somatic cell gene therapy has been addressed in several recent reports and in numerous academic studies. In November 1982, the President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, Splicing Life, which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded that civic, religious, scientific, and legal interests have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is currently in public deliberation as an extension of existing methods of therapy that might be preferable to other technologies. In light of this public support, RAC is prepared to consider proposals for somatic cell gene transfer.

RAC will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into the subject’s somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the gene pool of the individual’s offspring.

The RAC continues to explore the issues raised by the potential of in utero gene therapy, acknowledging that, however, the RAC concludes that, at present, it is premature to undertake any in utero gene transfer clinical trial. Significant additional preclinical and clinical studies are necessary to determine transduction efficacy, biodistribution, and toxicity are required before a human in utero gene transfer protocol can proceed. In addition, a thorough understanding of the development of human organ systems, such as the immune and nervous systems, is needed to better define the potential efficacy and risks of human in utero gene transfer.

Prerequisites for considering any specific human in utero gene transfer procedure include an understanding of the pathophysiology of the disease being treated and a demonstrable advantage to the in utero approach. Once the above criteria are met, the RAC would be willing to consider well rationalized human in utero gene transfer clinical trials.

Research proposals involving the deliberate transfer of recombinant DNA, or DNA derived from recombinant DNA, into the gametes or to human subjects (human gene transfer) will be considered through a review process involving both NIH/OBA and RAC. Investigations involving human gene transfer will be reviewed by RAC, and the NIH/OBA to which the protocol is submitted will make the final determination on the proposed human gene transfer experiments to NIH/OBA. Submission of human gene transfer protocols to NIH will be in the format described below. Submission Requirements—Human Gene Transfer Experiments. Submission to NIH shall be for registration purposes and will ensure continued public access to relevant human gene transfer information in compliance with the NIH Guidelines. Investigational New Drug (IND) applications should be submitted to FDA as described in 21 CFR, Chapter 1, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format.

Institutional Biosafety Committees appropriate approval for the conduct of experiments involving the delivery of recombinant DNA into or near target cells for human application. Factors that may contribute to public discussion of an human gene transfer experiment by RAC include: (i) new vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) potential societal implications. Further public discussion. Among the experiments that may be considered exempt from RAC discussion are those determined not to represent possible risk to human health or the environment. Full RAC review of an individual human gene transfer experiment can be initiated by the NIH Director or recommended to the NIH Director by: (i) three or more RAC members, or (ii) other Federal agencies. An individual human gene transfer experiment that is recommended for full RAC review should demonstrate characteristics deserving of public discussion. If the Director, NIH, determines that an experiment will undergo full RAC discussion, NIH/OBA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/OBA to the Principal Investigator, mak-

Note: Any application submitted to NIH/OBA shall not be designated as ‘confidential’; however, NIH/OBA, into which all human subject (human gene transfer) will be considered through a review process involving both NIH/OBA and RAC. Investigations involving human gene transfer will be reviewed by RAC, and the NIH/OBA to which the protocol is submitted will make the final determination on the proposed human gene transfer experiments to NIH/OBA. Submission of human gene transfer protocols to NIH will be in the format described below. Submission Requirements—Human Gene Transfer Experiments. Submission to NIH shall be for registration purposes and will ensure continued public access to relevant human gene transfer information in compliance with the NIH Guidelines. Investigational New Drug (IND) applications should be submitted to FDA as described in 21 CFR, Chapter 1, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. 

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CONGRESSIONAL RECORD—SENATE

June 28, 2001

12361

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 849. Mr. ENSIGN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the amendment is printed in today’s RECORD under “Amendments Submitted.”

Mr. ENSIGN. Madam President, the amendment that I have proposed really is entitled the “protection against genetic discrimination act.” The Senator from Massachusetts is one of the cosponsors of a bill that contains this particular amendment, along with 22 other Senators.

The mapping of the human genome is one of the most amazing scientific breakthroughs in recent history. Information that is embedded in the genome holds the key to understanding the illnesses and diseases that affect millions of people across the world every day.

I would like to note, this has nothing to do with the amendment that Senator BROWNBACK just proposed. We want to keep the controversies separate. What our amendment deals with is whether you can take this genetic information and use it to determine whether or not to provide health insurance coverage.

When the map of the human genome is completed, we will have all of the information that is contained in the 23 pairs of chromosomes in the human body. This information will be instrumental for finding the cure for diseases such as breast cancer, cystic fibrosis, Alzheimer’s disease, and hundreds of other debilitating illnesses.

However, this breakthrough also carries great dangers. Current law does not provide any protections for individuals to keep their own genetic information private. Currently there is no law prohibiting a health plan from requiring an applicant to provide genetic information prior to the approval for insurance. In other words, any individual with a genetic marker for a specific disease would most likely not be able to receive health insurance coverage for the treatment of that disease.

A joint report by the Department of Labor, Department of Health and Human Services, the Equal Employment Opportunity Commission, and the Department of Justice summarized the various studies on discrimination based on genetic information and argued for the enactment of Federal legislation.

The report stated that:

Genetic predisposition or conditions can lead to work force discrimination, even in cases where workers are healthy and unlikely to develop disease, or where the genetic condition has no affect on the ability to perform work.
Because an individual’s genetic information has implications for his or her family members and future generations, misuse of genetic information could have intergenerational effects that are broader than any individual incident of misuse.

Dr. Francis Collins, the director of the National Human Genome Research Institute, has stated:

While genetic information and genetic technology hold great promise for improving human health, they can always be used in ways that are fundamentally unjust. Genetic information can be used as the basis for insidious discrimination.

The misuse of genetic information has the potential to be, and is, a very serious problem both in terms of people’s access to employment and health insurance and the continued ability to undertake important genetic research.

This amendment takes the first step toward providing individuals with the protections they need for their individual genetic information.

This amendment, as I mentioned before, is part of a larger bill that Senator Frist has introduced on this very same subject. Simply put, this amendment prohibits health insurance companies from using genetic information when deciding whether or not to provide health insurance for an individual.

Insurance companies would not be able to use genetic information to deny an individual’s application for coverage or charge excessive premiums.

Think about diseases such as Tay-Sachs, sickle-cell anemia, breast cancer, colon cancer, cystic fibrosis, and other diseases in which we have identified genes that predispose people to these diseases. Just think about how many Americans this affects now and will affect in the future as we discover new genes that predispose people to certain diseases. It is because of this that we must include this amendment if we are truly going to call this bill a Patients’ Bill of Rights.

Madam President, my wife and I helped co-found the Breast Cancer Coalition of Nevada. Many of the women who are actively involved in this wonderful organization are breast cancer survivors or family members of women who have died from breast cancer. A wonderful friend of my wife and I, one of the most incredible women I have ever met, died in my wife’s arms several years ago. She died of breast cancer.

To think about women such as her who have had a gene identified, or more years ago, she died of breast cancer. She died of breast cancer. A wonderful friend of my wife and I, one of the most incredible women I have ever met, died in my wife’s arms several years ago. She died of breast cancer. To think about women such as her who have had a gene identified, or maybe her daughter the same, to think about someday being discriminated against getting health insurance is just unconscionable.

I encourage all of my Senate colleagues, including the sponsors of the bill, to accept this amendment. It is the right thing to do. I urge its adoption.

I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from North Carolina.

Mr. EDWARDS. Mr. President, we yield back the remainder of our time.

Mr. ENSIGN. Mr. President, I ask that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide, that health care professionals who provide pro bono medical services to medically underserved or indigent individuals are immune from liability)

At the end, add the following:

SEC. IMMUNITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, no health care professional shall be liable for the performance of, or the failure to perform, any duty in providing pro bono medical services to a medically underserved or indigent individual.

(b) DEFINITIONS.—In this section:

(1) HEALTH CARE PROFESSIONAL.—The term “health care professional” means any individual that does not have health care coverage, or any other health care provider who is providing pro bono medical services to a medically underserved or indigent individual.

(2) M EDICALLY UNDERSERVED OR INDIGENT INDIVIDUAL.—The term “medically underserved or indigent individual” means an individual that does not have health care coverage under a group health plan, health insurance coverage or any other health care coverage program, or who is unable to pay for the health care services that are provided to the individual.

Mr. ENSIGN. Mr. President, this next amendment I am offering comes once again from personal experience. I have a very close friend, Dr. Tony Alamo. He is a few years younger than me, and is an internist in Las Vegas. Our parents have known each other for a long time. He graduated from USC medical school. I don’t know that I have ever seen anybody work harder.

Internists today don’t make nearly the money that a lot of surgical specialists make, but the compassion that they have for their patients is just incredible. I remember a few years ago talking to him and what he had to tell me was amazing. As a practicing veterinarian, we get to choose who we are going to treat another patient. When he happens to be there providing pro bono services, they could not be sued. In fact, I would support a similar proposal that granted the same protection. If they are providing pro bono services, they could not be sued. It was a lawyer’s bill of rights, we would include that as well. But this happens to be a Patients’ Bill of Rights, and for the physicians that are treating these patients, we want to make sure they are protected.

We have spoken to Senator MCCAIN’s staff and, apparently, they think the language is acceptable. I think in the long run this is going to go a long way. I have spoken to Senator PRIORE, who, as many of you know, is a heart surgeon. He does volunteer work in clinics, both overseas and also here in the United States. He doesn’t get paid for these services. Yet, he has to maintain medical malpractice insurance. He pays premiums out of his pocket each year so that if he gets sued, he is covered.

This is probably the only amendment in this entire bill that actually will lower—it will only lower it slightly—malpractice premiums and eventually the cost of coverage premiums for consumers as well.
The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. First, I say to the Senator from Nevada that Senator Coverdell had a bill that he passed called the Volunteer Protection Act of 1997. It specifically provides protection for volunteers, including physicians, who provide pro bono services. So I suggest to my colleague, I don’t know if he thinks there is a problem with that law or the way it is written. There is no way for me to know that based on this amendment. But a specific law already covers this problem. It was passed by the Senate and signed into law in 1997. So, first, I suggest that my colleague look at that law and make sure what he is concerned about is not covered by it.

Second, the Bipartisan Patient Protection Act is about HMO reform. It is not about physician liability or the lack thereof—either of those. We would certainly have a problem with adding an amendment to this legislation that is not related to the issue of HMO reform.

So I say to my colleague, again, understanding that we are just seeing his amendment, in fairness, I will be happy to talk with him about it, but those were my immediate concerns. There appears to be a law that already covers this subject matter. We would always be concerned, of course, even under those circumstances, about a health care provider who acted recklessly. I don’t know whether his amendment covers that.

Third, the general issue of adding these kinds of provisions to an HMO reform bill, which is what this bill is about, would also be a concern.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. First of all, physicians I have spoken to do not think the bill the Senator is talking about adequately covers them. That is why they still have to carry malpractice insurance, similar to what Senator Frist has to carry. My amendment would help lower the cost of this type of coverage, so we think this bill is necessary. I don’t understand—if this is already covered in law, why would it be a problem to include it to make sure we are saying to the courts that we absolutely want to cover people who are providing pro bono services to the needy.

Mr. EDWARDS. I say to my colleague that if there is already a law in place that covers this issue, it seems as a matter of procedure that the appropriate thing to do would be to amend the already existing law that covers the subject matter, as opposed to adding this measure to an HMO reform piece of legislation.

So I guess, just as a matter of orderly process, that would make sense to me. Mr. ENSIGN. We have been looking for a vehicle to include this in. We have wanted to deal with this for some time. This is a Patient’s Bill of Rights, and I know it deals mostly with HMOs, but we are looking at our health care system and providing rights to patients. This is part of the health care bill that I think appropriately should have an amendment such as this, simply because I don’t think there is any question that we are driving up health care costs in this country. If anything can help drive down, even a small amount, the cost of health care, I think we should do it.

If between now and tomorrow morning, if there is other language the Senator thinks we need to massage into our amendment, I would be more than happy to work with the Senator from North Carolina. But as it stands, we think this is an important amendment.

Mr. EDWARDS. Mr. President, I say to my colleague, I appreciate his comments. He and I are friends, and I would like to find a way to work on this. I will be happy to talk to him about this when we adjourn.

Having said that, I continue to have a significant concern about raising an issue on the HMO reform bill that is not related to HMO reform. We have pretty consistently throughout this debate opposed and defeated amendments unrelated to the coverage of this bill. There are obviously many subject matters that are related to the general area of health reform and health care. If we start adding amendments on all these, we would never get this legislation completed and passed. I continue to have that concern.

I am happy to work with my colleague and listen to his concerns and work on language, although at this moment this is an amendment we would be compelled to oppose.

Mr. ENSIGN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, I ask unanimous consent that when the Senate resumes consideration of the Patients’ Bill of Rights on Friday, June 29, at 9 a.m., the Senate proceed to vote in relation to the following amendments, and it be disposed of in the following order, with no second-degree amendments in order prior to the votes; further, that the Senator from North Carolina debate prior to each vote, and that the first rollcall vote be 15 minutes in length and subsequent rollcall votes be 10 minutes in length. The order of the votes tomorrow morning would be: Santorum, DeWine, Grassley, Nickles, Brownback, Ensign No. 849, and Ensign No. 850.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I indicated earlier in this debate that I would complete reading into the RECORD the names and titles of organizations that support the Patient Protection Act. Therefore the following is the final list:

Gateway; Gateways for Youth and Families in WA; George Junior Republic in Indiana; Gibault; Girls and Town in NE; Goodfellows Homes for Boys; Greenbrier Children’s Center; Growing Home in St. Paul, MN; Haddasah; Heart of America Family Services; Hemochromatosis Foundation; Hereditary Colon Cancer Association; Highfields, Inc. in Onondaga, MI; Holy Family Institute of Pittsburgh, PA; Home on the Range in Sentinel Butte in Sentinel Butte, MT; Hubert H. Humphrey, III—Former Minnesota Attorney General; Human Services, Inc.; IARCA An Association of Children; Idaho Youth Ranch; Indiana United Methodist Children; Infectious Disease Society of America; International Association of Psychosocial Rehabilitation Services; Jackson Feid Homes in YA; Jane Addams Hull House Association; Jeffrey Modell Foundation; Jewish Board of Family & Children in New York, NY; Jewish Community Services of South Florida; Jewish Family & Career Services; Jewish Family Service in TX; Jewish Family & Children’s Service in Minnetonka, MN; Jewish Family and Children’s Services; Jewish Family and Community Services; Jewish Family Service in Providence, RI; Jewish Family Service in Teaneck, NJ; Jewish Family Service in TX; Jewish Family Service of Akron, OH; Jewish Family Services of Los Angeles; Julia Dyckman Andrus Memorial Children’s Center in NY; June Burnett Institute; Kemmerer Village; Kentucky United Methodist Homes; KidsPeace National Centers, Inc. in PA; Lakeside, Kalamazoo, MI; Lakeside School, Inc. in Albany, NY; League of Women Voters; Leake and Watts Services, Inc. in Yonkers, NY; Learning Disabilities of America; Lee and Beulah Moor Children’s Home in TX; Luperus Foundation of America; Lutheran Child & Family Service in Bay City, MI; Lutheran Child & Family Services; Lutheran Social Services of Wisconsin; Manisses Communications Group in RI; Marjorie Shake Youth Services; Maryhurst, Inc.; Maryland Association of Resources for Families & Youth; Massachusetts Council of Family; Mental Fitness Center; Mental Health Liaison Group; MentalHealth AMERICA, Inc.; Methodist Children’s Home in TX; Metropolitan Family Service of Portland, OR; Metropolitan Family Services of Chicago; Michigan Federation of Private Child & Family Agencies; Mid-South Chapter of the
Paralyzed Veterans of America; Milton Her- ington; PA; Missouri Art- ai Children’s Home; Missouri Coalition of Children’s Agencies; Missouri Girls Town; Moorhead Child City and School; Morning Star Boys’ ranch in WA; Mountain Community Hospital Center; Natchez Children’s Home in Natchez MS; National Al- liance for the Mentally Ill; National Associ- ation for Rural Mental Health; National Asso- ciation for the Advancement of Orthotics and Prosthetics; National Association of Children’s Hospitals; National Association of Counties; National Association of Disabil- ity Councils; National Association of People with AIDS; National Association of Pri- vate School for Exceptional Children; Na- tional Association of Private Special Edu- cation Centers; National Association of Pro- tection and Advocacy Systems; National As- sociation of School Psychologists.


National Rehabilitation Association; Na- tional Therapeutic Recreation Society; Na- tional Transplant Action Committee; Na- tional Workers’ Network; National Voice on Mental Illness; Nazareth Children’s Home in Rockwell, NC; NETWORK; New Community Corporation in Newark, NJ; Newark Beth Israel Medical Center in New Jersey; NISH; Norris Adolescent Center in WI; Northeast Parent & Child Society in New York; Northern Virginia Family Serv- ice; Northeastern Chapter of the Paralyzed Vet- erans of America; Northwest Children’s Home, Inc.; Northwood Children’s Services in Duluth, MN; Oak Grove Institute Founda- tion; Oakland Family Services; Olive Crest Treatment Centers; Organization of Spec- ialist in Emergency Medicine; Outcomes, Inc. in Albuquerque, NM; PA Alliance for Children and Families in Hummeltown, PA.

Pacific Lodge Youth Services; Paget Founda- tion; Pain Care Coalition; Palmer Home for Children in Columbus, MS; Paralyzed Veterans of America; Patient Access Coal- ition; Patient Access to Responsible Care Al- liance; Pediatric Orthopedic Society of North America; Pennsylvania Council of Children’s Homes; PA; Person-to-Person Fami- ly Counseling Service of New Philadelphia, OH; Philadelphia Health Management Cor- poration in PA; Planned Parenthood Federa- tion of Pennsylvania; Pennsylvania Home for Chil- dren; Provident Counseling, Inc. in St. Louis, MO; Rehabilitation Engineering and Assist- ive Technology Society of North America; Religious Action Center of Reform Judaism; Research Institute for Independent Living; Ridgeland Head Start & Family Service; Salem Children’s Home; Salvation Army Family Services in San Francisco, CA; Scarsdale Edgemont Family Counsel in NY; School Social Work Association of America; Seattle Children’s Home in WA; Seacoast Non-Profit Assistance; Service Net, Inc. in PA; Sheriff’s Youth Programs of Minneapolis; Sipe’s Orchard Home in Conover, NC; Sjogren’s Syndrome Foundation; Society for Excellence in Eye care; Society for Women’s Health Research; Society of Cardiovascular & Interventional Radiology; Society of Ex- cellence in Eye Care; Society of Gynecologic Oncologists; Society of Maternal-Fetal Medi- cine; Southmount Children’s Homes of America; St. Anne Institute of Albany, NY; St. Colman’s Home in Watervliet, NY; St. Joseph Children’s Home; St. Joseph’s Indian School in SD; St. Mary’s Home House in Bea- verton, OR; St. Vincent’s Services, Inc. of Brooklyn, NY; Starr Commonwealth; Sun- beam Family Services of Oklahoma City, OK; Sunny Ridge Family Center. Tabor Children’s Services, Inc. of Doylestown, PA; Taylor-Palay Family, Inc. of Marlette, MI; Texas Association of Leaders in Children & Family; Texas Medical Asso- ciation; The Arc of the United States; The Bradshaw Community of Older Families, Inc.—Shreveport, LA; The Endocrine Society; The Family Center; The Hutton Settlement in WA; The Learning Disabilities Association of America; The Home of Mechanicsburg, PA; The Mill; The Omaha Home for Boys in NE; The Organiza- tion of Specialists in Emergency Medicine; The Penet- ratorly for Pata’s Disease of Bone and Related Disorders; The Presley Ridge Schools in PA; The Village Family Service Center in Faryo, ND; The Woodlands of Newborn in Madison, WI; The Woodland Home and School for Children in SC; Title II Community AIDS National Network.

Tourette Syndrome; Tourette Syndrome Association; Treatment Access Expansion Project; Triad Family Services in Ral- leigh, NC; Tulsa Boys’ Home in Tulsa, OK; Turning Point Center; Ulrich Children’s Home; United Community & Family Service; United Methodist Children’s Home; United Ostomy Association; United Methodists Children’s Home; University of Florida Special Care Group; Vera Lloyd Presbyterian Home & Family Services in AR; Vera Lloyd Presbyterian Home; Verde Mental Health Center; Vil- lage for Families & Children; Virginia Home for Boys; Webster-Cantrell Hall; Whaley Children’s Center; Wisconsin Association of Family and Children; Wisconsin Paralyzed Veterans of America; Woodland Hills in Du- luth, MN; Yellowstone Boys and Girls Ranch in Billings, MT; Youth Haven, Inc.; Youth Service Bureau; and YWCA of Northeast Louisiana.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the Bipartisan Patient Protection Act of 2001. Put simply, I believe this is a good bill.

If the Senate approves this bill, we could offer protection to all 190 million Americans in private health plans within a week. It’s that simple.

Congress has a duty to pass a com- prehensive Patients’ Bill of Rights to make sure patients have access to quality care and to ensure less HMO interference with medical decision making. We need to ensure, for example, access to emer- gency rooms, specialists, and clinical trials. Patients should be able to go to the emergency room closest to their home in the event of a medical emerg- ency. This bill does that.

Each day, 10,000 physicians see pa- tients harmed because a health plan has refused services. Patients and doc- tors feel that getting quality care is a constant battle. It is time for this to stop. And the time is now.

Each day we wait to approve a com- prehensive Patients’ Bill of Rights, 35,000 patients are denied access to the speciality care they need to manage or diagnose their illness.

I want to read to you a heart-wrench- ing letter I received from a California mother who has had difficulty getting her health plan to approve medically necessary services for her disabled daughter.

I believe this letter really highlights the humane reasons Congress must enact a strong Patients’ Bill of Rights this year. This mother writes:

My daughter is a total-care patient. She was in a terrible car accident approximately 14 years ago and sustained several inju- ries and is a quadriplegic. I chose to keep her at home. Her licensed care coverage is to be 200 hours a week. In the past two years, her insur- ance company has unilaterally cut back on her nursing care to 5.5 hours a day. This is one of many unilateral decisions the insurance provider has made regarding her care—disregarding her doctor’s and other medical providers’ assessments.

I, as her mother and conservator, who is not trained in medical practices or care, am expected to cover the remainder of the 18.5 hours a day. This has caused me to quit my job, file bankruptcy, and most importantly, it has seriously affected my health.

I am a senior citizen and am not supposed to lift, however, because of the practices of the insurance company, I have no choice. I cannot tell you when I last had a full night’s sleep in the past several years.

The insurance company not only cut back on her nursing care, they stopped approving her therapy which included physical, speech, and occupational.

I received a letter from her current insur- ance carrier stating that she was considered to be a normal employee and in August of 2001 all the aforementioned items would be stopped.

This is not based on my daughter’s current doctor’s orders nor her needs. This is not based on an assessment from an independent medical establishment or by an experienced, licensed nurse that was selected by the insur- ance company for a complete assessment which supported the necessity of 24-hour nursing care.

This decision is being made unilaterally by the insurance company officials. Is this what insurance companies can do to critically ill patients without any accountability or li- ability on their part?

I commend this mother for her com- mitment to providing her daughter with the best care available.

This letter highlights the importance of giving doctors the power to make medical decisions to provide care rather than the “green eye shade” of the insurance companies.

I strongly believe that doctors should be making the medical decisions. This
At the same time, this bill protects employers. If an employer does not make medical decisions, the employer cannot be held liable. It is that simple.

This bill does not overturn or preclude existing state liability laws. It specifically exempts doctors and hospitals from new causes of action. These are reasonable provisions. In states like California that have strong patient protections there has not been an explosion of lawsuits.

In fact, since the inception of California's right-to-sue law in January 2001 and the unlimited damage it provides for, there has not been a single lawsuit filed.

Instead, HMOs appear to be deferring more to patients' requests for treatment, according to the first data to emerge from the state's HMO regulator. California has the longest history in managed care and the highest number of insured people in HMOs nationwide. Over 70 percent of Californians are enrolled in either a commercial HMO or a preferred provider organization. 

Approximately 20 million non-elderly Californians have access to health insurance through their job or privately purchase coverage. So for California, these protections are critical.

Due in part to the high penetration of managed care, California's health care system is on the verge of collapse. Resources are stretched to the limit and patients, as a result, are not getting the services they need.

For example, California's capitation rate, the rate paid to doctors for treatment, is one of the lowest in the Nation. The average capitation rate in California reached its peak in 1993 at $45 per month. Last year, the rate dropped to $26 (PriceWaterhouse Coopers).

These low reimbursement rates undoubtedly impact quality of care and access to services.

Many California hospitals and other health care providers have been forced to limit hours of operation and discontinue services. The burden to provide care is put on those that have remained open, and many of these facilities are now facing financial problems of their own.

I know that California's health care system is not unlike other systems across the country. The bottom line is that patients should not be the one's made to suffer at the hands of a failing health care system.

People pay monthly premiums. They expect their health insurance to be there when they need it. That is what insurance is. It insures against loss from an unforeseen illness or injury.

But with HMOs today, the certainty of good health care is being seriously eroded. Many people feel that every time they need care, it is a tremendous hassle.

Doctors and other health practitioners are already held accountable for their mistakes under State law. If a "green eye-shade" overrules a doctor's medical judgement and harms a patient, the plan too should be held responsible.

The bottom line is that people feel they have the fight to get the quality care they have paid for. Americans are tired of jumping through hoops to get good care.

People should not have to fight for their health care. They pay for it out of their monthly paycheck. It should be there for them when they need it.

I would like to close with a very tragic story about a young, 16 year old girl from Irvine, California who did not get the care she needed from her HMO in a timely manner. I think her story provides a poignant summary of the problem with managed care providers. Unfortunately, her story does not have a happy ending.

Serenity Silen was diagnosed with acute myeloid leukemia, or AML, in late February 1998. She had gone to her HMO four times, to four different HMO doctors, since the beginning of 1998. Each time she complained of the exact same symptoms, all of which could indicate leukemia.

Over the course of the four visits, Serenity's condition was never diagnosed. Finally, in the middle of February 1998, Serenity was taken to the emergency room of an out-of-network hospital because her mother was so frustrated with the care at their HMO.

The emergency room doctor was the first doctor, in the five weeks since the symptoms arose, to order a complete blood count test. The blood count test indicated a dangerously high white blood cell count that was symptomatic of leukemia. With a much delayed diagnosis, Serenity's leukemia was now going to be much more difficult to treat.

Fed up with the HMO, Serenity's parents sought a second opinion from a highly recognized oncologist at an out-of-network hospital. Serenity was transferred to that hospital to be under the oncologist's care. After being at the new hospital only a few days, Serenity explained to her parents that she did not realize how much pain she was in until the new hospital helped to take it away. After 2½ months at the new hospital, Serenity died. The disease had not been diagnosed in time.

I urge my colleagues to support this bill. I urge you to support this bill for the children like Serenity in your State. The constituents who battle with their HMOs daily to get the quality care they need and deserve. Many of these patients are too sick to fight with their HMOs to get access to the services necessary to treat their illnesses. How many more lives are we going to have to lose to the HMO battle before Congress rises up and passes a Patients' Bill of Rights that protects the patient?

This bill has been a long time in the making. Let's get it done this session.
CONGRESSIONAL RECORD—SENATE
June 28, 2001

ADJOURNMENT OF THE TWO HOUSES OVER THE FOURTH OF JULY HOLIDAY

Mr. REID. Mr. President, I have a unanimous consent request that the Senate proceed to H. Con. Res. 176, the adjournment resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 176) providing for conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to its adjournment resolution, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 176) was agreed to, as follows:

H. CON. RES. 176

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, June 28, 2001, or Friday, June 29, 2001, or a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, July 10, 2001, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, June 28, 2001, Friday, June 29, 2001, Saturday, June 30, 2001, Monday, July 2, 2001, Tuesday, July 3, 2001, Thursday, July 5, 2001, Friday, July 6, 2001, or Saturday, July 7, 2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned or recessed until noon on Monday, July 9, 2001, or until such time on that day as may be specified by its Majority Leader or his designee in the motion to adjourn or recess adjourned or recessed until noon on Monday, July 9, 2001, or until such time on that day as may be specified by its Majority Leader or his designee in the motion to adjourn or recess adjourned or recessed until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. REID. Mr. President, for the edification of Members, the resolution allows the House to go out today or tomorrow and allows the Senate to go out any day up until July 7.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING NEW YORK FIREFIGHTERS—JOHN J. DOWNING, BRIAN FAHEY, AND HARRY FORD, WHO LOST THEIR LIVES IN THE LINE OF DUTY

Mrs. CLINTON. Mr. President, let me state for the RECORD that the request I am about to make has been cleared on the Republican side.

I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 117 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 117) honoring John J. Downing, Brian Fahey, and Harry Ford, who lost their lives in the course of duty as firefighters.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. CLINTON. Mr. President, I rise today to introduce a resolution honoring John J. Downing, Brian Fahey, and Harry Ford, who gave their lives this past Father's Day while protecting the lives of others. Together, these brave men left behind three widows and eight children whom we also honor today for their sacrifice.

On June 17, as a treacherous five-alarm blaze at the Long Island General Supply Company in Queens, NY, without hesitation, as they have done countless times before, nearly 350 firefighters and numerous police officers responded to the call for help. Two civilians and dozens of firefighters and police officers were injured. And three courageous fathers lost their lives. It was the last time their children would be able to spend Father's Day with them.

John Downing was 40 years old, an 11-year veteran of the New York Fire Department when he responded to the five-alarm blaze. He was a valiant public servant who had been recognized for his bravery. John left behind his wife Anne, his 7-year-old daughter Joanne, and his three-year-old son Michael.

Brian Fahey, 46 years old, and a 14-year veteran of the department from East Rockaway, NY, was also a husband and father of three. His years of service to his community were made even more proud by his courage. He is survived by his wife Mary and their three sons: Brendan, 8; and twins, Patrick and James, 3's years old.

Harry Ford, age 50, gave nearly three decades of service to the New York City Fire Department. During his exemplary career, he received nine bravely citations. He is survived by his wife Denise; his daughter Janna O'Brien, age 24; and two sons, Harry, 12, and George.

Mr. President, I paid a call on the two firehouses early Sunday morning who had lost these brave patriots, and I spent time talking to the men who go to work every day not knowing what is going to be asked of them, who sometimes go for, thankfully, days, or was a month or months without ever having to put themselves in danger. But when the call comes, they are ready. And whether it is a call to respond to an emergency need because of an illness, an accident, or a huge raging fire that is about to get out of control, they represent the very best we have in our society.

We live in a society that seems to be in perpetual search for heroes, whether in the form of sports figures or screen idols. But to find true heroes, sometimes we don't have to look so very far from home. We certainly don't have to look any farther than the brave men we are honoring today.

The unmistakable courage and the integrity that these men and their families have made for the good of their neighbors and their community are the kinds of virtues and values that should be held up to our children and ourselves as something we should all aspire to.

Finally, in so honoring these men, we honor the hundreds of thousands of public safety officers across this country that, every single day, risk their lives and put them and their families at risk to keep us safe from harm. Their strong tradition of bravery and sacrifice keeps our communities safe and fills our hearts with pride for their selfless acts of courage for others.

I hope that next year when Father's Day comes around, the children who have lost their fathers in this fire and those who have lost fathers and mothers because they were serving us will know how grateful we are for their sacrifice. I hope all of my colleagues will join me in supporting this resolution.

I yield back the remainder of my time.

Mr. DODD. Mr. President, I rise in support of Senator CLINTON's resolution honoring the fallen firefighters of New York and to join with her in acknowledging the bravery and commitment of Harry Ford, Brian Fahey, and John Downing. These men were firefighters—firefighters who risked their lives and gave their lives to protect the public. These men died on Sunday, June 17th, while fighting a fire in Queens, New York. The price they paid on our behalf was as great a price as any citizen can pay. We owe these men our deepest appreciation and respect.

On Sunday, the 17th—Father's Day—firefighters Ford, Fahey and Downing worked quickly to fight a fire in a local hardware store. Thirty minutes after leaving the fire station, responding to what they thought was a routine call, an explosion buried the men under a mound of rubble. Dozens of firefighters worked to rescue the men, but they could not be reached in time.

These men were husbands and fathers. Harry Ford leaves behind his
wife, Denise and two sons, Harry, age 12, and Gerard, age 10. Brian Fahey leaves behind his wife, Mary and three sons, Brendan, who is 8 years old, and 3-year-old twins, Patrick and James. John Downing is survived by his wife Anne, his daughter Joanne, age 7, and his son Michael, who is 3. My thoughts and prayers are with these families.

I am humbled by their devotion to public service. Their deaths represent the ultimate sacrifice a person can make for his or her fellow human beings. They died while fighting a fire and it is not hyperbole to say that they died while making America a safer place to live.

I am always saddened to realize that it takes a tragedy like this to bring attention to the needs of fire departments and firefighters nationwide. I hope the firemen's sacrifice is a call for help. They are on the scene of traffic accidents and construction accidents. When a natural or man-made calamity strikes—from hurricanes to school shootings to bombings—firefighters are there without fail, restoring order and saving lives.

Unfortunately, fire departments across the Nation struggle to find resources to help keep our communities safe. As the demands placed on fire departments have grown in volume and magnitude, the ability of local residents to support them has been put to a severe test. As a result, towns and cities throughout the country are struggling mightily to provide the fire departments with the resources they require.

For these reasons I have strongly supported helping localities meet their critical objectives. Communities need more firefighters and community firefighters need the resources to ensure that they have the training and equipment to protect themselves and the public.

Last year we passed an important piece of legislation called the Firefighter Investment and Response Enhancement Act which authorized the Federal Emergency Management Agency to provide grants to local firefighters so they could purchase the equipment they need. Congress appropriated $100 for the program last year and the FEMA has just completed the first grant competition under the program. The demand is extraordinary. FEMA received nearly $3 billion worth of grant applications—that’s 30 times more in requests that is currently available. No amount of funding can bring back Firefighters Ford, Fahey, and Downing. New fire trucks or better training programs or even more firefighters cannot even begin to compensate for the loss suffered by the people of Queens and the families of these brave men. For their lives, we are forever indebted, and the members of this chamber to say that these men and their families shall not be forgotten. They have sacrificed their lives for us, and for this they deserve no less than the highest degree of honor and respect. We here today cannot compare our own deeds to those of Harry Ford, Brian Fahey, and John Downing, but we can bring honor to ourselves and justice to their memories by keeping them and the needs of the fire service in mind as we perform our own duties.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 117) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 117

Whereas on June 17, 2001, 350 firefighters and numerous police officers responded to a 911 call that sent them to Long Island General Supply Company in Queens, New York; Whereas a fire and an explosion in a 2-story building had turned the 128-year-old, family-owned store into a heap of broken bricks, twisted metal, and shattered glass; Whereas all who responded to the scene served without reservation and with their personal safety on the line; Whereas 2 civilians and dozens of firefighters were injured, including firefighters Joseph Vosilla and Brendan Manning who were severely injured; Whereas John J. Downing of Ladder Company 163, an 11-year veteran of the department and resident of Port Jefferson Station, and a husband and father of 2, lost his life in the fire; Whereas Brian Fahey of Rescue Company 4, a 14-year veteran of the department and resident of East Rockaway, and a husband and father of 3, lost his life in the fire; and Whereas Harry Ford of Rescue Company 4, a 27-year veteran of the department from Long Beach, and a husband and father of 3, lost his life in the fire: Now, therefore, be it Resolved, That the Senate—

(1) honors John J. Downing, Brian Fahey, and Harry Ford, who lost their lives in the course of duty as firefighters, and recognizes them for their bravery and sacrifice; (2) extends its deepest sympathies to the families of these 3 brave heroes; and (3) pledges its support and to continue to work on behalf of all of the Nation’s firefighters who risk their lives every day to ensure the safety of all Americans.

A CALL FOR ACTION

Mr. LEVIN. Mr. President, a new poll conducted by the Opinion Research Corporation International and released by the Brady Campaign to Prevent Gun Violence confirms once again that the American people support sensible gun safety legislation. Eighty-three percent of those polled said they support criminal background checks on all gun purchases at gun shows. Nearly four out of five respondents voiced support for preventing gun dealers from selling guns to anyone who has not passed a background check, even if it takes more than 3 days to complete the check. And more than 8 out of every 10 people polled believe that all guns should be sold with childproof safety locks.

The message here is clear. People are fed up with the reports of gun violence that dominate the front page and the evening news. America wants action.

The Brady Campaign’s poll and countless other studies demonstrate our mandate. The incidents of gun violence that plague our neighborhoods and endanger our children confirm our moral obligation.

We should ignore neither. We cannot let another Congress go by without action. Let’s close the loopholes in our gun laws and remember the 107th Congress as a time when we made America a safer place for our children and our grandchildren.

GENERAL ACCOUNTING OFFICE REPORT ON DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

Mr. MCCONNELL. Mr. President, when the 107th Congress passed the Transportation Equity Act for the 21st Century, TEA–21, there was a vigorous and close debate about whether to convert the Disadvantaged Business Enterprise Program into a race neutral program helping all small disadvantaged businesses. It troubled many members of both Houses that we lacked basic information about the characteristics of DBEs and non-DBEs and about alleged discrimination in the transportation industry. Consequently, I introduced, with widespread bi-partisan support, an amendment to TEA–21, requiring the GAO to gather the information Congress was missing that is essential to understanding the DBE program. As Congressman Stupak, Chair of the House Committee on Transportation and Infrastructure and the floor manager for the transportation bill, emphasized during the House debate, the Act “also requires a GAO study that would examine whether there is continued evidence of discrimination against small business owned and controlled by socially and economically disadvantaged individuals. I believe such a study will lay the groundwork for future reform."

Three years later, the GAO has produced a comprehensive report on the questions Congress asked it to investigate. This objective, impartial report
entitled, "Disadvantaged Business Enterprises: Critical Information is Needed to Understand Program Impact," GAO Report GAO–01–586, June 2001, is highly significant to the continuing legislative and judicial debate over the DBE program. Professor George R. La Noue, one of the distinguished scholars in this field, has analyzed the GAO’s report. He notes that the “DBE program has been continuously subject to litigation during its almost two decades of existence.” Professor La Noue concludes that “the picture of the DBE program that emerges from the GAO report is one of essential information that is missing, or if available, does not support any finding of a national pattern of discrimination against DBEs.” I am pleased to provide Professor La Noue’s analysis of the GAO report, and I request that it be printed in the RECORD.

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

An Analysis of “Disadvantaged Business Enterprises: Critical Information is Needed to Understand Program Impact”


(By George R. La Noue, Professor of Political Science)

Director, Project on Civil Rights and Public Contracts, University of Maryland, Baltimore County

During the 1998 consideration of the Transportation Equity Act for the 21st Century (TEA–21), there was extensive debate in both Houses about whether to make the DBE program race-neutral. In the end, a compromise was reached to retain a race conscious DBE program, while requiring the General Accounting Office to make a three year study of the characteristics of the DBEs and non-DBEs participating in federal transportation programs and to gather existing evidence of discrimination. Such information was intended to provide a solid basis of facts for courts, legislators, and others grappling with the complex issues of the constitutionality of the DBE program.

The report has been released and its conclusions are highly significant. GAO performed its three year study by obtaining data from 52 state DOT recipients (including the District of Columbia and Puerto Rico) and 31 of the largest (accounting for two-thirds of transit grant funds obligated in 1999) transportation districts in the country. In addition GAO staff interviewed representatives of interest groups on both sides of the DBE question and analyzed the results of 14 transportation related disparity studies. Following are GAO’s major conclusions.

1. Discrimination Complaints

GAO conducted a survey of discrimination complaints received by USDOT and recipients. GAO found that, while USDOT sometimes receives complaints of discrimination, the agency does not compile or analyze the information in those complaints. GAO could not supply information on the number of complaints filed, investigations launched, or their outcomes. (p. 33) GAO also asked state and local transit recipients about complaints they received and they had better information. State DOTs asked the recipients had no complaints, while a total of 31 complaints were received by the other recipients. Of these, 29 were investigated and 27 were resolved within 4 to 12 months of the complaint.

2. Disparity Studies

GAO also reviewed 14 transportation-specific disparity studies completed between 1996 and 2000. GAO concludes that these studies have been highly significant to the continuing high level of discrimination against DBEs. GAO found that: the limited data used to calculate findings of discrimination were not a source of evidence because they might be a source of evidence about discrimination against DBEs and better data was needed to determine the level of discrimination these groups purportedly are remedying. GAO found that about 75 percent of the recipients surveyed used disparity studies to set contract goals for the year 2000. (p. 29)

3. DBE Discretion

GAO then detailed disparity study problems, particularly in calculating DBE availability. These problems are important not because the studies are invalid, but because these problems exist in the regulations USDOT issued regarding annual goal setting. USDOT as a practical matter permits recipients to use a wide variety of sources to measure availability on which goals are then based.

GAO made other specific criticisms of the studies. For example, the studies did not have information on firm qualifications or capacities; they failed to analyze both the dollars and contracts awarded and sometimes did not have subcontracting data. This was important: Because MBE/WBEs are more likely to be small or prime contractors, MBEs/WBEs may appear to be underutilized when the focus remains on prime contractor data. Furthermore, although disparity study calculations based on the number of contracts, all but two based their determination of disparities on only the dollar amounts of the contracts. However, prime contracts worth more than $750,000 are often awarded to non-MBEs/WBEs, they are often unable to perform on larger contracts. Therefore, it would appear that they were awarded a disproportionate share of contract dollars. (p. 32) (see data on contract awards on p. 51)

GAO’s conclusion here is significant because the USDOT regulations measure utilization only in dollars, not contracts, and annual goals are set based on total dollars rather than on the DBE share of subcontracting dollars.

Finally GAO notes that although USDOT advised recipients that disparity studies should be “reliable.” USDOT provided no explicit guidance on what would constitute such a study. GAO concluded that: USDOT’s guidance does not, for example, caution against using studies that contain the types of data and methodological problems described above. Without explicit guidance on what makes a disparity study reliable, states and transit recipients may have little incentive to seek or maintain certification.

Is the basic assertion true? It turned out that 10 of 12 recipients with discontinued programs did not know what the DBE participation result was. For instance, although Michigan was cited by DBE proponents in the congressional debate as an example of DBE utilization decline after Michigan Road Builders Assn. v. Millikin (1987) struck down the state highway MBE program, GAO reports: Michigan could not provide us with minority and women owned business participation data in state highway contracting for the years immediately before and after it discontinued its program. Furthermore, Michigan officials stated that the analysis showing the decline that is often cited was a one-time issue and that the problem is no longer available. Consequently we can not verify the number cited during the debate (p.37)

4. Missing Information

Much of the above criticisms GAO cast in terms of a lack of information, but there were other key items missing as well. GAO had planned to survey all transit authorities receiving federal funds, but FTA does not have a complete list. (p. 74) When the 83 state and transit recipients were surveyed, only 40% or less of the respondents could report the gross revenues of the DBEs that won contracts. Less than 25% of the respondents could report the gross revenues of the DBEs that did not win contracts. (p. 52–55) Only about a third of the agencies could report data on the personal net worth of DBE owners, although TEA–21 regulations require that such owners net worth not exceed $750,000.

Only 26 of the recipients could report data on the gross revenues or owner net worth characteristics of non-DBE firms. (p. 68) While 79 respondents could report data on the personal net worth of non-DBE owners, only 26 respondents could report similar data for non-DBEs. That means that most respondents did not regard comparing DBE and non-DBE personal net worth important in setting goals or in determining whether discrimination exists.
Nor are respondents acquiring relevant information not considered and a study determining if awarding prime or sub contracts to DBEs affects contract costs; 67.5% no study on discrimination against DBE firms; 94.2% no study of discrimination against DBEs by financial credit, insurance or bond markets; 79.5% no study of factors making it difficult for DBEs to compete; and 92.8% no study on the impact of the DBE program on competition and the creation of jobs. (p. 66-68). Only 26.5% of the respondents have developed and implemented use of a bidding list, although the regulations require such.

The DBE program has been continuously subject to litigation during its almost two decades of existence. Overall, the picture of the DBE program that emerges from the GAO report is one of essential information that is missing, or if available, does not support any finding of a national pattern of discrimination against DBEs.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 18, 1998 in New York City. A man who used anti-gay epithets allegedly slashed a gay man in the face with a knife. Eric Rodriguez, 22, was charged with attempted murder, assault, and criminal possession of a weapon.

I believe that government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

RAILROAD CROSSING DELAY REDUCTION ACT

Mr. DURBIN. Mr. President, earlier this month I introduced the Railroad Crossing Delay Reduction Act, S. 1015, with my colleagues, Senators LEVIN and STABENOW.

This legislation would accelerate efforts at the U.S. Department of Transportation to address the issue of rail safety by requiring the Secretary of Transportation to issue specific regulations governing the use of signals that block automobile traffic at railroad crossings. Currently, there are no Federal limits on how long trains can block crossings. The Railroad Crossing Delay Reduction Act would simply minimize automobile traffic delays caused by trains blocking traffic at railroad grade crossings.

In northeastern Illinois, there are frequent blockages at rail crossings. These blocked crossings prevent emergency vehicles, such as fire trucks, police cars, ambulances, and other related vehicles from getting to their destinations in the times of need. This is a serious problem and one I hope to address by passage of this important legislation.

Blocked rail crossings also delay drivers by preventing them from getting to their destinations. Motorists, knowing they will have to wait for a train to move at blocked crossings, sometimes try to beat the train or ignore signals completely. This is a threat to public safety, and one that must stop. Motorists must act responsibly, but we can reduce the temptation by reducing delays.

Trains stopped for long periods of time also tempt pedestrians to cross between the train cars. I’ve heard from local mayors in my State that children, in order to get home from school, cross between the rail cars. This is a terrible invitation to tragedy.

Trains blocking crossings cause traffic problems, congestion, and delay. These issues are very real. They are serious. And more importantly, they are a threat to public safety. To address these problems, I’ve introduced with my colleagues the Railroad Crossing Delay Reduction Act. I’m hopeful this legislation will provide for a safer Illinois and a safer Nation. I urge my colleagues to join the effort to reduce blocked rail-grade crossings by cosponsoring and supporting S. 1015.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 27, the Federal debt stood at $5,655,167,261,852.88. Five trillion, six hundred fifty-five billion, five hundred million, six hundred sixty-seven million, two hundred sixty-six thousand, seven hundred fifty-two dollars and eighty-eight cents.

One year ago, June 27, 2000, the Federal debt stood at $5,650,720,000,000.00. Five trillion, six hundred fifty billion, seven hundred twenty million. Five years ago, June 27, 1996, the Federal debt stood at $5,118,104,000,000, Five trillion, one hundred eighteen billion, one hundred forty-four million.

Ten years ago, June 27, 1991, the Federal debt stood at $3,502,028,000,000. Three trillion, five hundred two billion, twenty-eight million.

Fifteen years ago, June 27, 1986, the Federal debt stood at $2,040,977,000,000. Two trillion, forty billion, nine hundred seventy-seven million, which reflects a debt increase of more than 3.5 trillion, $3,614,190,264,852.88. Three trillion, six hundred fourteen billion, one hundred ninety million, two hundred sixty-four thousand, eight hundred fifty-two dollars and eighty-eight cents during the past 15 years.

CONGRATULATING JAMES W. AND JESSE ANN DAVIS

• Mr. ALLEN. Mr. President, I rise today to congratulate two residents of Ashburn, Virginia, on the birth of one of my newest constituents and a fine young man, James Michael Davis. James Michael was born on March 20, 2001, weighing 6 pounds and 10 ounces, and is the proud son of James W. Davis, a member of the U.S. Capitol K-9 Police Force, and Jesse Ann Davis. He is the grandson of Edith Louise Davis and the late James Carl Davis, and Stella Canchola and the late Raymond Canchola.

James Michael has entered a world of unlimited opportunity and possibilities. His parents and grandparents will help instill virtues of independence, self-reliance, perseverance and determination, all of which will serve him well along the road of life. I want to extend my best wishes to James Michael for many years of health and happiness.

IN RECOGNITION OF DR. RICHARD W. MCDOWELL

• Mr. LEVIN. Mr. President, I am delighted to speak today to acknowledge a leader, from my home State of Michigan, who has dedicated his life to serving the citizens of Michigan, Dr. Richard W. McDowell. Today, many people will gather to pay tribute to Dr. McDowell for his service as President of Schoolcraft College, in Livonia, MI, for the past twenty years.

Dr. McDowell has dedicated his life, both professionally and personally, to the service of his community. Dr. McDowell has served capably and honorably as the President of Schoolcraft College during a period of incredible growth for this institution. He has presided over programs and projects that have reshaped the campus, and enhanced its ability to meet the needs of students at Schoolcraft College.

During his tenure as President, Dr. McDowell has presided over the construction of numerous structures including additions to the Campus Center, the Child Care Center and the student center that bears his name. In addition to enhancing the physical facilities, he has greatly enhanced the economic structure of the campus by forming the Schoolcraft Development Authority, and by expanding the enrollment of students. These efforts will secure the ability of the school to maintain a world-class campus while providing students with access to an affordable education.

In addition to these activities, Dr. McDowell is a leader in his profession and in numerous civic institutions. His love of academia and education translated into his desire to serve the educational community at large. Dr.
McDowell has served as President of the Michigan Community College Association, and he has been a member of the Michigan Educational Trust Board, the National Advisory Panel for the Community College Program at the University of Michigan, the American Association of Community Colleges and the North Central Association of Colleges and Schools.

He has further assisted his community by serving on the board of Wayne County Private Industry Corporation, St. Mary Mercy Hospital and the City of Livonia Ethics Board. This selfless leadership has been recognized by many organizations, including his alma maters—Indiana University of Pennsylvania and Purdue University. Both of these institutions awarded him their distinguished alumni awards. In addition, he was selected one of the top fifty college community presidents in the United States by the Community College Leadership Program at the University of Texas at Austin.

I hope my Senate colleagues will join me in saluting Dr. McDowell for his career of public service, particularly the commitment to education which he has exhibited for the last two decades.

CONCRETE CANOE COMPETITION

- Mr. SESSIONS. Mr. President, I join with my colleagues in support of the Concrete Canoe Competition.

Civil Engineers design the backbone of our Nation’s infrastructure. By designing, building, and maintaining our infrastructure, these engineers have quietly helped to shape the history of our Nation and its communities. Civil Engineers contribute daily to our standard of living through their designing, building, and maintaining our transportation, clean water, and power generation systems.

A great example of civil engineering ingenuity is manifested through the National Concrete Canoe Competition. The Concrete Canoe Competition provides college and university students an opportunity to use the engineering principles learned in the classroom, and apply them in a competitive environment where they further learn important team and project management skills.

I am very pleased to announce that on June 16, 2001, the University of Alabama at Huntsville won an unprecedented fifth national Championship in the Concrete Canoe Competition.

RETIREMENT OF JOHN C. HOY AS PRESIDENT OF THE NEW ENGLAND BOARD OF HIGHER EDUCATION

- Mr. KENNEDY. Mr. President, it is an honor today to recognize the outstanding accomplishments of John C. Hoy, president of the New England Board of Higher Education, who is retiring this month. Mr. Hoy has dedicated the past twenty-three years to serving the higher education institutions of the New England region, and his leadership will be greatly missed.

Since he became president of the Board in 1978, Mr. Hoy has led the effort to provide an accessible and affordable education for every New Englander. To accomplish this goal, he established reforms in his own organization, and he also involved individuals and businesses throughout New England in effective partnerships that served students and institutions alike. Among his primary achievements was the publication of numerous important books, including studies on the relationship between higher education and economic well-being in New England, the links between U.S. competitiveness and international aspects of higher education, and the effects of legal education on the New England economy.

In addition, John Hoy offered much-needed support to minority communities. He emphasized participation by Blacks and Hispanics in higher education, and he worked effectively to increase the number of ethnic minorities completing PhD programs. He also created a scholarship program for Black South African students at South Africa’s open universities under apartheid.

John Hoy also cared deeply about the way technology was changing higher education, in New England and around the country. Under his initiative, the Board explored the promise of biotech industries and manufacturing in New England, and worked to improve technical education, with the help of both professional educators and the private sector. In addition, he worked with the regional boards of higher education to coordinate telecommunications among higher educational institutions.

John C. Hoy deserves great credit for all he has done to enhance higher education in New England. His accomplishments are deeply appreciated by all of us who know him, and I welcome this opportunity to wish him a long and happy retirement.

HONORING DR. BERNARD MEYERS

- Mr. CRAPO. Mr. President, I rise today to say thank you to Dr. Bernard “Bernie” Meyers, President and General Manager of Bechtel BWXT Idaho, LLC (BWBI). BWBI manages the Idaho National Engineering and Environmental Laboratory (INEEL) for the United States Department of Energy.

The INEEL is the third largest employer in the state of Idaho and the largest single employer in the contiguous United States. It is also a significant component of the Idaho economy.

On August 1, 2001, Bernie will retire as President of BWBI and assume additional duties on behalf of Bechtel. In addition to his duties as President of BWBI, Bernie is also Senior Vice President in the 30,000 employee worldwide Bechtel organization.

Bernie’s 39-year professional career includes 26 years spent with Bechtel, where he has risen through the nuclear engineering ranks while serving as an Engineer, Supervisor, Project Manager, Vice President, and finally as Senior Vice President.

Bernie’s stewardship of Bechtel BWXT Idaho represents a strong demonstration of Bechtel’s commitment to provide customer satisfaction and operational excellence for the eastern Idaho community. In addition to being a Senior Vice President, Bernie has in the past directed major Bechtel companies, managed North American operations, headed up the firm’s Engineering and Construction operations, managed Bechtel’s nuclear business line and served as an “in-the-trenches” project manager for some $30 billion worth of nuclear power jobs.

During that same time, Bernie gained INEEL-applicable experience in integrating safety through diverse workforces and in serving as a leader in nuclear technologies and nuclear operations. Over the years, he has managed large, complex and highly technical entities; overseen research and development organizations, and helped expand new and existing business lines into both national and international markets. He also has integrated technical, management and business systems across multiple offices, companies, sites, and disciplines.

Bernie is a Fellow in the American Society of Civil Engineers and the American Concrete Institute, and has authored a textbook, as well as more than 60 professional papers. He holds a master’s degree in civil engineering from the University of Missouri and a doctor’s degree in civil engineering from Cornell University.

During his time in Idaho, Bernie Meyers has provided sound thinking, decisive leadership and an intelligent vision for the future of the INEEL. He has provided honest and frequent communications about INEEL activities with Idaho’s Congressional delegation, Idaho elected officials, key stakeholders, business and community leaders and the site’s employees.

Under Bernie leadership, BWBI has proven to be a solid corporate neighbor throughout the state of Idaho. His advocacy for science education has helped to firmly establish the JASON Science Education program in the state, creating an awareness of science that delivers science and engineered solutions to the world’s environmental, energy and security challenges.
and technology careers for Idaho’s elementary and secondary school students. His support of art, cultural and civic causes have contributed to the financial well being of many of organizations in Idaho.

On behalf of the people of Idaho, I want to say thank you to Bernie Meyers for a job well done. I want to wish Bernie and his wife Rita all the best as they tackle new challenges in the years ahead.

WE THE PEOPLE COMPETITION

• Mr. MILLER. Mr. President, I would like to congratulate the following students for their outstanding performance in the national finals of the ‘We the People ... The Citizen and the Constitution’ contest in Washington, D.C. on April 21-23, 2001.

Joey Angel, David Connor, Darrell Davis, Eric Eloise, Jesse Gelbaum, Lindsey Green, Kyle Hale, Matthew Hail, James Jones, David Lee, Jennie Long, Greer Pasmanick, Benjamin Riddick, Emily Rubinson, Matthew Snyder, Sanjay Tamhane, Jordan Tritt, and Scott Visser.

The leaders of this exceptional group of students are: Celeste Boemker, Teacher, Parker Davis, State Coordinator, and John Carr, District Coordinator.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer before the Senate messages from the President of the United States submitting sundry nominations where were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE CORPORATION FOR PUBLIC BROADCASTING FOR FISCAL YEAR 2000—MESSAGE FROM THE PRESIDENT—PM 32

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources.

To the Congress of the United States:

One of the first actions I took when I became President in January was to create the National Energy Policy Development Group to examine America’s energy needs and to develop a policy to put our Nation’s energy future on sound footing.

I am herewith transmitting to the Congress proposals contained in the National Energy Policy report that require legislative action. In conjunction with executive actions that my Administration is already undertaking, these legislative initiatives, harking to the underlying causes of the energy challenges that Americans face now and in the years to come. Energy has enormous implications for our economy, our environment, and our national security. We cannot let another year go by without addressing these issues together in a comprehensive and balanced package.

These important legislative initiatives, combined with regulatory and administrative actions, comprise a comprehensive and forward-looking plan that utilizes 21st century technology to allow us to promote conservation and diversify our energy supply. These actions will increase the quality of life of Americans by providing reliable energy and protecting the environment.

Our policy will modernize and increase conservation by ensuring that energy is used as efficiently as possible. In addition, the National Energy Policy will modernize and expand our energy infrastructure, creating a new high-tech energy delivery network that increases the reliability of our energy supply. Further, it will diversify our energy supply by encouraging renewable and alternative sources of energy as well as the latest technologies to increase environmentally friendly exploration and production of domestic energy resources.

Importantly, our energy policy improves and accelerates environmental protection. By utilizing the latest in pollution control technologies to cut harmful emissions we can integrate our desire for a cleaner environment and a sufficient supply of energy for the future. We will also strengthen America’s energy security. We will do so by reducing our dependence on foreign sources of oil, and by protecting low-income Americans from soaring energy prices and supply shortages through programs like the Low Income Housing Energy Assistance Program.

My Administration stands ready to work with the Congress to enact comprehensive energy legislation this year.

GEORGE W. BUSH.

REPORT ON THE COMPREHENSIVE NATIONAL ENERGY POLICY DATED JUNE 2001—MESSAGE FROM THE PRESIDENT—PM 33

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources.

To the Congress of the United States:

One of the first actions I took when I became President in January was to create the National Energy Policy Development Group to examine America’s energy needs and to develop a policy to put our Nation’s energy future on sound footing.

I am herewith transmitting to the Congress proposals contained in the National Energy Policy report that require legislative action. In conjunction with executive actions that my Administration is already undertaking, these legislative initiatives, harking to the underlying causes of the energy challenges that Americans face now and in the years to come. Energy has enormous implications for our economy, our environment, and our national security. We cannot let another year go by without addressing these issues together in a comprehensive and balanced package.

These important legislative initiatives, combined with regulatory and administrative actions, comprise a comprehensive and forward-looking plan that utilizes 21st century technology to allow us to promote conservation and diversify our energy supply. These actions will increase the quality of life of Americans by providing reliable energy and protecting the environment.

Our policy will modernize and increase conservation by ensuring that energy is used as efficiently as possible. In addition, the National Energy Policy will modernize and expand our energy infrastructure, creating a new high-tech energy delivery network that increases the reliability of our energy supply. Further, it will diversify our energy supply by encouraging renewable and alternative sources of energy as well as the latest technologies to increase environmentally friendly exploration and production of domestic energy resources.

Importantly, our energy policy improves and accelerates environmental protection. By utilizing the latest in pollution control technologies to cut harmful emissions we can integrate our desire for a cleaner environment and a sufficient supply of energy for the future. We will also strengthen America’s energy security. We will do so by reducing our dependence on foreign sources of oil, and by protecting low-income Americans from soaring energy prices and supply shortages through programs like the Low Income Housing Energy Assistance Program.

My Administration stands ready to work with the Congress to enact comprehensive energy legislation this year.

GEORGE W. BUSH.

MESSAGES FROM THE HOUSE

At 10:21 a.m., message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 691. An act to extend the authorization of funding for child passenger protection education grants through fiscal year 2003.

H.R. 2113. An act to establish a commission for the purpose of encouraging and providing for the commemoration of the 50th anniversary of the Supreme Court decision in Brown v. Board of Education.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 176. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

At 5:50 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2311. An act making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes.

The message also announced that pursuant to section 201(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431), as amended by Public Law 105-155, and upon the recommendation of the Minority Leaders, the Speaker appoints the following members on the part of the House of Representatives to the Commission on
MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 691. An act to extend the authorization of funding for child passenger protection education grants through fiscal year 2003; to the Committee on Commerce, Science, and Transportation.

H.R. 2133. An act to establish a commission for the purpose of encouraging and providing for the commemoration of the 50th anniversary of the Supreme Court decision in Brown v. Board of Education; to the Committee on the Judiciary.

H.R. 691. An act making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on Friday, June 28, 2001, he had presented to the President of the United States the following enrolled bill:

S. 657. An act to authorize funding for the National 4-H Program Centennial Initiative. 617-123. Concurrent resolution adopted under the terms of theAct of May 24, 1970 (84 Stat. 176), and referred as indicated:

SENATE CONCURRENT RESOLUTION NO. 106

Whereas, Federal law currently prohibits the interstate highway system from receiving necessary services for Louisiana motorists, as well as visitors to Louisiana; and

Whereas, there are currently thirty-four rest areas located along interstate highways in Louisiana; and

Whereas, the annual cost of upkeep and maintenance of these rest areas is approximately three and one-half million dollars; and

Whereas, the state is required by federal law to maintain these rest areas; and

Whereas, the Louisiana Department of Transportation and Development has scheduled approximately fifteen of these rest areas for closure; and

Whereas, these rest areas scheduled for closure could remain open if private entities were charged with the responsibility of maintenance and upkeep; and

Whereas, Federal law currently prohibits privatization of safety rest areas located on the rights of way of the Interstate highway system. Therefore be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to allow states to privatize safety rest areas located on the rights of way of the Interstate highway system. Be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. LEVIN, Mr. President, for the Committee on Armed Services.

Resolved, That the nominations be confirmed.

The following named officers for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 5137:

To be brigadier general

Col. Rex W. Tanberg Jr., 0000

The following named officers for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be major general

Brig. Gen. Dale W. Meyerrose, 0000
Brig. Gen. Wilbert D. Pearson Jr., 0000

The following Air National Guard of the United States officers for appointment in the Reserve of the United States Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Rex W. Tanberg Jr., 0000

The following named officers for appointment in the Reserve of the Army to the grade indicated under assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Janet A. Van Antwerp, 0000

The following named officers for appointment in the Reserve of the Army to the grade indicated under assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be major general

Brig. Gen. James P. Collins, 0000

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Edward L. Correa Jr., 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 5137:

To be lieutenant general

Lt. Gen. James C. Riley, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. William S. Wallace, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Ernest J. S. Griffin, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Leon J. LaPorte, 0000

The following named officer for appointment as Chief of the Bureau of Medicine and Surgery and Surgeon General and for appointment to grade indicated under title 10, U.S.C., sections 5137 and 617:

To be vice admiral

Rear Adm. Michael L. Cowan, 0000

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Vice Adm. Patricia A. Tracey, 0000

The following named officer for appointment in the United States Marine Corps to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Maj. Gen. Edward Hanlon Jr., 0000

(Whereas the following officers were reported with the commendation that they be confirmed.)

Mr. LEVIN, Mr. President, for the Committee on Armed Services, I report favorably the following nominations listed which were printed in the Records of the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary’s desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Air Force nominations beginning STEVEN J. BELL JR. and ending STEVEN N. ZUEHLKE, which nominations were received by the Senate and appeared in the Congressional Record on June 12, 2001.

Army nominations beginning KEITH S. ALBERTSON and ending ROBERT K. BENNETT and ending GRANT E. ZACHARY, which nominations were received by the Senate and appeared in the Congressional Record on June 12, 2001.

Army nominations beginning ERIC D. ADAMS and ending DAVID S. ZUMBOO, which nominations were received by the Senate and appeared in the Congressional Record on January 3, 2001.

Army nominations beginning STEVEN W. WINSON, which nominations were received by the Senate and appeared in the Congressional Record on May 21, 2001.

Army nominations beginning GREGGORY R. CLUFF and ending STEVEN E. VORZ, which nominations were received by the Senate and appeared in the Congressional Record on May 21, 2001.

Army nominations beginning GILL P. BECK and ending MARGO D. SHERIDAN, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2001.

Army nominations beginning CYNTHIA J. ABBADINI and ending THOMAS R. YARBER, which nominations were received by the Senate and appeared in the Congressional Record on June 5, 2001.

Army nominations beginning JAMES E. GELETA and ending GARY S. OWENS, which nominations were received by the Senate and appeared in the Congressional Record on June 12, 2001.

Army nominations beginning FLOYD E. BICK JR. and ending STEVEN N. WICKSTROM, which nominations were received by the Senate and appeared in the Congressional Record on June 12, 2001.

Army nominations beginning ROBERT E. ELLIOTT and ending PETER G. SMITH, which nominations were received by the Senate and appeared in the Congressional Record on June 16, 2001.

Army nominations beginning BRUCE M. BENNETT and ending GRANT E. ZACHARY

June 28, 2001
INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BINGAMAN (for himself and Mr. JOHNSON):

S. 1119. A bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to identify certain routes in New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. DEWINE, Mr. DASCHEL, Mr. COCHRAN, Mrs. CARNHAN, Ms. SNOW, and Mr. JOHNSON):

S. 1120. A bill to require the Secretary of Defense to carry out a study of the extent to which the coverage of members of the Selected Reserve of the Ready Reserve of the Armed Forces under health benefits plans and to submit a report on the study of Congress, and for other purposes; to the Committee on Armed Services.

By Mrs. BOXER (for herself and Mr. SMITH of Oregon):

S. 1121. A bill to suspend temporarily the duty on certain R-core transformers; to the Committee on Finance.

By Mr. TORRICE:

S. 1122. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit against tax with respect to education and training of developmentally disabled children; to the Committee on Finance.

By Mr. FEINGOLD (for himself, Mr. CRAIG, and Mr. KOHL):

S. 1123. A bill to amend the Dairy Production Stabilization Act of 1983 to ensure that all programs under the dairy promotion and research program contribute to the cost of the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. THOMPSON:

S. 1124. A bill to amend section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to provide for a user fee to cover the cost of customs inspections at express courier facilities; to the Committee on Finance.

By Mr. McCONNELL (for himself, Mr. AKAKA, Mr. ALLARD, Mr. BAYH, Mr. BINGHAM, Mr. CLELAND, Mr. COCHRAN, Mr. EDWARDS, Mr. FITZGERALD, Mr. FENDRUSSEL, Mr. HELMS, Mr. INHOPE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LEVIN, Mr. RIEDE, Mr. SMITH of Oregon, Mr. SMITH of New Hampshire, Mr. SPECTER, Mr. TORRICE, and Mr. WYDEN):

S. 1125. A bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BROWNBACK (for himself and Mr. ENZI):

S. 1126. A bill to facilitate the deployment of broadband telecommunications services, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROWNBACK (for himself and Mr. ENZI):

S. 1127. A bill to stimulate the deployment of advanced telecommunications services in rural areas, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON:

S. 1128. A bill to provide grants for FHA-insured hospitals; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WARNER:

S. 1129. A bill to increase the rate of pay for certain offices and positions within the executive and judicial branches of the Government, respectively, and for other purposes; to the Committee on Governmental Affairs.

By Mr. CRAIG (for himself, Mrs. FEINSTEIN, and Mr. CORZINE):

S. 1130. A bill to require the Secretary of Energy to develop a plan for a magnetic fusion burning plasma experiment for the purpose of advancing the scientific understanding and development of fusion as a long term energy source, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LEAHY:

S. 1131. A bill to promote economically sound modernization of electric power generating capacity in the United States, to establish requirements to improve the combustion heat rate efficiency of fossil fuel-fired electric utility generating units, to reduce emissions of mercury, carbon dioxide, nitrogen, oxides, and sulfur dioxide, to require that all fossil fuel-fired electric utility generating units operating in the United States meet new sources review requirements, to promote the use of clean coal technologies, and to promote alternative energy and clean energy sources such as solar, wind, biomass, and fuel cells; to the Committee on Finance.

By Mr. CRAPO:


By Mrs. BOXER (for herself, Mrs. CARNHAN, and Mr. BOND):

S. 1133. A bill to amend title 49, United States Code, to preserve nonstop air service to and from Ronald Reagan Washington National Airport for certain communities in case of airline bankruptcy; to the Committee on Commerce, Science, and Transportation.

By Mr. LIEBERMAN (for himself and Mr. HATCH):

S. 1134. A bill to amend the Internal Revenue Code of 1986 to modify the rules applicable to qualified small business stock; to the Committee on Finance.

By Mr. GRAHAM (for himself, Mr. CHAFFEE, Mr. CONRAD, Mrs. LINCOLN, Mr. MILLER, Mr. ROCKEFELLER, Mr. BINGHAMAN, Mr. KERRY, and Mr. CARR:

S. 1135. A bill to amend title XVIII of the Social Security Act to provide comprehensive reform of the medicare program, including the provision of coverage of outpatient prescription drugs under such program; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BAUCUS, Mr. BAYH, Mr. CLELAND, Mr. CORZINE, Mr. DODD, Mrs. FEINSTEIN, Mr. Reid, Mr. SCHUMER, Ms. SNOWE, Mr. STABENOW, Mr. THOMPSON, and Mr. WYDEN):

S. 1136. A bill to provide for mass transportation in certain Federally owned or managed areas that are open to the general public; to the Committee on Energy and Natural Resources.

By Mr. HARKIN (for himself and Mr. GRASELBY):

S. 1137. A bill to direct the Secretary of the Army to convey the military reserve technicians' storage allocation in Rathbun Lake, Iowa, to the Rathbun Regional Water Association; to the Committee on Environment and Public Works.

ADDITIONAL COSPONSORS

S. 1139. At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 155, a bill to amend title 5, United States Code, to eliminate an inequity in the applicability of early retirement eligibility requirements to military reserve technicians.

S. 121. At the request of Mr. CAMPBELL, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 212, a bill to amend the Indian Health Care Improvement Act to revise and extend such Act.

S. 280. At the request of Mr. JOHNSON, the name of the Senator from Michigan...
(Mr. Levin) was added as a cosponsor of S. 280, a bill to amend the Agriculture Marketing Act of 1996 to require retailers of branded pork, and perishable agricultural commodities to inform consumers, at the final point of sale to consumers, of the country of origin of the commodities.

At the request of Mr. Santorum, the name of the Senator from California (Mrs. Feinstein) was added as a cosponsor of S. 912, a bill to amend the Internal Revenue Code of 1986 to provide a long-term capital gains exclusion for individuals, and to reduce the holding period for long-term capital gain treatment to 6 months, and for other purposes.

At the request of Ms. Collins, the name of the Senator from Maine (Ms. Snowe) was added as a cosponsor of S. 643, a bill to amend section 2007 of the Social Security Act to provide grant funding for additional Enterprise Communities, and for other purposes.

At the request of Mr. Thompson, the names of the Senator from Mississippi (Mr. Cochran) and the Senator from Nebraska (Mr. Hagel) were added as cosponsors of S. 661, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

At the request of Mr. Hatch, the name of the Senator from Indiana (Mr. Bayh) was added as a cosponsor of S. 677, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financing to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

At the request of Mrs. Lincoln, the name of the Senator from West Virginia (Mr. Rockefeller) was added as a cosponsor of S. 775, a bill to amend title XVIII of the Social Security Act to permit expansion of medical residency training programs in geriatric medicine and to provide for reimbursement of care coordination and assessment services provided under the Medicare program.

At the request of Mr. Hagel, the name of the Senator from California (Ms. Feinstein) was added as a cosponsor of S. 778, a bill to expand the class of beneficiaries who may apply for adjustment of status under section 245(i) of the Immigration and Nationality Act by extending the deadline for classification petition and labor certification filings.

At the request of Mr. Dodd, the name of the Senator from Massachusetts (Mr. Kennedy) was added as a cosponsor of S. 814, a bill to establish the Child Care Provider Retention and Development Grant Program and the Child Care Provider Scholarship Program.

At the request of Mr. Hatch, the name of the Senator from Connecticut (Mr. Lieberman) was added as a cosponsor of S. 818, a bill to amend the Internal Revenue Code of 1986 to provide a long-term capital gains exclusion for individuals, and to reduce the holding period for long-term capital gain treatment to 6 months, and for other purposes.

At the request of Ms. Snowe, the names of the Senator from Delaware (Mr. Carper), the Senator from Maryland (Mr. Sarbanes), and the Senator from Minnesota (Ms. Emmer) were added as cosponsors of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of all oral anticancer drugs.

At the request of Mr. Dodd, the name of the Senator from New York (Mrs. Clinton) was added as a cosponsor of S. 940, a bill to leave no child behind.

At the request of Mr. Nickles, the name of the Senator from Massachusetts (Mr. Kerry) was added as a cosponsor of S. 992, a bill to amend the Internal Revenue Code of 1986 to repeal the provision taxing policy holder dividends of mutual life insurance companies and to repeal the policyholders surplus account provisions.

At the request of Mr. Frist, the names of the Senator from Utah (Mr. Harkin) and the Senator from Ohio (Mr. DeWine) were added as cosponsors of S. 1032, a bill to expand assistance to countries seriously affected by HIV/AIDS, malaria, and tuberculosis.

At the request of Mrs. Hutchinson, the names of the Senator from Alaska (Mr. Murray) and the Senator from Connecticut (Mr. Lieberman) were added as cosponsors of S. 1037, a bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for member of the Armed Forces who die in the line of duty while on active duty, and for other purposes.

At the request of Mr. Jeffords, the names of the Senator from Idaho (Mr. Craig) and the Senator from Colorado (Mr. Allard) were added as cosponsors of S. 1038, a bill to amend the Internal Revenue Code of 1986 to improve access to tax-exempt debt for small nonprofit health care and educational institutions.

At the request of Mr. Johnson, his name was added as a cosponsor of S. 1075, a bill to extend and modify the Drug-Free Communities Support Program, to authorize a National Community Anti-Drug Coalition Institute, and for other purposes.

At the request of Mr. Conrad, the names of the Senator from Texas (Mr. Gramm) and the Senator from Georgia (Mr. Miller) were added as cosponsors of S. 1087, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period of the depreciation of certain leasehold improvements.

At the request of Mr. Harkin, the names of the Senator from Florida (Mr. Graham), the Senator from Florida (Mr. Nelson), and the Senator from California (Mrs. Boxer) were added as cosponsors of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

At the request of Mr. Campbell, the name of the Senator from Mississippi (Mr. Cochran), the Senator from New Jersey (Mr. Corzine), the Senator from North Dakota (Mr. Dorgan), the Senator from Illinois (Mr. Fitzgerald), and the Senator from Wyoming (Mr. Thomas) were added as cosponsors of S. Res. 99, a resolution supporting the goals and ideals of the Olympics.

At the request of Mr. Fitzgerald, the name of the Senator from Georgia (Mr. Cleland) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing the sense of Congress that the Humane Methods of Slaughter Act of 1958 should be fully enforced so as to prevent needless suffering of animals.

At the request of Mr. Corzine, the name of the Senator from Hawaii (Mr. Akaka) was added as a cosponsor of S. Con. Res. 52, a concurrent resolution expressing the sense of Congress that reducing crime in public housing should be a priority, and that the successful Public Housing Drug Elimination Program should be fully funded.

At the request of Mr. Santorum, the names of the Senator from Virginia (Mr. Allen) was added as a cosponsor of amendment No. 814 proposed to S. 1052, a bill to amend the Public Health Service Act and the Employees’ Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

At the request of Ms. Collins, the name of the Senator from Virginia (Mr. Allen) was added as a cosponsor of amendment No. 826 proposed to S. 1052, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.
At the request of Mr. DOMENICI, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of amendment No. 827 intended to be proposed to S. 1052, a bill to amend the Transportation Act of 1970 to protect consumers in managed care plans and other health coverage.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, and Mr. DOMENICI):

S. 1118—A bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to identify certain routes in New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System designated in the Commerce, Science, and Transportation Act of 1982, as amended;

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation to promote the future economic vitality of the communities in Union and Colfax Counties, and throughout Northeast New Mexico. Our bill designates the route for New Mexico’s section of the Ports-to-Plains High Priority Corridor, which runs 1000 miles from Laredo, Texas, to Denver, Colorado. I am pleased to have my colleague, Senator DOMENICI, as a cosponsor.

I am certain every senator recognizes the importance of basic transportation infrastructure to economic development in their states. Roads and airports link a region to the world economy.

In New Mexico, it is well known that regions with four-lane highways and economical commercial air service will most readily attract new jobs. I have long advocated at the Federal level to ensure our communities have the roads and airports they need for their long-term economic health. That is why this bill I am introducing today is so important.

With the passage of NAFTA, the Ports-to-Plains Corridor is centrally situated to serve international trade and promote economic development along its entire route.

In 1990 Congress identified the corridor from the border with Mexico to Denver, CO, as a High Priority Corridor on the National Highway System. Last year, a comprehensive study was undertaken to determine the feasibility of creating a continuous four-lane highway. The corridor’s alternative highway alignments for the trade corridor were also developed and evaluated. The study was conducted under the direction of a steering committee consisting of the State departments of transportation in Texas, New Mexico, Oklahoma, and Colorado.

It is important to note that public input was an important facet at every stage of the study. The steering committee sponsored public meetings in May of last year in Clayton, NM, and five other locations along the corridor. A final series of seven public meetings was held this year. I note that the level of public interest and participation was highest in New Mexico. Over 600 citizens attended the public meeting in Clayton, NM, on March 6, 2001, while a total of only 700 people attended all six of the other public meetings in Texas, Oklahoma, and Colorado clearly demonstrating the importance of this trade corridor designation to Northeast New Mexico. A final report has just been prepared and a summary can be found on the web at www.wilbursmith.com/portstoplains.

The study evaluated two routes for the trade corridor between Amarillo, TX, and Denver, CO. One route ran along U.S. Highway 64/87 between Clayton and Raton, NM. The other followed U.S. Highway 287, bypassing New Mexico. The feasibility study found that either route between Amarillo and Denver would result in favorable conditions. However, the alignment through New Mexico, from Clayton to Raton, along U.S. Highway 64/87, was dramatically more favorable than the alternative in terms of travel efficiency, benefits and feasibility, including travel time savings and accident cost reduction. In particular:

The benefit-to-cost ratio of the New Mexico route was 75 percent better than for the route bypassing New Mexico.

The traffic volume in 2025 would be 150 percent higher on the New Mexico corridor than on the alternative, including 25 percent more trucks.

Two-thirds of the New Mexico alignment is already four lanes wide or is soon slated to be widened to four lanes, compared to only one-third of the alternative alignment.

The alternative would require acquisition of more than twice the right-of-way and would displace nearly three times more residential and commercial facilities.

The New Mexico alignment would serve a population of nearly 2 million persons, compared to 1.5 million for the alternative.

Finally, the construction costs of the New Mexico alignment are $175 million less than the route bypassing New Mexico.

The alternative route had a very slight advantage over the New Mexico alignment only in economic development benefits.

With the feasibility study results now complete, The New Mexico Highway Commission last week voted unanimously to support the designation New Mexico’s portion of the Ports-to-Plains Trade High Priority Corridor along U.S. Highway 64/87 between Clayton and Raton. The designated route connects into Texas along Highway 87 to Dumas, and to Denver along Interstate 25.

Very simply, this bill advances the same goal, to designate the route between Clayton and Raton in New Mexico as part of the Ports-to-Plains Corridor. As the huge turnover for the public meeting in Raton in March clearly demonstrates, there is overwhelming public support for this route throughout Union and Colfax Counties in New Mexico. There is also very strong support in neighboring Las Animas and Pueblo Counties in Colorado, including tidal cities of Trinidad and Pueblo.

In Texas, the state already plans to widen to four lanes its portion of the route between Dumas and the New Mexico state line. In New Mexico, the Citizens’ Highway Assessment Task Force identified this route between Clayton and Raton as a priority to upgrade to four lanes. The initial needs and purposes study for the project is currently listed in New Mexico’s five-year Statewide Transportation Improvement Program, STIP.

In addition to possible routes north of Amarillo, TX, I should also note that the feasibility study considered a variety of alternative routes south of Amarillo, on down to Laredo. However, Congress already indicated its preferred southern leg in the Omnibus Appropriations Act of 2001, though the Congressional designation of the southern route was enacted long before we had the results of the feasibility study. The Texas Transportation Commission is voting today to confirm Congress’ designation of the southern leg.

The studies have now been completed. The results are in. The route south of Amarillo has been set. Congress should now complete the designation of the final leg of the Ports-to-Plains Trade Corridor by passing our bill.

The time to act is now. Once the route is established the States can move forward with their regional and statewide transportation plans, environmental studies, design work, acquisition of rights of way, and initial construction of the most critical segments.

I thank Senator DOMENICI for cosponsoring the bill, and I hope all senators will join us in support of this important legislation.

I ask unanimous consent that a copy of the New Mexico State Highway Commission’s resolution and the text of the bill be printed in the RECORD.

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

S. 1118

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

SECTION 1. IDENTIFICATION OF PORTS-TO-PLAINS HIGH PRIORITY CORRIDOR ROUTES IN NEW MEXICO AND COLORADO.

Section 1106(c)(38) of the Intermodal Surface Transportation Efficiency Act of 1991
CONGRESSIONAL RECORD—SENATE
June 28, 2001

S. 1119. A bill to require the Secre-

etary of Defense to carry out a study of the extent to the coverage of mem-

bers of the Selected Reserve of the

Ready Reserve of the Armed Forces

under health benefits plans and to sub-

mit a report on the study of Congress, and for other purposes; to the Com-

mittee on Armed Services.

Mr. LEAHY. Mr. President, I rise
today to introduce important legisla-
tion that will impact the health and

readiness of the Selected Reserve. The

Selected Reserves includes over 900,000
dedicated men and women divided be-
tween the National Guard and the Re-

serves. Over the past ten years, this

force has become increasingly critical
to carrying out our Nation's defense,

whether deploying to far-flung regions
der the public interest over another, one must

consider a host of factors.

Those factors include considering
the public’s preferences, the cost of the
competing projects, and the relative ef-
ciciency of implementing each project.

The feasibility study concluded that
the Ports-to-Plain route best meets
this criteria.

The traveling public overwhelmingly
prefers the route through New Mexico,
which carries 28,000 vehicles per day. The
competing proposal only has traffic
flows of 11,000 vehicles each day.

The N-1 route through New Mexico
represents the best deal for the tax-
payer because the Port-to-Plains route
is only 75 million less than the competing route.

Last, the route through New Mexico
would be the most efficient to imple-
ment since sixty-seven percent of the
highway has already been programmed
for four-lane improvements. The competing route has only programmed thirty-
seven percent of the road for crucial
four-lane improvements.

Furthermore, the State of New Mex-
ico is committed to securing the Ports-
to-Plains designation. Evidencing that
commitment, the State’s Highway
Commission recently passed a resolu-
tion supporting the Ports-to-Plains
designation from Dumas, Texas to
Raton, New Mexico.

I pledge to continue working to en-
sure that the Ports-to-Plains corridor
is designated through New Mexico. The
route through Raton, New Mexico is
the most efficient and cost effective
option for the U.S. taxpayer, furthers
the most efficient and cost effective
route to integrate regional population centers and to improve the effi-
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The country simply cannot meet its commitments without these proud citizens-soldiers. If it fails, then it is likely that the cohesion of the Armed Forces of the United States that serve of the Armed Forces is the element of the Total Force, we cannot let this problem. I urge the legislation’s development a set of concrete steps to meet this issue, and I deeply interested in this issue, and I want to thank the other sponsors of the Senate’s National Guard Caucus to introduce S. 1119, which we believe will one day result in improved health care for Guard and Reserve members and their families. It is appropriate that we introduce this now, during a week in which Senate floor debate has focused almost exclusively on health care, with several lively discussions about the importance of expanding health care coverage to the uninsured.

Unfortunately, Guard members and leaders in South Dakota tell me that many of the uninsured serve in the National Guard. Many of them work for small businesses that cannot afford to offer health insurance to their employees. Some of them have insurance for themselves, but cannot afford to insure their dependents.

Mr. DASCHLE. Mr. President, today I join with several important leaders of the Armed Forces since the end of the Cold War. (2) The Selected Reserve has been assigned increasingly critical levels of responsibility for carrying out the worldwide military missions of the Armed Forces since the end of the Cold War. (3) Members of the Selected Reserve have served proudly as mobilised forces in numerous theaters from Europe to the Pacific and South America, indeed, around the world. (4) The active duty forces of the Armed Forces are solely responsible for all of the national security missions of the Armed Forces without augmentation by the Selected Reserve. (5) The high and increasing tempo of activity of the Selected Reserve causes turbulence in the relationships of members of the Selected Reserve with their families, employers, and reserve units. (6) The turbulence often results from lengthy, sometimes year-long, absences of the members of the Selected Reserve from their families. The performance of military duties necessary for the execution of essential missions. (7) Family turbulence includes the difficulties associated with health care plans and coverage for the military readiness. (8) Up to 200,000 members of the Selected Reserve, including, in particular, self-employed members, do not have adequate health benefits. SEC. 2. SENSE OF CONGRESS. It is the sense of Congress that steps should be taken to ensure that every member of the Selected Reserve of the Ready Reserve of the Armed Forces and the member’s family have health benefits that are adequate—(1) to ease the transition of the member from civilian life to full-time military life during a mobilization of reserve forces; (2) to minimize the adverse effects of a mobilization on the performance of military duties necessary; (3) to improve readiness and retention in the Selected Reserve; with a contract to be entered into by the Secretary of Defense for carrying out the worldwide military missions of the Armed Forces; (4) to commission an independent study to the reserves. (C) Descriptions of the disruptions in the Selected Reserve of the Ready Reserve, including, in particular, self-employed members, do not have adequate health benefits. (D) At least three recommended options for correcting the disruptions by means of extending health care benefits under the Defense Health Program or the Federal Employees Health Benefits program to all members of the Selected Reserve and their families, together with an estimate of the costs of individual coverage and family coverage under each option. (E) A profile of the mission and readiness of the Selected Reserve and their dependents, together with a discussion of how that profile would affect the cost of providing adequate health benefits coverage for that population of beneficiaries. (F) An analysis of the likely effects that providing enhanced health benefits coverage to members of the Selected Reserve and their families would have on recruitment and retention for, and the readiness of, the Selected Reserve.

In formulating the options to recommend under paragraph (2)(C), the Secretary shall consider an expansion of the TRICARE program or the Federal Employees Health Benefits program to cover the members of the Selected Reserve and their families.

SEC. 3. STUDY OF HEALTH CARE BENEFITS COVERAGE FOR MEMBERS OF THE SELECTED RESERVE.

(a) Requirement for study.—The Secretary of Defense shall enter into a contract with a federally funded research and development center to carry out a study of the needs of members of the Selected Reserve of the Ready Reserve of the Armed Forces and their families for health care benefits. (b) Report.—(1) Not later than March 1, 2002, the Secretary shall submit a report on the results of the study to Congress. (2) The report shall include the following matters: (A) Descriptions, and an analysis, of how members of the Selected Reserve and their dependents currently obtain coverage for health care benefits, together with statistics on enrollees in each insurance plan, and the plan’s performance and access to care. (B) The percentage of members of the Selected Reserve, and dependents of such members, who are not covered by any health insurance, or other health benefits plan, together with the reasons for the lack of coverage. (C) Descriptions of the disruptions in health benefits coverage that a mobilization of members of the Selected Reserve causes for the members and their families.
employers, particularly small businesses.

This bill lays the groundwork for a solution. S. 1119 would authorize a study by a non-government research center to explore the extent of the problem and recommend at least three cost-effective solutions, including the possibility of opening the TRICARE program or the Federal Employees Health Benefits Program to reservists and their families. The study would look at disruptions to health coverage caused by mobilizations and analyze the likely impact of enhanced health care on recruitment and retention.

We have developed this bill in consultation with the Military Coalition and several of its members. I appreciate their concern for this problem and their work to help develop a solution. Senator Smith, I would particularly like to acknowledge the role of the Enlisted Association of the National Guard of the United States, the Reserve Officers Association, the National Guard Association of the United States, and the Retired Officers Association.

I hope and believe that today’s bill introduction can be an important step toward providing adequate health care for members of the South Dakota National Guard and other reservists around the Nation, who do so much on behalf of their communities, their States, and this Nation.

By Mrs. BOXER (for herself and Mr. SMITH of Oregon):

S. 1120. A bill to amend the Foreign Assistance Act of 1961 to increase the authorization of appropriations for fiscal year 2002, and to authorize appropriations for fiscal year 2003, to combat HIV/AIDS, and for other purposes; to the Committee on Foreign Relations.

Mrs. BOXER. Mr. President, this week, as the United Nations meets to prepare a global strategy to combat the growing worldwide HIV–AIDS crisis, I am proud to introduce legislation aimed at ensuring that the United States continues to be a leader in the fight against this deadly disease.

I am pleased to once again join my good friend and colleague from Oregon, Senator Smith, in the effort to combat this worldwide epidemic.

Last year, we teamed up to offer the Global AIDS Prevention Act that doubled funding for the United States Agency for International Development’s HIV–AIDS programs. Not only was this legislation included in broader international health legislation which became law, it was also fully funded for the current fiscal year. This year, we are looking to build upon last year’s success by again doubling the amount USAID spends on fighting the global HIV–AIDS epidemic.

The Global AIDS Research and Relief Act would authorize $600 million in each of the next two fiscal years. It is designed to complement international HIV–AIDS relief efforts so that a truly global response can be implemented in sub-Saharan Africa, Latin America, Southeast Asia, Russia, and all places where people are suffering from this epidemic.

In the 20 years since AIDS was first recognized, 22 million people worldwide have died from the disease, and 36 million more are living with HIV or AIDS today. Of those living with the disease, 95 percent live in the developing world where advanced technology to combat AIDS is not readily available. It is predicted that AIDS will soon become the deadliest infectious epidemic in world history, surpassing the Plague, which killed an estimated 25 million people.

This new chapter in the AIDS epidemic is especially significant because its growth is preventable. While there is no cure for this horrible disease, progress is being made. New medical breakthroughs afford HIV-positive people a much greater life expectancy than in the mid-80s just two decades ago. Unfortunately, these efforts are not reaching the Nations whose people need the most. By increasing authorization for USAID to establish and expand these valuable initiatives in developing countries, our bill helps to remedy this disparity in the quality of care.

Specifically, the bill addresses the need for increased voluntary testing and counseling, so that we can educate people and keep its spread in check. With this funding authorization, the USAID will be able to provide more for the most vulnerable constituencies, children and young adults. The money will be used for drugs like nevirapine, which is given to expectant HIV-positive mothers to prevent the spread of the infection to their unborn children. The United States is a trendsetter in efforts to address the pandemic of HIV–AIDS, and through our work of USAID, we have instituted prevention, care, and treatment programs in some of the hardest-hit countries in sub-Saharan Africa. The Centers for Disease Control and Prevention has worked with partners in other countries to expand treatment programs.

The United States is a trendsetter in efforts to address the pandemic of HIV–AIDS, and through our work of USAID, we have instituted prevention, care, and treatment programs in some of the hardest-hit countries in sub-Saharan Africa. The United States, the epidemic of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) will soon become the worst epidemic of infectious diseases recorded in history, eclipsing both the bubonic plague of the 1300s and the influenza epidemic of 1918–1919 which killed more than 20,000,000 people worldwide.

According to the United Nations Programme on HIV/AIDS (UNAIDS), more than 36,100,000 people in the world today are living with HIV/AIDS, of which approximately 95 percent live in the developing world.

(3) UNAIDS data shows that among children age 15 and under worldwide, more than 4,300,000 have died from AIDS, more than 1,400,000 are living with the disease; and in 1 year alone—2000—an estimated 600,000 became infected, of which over 90 percent were babies born to HIV-positive women.

(4) Although sub-Saharan Africa has only 10 percent of the world’s population, it is home to more than 25,000,000—roughly 70 percent—of the world’s HIV/AIDS cases.

(5) Worldwide, there have already been an estimated 21,800,000 deaths because of HIV/AIDS, of which more than 80 percent occur in sub-Saharan Africa, and are thus considered AIDS orphans.

(6) According to UNAIDS, by the end of 1999, 13,200,000 children have lost at least one parent to AIDS, including 12,100,000 children in sub-Saharan Africa, and are thus considered AIDS orphans.

(7) At current infection and growth rates for HIV/AIDS, the National Intelligence Council estimates that the number of AIDS orphans worldwide will increase dramatically, potentially increasing threefold or more in the next 10 years, contributing to economic decay, social fragmentation, and political destabilization in already volatile and strained societies. Children without care or hope are often drawn into prostitution, crime, substance abuse, or child soldiery.

(8) The discovery of a relatively simple and inexpensive means of interrupting the transmission of HIV from an infected mother to the unborn child—namely with nevirapine (NVP), which costs $4 a tablet—has created a great opportunity for an unprecedented partnership between the United States Government and the governments of African, and Latin American countries to reduce mother-to-child transmission (also known as “vertical transmission”) of HIV.

(9) According to UNAIDS, if implemented this strategy will decrease the proportion of orphans that are HIV-infected and decrease infant and child mortality rates in these developing regions.

(10) A mother-to-child antiretroviral drug strategy can be a force for social change,
providing the opportunity and impetus needed to understand the pathologies and consequences of inadequate services and the profound stigma associated with HIV-infection and the AIDS disease. Strengthening the health infrastructure to improve mother-and-child health, antenatal, delivery, and postnatal services, and couples counseling generates enormous spillover effects toward combating the AIDS epidemic in developing regions.

(11) A January 2000 United States National Intelligence Estimate (NIE) report on the global infectious disease threat concluded that the economic and social impacts of infectious diseases—especially HIV/AIDS—are already significant and could reduce GDP by as much as 20 percent or more by 2010 in some sub-Saharan African nations.

(12) The HIV/AIDS epidemic is of increasing concern in other regions of the world, with UNAIDS estimating that there are more than 5,800,000 cases in South and Southeast Asia, that the rate of HIV infection in the Caribbean is second only to sub-Saharan Africa. Pregnancies that have doubled in just 2 years in the former Soviet Union.

(13) Russia is the new “hot spot” for the pandemic as Russians are expected to be diagnosed with HIV/AIDS by the end of 2001 than all cases from previous years combined.

(14) Despite the discouraging statistics on the spread of HIV/AIDS, some developing nations—such as Uganda, Senegal, and Thailand—have implemented prevention programs that have substantially curbed the rate of HIV infection.

(15) Accordingly, United States financial support for medical research, education, and disease prevention as a global strategy has beneficial ramifications for millions of Americans and their families who are affected by this disease, and the entire population, which is potentially susceptible.

(b) PURPOSES.—The purposes of this Act are to—

(1) help prevent human suffering through the prevention, diagnosis, and treatment of HIV/AIDS; and

(2) help ensure the viability of economic development and stability, and national security in the developing world by advancing research to—

(A) understand the causes associated with HIV/AIDS in developing countries; and

(B) assist in the development of an AIDS vaccine.

SEC. 3. ADDITIONAL ASSISTANCE AUTHORITIES TO COMBAT HIV AND AIDS.

Paragraphs (4) through (6) of section 106(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(c)) are amended to read as follows:

“(4)(A) Congress recognizes the growing international dilemma of children with the human immunodeficiency virus (HIV) and the merits of intervention programs aimed at this problem. Congress further recognizes that mother-to-child transmission prevention strategies can serve as a major force for change in developing regions, and it is, therefore, a major objective of the foreign assistance program to control the acquired immunodeficiency syndrome (AIDS) epidemic.

“(B) The agency primarily responsible for administering this part shall—

(i) coordinate with UNAIDS, UNICEF, WHO, national and local governments, other organizations, and other Federal agencies to develop and implement effective programs to prevent the transmission of HIV; and

(ii) coordinate with those organizations to increase intervention programs and introduce voluntary counseling and testing, antiretroviral drugs, replacement feeding, and other strategies.

“(5)(A) Congress expects the agency primarily responsible for administering this part to—

(i) coordinate with the human immunodeficiency virus (HIV) and the acquired immune deficiency syndrome (AIDS) a priority in the foreign assistance program and to undertake a comprehensive, coordinated effort to combat HIV and AIDS.

“(B) Assistance described in subparagraph (A) shall include helping—

(i) primary prevention and education;

(ii) voluntary testing and counseling;

(iii) medications to prevent the transmission of HIV from mother to child;

(iv) programs to strengthen and broaden health care systems infrastructure and the capacity of health care systems in developing countries to deliver HIV/AIDS pharmaceuticals, prevention, and treatment to those afflicted with HIV/AIDS; and

(v) care for those living with HIV or AIDS.

“(6)(A) In addition to amounts otherwise available for such purpose, there is authorized to be appropriated to the President $600,000,000 for each of the fiscal years 2002 and 2003. Of the amounts authorized to be appropriated by subparagraph (A), not more than 7 percent may be used for the administrative expenses of the agency primarily responsible for carrying out this part of this Act in support of activities described in paragraphs (4) and (5).

“(B) Of the funds authorized to be appropriated under subparagraph (A), not less than 65 percent shall be made available to carry out the purposes of this subsection, may be made available notwithstanding any other provision of law that restricts assistance to foreign countries.

“(C)(i) Of the funds authorized to be appropriated by subparagraph (A), priority should be given to programs that address the support and education of orphans in sub-Saharan Africa, including AIDS orphans and prevention strategies for vertical transmission referred to in paragraph (4)(A).

“(ii) Assistance made available under this subsection, and assistance made available under chapter 4 of part II to carry out the purposes of this subsection, may be made available notwithstanding any other provision of law that restricts assistance to foreign countries.

“(B) Of the funds authorized to be appropriated by subparagraph (A), not more than 7 percent may be used for the administrative expenses of the agency primarily responsible for carrying out this part of this Act in support of activities described in paragraphs (4) and (5).

“(E) Funds appropriated under this paragraph are authorized to remain available until expended.”

Mr. SMITH of Oregon. Mr. President, I rise today to join my colleague Senator BOXER to introduce the “Global AIDS Research and Relief Act of 2001.” This important legislation increases the authorization for USAID to carry out its prevention, treatment and care programs to $600 million for fiscal years 2002 and 2003. These additional resources are needed to halt the spread of HIV and AIDS.

The world is facing a global health problem of catastrophic proportions in the global HIV/AIDS pandemic. In the past year, the number of new infections has reached a critical level. The United States has a responsibility to act quickly to reverse years of steady progress of child survival in developing countries. The United States should be an example to other nations of what can be done to help prevent the transmission of HIV and AIDS.

The global health threat is not just a problem in Africa; it is threatening to reverse years of steady progress of child survival in developing countries.

Over 58 million people have already died as a result of HIV/AIDS since the epidemic of 1918–1919.

HIV/AIDS is also hitting those between the ages of 15–24. In some sub-Saharan African countries, the infection rates are more than 40 percent in this population. These high infection rates will have a significant impact on the social and economic health of developing nations. The United States Census Bureau has found the life expectancy in sub-Saharan Africa has fallen almost 30 years within a decade. In the year 2000, it is estimated that average life expectancy in Botswana will be 29 years of age, 30 years in Swaziland, 33 years in Namibia, and 36 years in South Africa. Millions of young adults are losing their lives and this will significantly impact the economic and political viability of these Nations. Some Nations are estimated to have a reduced GDP of at least 20 percent or more by 2010 due to decreased productivity of its workers. Over the past thirty years, the United States has invested millions of dollars in creating building programs and economic stabilization programs. HIV/AIDS has quickly erased much of this progress.

As we look to the future of the world, we are also confronted by the problem of AIDS orphans. USAID estimates that there will be 44 million orphans by 2010. Without a parent or family to care for them, many will be drawn into prostitution, crime, substance abuse or child soldiery. Furthermore, without social stability, many will not seek help when they are sick. AIDS threatens to reverse years of steady progress of child survival in developing countries.
The prevalence of HIV/AIDS in the young will have a significant impact on the economic stability and health of the world. The pandemic is contributing to economic decay, social fragmentation, and political destabilization in already strained and volatile societies. These factors are of particular concern in South and Southeast Asia, the Caribbean, Eastern Europe, and the former Soviet Union where the pandemic is just beginning to become a problem. It is estimated that there are more than 5.8 million cases in South and Southeast Asia and the rate of HIV infection in the Caribbean is second only to sub-Saharan Africa. Russia is the new “hot spot” for HIV/AIDS. More Russians are expected to be diagnosed with HIV/AIDS by the end of 2001 than all cases from previous years combined. Many of these countries do not yet have prevention, treatment and care programs in place and we must equip our federal agencies with the resources and flexibility needed to address the pandemic in all of these areas.

The United States is seen as a leader in efforts to address the epidemic. We contributed almost $500 million to fight HIV/AIDS in fiscal year 2001. Through programs at the U.S. Agency for International Development, we have instituted prevention, care and treatment programs in some of the worst hit countries in sub-Saharan Africa. At the Centers for Disease Control and Prevention, we have worked with partners in other countries to expand treatment and home-based care programs. Other agencies, including the Department of Labor, the Department of Defense, and the Department of Agriculture have contributed in their areas of expertise.

This legislation recognizes the growing problems encountered by children around the world and instructs USAID to make the prevention of mother-to-child transmission and orphan programs a major objective of their program. Through coordination with UN agencies, national and local governments, non-governmental organizations and foundations, the U.S. government shall implement effective strategies to prevent vertical transmission of HIV. Further, the bill states that the agency must strengthen and expand all of its primary prevention and education programs.

This bill also calls on USAID to continue to provide support to research that will help the world to understand the causes associated with HIV/AIDS in developing countries and assist in the development of an effective AIDS vaccine.

I believe the “Global AIDS Research and Relief Act of 2001” can make a profound difference in the lives of millions of people facing the HIV/AIDS epidemic. I ask all my colleagues to join us and support this legislation at this critical moment in the spread of the disease.

By Mr. FEINGOLD (for himself, Mr. CRAIG, and Mr. KOHL):

S. 1125. A bill to amend the Dairy Production Stabilization Act of 1983 to ensure that all persons who benefit from the dairy production and research program contribute to the cost of the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. FEINGOLD. Mr. President, I rise today with my colleagues Senator CRAIG and Senator KOHL to introduce a modified version of the “Dairy Promotion Fairness Act,” which I introduced earlier this year. This legislation provides equity to domestic producers who have been paying into the Promotion Program while importers have gained a free ride.

I introduced a revised version of legislation, after I received suggestions on how to improve this legislation from America’s dairy farmers. Their input is vital to enacting effective dairy legislation. I thank all the dairy producers of my State not only for their views, but also their work to strengthen Wisconsin’s rural economy.

Since the National Dairy Promotion and Research Board conducts only generic promotion and general product research, domestic farmers and importers alike benefit from these actions. The Dairy Promotion Fairness Act requires that all dairy product importers contribute to the program.

Unlike other agricultural commodity checkoff promotion programs, such as beef, cotton and eggs, the dairy checkoff program collects funds solely from domestic producers. Importers of dairy products do not have to pay into the program, yet they reap the benefits of dairy promotion.

I would also like to make sure my colleagues are aware that June is Dairy Month. This tradition of honoring hard working dairy farmers, began as “National Milk Month” first held in the summer of 1937. Wisconsin celebrates this proud heritage every June by honoring our past accomplishments of Wisconsin as America’s Dairy State.

Wisconsin became a leader in the dairy industry after the first dairy cow came to Wisconsin in the 1800’s and by 1930 it earned the nickname, America’s Dairyland. Dairy history and the State’s history have been interwoven from the beginning. The people of Wisconsin are defined by the image of dairy farmers: hardworking, honest and the heirs of a great tradition.

I would like to highlight one of the accomplishments of Wisconsin’s Dairy Farmers. Wisconsin is the No. 1 cheese-producing State in the country, with 28 percent of the total annual U.S. cheese production. Wisconsin’s 130 cheese plants produce more than 350 varieties, types and styles of Wisconsin cheese.

We produce more than 2 billion pounds of cheese annually. We have more licensed cheese makers than any other state with some of the most stringent state standards for cheese-making and overall dairy product quality. We lead the nation in the production of specialty cheeses, such as Gorgonzola, Gruyere (gru-yure), Asiago, Provolone, Aged Cheddar, Gouda, Blue, Feta and many others. In fact, we are the only producer of Limburger cheese in the country.

Colby, Wisconsin is the home Colby cheese. And Brick cheese was invented in Wisconsin. Brick is named for its shape, and because cheese makers originally used bricks to press moisture from the cheese.

Wisconsinites have recognized this proud tradition by holding over 100 dairy celebrations across our State, including dairy breakfasts, ice cream socials, cooking demonstrations, festivals and other events. These events are all designed to make the public aware of the quality, variety and great taste of Wisconsin dairy products and to honor the producers who make it all possible.

We must follow the lead of Wisconsin, and honor our dairy farmers by passing this legislation and halting the free ride dairy importers currently receive.

The Dairy Promotion Fairness Act supports the dairy marketing board’s efforts to educate consumers on the nutritional value of dairy products. It also treats our farmers fairly by asking them not to bear the entire financial burden for a promotional program that benefits importers and domestic producers alike.

We have put our own producers at a competitive disadvantage for far too long. It’s high time importers paid for their fair share of the program.

By Mr. MCCONNELL (for himself, Mr. AKAKA, Mr. ALLARD, Mr. BAYH, Mr. BINGAMAN, Mr. CLELAND, Mr. COCHRAN, Mr. EDWARDS, Mr. FITZGERALD, Mr. FRIST, Mr. GRAHAM, Mr. HELMS, Mr. INHOFE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LEVIN, Mr. REED, Mr. SMITH of Oregon, Mr. SMITH of New Hampshire, Mr. SPECTER, Mr. TORRIEGLI, and Mr. WYDEN):

S. 1125. A bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes; to the Committee on Environment and Public Works.

Mr. MCCONNELL. Mr. President, incredibly, there is a good chance that today someone will put on a facial mask, apply a medicine, or even eat a soup that contains bear parts. Bear bile, gallbladders, paws and claws are
The slaughter of American black bears and the sale of their parts is a deliberate and dastardly plot hatched by a black market of poachers, traders, and smugglers who have been known to transport bear parts in cans of chocolate syrup or bottles of scotch. Because certain Asian bear populations are being poached to near extinction, poachers and smugglers often target American black bears to meet the demand for bear parts in Asia and even within certain communities here at home. In Oregon alone, one poaching-for-profit ring reportedly killed between 50–100 black bears a year for 5 to 10 years simply to harvest their gallbladders. While the bear population in North America presently is stable, the growth of illegal and inhumane poaching, coupled with the difficulty of anti-poaching enforcement efforts, could pose a real threat to our resident bear population. We should not stand by and allow American bears to be decimated by poachers.

The depleted bear populations in Asia suffer, but equally tragic is the fate as they are “protected” to meet the demand for their bile. National Geographic, U.S. News and World Report and The Los Angeles Times each have reported that Asiatic bears in China have been trapped in bear “farms” and milked for their bile through catheters inserted into their gallbladders. Bears in other countries often fare no better. In South Korea, for example, bears have been bludgeoned to death or boiled alive in front of patrons to prove they are purchasing authentic Asian bear parts.

Some States in America prohibit trading in bear parts. But others do not. And to make matters more complicated, some States prohibit such trading—only if the bear was killed within that State. It hardly takes a lawyer to quickly find the loophole in such a law, poachers and black market profiteers can simply kill a bear in another State and take it back across State lines to sell the parts. And because it is almost impossible to tell where a bear was killed just by looking at its parts, traders and smugglers can always claim that the bear was killed out of State. So, as you can see, our conflicting web of State laws does little to deter poachers from their prey. This is not for lack of laws—on the contrary, I am afraid many laws may make it easier for poachers to slaughter still more bear.

To help bring the complex, sometimes criminal, and inhumane trade in bear parts to an end, I am once again introducing the Bear Protection Act. This legislation always has enjoyed broad, bipartisan support since I first introduced the bill in the 103rd Congress. Last year the bill passed this chamber by unanimous consent, only to be returned by the House under the blue-slip rule. I am proud to be joined by 25 original cosponsors of the bill today, including 14 Democrats, 10 Republicans and an Independent, and I hope that others soon will join me to help shepherd this important legislation to passage.

My legislation is straightforward. It prohibits the import, export, or sale of bear viscera, or any products containing bear viscera, and it imposes criminal and civil penalties for violators. Enacting a uniform Federal prohibition on the trade in bear parts is necessary to close the loopholes left open by the patchwork of State laws that have facilitated the illegal trade of bear parts in the United States and overseas.

This legislation will in no way affect the rights of sportsmen to hunt bears legally in any State. Illegal bear poaching and legal recreational hunting are separate and distinct acts. Instead, we should remember that every bear poached for illegal profiteering of bear parts is a bear taken away from sportsmen. A former chief enforcement officer for the United States Fish and Wildlife Service has estimated that approximately 60,000 bears are poached illegally each year, but an almost equal number are poached legally. Many States understand this problem, as over two-thirds of the States that allow bear hunting also ban the trade of bear parts.

This bill is another example of what I like to call consensus conservation. The legislation does not pit hunters against environmentalists. Nor does it pit States against the Federal Government or wildlife management or sporting laws. Indeed, I am happy to report that there are no political fireworks in this bill. One look at the cosponsor list should indicate that.

Instead, what we have is a bill that targets a specific legislative goal, to protect bears from illegal and inhumane poaching and black market profiteering. By carefully crafting this legislation with that single goal in mind, we have crafted an opportunity to introduce a commonsense bill that is supported by wildlife enthusiasts and conservationists while protecting the autonomy of states and the rights of sportsmen.

I continue to believe that these types of targeted, bipartisan conservation efforts that are rooted in consensus thinking rather than conflicting politics, can, in the end, make the most noticeable strides toward protecting our national wildlife and environmental treasures.

I ask unanimous consent that the text of the bill be printed in the RECORD, and I further ask unanimous consent that the RECORD include letters of support from the Humane Society of the United States, the Society for Animal Protective Legislation, and the American Zoo and Aquarium Association.

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

SEC. 2. FINDINGS.
Congress finds that—

(1) all 8 extant species of bear—Asian black bear, brown bear, polar bear, American black bear, spectacled bear, giant panda, sun bear, and sloth bear—are listed on Appendix I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249); and

(2) Article XIV of CITES provides that Parties to CITES may adopt stricter domestic measures regarding the conditions for trade, taking, possession, or transport of species listed on Appendix I or II; and

The purpose of this Act is to ensure the long-term viability of the world’s 8 bear species by (1) prohibiting interstate and international trade in bear viscera and products containing, or labeled or advertised as containing, bear viscera; and (2) encouraging bilateral and multilateral efforts to eliminate such trade; and
(3) ensuring that adequate Federal legisla-
tion exists to protect the entire domestic trade in
bear viscera and products containing, or la-
beled as containing, bear viscera.

SEC. 4. DEFINITIONS.

In this Act:
(1) BEAR VISCERA.—The term ‘‘bear viscera’’ means the body fluids or internal
organs, including the gallbladder and its con-
tents but not including the blood or brains,
of a species of bear.
(2) CITES.—The term ‘‘CITES’’ means the Convention on International Trade in Endan-
gered Species of Wild Fauna and Flora (27
UST 1087; TIAS 8249).
(3) IMPORT.—The term ‘‘import’’ means to land on, bring into, or introduce into any
place subject to the jurisdiction of the United States, regardless of whether the
landing, bringing, or introduction constitutes an importation within the meaning
of the customs laws of the United States.
(4) PERSON.—The term ‘‘person’’ means—
(A) an individual, corporation, partnership, trust, association, or other private entity;
(B) an officer, employee, agent, depart-
ment, or instrumentality of—
(i) the Federal Government;
(ii) any State or political subdivision of a State; or
(iii) any foreign government; and
(C) any other entity subject to the jurisdic-
tion of the United States.
(5) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of the Interior.
(6) STATE.—The term ‘‘State’’ means a State, the District of Columbia, the Com-
monwealth of Puerto Rico, the Virgin Is-
lands, Guam, the Commonwealth of the
Northern Mariana Islands, American Samoa, and any other territory, commonwealth,
or possession of the United States.
(7) TRANSPORT.—The term ‘‘transport’’ means to move, convey, carry, or ship by any
means, or to deliver or receive for the pur-
pose of movement, conveyance, carriage, or
shipment.

SEC. 5. PROHIBITED ACTS.

(a) General.—Except as provided in subsec-
tion (b), a person shall not—
(1) import into, or export from, the United States bear viscera or any product, item, or
substance containing, or labeled or adver-
tised as containing, bear viscera; or
(2) sell or barter, offer to sell or barter,
purchase, possess, transport, deliver, or re-
ceive, in interstate or foreign commerce, bear viscera or any product, item, or sub-
stance containing, or labeled or advertised as containing, bear viscera.

(b) EXCEPTION FOR WILDLIFE LAW ENFORCE-
MENT PURPOSES.—A person described in sec-
tion 4(4)(B) may import into, or export from,
the United States, or transport between States, bear viscera or any product, item, or
substance containing, or labeled or adver-
tised as containing, bear viscera if the im-
portation, exportation, or transportation
(1) is solely for the purpose of enforcing laws relating to the protection of wildlife; and
(2) is authorized by a valid permit issued under Subtitle I or II of CITES, in any case
in which such a permit is required under
CITES.

SEC. 6. PENALTIES AND ENFORCEMENT.

(a) General.—A person that knowingly viol-
ates section 5 shall be fined under title 18, United States Code, impris-
oned not more than 1 year, or both.

(b) EXCEPTION.—A person that knowingly vio-
lates section 5 may be assessed a civil pen-
ality by the Secretary of not more than $50,000 for each violation.

(2) MANNER OF ASSESSMENT AND COLlec-
TION.—A civil penalty under this subsection shall be assessed, and may be collected, in
the manner in which a civil penalty under
the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of
that Act (16 U.S.C. 1540(a)).

(c) SEIZURE AND FORFEITURE.—Any bear viscera or any product, item, or sub-
stance imported, exported, sold, bartered, at-
ttempted to be imported, exported, sold, or bartered, is prima facie evidence that it was
bought, purchased, possessed, transported, delivered, or received in violation of this section
(including any regulation issued under this section) shall be seized and forfeited to the United
States.

(d) REGULATIONS.—After consultation with
the Secretary of the Treasury and the United
States Trade Representative, the Secretary
shall issue such regulations as are necessary
to carry out this section.

(e) ENFORCEMENT.—The Secretary, the Sec-
retary of the Treasury, and the United States
Trade Representative shall enforce this section in the manner in which the Secretaries
and the United States Trade Representative carry out enforcement of the Endangered
Species Act of 1973 (16 U.S.C. 1540(e)).

(f) USE OF PENALTY AMOUNTS.—Amounts
received as penalties, fines, or forfeiture of
property under this section shall be used in accordance with section 6(d) of the Lacey Act
Amendments of 1981 (16 U.S.C. 375(d)).

SEC. 7. DISCUSSIONS CONCERNING BEAR CON-
SERVATION AND THE BEAR PARTS TRADE.

In order to seek to establish coordinated
efforts with other countries to protect bears,
the Secretary shall continue discussions con-
cerning trade in bear viscera with—
(1) the appropriate representatives of Par-
ties to CITES; and
(2) the appropriate representatives of coun-
tries that are not parties to CITES and that
are determined by the Secretary and the
United States Trade Representative to be the
leading importers, exporters, or con-
sumers of bear viscera.

SEC. 8. CERTAIN RIGHTS NOT AFFECTED.

In this Act:

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lates section 5 may be assessed a civil pen-
ality by the Secretary of not more than $50,000 for each violation.

(2) MANNER OF ASSESSMENT AND COLlec-
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HSUS STATEMENT IN SUPPORT OF THE BEAR
PROTECTION ACT

The Humane Society of the United States, the
nation’s largest animal protection organiza-
tion, with over seven million members and
constituents, strongly supports Senator
McConnell’s Bear Protection Act.

The Bear Protection Act would eliminate the
looming threat of the gallbladder trade. The
remaining states fall into three categories
that are not parties to CITES and that
allow trade in gallbladders from bears legally
taken from bears legally killed in-state;
and constituents, strongly supports Senator
McConnell’s leadership, there may come
before it’s too late. The Humane Society of
the United States bears are threatened by poachers to launder gallbladders through
the Convention and that if CITES parties do not take action to eliminate poach-
ing may cause declines of wild bears that
could lead to the extirpation of certain popu-
lations or even species.

Dwindling Asian bear populations have
collected poachers to look to American bears
to meet market demand for bear parts and
products. While each year nearly 40,000
American black bears are legally hunted in
thirty-six states and Canada, it is estimated
that roughly the same number are illegally
poached each year, according to a former
chief law enforcement officer with the U.S.
Fish and Wildlife Service.

The U.S. Senate passed this legislation in
the 106th Congress and we hope swift action
will be taken again this year. We also hope
that the House will follow the Senate’s wise
lead and act to protect bears across the globe
before it’s too late. The Humane Society of
the United States applauds Senator McCon-
nell and the quarter of the United States
Senate that has signed onto the Bear Protec-
tion Act. Senator McConnell’s leadership, there may come
crude trade unpinpin

BEAR PROTECTION ACT IS URGENTLY NEEDED

The Society for Animal Protective Legisla-
tion strongly supports Senator Mitch
McConnell in his effort to pass the Bear
Protection Act once again. This bill would end
the United States’ involvement in the trade
of bear viscera by prohibiting the import, ex-
port and interstate commerce in bear gall-
bladders and bile. Bears are targeted for
their internal organs, which fetch enormous prices on the black market. They kill them and
the merchants who sell their or-
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ble allows an illegal trade to flourish. It is important to realize that the disassociated gallbladder of one state’s black bear from another. This enables smugglers to acquire gallbladders illegally in one state, transport them to another state where individualization of bear parts is legal, and sell the gallbladders under false pretenses. These gallbladders are also smuggled out of the country, providing a laundering opportunity for the sale of gallbladders from highly endangered bears.

Enactment of Senator McConnell’s Bear Protection Act will ensure that those who seek to profit by the reckless destruction of America’s bears can be punished appropriately for their illegal and immoral activity.

Mr. McConnell’s bill does not impact a state’s ability to manage its resident bear population or a lawful hunter’s ability to hunt bears in accordance with applicable state laws and regulations. The Bear Protection Act is not about bear hunting—it’s about ending bear poaching. This is a laudable goal that all Americans should support. American citizens should not sit by helplessly while bears are slaughtered, their gallbladders ripped out and the carcasses left to rot. It’s time to take a stand against bear poachers and profit-seeking toers. Congratulations to Senator McConnell for taking up the charge.

American Zoological and Aquarium Association (AZA) in support of your proposed Bear Protection Act of 2001.

AZA institutions draw over 135 million visitors annually and have more than 5 million zoo and aquarium members who provide almost $100 million in support. Collectively, these zoos and aquariums care for more than 1,300 species each year in living classrooms, dedicate over $50 million annually to education programs, invest over $50 million annually to scientific research and support over 1,300 field conservation and research projects in 90 countries.

In addition, AZA member institutions have established the Species Survival Plan (SSP) program—a long-term plan involving genetically diverse breeding, habitat preservation, public education, field conservation and supportive research to ensure survival for many threatened and endangered species. Currently, AZA member institutions are involved in 96 different SSP programs throughout the world, including four species of bear—sloth, sun, spectacled and the giant panda.

It is in this context that AZA expresses its support for the Bear Protection Act. There is little question that most populations of the world’s eight bear species have experienced significant declines during this century, particularly in Europe and Asia. habitat loss has been the major reason for this decline, although overhunting and poaching have also been factors in some cases, especially in Asia. In recent years, the commercial trade of bear body parts, in particular gallbladders and bile, for use in traditional Asian medicines has been implicated as the driving force behind the illegal hunting of some bear populations. Analyses by the US Fish and Wildlife Service (USFWS), TRAP-
The broadband market, distinct from the local telephone market, is new. Yet, federal and State regulators are placing new telecommunications regulations on broadband-specific facilities deployed by incumbent local exchange carriers, ILECs, the only regulated broadband service providers, as if they were part and parcel of their local telephone service. This is simply not the case. The local telephone market is not synonymous with the broadband market. The disparate regulatory treatment of phone companies deploying broadband and all other broadband service providers is serving to deny broadband to many rural communities.

Broadband facilities being deployed by ILECs throughout our cities and towns require billions of dollars of capital in new infrastructure that must be added to the existing telephone network. The sparse populations of rural communities already diminish the return on infrastructure investment so that, when combined with local market regulations, ILEC broadband deployment has not proven to be cost effective.

As a result, rural telephone exchanges owned by regulated telephone companies are not being upgraded for broadband services even while unregulated companies seem to be capable of making that substantial investment. In Wellington, Kansas, a rural community with around 10,000 residents, a small unregulated cable company called Sumner Cable has deployed broadband service. Yet, Southwestern Bell, the local regulated telephone company and a Bell operating company, is not deploying broadband. Different regulatory treatments of these companies, the incentive to one to deploy broadband, but not the other. This is being seen throughout our nation's rural communities, and is particularly disappointing. The Bell operating companies serve approximately 65 percent of rural telephone lines like those found in Wellington.

Broadband is certainly being deployed at a much faster rate in urban markets than rural markets. But that does not mean all is well in our nation's cities. Today, broadband deployment in urban markets is being characterized by the market dominance of the cable TV industry, unregulated in the broadband market, which serves approximately 70 percent of all broadband subscribers. This is good for consumers. Cable companies have taken full advantage of their deregulated status, and the inherent economic incentives, to deploy new technologies and provide new services to consumers. But while the cable industry finishes rebuilding its entire infrastructure with digital technology that permits it to offer broadband, ILECs are, in many instances, not making the same investment to rebuild their infrastructure.

The Broadband Deployment and Competition Enhancement Act of 2001 promotes broadband deployment in rural areas by requiring ILECs to deploy to all of their telephone exchange subscribers within 5 years. In exchange, ILEC broadband services are placed on a more level-playing field with their broadband competitors. This is achieved by deregulating only those new technologies added to the local telephone network that make broadband possible over telephone lines. By permitting ILECs to compete on a level playing field with their broadband competitors in their urban markets, we can create the proper balance between requirements and incentives.

The limited deregulation in this legislation will not affect competition in the local telephone market. CLECs will still have access to the entire legacy telephone network to use as they see fit, and they will still be permitted to combine their own broadband equipment with the telephone network to compete in the broadband market. Local exchanges in those parts of the local telephone network where new network architecture must be deployed to make broadband possible, CLECs are free to add their own facilities to the network so they can compete for every potential broadband subscriber.

In Kansas, we have many farms and small rural communities. I grew up on a farm near Parker, Kansas. My hometown has 200 people. My singular goal in introducing this legislation is to facilitate rural broadband deployment. Given the importance of ensuring broadband is deployed in rural communities, I have elected to introduce two bills to this effect.

In the Rural Broadband Deployment of 2001 Act of 2001, the State of Wyoming has been attempting to create a competitive local phone market that would have a multitude of competitors and lower rates for both landline and broadband possible over telephone lines. By permitting ILECs to compete in the telephone network that make broadband possible, CLECs are free to add their own facilities to the network so they can compete for every potential broadband subscriber. This is achieved by deregulating only those new technologies added to the local telephone network that make broadband possible over telephone lines.

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services can help to build Wyoming’s economy. Companies are beginning to realize that our State has a ready work force and the lower costs of doing business are making companies choose Wyoming. Many existing businesses are taking advantage of the Internet to bring their products and services to the world. Where once a store was limited to only being able to serve those within driving distance of it, now it can bring Wyoming to the world. This cannot take place without the continued roll out of broadband business services.

Wyoming has for many years been promoting the benefits of telecommuting. People living around the State have been able to connect to their office via computer and remain in contact with clients. Telecommuting now requires high speed access and that is available to decentate the areas. In other areas, the only data access is via a regular dial-up modem. There are companies that are deploying digital subscriber lines and cable modems, but those locations are limited and the price is too high to be adopted by a majority of Wyoming residents. Over time that price will come down, but this is not a call for public subsidies or government mandates, but a call for more competition and deregulation. Competition will bring lower prices and greater deployment of services to even the smallest of towns.

That is why I am an original cosponsor of Senator BROWNBACK’s bill. His bill creates a deregulatory regime that is backed by specific performance requirements and strong enforcement provisions.

The bill requires Incumbent Local Exchange Carriers, ILEC’s, to be able to provide advanced services to all of its customers within 5 years of the enactment of legislation in order to receive the benefits of deregulation. This ensures that companies will bring advanced services and competition to rural areas by giving a hard deadline for companies to complete their buildout.

Advanced services would be deregulated by exempting them from the requirements that ILECs make packet switching and fiber available to competitors at below cost rates. This would simplify the legislation in order to receive the benefits of deregulation. This makes it possible to provide advanced services over traditional phone lines. The bill also exempts fiber optic lines owned by ILECs from below cost pricing if the fiber is deployed either to the home or in areas that never had telephone infrastructure before. I believe that this will be key to making the economics of rural advanced services more favorable for companies wanting to invest in rural broadband deployment.

The bill would also give ILECs the necessary pricing flexibility for their broadband services. I believe that we should not hamstring a new technology in a very competitive marketplace with outdated regulations on price. It is important that Congress ensure that in addition to the wholesale pricing relief contained in this legislation, it also includes retail pricing flexibility to further make the economics more favorable.

The bill does not change the requirements that ILECs allow competitors to collocate their equipment in an ILEC facility. Collocation is very important since it ensures that competitors have access to the network and do not have to build distant links or other connections to the ILEC network.

The bill also does not eliminate the requirement that ILECs give competitors access to local loops. In fact, if an ILEC does not grant a competitor access to local lines the bill gives states the right to strip the ILEC of the deregulatory benefits contained in the bill.

The bill’s enforcement provisions are very strong and explicit. If a company does not meet the build-out requirements or does not collocate and/or grant competitors access to local loops, state regulators have the authority to return an ILEC to the old regulatory regime. Deregulation without proper enforcement mechanisms does not benefit consumers and competitors. It is important that we hold ILECs accountable if they are granted relief from the pricing requirements.

I have been working with my colleagues to create a mix of deregulation and incentives to encourage private infrastructure development. Government cannot force private firms to make unprofitable investments, but government can work to make investments in rural infrastructure more favorable. The Broadband Deployment and Competition Investment Act helps to make investment in advanced services in rural areas possible.

The great strides made by both Qwest, the smaller phone companies and the cooperatives show that rural areas can support fiber optic based services. The Wyoming Equality Network, the fiber based network linking all of Wyoming’s high schools, has been a great advancement for education and I applaud State’s foresight for undertaking such a far reaching project. The WEN has had the added effect of showing other companies that it is possible to link rural areas with fiber, bringing high speed data services and other advanced services to homes and businesses.

I am pleased to see that Qwest and several smaller companies have worked together to close the inter-office fiber loop, linking all local phone exchanges with a fiber optic connection. This will allow for greater capacity and new services like DSL and other high speed broadband services. This connection will help many areas of Wyoming overcome many of the service problems they have been experiencing for the last several years.

The objective of telecommunications policy should be to bring as many players into the marketplace and allow them to compete in the marketplace. Congress should not tie a company’s hands in a continually changing and competitive marketplace. We should ensure that all parties are on a level playing field and that all services are regulated in the same manner regardless of the company that is offering the service or the technology they are using. This legislation will help bring some needed consistency to the regulation of advanced services and I urge my colleagues to support this vital legislation.

By Mr. WARNER: S. 1129. A bill to increase the rate of pay for certain offices and positions within the executive and judicial branches of the Government, respectively, and for other purposes; to the Committee on Governmental Affairs.

Mr. WARNER. Mr. President, I am pleased to introduce legislation today to provide relief from the pay compression affecting career Federal employees serving in the Senior Executive Service, SES. It is nearing a decade since Senior Executive Service members have seen a meaningful adjustment in pay.

The salaries earned by these employees are, on average, well below those earned by their peers in private industry. Pay caps for the Senior Executive Service and certain other positions in the government are tied to the Executive Schedule which includes senior level officials as well as Members. Pay for the Senior Executive Schedule in five of the past eight years has resulted in pay compression so severe that 60 percent of the entire executive corps earns essentially the same salary despite differences in obligation and executive level. Over the past eight years, pay increases for these executives would average 1 percent per year. There is not much of an incentive to accept a higher position with added responsibilities and increased work hours for little or no increase in pay.

Many senior executives leave Federal service to begin second careers in the private sector because of the salary compression. Others find that retirement is a more sensible option, whereas Federal annuitants receive an average two and a half percent cost of living adjustment every year compared to the average one percent per year pay increase a senior executive may receive if she or he remained in Federal service.

I have heard from many SES employees relating their own stories as to how the problem of pay compression has affected them. I would like to share a few of these personal accounts.
From an ES-6 with the Department of Defense: “My pay has been capped and I have been receiving pay cuts. This year I received a surprise. I turned 55 and I subsequently experienced a $115.16 decrease in pay in January because my life insurance increased considerably, along with the contribution to retirement increase. Age 55 is not old! I expect to work a few more years and I expect my pay to increase so that I can enjoy my retired years with a reasonable retirement income that has not been eroded by the pay cap.”

A Senior Executive at the Department of Health and Human Services: “The highest career Deputy General Counsel position in my agency became vacant, and I was called by the General Counsel to seriously consider taking it. Aside from the many family issues involved in moving to Washington, an overriding aspect is the fact that I am already at the pay cap. Thus, a move into a position with more responsibility would provide no financial incentive. Although I’m obviously not in government for any huge financial rewards, I don’t want to go backward financially. Thus, I have decided to forgo this very challenging opportunity that would be a fitting pinnacle to my career with the Federal Government.”

Private Contractor, Department of Defense: “I turned down a job at the US Nuclear Command and Control System Support Staff, where I’d been stationed on active duty as a Regular Air Force Officer. I retired from the NSS four years ago after over 23 years in the Air Force, and was honored to get offered a Civil Service position back at the office. Instead, I reluctantly turned down the job. The reason was primarily money. I had to take another job that would have been necessary to give up part of my Air Force retirement pay because I retired as a regular officer. To make matters worse, my pay would have been capped. The bottom line is I would have taken a pay cut with no prospect of a pay raise in the foreseeable future. My family and I were asked to sacrifice pay and time together which we willingly did for over 23 years. Instead, I’m supporting the government in the role of a private contractor, where I’m fairly compensated for my expertise.”

These are just a few examples which illustrate how the freeze on executive pay and resulting pay compression have seriously eroded the government’s ability to attract and retain the most highly-competent career executives. This is a very timely issue for the Federal Government, seventy percent of the SES corps is eligible to retire over the next four years and almost half are expected to retire upon eligibility. Agencies are being forced to make special requests to increase salaries for their managers and supervisors. They recognize that when someone leaves Federal service, their knowledge and experience goes with them.

The legislation I am introducing increases base pay for Senior Executives from Executive Level IV to Executive Level III, extends locality pay to the Executive Schedule, increases the locality cap from Executive Level III to Executive Level II plus an extra amount of pay, and increases the overall limit on compression that can be received in a single year by career executives from Executive Level I to the Vice-Presidential level. The bill also includes certain positions in the Federal judiciary which have been impacted by the pay caps. The actual raises career executives would receive would continue to be determined at the President’s discretion.

It is also my intention to ensure that this issue remains a priority for the incoming Director at the Office of Personnel Management. During the confirmation hearing, Mrs. Kay Coles James, President Bush’s nominee to head the Office of Personnel Management, indicated her willingness to work with Members to address the problem of pay compression.

Pay compression within the Senior Executives Service is one of the more pressing issues facing the Federal employee workforce and must be addressed as the situation will only get worse. The only means to alleviate pay compression for the Senior Executives at this time is through legislation. Therefore, I encourage my Senate colleagues to support the bill. I ask that you take a look at the text of the bill that will be printed in the RECORD.

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

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

SECTION 1. PROVISIONS RELATING TO CERTAIN OFFICES AND POSITIONS WITHIN THE EXECUTIVE BRANCH.

(a) EXECUTIVE SCHEDULE PAY RATES.—

(1) In general.—Section 5319 of title 5, United States Code, is amended—

(A) by redesigning subsection (a) as subsection (a)(1) and subsection (b) as paragraph (2); and

(B) by adding at the end the following:

“(b)(1)(A) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which any adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic pay for contract appeals board members shall be adjusted by an amount determined by the President to be appropriate.

(2) C ONTRACT APPEALS BOARD MEMBERS.—

(A) in subsection (b)(2) by striking ‘‘97 percent of the rate under paragraph (1)’’ and inserting ‘‘no less than 97 percent of the rate under paragraph (1)’’; and

(B) in subsection (b)(3) by striking ‘‘94 percent of the rate under paragraph (1)’’ and inserting ‘‘no less than 94 percent of the rate under paragraph (1)’’; and

(C) by adding at the end the following:

“(a) Subject to subsection (b) (as redesignated) at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic pay for contract appeals board members shall be adjusted by an amount determined by the President to be appropriate.”

(3) CONFORMING AMENDMENTS.—Section 5318 of title 5, United States Code, is amended—

(A) in the first sentence of subsection (a)(1) (as redesignated)—

(i) by striking “Subject to subsection (b),” and inserting “Subject to paragraph (2),”;

and

(ii) by inserting “exclusive of any previous adjustment under subsection (b)” after “Executive Schedule”;

and

(B) in subsection (a)(2) (as redesignated), by striking “subsection (a)” and inserting “paragraph (1)”;

(b) AMENDMENTS RELATING TO CERTAIN LIMITATIONS AND OTHER PROVISIONS.

(1) PROVISIONS TO BE APPLIED BY EXCLUDING EXECUTIVE SCHEDULE COMPARABILITY ADJUSTMENT.—Sections 5303(f), 5304(h), 5304a(h), 5306(e), and 5379a of title 5, United States Code, are each amended by inserting ‘‘exclusive of any adjustment under section 5319(b)” after ‘‘Executive Schedule”.

(2) LIMITATION ON CERTAIN PAYMENTS.—Section 5306(a) of title 5, United States Code, is amended by adding at the end the following:

“(3) In the case of an employee who is receiving basic pay under section 572a, 5776, or 5782, notwithstanding paragraph (1), the ‘average rate of salary of the Vice President of the United States’ for the ‘annual rate of basic pay payable for level I of the Executive Schedule’ shall be determined in accordance with subsection (c) and the ‘average of any adjustment under section 5319(b)” after “Executive Schedule”.

(3) This subsection shall be applied by excluding the Executive Schedule comparability adjustment from the computation of the average rate of salary of the Vice President of the United States for the purposes of this subsection.

The base pay under the Executive Schedule is determined by the President to be appropriate for the Executive Schedule.

(4) This subsection may be applied to the preceding sentence for other equivalent categories of employees.

References to Level IV of the Executive Schedule.—Sections 5372b(c)(1)(C), 5372a(b)(1), 5376b(1)(B), and 5382(b) of title 5,
United States Code, are each amended by striking "level IV" each place it appears and inserting "level III".

SEC. 2. PROVISIONS RELATING TO CERTAIN OFFICES AND POSITIONS WITHIN THE EXECUTIVE BRANCH.

(a) INCREASE IN MAXIMUM RATES OF BASIC PAY ALLOWABLE.—

(1) For positions covered by section 632(a) of title 28, United States Code—

Section 604(a)(5) of title 28, United States Code, is amended by striking "by law" and inserting "by law (except that the rate of basic pay for any such employee may not exceed the rate for level IV of the Executive Schedule)".

(2) For circuit executives.—Section 332(f)(1) of title 28, United States Code, is amended by striking "level IV of the Executive Schedule pay rates under section 5315" and inserting "level III of the Executive Schedule pay rates under section 5314".

(3) For personnel of the administrative office of the United States courts.—

(A) IN GENERAL.—Section 3(a) of the Administrative Office of the United States Courts Personnel Act of 1990 (28 U.S.C. 602 note) is amended—

(i) in paragraph (1), by striking "level V" and inserting "level IV"; and

(ii) in paragraph (10), by striking "level IV" and inserting "level III".

(B) PROVISIONS RELATING TO CERTAIN ADDITIONAL DISTRICTS.—Section 605 of title 28, United States Code, is amended by striking "level IV of the Executive Schedule under section 5315" and inserting "level III of the Executive Schedule under section 5314".

(b) SALARY OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 603 of title 28, United States Code, is amended by striking "district" and inserting "circuit".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall be effective with respect to pay periods beginning on or after the date of enactment of this Act.

By Mr. CRAIG (for himself, Mrs. FEINSTEIN, and Mr. CORZINE):

S. 1130. A bill to require the Secretary of Energy to develop a plan for a magnetic fusion burning plasma experiment for the purpose of accelerating the scientific understanding and development of fusion as a long-term energy source, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CRAIG. Mr. President, today I am introducing a bill of great significance to our energy future, the Fusion Energy Sciences Act of 2001. I am especially pleased that my colleague from California, Senator FEINSTEIN, is joining me as the primary cosponsor of this legislation. This bill is designed to strengthen the fusion program at the Department of Energy and with it accelerate planning for the next major step in fusion energy science development.

In recent months, the news has been dominated by energy concerns. Although there may be differences of opinion about the causes of our current energy problems and what the appropriate solutions might be, there is general agreement that energy forms a vital link to our economic prosperity and provides the means by which the conduct of our daily lives is made easier and more comfortable. While we grapple with our energy problems, we need to stay focused on long-term investment in those endeavors which have the potential to help secure our energy future. I believe that fusion energy has this potential.

Fusion, the energy source that powers the sun and the stars, at its most basic, is the combining or fusion of two small atoms into a larger atom. When two atomic nuclei fuse, tremendous amounts of energy are released. If we can achieve this joining of atoms, and successfully contain and harness the energy produced, fusion will be close to an ideal energy source. It produces no air pollutants because the byproduct of the reaction is helium. In space, hydrogen, is practically unlimited and easily obtained.

In the technical community, the debate over the scientific feasibility of fusion energy is now over. During the past decade, substantial amounts of fusion energy have been created in the laboratory setting. I am proud to note that some of this underlying scientific work has been conducted at the Idaho National Engineering and Environmental Laboratory in my State, which has been selected by the Department of Energy to lead efforts on fusion safety. Although certain scientific questions remain, the primary outstanding issue about fusion energy at this point is whether fusion energy can make the challenging step from the laboratory into a practical energy resource. Achieving this goal will require high quality science, innovative research and international collaboration. It may be possible to accelerate this process. In addition to these steps, continued investment in a strong underlying program of fusion science and plasma physics will still be necessary.

Therefore, this bill instructs the Secretary of Energy to transmit to the Congress by July 1, 2004 a plan for a "burning plasma" experiment, which is the next necessary step towards the eventual realization of practical fusion energy. At a minimum, the Secretary must submit a plan for a domestic U.S. experiment, but may also submit a plan for U.S. involvement in an international burning plasma experiment if such involvement is cost effective and has equivalent scientific benefits to a domestic experiment. The bill also requires that within six months of the enactment, the Secretary of Energy shall submit a plan to Congress to ensure a strong scientific base for the fusion energy sciences program. Finally, for ongoing activities in the Department of Energy's fusion energy sciences program and for the purpose of preparing the plans called for, the bill authorizes $320,000,000 in fiscal year 2002 and $335,000,000 in fiscal year 2003.

As we suffer through near term challenges in the energy sector and meeting our immediate needs, it is more crucial than ever that we invest in those items that hold the promise for long term solutions. Recent accomplishments in the laboratory demonstrate that fusion energy has this long term potential. The Fusion Energy Sciences Act of 2001 will bring this promise closer to reality for future generations.

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. 1130 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 "Fusion Energy Sciences Act of 2001".

SEC. 2. FINDINGS.

The Congress finds that—

(1) economic prosperity is closely linked to an affordable and ample energy supply;

(2) environmental quality is closely linked to energy productions;

(3) population, worldwide economic development, energy consumption, and stress on the environment are all expected to increase substantially in the coming decades;

(4) the few energy options with the potential to meet economic and environmental needs for the long-term future must be pursued aggressively now, as part of a balanced national energy plan;

(5) fusion energy is a long-term energy solution that is expected to be environmentally benign, safe, and economical, and to use a fuel source that is practically unlimited;

(6) the National Academy of Sciences, the President's Committee of Advisors on Science and Technology, and the Secretary of Energy Advisory Board have each recently reviewed the Fusion Energy Sciences Program and each strongly supports the fundamental science and creative innovation of the program, and has confirmed that progress toward the goal of producing practical fusion energy has been excellent;

(7) each of these reviews stressed the need for the Fusion Energy Sciences Program to move forward to a magnetic fusion burning plasma experiment, which is capable of producing substantial fusion power output and providing key information for the advancement of fusion science;

(8) the National Academy of Sciences has also called for a broadening of the Fusion Energy Sciences Program research base as a
means to more fully integrate the fusion science community into the broader scientific community; and

(9) the Fusion Energy Sciences Program budget is inadequate to support the necessary evaluation for the present generation of experiments, and cannot accommodate the cost of a burning plasma experiment constructed by the United States, or even the cost of key participation by the United States in an international effort.

SEC. 3. PLAN FOR FUSION EXPERIMENT.

(a) PLAN FOR UNITED STATES FUSION EXPERIMENT.—In addition to and development of the experiment including its estimated cost and potential construction facilities and equipment are more fully utilized with appropriate measurements and methods between the fusion science community and the wider scientific community.

(3) to encourage and ensure that the selection of and funding for new magnetic and in-ertial fusion research facilities is based on scientific effectiveness;

(4) to improve the communication of scientific results and methods between the fusion science community and the wider scientific community;

(5) to ensure that adequate support is provided to optimize the design of the magnetic fusion burning plasma experiments referred to in section 3.

(b) REQUIREMENTS OF PLAN.—The plan described in subsection (a) shall—

(1) address key burning plasma physics issues; and

(2) include specific information on the scientific capabilities of the proposed experiment, the relevance of these capabilities to the goal of practical fusion energy, and the overall design of the experiment including its estimated cost and potential construction sites.

(c) UNITED STATES PARTICIPATION IN AN INTERNATIONAL EXPERIMENT.—In addition to the plan described in subsection (a), the Secretary, on the basis of full consultation with, and the recommendation of, FESAC, may also develop a plan for United States participation in an international burning plasma experiment for the purpose of accelerating scientific understanding of burning plasma experiments. The Secretary shall request a review of the plan by the National Academies of Sciences, and shall transmit the plan and the review to the Congress no later than July 1, 2004.

(d) AUTHORIZATION OF RESEARCH AND DEVELOPMENT.—The Secretary, through the Fusion Energy Sciences Program, may conduct any research and development necessary to fully develop the plans described in this section.

SEC. 4. PLAN FOR FUSION ENERGY SCIENCES PROGRAM.

Not later than 6 months after the date of enactment of this Act, the Secretary, in full consultation with FESAC, shall develop and transmit to the Congress a plan for the purpose of ensuring a strong scientific base for the Fusion Energy Sciences Program and to enable the Secretary to more fully utilize its scientific resources.

Such plan shall include as its objectives—

(1) to ensure that existing fusion research facilities are more fully utilized with appropriate measurements and control tools;

(2) to ensure a strengthened fusion science theory and computational base;

(3) to encourage and ensure that the selection of and funding for new magnetic and in-ertial fusion research facilities is based on scientific effectiveness;

(4) to improve the communication of scientific results and methods between the fusion science community and the wider scientific community;

(5) to ensure that adequate support is provided to optimize the design of the magnetic fusion burning plasma experiments referred to in section 3.

(b) REQUIREMENTS OF PLAN.—The plan described in subsection (a) shall—

(1) to ensure that existing fusion research facilities are more fully utilized with appropriate measurements and control tools;

(2) to ensure a strengthened fusion science theory and computational base;

(3) to encourage and ensure that the selection of and funding for new magnetic and in-ertial fusion research facilities is based on scientific effectiveness;

(4) to improve the communication of scientific results and methods between the fusion science community and the wider scientific community;

(5) to ensure that adequate support is provided to optimize the design of the magnetic fusion burning plasma experiments referred to in section 3.

(6) to ensure that inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research.

(c) PLAN FOR UNITED STATES FUSION EXPERIMENT.—The Secretary of Energy (in this Act referred to as ‘the Secretary’), on the basis of full consultation with, and the recommendation of, the Fusion Energy Sciences Advisory Committee (in this Act referred to as ‘FESAC’), shall develop a plan for United States construction of a magnetic fusion burning plasma experiment for the purpose of accelerating scientific understanding of burning plasma experiments. The Secretary shall request a review of the plan by the National Academies of Sciences, and shall transmit the plan and the review to the Congress by July 1, 2004.

(d) AUTHORIZATION OF RESEARCH AND DEVELOPMENT.—The Secretary, through the Fusion Energy Sciences Program, may conduct any research and development necessary to fully develop the plans described in this section.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for the development and news of the plans described in this Act and for activities of the Fusion Energy Sciences Program $320,000,000 for fiscal year 2002 and $355,000,000 for fiscal year 2003.

Mrs. FEINSTEIN. Mr. President, I rise today to join my colleague, Senator Bayh, in supporting this legislation to accelerate the development of fusion energy as a practical and realistic alternative to fossil fuels for our nation’s energy needs.

I would also like to commend my colleagues, Senator Bayh and Senator Lieberman, who introduced the “Fusion Energy Sciences Act of 2001” on the House side as H.R. 1781.

Since the beginning of the Manhattan Project, scientists have been trying to harness energy from fusion to produce electricity. This legislation will help the scientific community expedite the development of fusion as a viable option for our energy needs.

To help fusion science move from the lab to the grid, this bill fast-tracks a key experimental fusion project. This bill also authorizes $320 million for Fiscal Year 2002 and $335 million for Fiscal Year 2003 to speed up fusion’s current estimated 45-year implementation timetable.

I have spoken frequently to my colleagues on California’s current energy situation.

Last week the Department of Energy predicted the State will suffer from around 110 hours of rolling blackouts this summer. Experts say $21.8 billion of economic output will be lost and over 135,000 workers will lose their jobs because of this summer’s blackouts.

I will continue to try to help California and the rest of the West in the short-term, making blackouts less frequent, lowering electricity costs on the wholesale market, keeping natural gas prices reasonable, and bringing new supplies of power online are the key objectives I have been working toward to bring stability to the Western Energy Market.

While I work on the short-term problems in California, I join my colleague from Idaho on this bill to develop a key long-term solution to our current energy problems.

As world populations grow, and as civilization advances, we need to pursue new energy sources beyond traditional fossil fuels.

It is no secret that fossil fuels are finite and polluting. Beyond expanding renewable energy resources, harnessing energy from the sun and the wind, fusion holds a great deal of potential to expand our nation’s energy supply.

Fusion is a safe, almost inexhaustible energy source with major environmental advantages. As a co-sponsor of this legislation, I hope to see fusion move quickly from an experiment in the lab to a reality for our homes and businesses.

We have already succeeded in using scientific advancements to harness energy occurring elsewhere on our planet. Solar panels collect the sun’s rays to heat pools and power homes. Windmills transfer nature’s gusts into electrical currents. Water running from mountains to the sea can produce significant amounts of hydropower.

And now, with fusion energy, we will be able to harness the power of the stars to create an almost unlimited and clean form of energy.

Fusion energy is the result of two small hydrogen nuclei combining into a larger atom. The energy released from this fusion of the atoms can be harnessed to generate electricity.

Unlike nuclear power, which uses radioactive materials for fuel, fusion uses hydrogen from water. Unlike fossil fuels, which pollute the air when burned, the only byproduct in a hydrogen fusion reaction is helium, an element already plentiful in the air.

Besides being environmentally benign, fusion is a practically unlimited fuel source. In fact, scientists predict that using 1 gallon of sea water, fusion can yield the energy produced from 300 gallons of gasoline. And with fusion, 50 cups of sea water can be the energy equivalent of 2 tons of coal.

Fusion energy has proven to be a practical energy endeavor, worthy of more investment for research and development. So just where do we go from here? How do we harness the power of the stars?

A 1999 review by the Department of Energy’s task force on Fusion Energy concluded: one, substantial scientific progress has been made in the science of fusion energy; two, the budget for fusion research needs to grow; and three, a burning plasma experiment needs to be carried out.

To expedite the use of fusion to meet our energy needs, we need to strengthen the efforts already underway in fusion research and development and create new programs financed by the government.

Scientists agree that at current funding levels, fusion is approximately 45 years away from entering the marketplace as a viable energy source.

This timetable is based on a three step process in which the scientific community can: first, carry out a burning plasma experiment; second, build a fusion energy test facility; and third,
It is critical that we be the leader in the renewable energy resources sector. I urge my colleagues to join Senator Clinton and me in supporting fusion energy as a clean, safe, and abundant energy source for our Nation's long-term energy supply.

By Mr. LEAHY:

S. 1131. A bill to promote economically sound modernization of electric power generation capacity in the United States, to establish requirements to improve the combustion heat rate efficiency of fossil fuel-fired electric utility generating units, to reduce emissions of mercury, carbon dioxide, nitrogen, oxides, and sulfur dioxide, to require that all fossil fuel-fired electric utility generating units operating in the United States meet source review requirements, to promote the use of clean coal technologies, and to promote alternative energy and clean energy sources such as solar, wind, biomass, and fuel cells; to the Committee on Finance.

Mr. LEAHY. Mr. President, the Administration finally released its National Energy Policy last month. As I noted at the time, I have serious concerns about several of its recommendations, not the least of which was its proposal to build 1,600 to 1,900 new electric power plants many of them burning relatively dirty fossil fuels, while, at the same time, questioning the enforcement of clean air laws that protect the public from excess power plant emissions.

Today, fossil fuel-fired power plants constitute the largest source of air pollution in the United States. Every year, they collectively emit approximately 2.2 billion tons of carbon dioxide, 13 million tons of acid rain-producing sulfur dioxide, 7 million tons of acid rain- and smog-producing nitrogen oxides, and 43 tons of highly toxic mercury.

How could pollutants still be dumped into our atmosphere at this scale? One reason that cannot be ignored is that more than 75 percent of the fossil-fuel fired power plants in the United States are still "grandfathered," or exempt from modern Clean Air Act standards. When the Clean Air Act and its amendments were passed, Congress assumed that old, 1950's era power plants would be retired over time and replaced by newer, cleaner plants within 30 years. They were not. Unfortunately, utilities have kept these inefficient, pollution-prone power plants on line because they are inexpensive. Those grandfathered plants continue to burn cheap fuel and refuse to invest in emissions control technologies that protect air quality.

The continuing harm to our atmosphere, lands, waters, State economies, and public health by excess power plant emissions is well documented. In my home state of Vermont, acid deposition caused by emissions of sulfur dioxide and nitrogen oxide has scarred our forests and poisoned our streams. Farmers in Vermont,maple trees the source of Vermont maple syrup and other economic Vermont crops. And despite Vermont’s tough air laws and small population, out-of-state particulates and smog lower our air quality, endanger our health, and ruin views of our Green Mountains.

Earlier this year, I cosponsored bipartisan legislation, the "Clean Power Act of 2001," that strictly capped national power plant emissions and ended cut by more than 1 million tons beyond Phase II requirements, and nitrogen oxide emissions would be cut by more than 4 million tons per year beyond Phase II requirements. This bill would also prevent at least 650 million tons of carbon dioxide emissions per year.

And this bill goes beyond emissions caps and transition incentives to recognize the emergent of energy technologies that are more environmentally sustainable. It also provides substantial funding for research, development, and commercial demonstrations of renewable and clean energy technologies such as solar, wind, biomass,
geothermal, and fuel cells. It also authorizes expenditures for implementing known ways of biologically sequestering carbon dioxide from the atmosphere such as planting trees, preserving wetlands, and soil restoration.

The bill emphasizes the importance of immediately capping, if not totally eliminating, the release of mercury from power plants. In December, the EPA finally determined to regulate mercury emissions from electric utility power plants, an action I strongly commended. However, such regulations are years away, and it is uncertain what form they will take. Yet, just last year, 41 states issued more than 2,200 fish consumption advisories because of mercury contamination. Eleven states, including Vermont, issued statewide advisories. In 2000, the National Academy of Sciences confirmed the health threats of mercury, emphasizing the special vulnerability of unborn and young children. I believe we need to do something now.

As the energy landscape of our nation changes, this bill also recognizes the need to train a new national energy work force. As U.S. power plants become more efficient and more power is produced by renewable technologies, less fossil fuel will be consumed. This will have an impact on the workers and communities that produce fossil fuels. These effects are likely to be greatest for coal, even with significant deployment of clean coal technology. The bill provides funding for programs to help workers and communities during the period of transition. I am eager to work with organized labor to ensure that these provisions address the needs of workers, particularly those who may not fully benefit from retraining programs.

Finally, this bill holds the electric power industry, and Congress, accountable for any and all taxpayer dollars used to aid the transition to cleaner electric generation facilities. To assess how well clean air laws and emissions reductions are working, our nation must have robust, nationwide monitoring networks capable of generating reliable, consistent, long-term data about natural ecosystems. Networks such as the National Atmospheric Deposition Program will help the national data needed by scientists and Federal agencies to accurately assess the trends in pollutant deposition. Yet, over the past 30 years, these networks have struggled to survive with ever-decreasing funding. My bill provides modest appropriations for both operational support and modernization of scientific sites that are so critical to understanding of our ecosystems and our public health.

The American public overwhelmingly supports the environmental commitments that we have made since the early 1970s. It is our responsibility to preserve the environment for our children and grandchildren, and it is our duty to protect their health as well. The proposed energy policy of this administration needs to be less about drilling and more about energy efficiency and protection of air quality. This bill will, I hope, add another way in which we can ensure reliable, affordable electric power while modernizing energy efficiency and protecting our national resources.

I ask unanimous consent that the text of this bill, and the section-by-section overview of the bill be printed in the RECORD.

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

S. 139

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

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Clean Power Plant and Modernization Act of 2001.”

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

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SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the United States is relying increasingly on old, needlessly inefficient, and highly polluting power plants to provide electricity;

(2) the pollution from those power plants causes a wide range of health and environmental damage, including—

(A) fine particulate matter that is associated with the deaths of approximately 50,000 Americans annually;

(B) urban ozone, commonly known as “smog”, that impairs normal respiratory function and is especially concern to individuals afflicted with asthma, emphysema, and other respiratory ailments;

(C) rural ozone that obscures visibility and damages forests and wildlife;

(D) acid deposition that damages estuaries, lakes, rivers, and streams (and the plants and animals that depend on them for survival) and leaches heavy metals from the soil;

(E) mercury and heavy metal contamination that renders fish unsafe to eat, with especially serious consequences for pregnant women and their fetuses;

(F) eutrophication of estuaries, lakes, rivers, and streams; and

(G) global climate change that may fundamentally and irreversibly alter human, animal, and plant life;

(3) tax laws and environmental laws—

(b) PROVIDE A STRONG DISINCENTIVE TO INVESTING IN NEW CLEAN, AND EFFICIENT GENERATING TECHNOLOGIES;

(4) fossil fuel-fired power plants, consisting of plants fueled by coal, fuel oil, and natural gas, produce more than two-thirds of the electricity generated in the United States;

(5) since, according to the Department of Energy, the average combined cycle heat efficiency of fossil fuel-fired power plants in the United States is 33 percent, 67 percent of the heat generated by burning the fuel is wasted;

(6) technology exists to increase the combustion heat rate efficiency of coal combustion from 35 percent to 50 percent above current levels, and technological advances are possible that would boost the net combustion heat rate efficiency even more;

(7) coal-fired power plants are the leading source of mercury emissions in the United States, releasing more than 43 tons of this potent neurotoxin each year;

(8) in 1999, fossil fuel-fired power plants in the United States produced nearly 2,200,000,000 tons of carbon dioxide, the primary greenhouse gas;

(9) on average, fossil fuel-fired power plants emit approximately 2,000 pounds of carbon dioxide for every megawatt hour of electricity produced;

(10) the average fossil fuel-fired generating unit in the United States commenced operation in 1964, 6 years before the Clean Air Act (42 U.S.C. 7401 et seq.) was amended to establish requirements for stationary sources;

(11)(A) according to the Department of Energy, only 23 percent of the 1,000 largest emitting units are subject to stringent new source performance standards under section 111 of the Clean Air Act (42 U.S.C. 7411); and

(B) the remaining 77 percent, commonly referred to as “grandfathered” power plants, are subject to much less stringent requirements;

(12) according to available scientific and medical evidence, exposure to mercury and mercury compounds is of concern to human health and the environment;

(13) according to the report entitled “Toxicological Effects of Methylmercury” and submitted to Congress by the National Academy of Sciences in 2000, and other scientific and medical evidence, pregnant women and their developing fetuses, women of child-bearing age, children, and individuals who subsist primarily on fish are most at risk for mercury-related health impacts such as neurotoxicity;

(14) although exposure to mercury and mercury compounds occurs most frequently through consumption of mercury-contaminated fish, such exposure can also occur through—
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(A) ingestion of breast milk;
(B) ingestion of drinking water, and foods other than fish, that are contaminated with methylmercury; and
(C) dermal uptake through contact with soil and water;
(15) the report entitled “Merkurky Study Report to Congress” and submitted by the Environmental Protection Agency under section 1220(3)(B) of the Clean Air Act (42 U.S.C. 7412(n)(1)(B)), in conjunction with other scientific knowledge, supports a plausible link between mercury emissions from combustion of coal and other fossil fuels and mercury concentrations in air, soil, water, and sediments;
(16)(A) the Environmental Protection Agency report described in paragraph (15) supports a plausible link between mercury emissions from combustion of coal and other fossil fuels and methylmercury concentrations in freshwater fish;
(B) in 2000, 41 States issued health advisories that warned the public about consuming mercury-tainted fish, as compared to the 27 States that issued such advisories in 1993; and
(C) the number of mercury advisories nation wide increased from 899 in 1993 to 2,242 in 2000, an increase of 149 percent;
(17) pollution from power plants can be reduced through adoption of modern technologies and practices, including—
(A) methods ofcombusting coal that are intrinsically more efficient and less polluting, such as pressurized fluidized bed combustion and an integrated gasification combined cycle system;
(B) methods ofcombusting cleaner fuels, such as gases from fossil and biological resources and clean power generation;
(C) treating flue gases through application ofpollution controls;
(D) methods ofextracting energy from natural, renewable resources of energy, such as solar and wind sources;
(E) methods ofproducing electricity and thermal energy from fuels without conventional combustion, such as fuel cells; and
(F) combined heat and power methods of extracting and using heat that would otherwise be wasted, for the purpose of heating or cooling office buildings, providing steam to processing facilities, or otherwise increasing total efficiency;
(18) setting the technologies and practices described in paragraph (17) would increase competitiveness and productivity, secure employment, save lives, and preserve the future; and
(19) accurate, long-term, nationwide monitoring of atmospheric acid and mercury deposition is essential for—
(A) determining deposition trends;
(B) evaluating the local and regional transport of emissions; and
(C) assessing the impact ofemission reductions.
(b) PURPOSE.—The purposes ofthis Act are to—
(1) to protect and preserve the environment while safeguarding health by ensuring that each fossil fuel-fired generating unit minimizes air pollution to levels that are technically achievable through application and modernization of pollution controls;
(2) to greatly reduce the quantities ofmercury, carbon dioxide, sulfur dioxide, and nitrogen oxides entering the environment from combustion offossil fuels;
(3) to permanently reduce emissions of those pollutants by increasing the combustion heat rate efficiency of fossil fuel-fired generating units to levels achievable through—
(C) increased use ofrenewable and clean energy sources such as biomass, geothermal, solar, wind, and fuel cells;
(D) promotion ofapplication ofcombined heat and power technologies;
(4)(A) to obtain and financial and economic incentives to retire inefficiently generating units that employ high-temperature, high-efficiency combustion technology; and
(B) to increase use ofrenewable and clean energy sources such as biomass, geothermal, solar, wind, and fuel cells;
(5) to establish the Clean Air Trust Fund to fund the training, economic development, carbon sequestration, and research, development, and demonstration programs established under this Act;
(6) to eliminate the “grandfather” loophole in the Clean Air Act relating to sources in operation before the promulgation of standards under section 111 of that Act (42 U.S.C. 7411); (7) to express the sense of Congress that permanent reductions in emissions of greenhouse gases that are accomplished through the retirement of old units and replacement by new units that meet the combustion heat rate efficiency and emission standards specified in this Act should be credited to the utility sector and the owner or operator in any climate change implementation program;
(8) to provide permanent and safe disposal of mercury recovered through coal cleaning, flue gas control systems, and other methods ofmercury pollution control;
(9) to increase public knowledge of the sources ofmercury exposure and the threat to public health from mercury, particularly the threat to the health ofpregnant women and their fetuses, women ofchildbearing age, and children;
(10) to decrease significantly the threat to human health and the environment posed by mercury;
(11) to provide worker retraining for workers adversely affected by reduced consumption ofcoal;
(12) to provide economic development incentives for communities adversely affected by reduced consumption of coal;
(13) to promote research concerning renewable energy sources, clean power generation technologies, and carbon sequestration; and
(14) to promote government accountability for compliance with the Clean Air Act (42 U.S.C. 7401 et seq.) and other emission reduction laws by ensuring accurate, long-term, nationwide monitoring of atmospheric acid and mercury deposition.

SEC. 3. DEFINITIONS.
In this Act:
(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.
(2) GENERATING UNIT.—The term “generating unit” means an electric utility generating unit.

SEC. 4. COMBUSTION HEAT RATE EFFICIENCY STANDARDS FOR FOSSIL FUEL-FIRED GENERATING UNITS.
(a) STANDARDS.—
(1) IN GENERAL.—Not later than the day that is 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit that commences operation on or before that day shall achieve and maintain, at all operating levels, a combustion heat rate efficiency of not less than 4,100 Btu per kilowatt-hour (based on the higher heating value of the fuel).
(2) FUTURE GENERATING UNITS.—Each fossil fuel-fired generating unit that commences operation more than 10 years after the date of enactment of this Act shall achieve and maintain, at all operating levels, a combustion heat rate efficiency of not less than 50 percent based on the higher heating value of the fuel), unless granted a waiver under subsection (d).
(b) TEST METHODS.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, shall promulgate methods for determining initial and continuing compliance with this section.
(c) PERMIT REQUIREMENT.—Not later than 10 years after the date of enactment of this Act, each generating unit shall have a permit issued under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) that requires compliance with this section.
(d) WAIVER OF COMBUSTION HEAT RATE EFFICIENCY STANDARD.—
(1) APPLICATION.—The owner or operator of a generating unit that commences operation more than 10 years after the date of enactment of this Act may apply to the Administrator for a waiver of the combustion heat rate efficiency standard specified in subsection (a)(2) that is applicable to that type of generating unit.
(2) ISSUANCE.—The Administrator may grant the waiver only if—
(A) the owner or operator of the generating unit demonstrates that the technology to meet the combustion heat rate efficiency standard is not commercially available; or
(ii) the owner or operator of the generating unit demonstrates that, despite best technical efforts and willingness to make the necessary level of financial commitment, the combustion heat rate efficiency standard is not achievable at the generating unit; and
(B) the owner or operator of the generating unit enters into an agreement with the Administrator to offset by a factor of 1.5 to 1, using a method approved by the Administrator, the emission reductions that the generating unit does not achieve because of the failure to achieve the combustion heat rate efficiency standard specified in subsection (a)(2).
(e) EFFECT OF WAIVER.—If the Administrator grants a waiver under paragraph (1), the generating unit shall be required to achieve and maintain, at all operating levels, the combustion heat rate efficiency standard specified in subsection (a)(1).

SEC. 5. AIR EMISSION STANDARDS FOR FOSSIL FUEL-FIRED GENERATING UNITS.
(a) ALL FOSSIL FUEL-FIRED GENERATING UNITS.—Not later than 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit, regardless of its date of construction, or commencement of operation, shall be subject to, and operating in physical and operational compliance with, the new source review requirements under section 111 of the Clean Air Act (42 U.S.C. 7411).
(b) EMISSION RATES FOR SOURCES REQUIRED TO COMPLY WITH 40 CFR PART 68.—Not later than 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit subject to section 4(a)(1) shall be in compliance with the following emission limitations:
(1) MERCURY.—Each coal-fired or fuel oil-fired generating unit shall be required to reduce the emission ofmercury contained in the fuel, calculated in accordance with subsection (e).
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(2) CARBON DIOXIDE.—(A) NATUREL GAS-FIRED GENERATING UNITS.—Each natural gas-fired generating unit shall be required to achieve an emission rate of not more than 0.9 pounds of carbon dioxide per kilowatt hour of net electric power output.

(B) FUEL-OIL-FIRED GENERATING UNITS.—Each fuel oil-fired generating unit shall be required to achieve an emission rate of not more than 1.3 pounds of carbon dioxide per kilowatt hour of net electric power output.

(C) COAL-FIRED GENERATING UNITS.—Each coal-fired generating unit shall be required to achieve an emission rate of not more than 1.5 pounds of carbon dioxide per kilowatt hour of net electric power output.

(3) SULFUR DIOXIDE.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 95 percent of the sulfur dioxide that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.3 pounds of sulfur dioxide per million British thermal units of fuel consumed.

(4) NITROGEN OXIDES.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 90 percent of nitrogen oxides that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.15 pounds of nitrogen oxides per million British thermal units of fuel consumed.

(5) FUEL-OIL-FIRED GENERATING UNITS.—Each fuel oil-fired generating unit shall be required—

(A) to remove 95 percent of the fuel oil that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.3 pounds of sulfur dioxide per million British thermal units of fuel consumed.

(6) NATURAL GAS-FIRED GENERATING UNITS.—Each natural gas-fired generating unit shall be required to achieve an emission rate of not more than 0.9 pounds of carbon dioxide per kilowatt hour of net electric power output.

D. Calculation of Mercury Emission Reductions.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, shall promulgate methods for determining initial and continuing compliance with this section.

E. Compliance Determination and Monitoring.—

(1) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, shall promulgate methods for determining initial and continuing compliance with this section.

(2) CALCULATION OF MERCURY EMISSION REDUCTIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate fuel sampling techniques and emission monitoring techniques for use by generating units in calculating mercury emission reductions for the purposes of this section.

(3) REPORTING.—

(A) IN GENERAL.—Not less often than quarterly, the owner or operator of a generating unit shall submit—

(i) a pollutant-specific emission report for each pollutant covered by this section;

(ii) a signature report for each pollutant covered by this section;

(iii) a consumer disclosure report for each pollutant covered by this section;

(iv) a facility-specific emission data report for each pollutant covered by this section;

(v) a signature report for each pollutant covered by this section;

(vi) a consumer disclosure report for each pollutant covered by this section;

(vii) a facility-specific emission data report for each pollutant covered by this section;

(B) COMPLIANCE DETERMINATION AND MONITORING.—

(1) IN GENERAL.—The Administrator shall promulgate regulations to ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations).

(2) REPORTING OF FACILITY-SPECIFIC EMISSION DATA.—

(A) IN GENERAL.—The Administrator shall annually make available to the public, through 1 or more published reports and 1 or more forms of electronic media, facility-specific emission data for each generating unit and each pollutant covered by this section.

(B) SIGNATURE.—Each report required under subparagraph (A) shall be signed by a responsible official of the generating unit, who shall certify the accuracy of the report.

(C) PUBLIC REPORTING.—The Administrator shall—

(i) make the facility-specific emission data for generating units available to the public;

(ii) promulgate regulations to ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations);

(iii) promulgate regulations to ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations).

D. Calculation of Mercury Emission Reductions.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate regulations to ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations).

(1) IN GENERAL.—Not less often than quarterly, the owner or operator of a generating unit shall record and report to the consumers, data concerning the level of emissions by the generating unit of each pollutant covered by this section and each pollutant covered by section 111 of the Clean Air Act (42 U.S.C. 7411).

(2) DISPOSAL OF MERCURY CAPTURED OR RECOVERED THROUGH EMISSION CONTROLS.—

(A) CAPTURED OR RECOVERED MERCURY.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate regulations to ensure that mercury that is captured or recovered through the use of an emission control, coal cleaning, or another method is disposed of in a manner that ensures that—

(i) the hazards from mercury are not transferred from 1 environmental medium to another;

(ii) there is no release of mercury into the environment.

(B) MERCURY-CONTAINING SLUDGES AND WASTES.—The regulations promulgated by the Administrator under paragraph (1) shall ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations).

(3) EFFECTIVE DATE.—The amendments made by this section shall be effective upon publication in the Federal Register of the final regulations promulgated under this section.
SEC. 8. CLEAN AIR TRUST FUND.
(a) In General.—Section A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following:

"SEC. 9501. CLEAN AIR TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Air Trust Fund' (hereafter referred to in this section as the 'Trust Fund'), consisting of amounts equivalent to the taxes received in the Treasury under section 4691.

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Trust Fund amounts equivalent to the taxes received in the Treasury under section 4691.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available, without further Act of appropriation, upon request by the head of the appropriate Federal agency in such amounts as the agency head determines are necessary—

"(1) to provide funding under section 12 of the Clean Air Act (42 U.S.C. 7412) and Modernization Act of 2001, as in effect on the date of enactment of this section;

"(2) to provide funding for the demonstration program under section 15 of such Act, as so in effect;

"(3) to provide assistance under section 15 of such Act, as so in effect;

"(4) to provide assistance under section 16 of such Act, as so in effect; and

"(5) to provide funding under section 17 of such Act, as so in effect.

"(d) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following:

"Sec. 9511. Clean Air Trust Fund.

SEC. 9. ACCELERATED DEPRECIATION FOR INVESTOR-OWNED GENERATING UNITS.
(a) In General.—Section 160(c)(3) of the Internal Revenue Code of 1986 (relating to classification of certain property) is amended—

"(1) in subparagraph (E) (relating to 15-year property), by striking "and at the end of clause (A) of subsection (B)" and inserting "and clause (C) and subsection (B)"; and

"(2) by adding at the end the following:

"(E) 15-YEAR PROPERTY.—The term '15-year property' includes any 50-percent efficient fossil fuel-fired generating unit.

"(b) Definitions.—Section 160(k) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

"(15) FOSSIL FUEL-FIRED GENERATING UNITS.—

"(A) 50-PERCENT EFFICIENT FOSSIL FUEL-FIRED GENERATING UNITS.—The term '50-percent efficient fossil fuel-fired generating unit' means any property used in an investor-owned fossil fuel-fired generating unit to a plan approved by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to place into service such a unit which meet the liquid criteria of clause (c) and substitute for the phrase "50 percent" the phrase "50 percent efficient".

"(B) 45-PERCENT EFFICIENT FOSSIL FUEL-FIRED GENERATING UNITS.—The term '45-percent efficient fossil fuel-fired generating unit' means any property used in an investor-owned fossil fuel-fired generating unit pursuant to a plan approved by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to place into service such a unit which meet the liquid criteria of clause (c) and substitute for the phrase "50 percent" the phrase "45 percent efficient".

"(c) Calculation of Depreciation.—The amount of the depreciation deduction that would be allowable in respect of such an investment is a reasonable portion of any monetary value that may accrue from the crediting of such an investment unit during the period of time that such unit is in service under this section with sections 4(a)(10) and 5(b) of such Act, as so in effect.

"(d) CONFORMING AMENDMENT.—The table contained in section 168(c) of the Internal Revenue Code of 1986 (relating to applicable percentages) is amended by inserting, after the item related to 10-year property the following:

"12-year property ............. 12 years."

"(e) EFFECTIVE DATE.—The amendments made by this subsection apply to property used after the date of enactment of this Act.

SEC. 10. GRANTS FOR PUBLICLY OWNED GENERATING UNITS.
Any capital expenditure made after the date of enactment of this Act to purchase, install, and bring into commercial operation any new publically owned generating unit that—

1. is in compliance with sections 4(a)(1) and 5(b) of such Act, as so in effect;

2. is used at the end of the following:

"(1) is in compliance with sections 4(a)(1) and 5(b) shall, for a 15-year period, be eligible for partial reimbursement through annual grants made by the Secretary of the Treasury, in consultation with the Administrator, in an amount equal to the monetary value of the depreciation deduction that would be realizable by a similarly-situated investor-owned generating unit over that period; and

"(2) shall, over a 12-year period, be eligible for partial reimbursement through annual grants made by the Secretary of the Treasury, in consultation with the Administrator, in an amount equal to the monetary value of the depreciation deduction that would be realizable by a similarly-situated investor-owned generating unit over that period.

SEC. 11. RECOGNITION OF PERMANENT EMISSION REDUCTIONS IN FUTURE CLIMATE CHANGE IMPLEMENTATION PROGRAMS.
It is in the sense of Congress that—

1. permanent reductions in emissions of carbon dioxide and nitrogen oxides that are accomplished through the retirement of old generating units and replacement by new generating units that meet the combustion heat rate efficiency and emission standards specified in this Act, or through replacement of old generating units with noncombustion renewable power generation technologies, should be credited to the utility sector, and to the owner or operator that retires or replaces the old generating unit, in any climate change implementation program enacted by Congress;

2. the base year for calculating reductions under a program described in paragraph (1) should be the calendar year preceding the calendar year in which this Act is enacted; and

3. a reasonable portion of any monetary value that may accrue from the crediting described in paragraph (1) should be passed on to utility customers.

SEC. 12. RENEWABLE AND CLEAN POWER GENERATION TECHNOLOGIES.
(a) In General.—Under the Renewable Energy and Energy Efficiency Technology Act of 1989 (22 U.S.C. 12001 et seq.), the Secretary of Energy shall fund research and development programs and commercial demonstration projects and partnerships to demonstrate the technical viability and environmental benefits of electric power generation from—

1. biomass (excluding unseparated municipal solid waste), geothermal, solar, and wind technologies; and

2. fuel cells.

(b) TYPES OF PROJECTS.—Demonstration projects may include the construction of solar power plants, solar dishes and engines, co-firing of biomass with coal, biomass modular systems, next-generation wind turbines and wind power plants, geothermal energy conversion, and fuel cells.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under other laws, there is authorized to be appropriated to carry out this section $75,000,000 for each of fiscal years 2003 through 2012.

SEC. 13. CLEAN COAL, ADVANCED GAS TURBINE, AND COMBINED HEAT AND POWER DEMONSTRATION PROGRAM.
(a) In General.—Under subtitle B of title X of the Energy Policy Act of 1992 (42 U.S.C. 14311 et seq.), the Secretary of Energy shall establish a program to fund projects and partnerships designed to demonstrate the efficiency and environmental benefits of electric power generation from—

1. clean coal technologies, such as pressurized fluidized bed combustion and integrated gasification combined cycle system;

2. advanced gas turbine technologies, such as flexible (2013) gas turbines and base-load utility scale applications;

3. combined heat and power technologies.

(b) SELECTION CRITERIA.—(1) In General.—Not more than 1 year after the date of enactment of this Act, the Secretary of Energy shall promulgate criteria and procedures for selection of demonstration projects and partnerships to be funded under subsection (a).

2. REQUIRED CRITERIA.—At a minimum, the selection criteria shall include—

2. the potential commercial viability of the proposed demonstration project or partnership;

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) In General.—In addition to amounts made available under any other law, there is authorized to be appropriated to carry out this section $75,000,000 for each of fiscal years 2003 through 2012.

2. DISTRIBUTION.—The Secretary shall make reasonable efforts to ensure that, under any program carried out under this section, the same amount of funding is provided for demonstration projects and partnerships under each of paragraphs (1), (2), and (3) of subsection (a).

SEC. 14. EVALUATION OF IMPLEMENTATION OF THIS ACT AND OTHER STATUTES.
(a) In General.—Not later than 2 years after the date of enactment of this Act, the Secretary of Energy, in consultation with the Chairman of the Federal Energy Regulatory Commission, shall submit to Congress a report on the implementation of this Act.


2. DISTRIBUTION.—The Secretary shall make reasonable efforts to ensure that, under any program carried out under this section, the same amount of funding is provided for demonstration projects and partnerships under each of paragraphs (1), (2), and (3) of subsection (a).
In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2012 to provide assistance, under the economic adjustment program of the Department of Labor authorized by title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.), to coal industry workers who are terminated from employment as a result of reduced consumption of coal by the electric power generation industry.

SEC. 16. COMMUNITY ECONOMIC DEVELOPMENT INCENTIVES FOR COMMUNITIES ADVERSELY AFFECTED BY REDUCED CONSUMPTION OF COAL.

In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2012 to provide assistance, under the economic adjustment program of the Department of Labor authorized by title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.), to coal industry workers who are terminated from employment as a result of reduced consumption of coal by the electric power generation industry.

SEC. 17. CARBON SEQUESTRATION.

(a) CARBON SEQUESTRATION STRATEGY.—In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2005 to conduct research and development activities in basic and applied science in support of development by September 30, 2005, of a carbon sequestration strategy that is designed to offset all growth in carbon dioxide emissions in the United States after 2010.

(b) METHODS FOR BIOLOGICALLY SEQUES-TRING CARBON DIOXIDE.—In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2005 to conduct research and development activities in basic and applied science in support of development by September 30, 2005, of a carbon sequestration strategy that is designed to offset all growth in carbon dioxide emissions in the United States after 2010.

(c) LIMITATION.—A project carried out using funds made available under this section shall not be used to offset any emission reduction required under any other provision of this Act.

SEC. 18. ATMOSPHERIC MONITORING.

(a) OPERATIONAL SUPPORT.—In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2012—

(1) for operational support of the National Atmospheric Deposition Program National Trends Network—

(A) $2,000,000 to the United States Geological Survey; (B) $600,000 to the Environmental Protection Agency; (C) $600,000 to the National Park Service; and (D) $400,000 to the Forest Service;

(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—

(A) $400,000 to the United States Geological Survey; (B) $600,000 to the Environmental Protection Agency; (C) $100,000 to the National Oceanic and Atmospheric Administration; and (D) $100,000 to the National Park Service;

(3) for the National Atmospheric Deposition Program Integrated Research Monitoring Network—

(A) $1,500,000 to the National Oceanic and Atmospheric Administration; (B) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; (C) for the National Atmospheric Deposition Program Mercury Deposition Network $2,000,000 to the Environmental Protection Agency; (D) for the National Atmospheric Deposition Program Mercury Deposition Network $1,000,000 to the National Oceanic and Atmospheric Administration; and (E) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $4,600,000 to the Environmental Protection Agency.

(b) AVAILABILITY OF FUNDS.—Each of the amounts appropriated under subsection (b) shall remain available until expended.

Section-by-Section Overview of the Clean Power Plant and Modernization Act of 2001

What will the Clean Power Plant and Modernization Act of 2001 Do?

The Clean Power Plant and Modernization Act of 2001 would establish new and enforceable heat rate efficiency standards for the electric power industry. The bill requires that fossil fuel-fired electric power plants in the United States operate at an average combustion efficiency of not less than 45%. In the second stage, with expected advances in combustion technology, units commencing operation more than 10 years after enactment must achieve a combustion heat rate efficiency of not less than 50%. These standards are intended to ensure that plants meeting the standards reduce their carbon dioxide emissions by at least 15% per year, and that the potential exists for even larger reductions.
period for units meeting the 50% efficiency level and the emission standards in Section 5(c).

Section 10. Grants for Publicly Owned Generating Units

No federal taxes are paid on publicly-owned generating units. To provide publicly-owned generating units with a comparable incentive to modernize and streamline these other statutes, Section 10 provides for annual grants in an amount equal to the monetary value of the depreciation deduction that would be allowed by a similarly situated investor-owned generating unit under Section 9. Units meeting the 45% efficiency level and the emission standards in Section 5(b) would receive annual grants over a 20 year period, and units meeting the 50% efficiency level and the emission standards in Section 5(c) would receive annual grants over a 12 year period.

Section 11. Recognition of Permanent Emission Reductions in Future Climate Change Implementation Programs

This section expresses the sense of Congress that reductions in emissions of carbon dioxide and nitrogen oxides that are accomplished through the retirement of old generating units and replacement with new generating units that meet the efficiency and emission standards in the bill, or through replacement with non-polluting renewable power generation technologies, should be credited to the utility sector and to the owner/operator in any climate change implementation program enacted by Congress.

Section 12. Renewable and Clean Power Generation Technologies

This section provides a total of $750 million over 10 years to fund research and development programs and commercial demonstration projects and partnerships to demonstrate the commercial viability and environmental benefits of electric power generation from biomass, geothermal, solar, and wind technologies. Types of projects may include solar power tower plants, solar dishes and dishes, co-firing biomass with coal, biomass modular systems, next-generation wind turbines, and wind utilization projects, and geothermal energy conversion.

Section 13. Clean Coal, Advanced Gas Turbine, and Combined Heat and Power Demonstration Program

This section provides a total of $750 million over 10 years to fund research and development programs and commercial demonstration projects and partnerships to demonstrate the commercial viability and environmental benefits of electric power generation from clean coal technologies, advanced gas turbine technologies, and combined heat and power technologies.

Section 14. Evaluation and Implementation of the Act and Other Statutes

Not later than 2 years after enactment, DOE, in consultation with EPA and FERC, shall report to Congress on the implementation of the Clean Power Plant and Modernization Act. The report shall identify any provisions of other laws that conflict with the efficient implementation of the Clean Power Plant and Modernization Act. The report shall include recommendations for legislative or administrative measures to harmonize and streamline these other statutes.

Section 15. Assistance for Workers Adversely Affected by Reduced Consumption of Coal

Beginning 3 years after enactment, this section provides a total of $975 million over 13 years to provide assistance to coal industry workers who are adversely affected as a result of reduced consumption of coal by the electric power generation industry. The funds will be administered under the economic dislocation and worker adjustment assistance program authorized by Title III of the Job Training Partnership Act.

Section 16. Community Economic Development Incentives for Communities Adversely Affected by Reduced Consumption of Coal

Beginning 3 years after enactment, this section provides a total of $975 million over 13 years to provide assistance to communities adversely affected by reduced consumption of coal by the electric power generation industry. The funds will be administered under the economic adjustment program of the Department of Commerce authorized by the Public Works and Economic Development Act of 1965.

Section 17. Carbon Sequestration

This section authorizes $15.6 million over 10 years to support the operation of existing instrument networks that monitor the deposition of sulfates, nitrates, mercury, and other pollutants, as well as the effects of these pollutants of ecosystem health. This section also authorizes a one-time expenditure of $13.6 million for equipment modernization for these instrument networks.

By Mr. CRAPO:


Mr. CRAPO. Mr. President, I rise today to introduce a bill designed to prevent a serious disruption in the distribution of prescription drugs across America. Unless changed by this legislation, or modified by the agency itself, a regulation issued by the Food and Drug Administration will drive out of business thousands of small and medium sized drug wholesalers. Tens of thousands of small nursing homes, clinics, doctor's offices, drug stores, and veterinary practices, especially in rural areas, would be forced to find new suppliers of prescription drugs, who would almost certainly charge higher prices. Consumers, especially the sickest and the least able to pay, would be even further hard-pressed to afford the prescription drugs they need to maintain their health.

There is no real health or safety reason behind the FDA's action, which is simply a lack of understanding of how the wholesale distribution of drugs actually works. The agency's regulation would complete the implementation of the Prescription Drug Marketing Act, which was enacted in April 1988. That statute, which was designed to stop the misuse of drug samples, prevent various types of resale fraud, stop the implementation of counterfeit drugs, and establish minimum national standards for the storage and handling of drugs by wholesalers, has worked well.

However, the FDA's regulation, which will go into effect on April 1, did not treat two wholesalers, neither of which were present when the agency issued its initial policy guidance on the statute in 1988. The first problem relates to the sales history of drug products which wholesalers must provide their customers. A wholesaler who does not purchase directly from a manufacturer must provide their customer with a detailed history of all prior sales of that product back to the wholesaler who did purchase the drugs from the manufacturer and who decided to prevent the introduction of counterfeits or other drugs from questionable or unknown sources into the marketplace. The FDA's initial guidance was that resellers who did not purchase drugs directly from a manufacturer had to trace the product back to the wholesaler who did purchase directly from the manufacturer. This wholesaler is known as an authorized distributor.

Notwithstanding the fact that this system has produced a drug distribution system of exceptional quality, the FDA has changed its mind as to what the statute required and proposed that a reseller now be required to trace the product history all the way back to the manufacturer. At the same time, however, the agency also concluded that the statute does not require either the manufacturer or the authorized distributor to provide this sales history to secondary wholesalers. Without this very detailed sales history, it will be illegal for the secondary wholesaler to resell products. Since it is economically and logistically impractical for manufacturers or authorized distributors to keep track of the huge volume of product in the extreme detail required by the FDA rule, thousands of secondary wholesalers will be forced to cease business.

Fortunately, there is a simple solution. In 1990, the FDA finalized a regulation implementing another part of the PDMA, which requires wholesalers to keep very detailed records of all purchases, sales, or other dispositions of the drugs they obtain. These records, which are very similar to the detailed sales history in the FDA's latest regulation, are also subject to audit by the agency, by state regulators, and must be made available to law enforcement agencies if needed. Thus, there is really no need for a secondary wholesaler to try and assemble the detailed and virtually unobtainable sales history now demanded by the FDA and to pass it on to their customers. Instead, the bill I am introducing today requires only...
that secondary wholesalers provide a written statement to their customers that the drug products were first purchased from a manufacturer or an authorized distributor. Substituting the written statement would prevent a serious disruption in the wholesale drug sector while preserving the original intent of the PDMA, which was to guard the network of licensed and inspected wholesalers from counterfeiters or drugs from questionable sources. It would be a simple matter for a secondary wholesaler to determine that a shipment of drugs was first purchased by an authorized wholesaler, and the written statement would be subject to criminal penalties if falsified under existing law. Substituting the written statement for the paper trail requirement would also reduce selling costs, which could be passed on to the consumer.

This is a companion to H.R. 68, introduced on January 3, 2001, by Representatives Jo Ann Emerson and Marion Berry. That bill now has 45 co-sponsors who represent an especially diverse geographical and ideological cross section of the House and is supported by nine major trade and professional organizations representing most companies that wholesale or retail prescription drugs in the U.S. I invite my colleagues to add their names to this commonsense measure.

By Mrs. BOXER (for herself, Mrs. Carnahan, and Mr. Bond):

S. 1193. A bill to amend title 49, United States Code, to preserve nonstop air service to and from Ronald Reagan Washington National Airport for certain communities in case of airline bankruptcy; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, last week the Bush Administration eliminated the only nonstop air service between Los Angeles International Airport, LAX, and National Airport, DCA, in Washington, DC. The elimination of the flight makes Los Angeles the largest U.S. city without nonstop air service to this vital airport in the Nation's capital.

Since the DCA to lax flight began 10 months ago, 45,000 passengers have taken the flight. Not only is it popular, but many small and mid-sized communities throughout the state, including Bakersfield, Fresno, Monterey, and San Luis Obispo, rely on this flight. They have connecting flights into LAX specifically designed so that passengers can take the LAX-DCA nonstop flight. These communities will suffer because of this decision.

This happened because TWA, which operated the flight, went bankrupt. In those cases, the air carrier that purchases the assets of the bankrupt airlines has a right to continue the nonstop service. In exchange, however, the air carrier must give up one of its several slots that it uses to fly to its hub airport.

In this way, my bill would not create any additional flights to National Airport. Nor would it take away any of the long-distance nonstop flights now in operation, including to the city that just received the slot originally granted to Los Angeles. But, it would allow the very popular nonstop air service between LAX and DCA to continue.

It seems to me that this is a fair compromise to ensure that service between National Airport and Los Angeles continues. I look forward to working with my colleagues to address this problem before the end of the summer.

By Mr. LIEBERMAN (for himself and Mr. HATCH):

S. 1194. A bill to amend the Internal Revenue Code of 1986 to modify the rules applicable to qualified small business stock; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation to provide an incentive for capital formation for entrepreneurs.

This incentive is tailor-made to form capital for entrepreneurial firms so they can spur economic growth, create jobs, help the American, competitiveness into the 21st Century. It focuses on equity investments as this is the only form of capital most entrepreneurial firms secure to fund research and development; most such firms are unable to secure debt capital.

Because this incentive applies to founders stock and employee stock options, and not just stock offered to outside investors, it provides a powerful incentive for the human infrastructure and culture that drives and grows our nation's entrepreneurial firms.

This legislation could not be more timely given the drought we see in equity capital for entrepreneurs. Nationwide we saw 650 Initial Public Offerings of stock, IPOs, in 1996, 610 in 1997, 302 in 1998, 501 in 1999, and 379 in 2000. So far in 2001 we have seen only 50. The total value of these offerings was $47 billion in 1996, $39 billion in 1997, $37 billion in 1998, $33 billion in 1999, and $54 billion in 2000. So far in 2001 we have only $20 billion. Entrepreneurs are starved for capital and this incentive is tailor made to provide an incentive to investors to provide it to them.

The details of our proposal are straightforward. They call for a 100 percent exclusion, a zero capital gains tax, on the increase in value of their investments in the stock of a small corporation. "New" means that the stock must be offered after the effective date of the bill and does not apply to sale of previously acquired equity shares. "Divest" means the stock must have been acquired from the firm and not in secondary markets, so it includes founders, stock options, venture capital placements, IPOs, and subsequent public stock offerings. "Long-term" means the stock must be held for three years. "Stock" includes any type of stock, including convertible preferred shares. "Small corporation" means a corporation with $300 million or less in capitalization (not valuation, but paid-in capital). The incentive that helped 24 million individual and corporate taxpayers. And the excluded gains are not a preference item for the Alternative Minimum Tax.

I am pleased that Senator HATCH has agreed to serve as the lead cosponsor of the legislation. He and I worked closely together from 1995 through 1997 to restore the capital gains incentive. There were many Members involved with that effort, but Senator HATCH and I were pleased to be the leaders of the legislative coalition that proved to be so effective. Our work now on this venture capital gains legislation is a continuation of that long and successful partnership.

I am pleased that Representatives JENNIFER DUNN and ROBERT MASTRI are introducing the same bill in the other body.

I have long championed this approach to capital gains incentives. Most recently, this provision was included as Section 4 of S. 798, the Productivity, Opportunity, and Prosperity Act of 2001. The first proposal on this subject was introduced on April 7, 1987 in the 100th Congress by Senator Dale Bumpers as S. 932. I was an early supporter of this proposal and I cosponsored a version of this proposal introduced in 1991 by Senator Bumpers as S.1932. A version of that bill was enacted as part of the 1993 tax bill, Section 1202, but it was laden with technical requirements that limited its effectiveness. In the 104th Congress sent amendments to strengthen Section 1202 to President Clinton in the tax bill vetoed he vetoed in 1996. In the 105th Congress these amendments were included in all of the key capital gains, including S. 2 (Rotth), S. 20 (DASCHLE), S. 66 (HATCH-LIEBERMAN), S. 501 (Mack), and S. 745 (Bumpers). These amendments were sent to the conference on that bill but did not emerge from it. A broad-based capital gains incentive, which I supported, was enacted into law and a rollover provision was enacted with regard to Section 1202 stock. In the 106th Congress, amendments to strengthen
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Section 1202 were introduced in the House by Representatives Jennifer Dunn and Bob Matsui, H.R. 2331. Then I introduced the Senate equivalent, S. 798 and we are today introducing it again as a stand-alone bill.

Today I am pleased to cosponsor S. 818, the capital gains proposal introduced by Senator Hatch and Senator Bob Goodlatte. That proposal calls for a reduction in the current 20 percent capital gains tax rate for a broad class of investments, simplifies the capital gains tax, and provides special benefits to low income taxpayers. This bill and the one I introduced today are complementary and should both be enacted.

I recognize that the Joint Committee on Taxation, which determines the “cost” of all tax proposals, will determine the transitional period today a fudge—S. 818, will lose revenue. I believe this finding to be short-sighted given the dramatic effect that these incentives will have on entrepreneurs and therefore on economic growth, but I leave it to the Joint Committee on Taxation and others to determine the transitional period. There is no revenue remaining available under the budget resolution to tap to finance these proposals. Accordingly, I fully accept the obligation to find a way to pay for these other tax proposals, an offset, so that we do not adversely affect the deficit.

The reasons for setting a special capital gains rate for venture capital are compelling. Entrepreneurial firms are the ones which can dramatically change our whole health care system, clean up our environment, link us to international telecommunication networks, and increase our capacity to understand our world. The firms are funded by dreamers, adventurers, and risk-takers who embody the best we understand our world. The firms are confident that if we in the public sector in Washington work in partnership with the private sector throughout our country, we can truly say of America’s future that the best is yet to come. I believe that Productivity, Opportunity, and Prosperity Act and this venture capital incentive are an important step toward that future.

Mr. President, I ask unanimous consent that the text of the bill and section analysis be printed in the Record.

There being no objection the material was ordered to be printed in the Record as follows:

S. 1134

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 “Venture Capital Gains and Growth Act of 2001”.

SEC. 2. MODIFICATIONS APPLICABLE TO QUALIFIED SMALL BUSINESS STOCK.

(a) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 (relating to tax preference) is amended by striking “50 percent” and inserting “100 percent”.

(b) INCREASE IN ROLLOVER PERIOD FOR QUALIFIED SMALL BUSINESS STOCK.—Subsections (a)(1) and (b)(3) of section 1045 of the Internal Revenue Code of 1986 (relating to rollover of gain from one qualified small business stock to another qualified small business stock) are each amended by striking “60-day” and inserting “180-day”.

(c) REDUCTION IN HOLDING PERIOD.—

(1) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 (relating to partial exclusion for gains from certain small business stock) is amended by striking “5 years” and inserting “3 years”.

(2) CONFORMING AMENDMENT.—Subsection (c)(2)(A) of section 1202 of such Code is each amended by striking “5 years” and inserting “3 years”.

(d) REPEAL OF PER-ISSUER LIMITATION.—

Section 1202(b) of the Internal Revenue Code of 1986 (relating to per-issuer limitations on taxpayer’s eligible gain) is repealed.

(e) QUALIFIED TRADE OR BUSINESS.—Section 1202(c)(3) of the Internal Revenue Code of 1986 (relating to qualified trade or business) is amended by inserting “and” in paragraph (9) and inserting “3” after “3”.

(f) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Section 1202(e)(2) of the Internal Revenue Code of 1986 (relating to working capital) is repealed.

(A) in subparagraph (B), by striking “2 years” and inserting “3 years”.

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Section 1202(c)(3) of such Code (relating to certain purchases by corporation of its own stock) is amended by adding at the end the following new subparagraph:

(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purpose was not to avoid the limitations of this section.”.

(g) INCREASED EXCLUSION.—

(1) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 (relating to 50-percent exclusion for gain from certain small business stock) is amended by striking “50 percent” and inserting “100 percent”.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 1(h)(5) of such Code is amended to read as follows:

“(A) collectibles gain, over.”.

(B) Section 1(h) of such Code is amended by redesignating paragraphs (8) (as amended by subsection (a) of section 1(h) of such Code) and paragraphs (10), (11), and (12) as paragraphs (9), (10), and (11), respectively.

(C) Section 1(h) of such Code is amended by inserting “and” at the end of paragraph (8) and inserting “and gain described in paragraph (7)(A)(1)” after “gain described in paragraph (7)(A)(1)”.

(D) Section 1(h) of such Code is amended by inserting “and gain described in paragraph (7)(A)(1)” after “gain described in paragraph (7)(A)(1)”.

(E) The heading for section 1202 of such Code is amended by striking “PARTIAL” and inserting “100-PERCENT”.

(F) The table of sections for part I of subsection (B) of section 1(h) of such Code is amended by inserting therein the following new table of contents:

(1) General.

(2) Technical amendment.
(4) Stock held among members of controlled group not eligible—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(8)) shall not be counted as qualified small business stock while held by another member of such group.

(1) Stock of larger businesses eligible for exclusion—

(1) In general.—Paragraph (1) of section 1202(d) of the Internal Revenue Code of 1966 (defining qualified small business) is amended by adding at the end the following new paragraph:

(4) Inflation adjustment.—Section 1202(d) of such Code (defining qualified small business) is amended by adding at the end the following new paragraph:

(4) Inflation Adjustment of Asset Limitation.—In the case of stock issued in any calendar year after 2002, the $300,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by—

(A) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(2) Effective date.—The amendments made by this paragraph shall apply to stock issued after the date of the enactment of this Act.

Description of Venture Capital Gains Incentive

Section 1202 enacted in 1993:

50% capital gains exclusion for new investments—not sale of previously acquired assets—new investments made after effective date, August 1993.

Only if investments made directly in stock—not secondary trading, founders stock, stock options, venture capital, public offerings, common, convertible preferred.

Only if made in stock of a "small corporation"—defined as corporation with $50 million or less in capitalization—ceiling not in excess of $10 million.

Only if investment held for five years.

Only if investment made by an individual taxpayer—not by a corporate taxpayer.

50% of the excluded gains not covered by the Alternative Minimum Tax (AMT).

Limit on benefits per taxpayer of "10 times basis or $10 million, whichever is greater".

Technical problems—redemption of stock, "spending speed-up" provision.

Section 1045 enacted in 1997.

Permits investors in Section 1202 stock to roll over their investments in a new Section 1202 investment without "realizing" gains and paying taxes within 60 days.

Nine proposed amendments to Section 1202 and Section 1045:

(1) Sets a zero capital gains rate, compared to the 50 percent rate for other capital gains investments.

(2) Only new investments—same.

(3) Only if investments made in stock—same.

(4) Only if investment held for five years.

(5) Only if made in stock of a "small corporation" as one with $50 million in capitalization and index for inflation—up from $50 million with no indexing.

(6) 100 percent exemption from AMT—now 50 percent.

(7) Increase the time permitted to roll over a Section 1202 investment into another Section 1202 investment to 180 days.

(8) Only if investment held for three years—reduction from five years.

(9) Fix technical problems—modify redemption of stock, "spending speed-up" provision.

By Mr. GRAHAM (for himself, Mr. CHAFEE, Mr. CONRAD, Mrs. LINCOLN, Mr. MILLER, Mr. ROCKEFELLER, Mr. BINGMAN, Mr. KERRY, and Mr. CARPER):

S. 1135. A bill to amend title XVII of the Social Security Act to provide comprehensive reform of the Medicare program, including the provision of comprehensive prescription drug coverage under such program; to the Committee on Finance.

Mr. GRAHAM. Mr. President, I rise today joined by my colleagues to introduce the Medicare Reform Act of 2001.

Today we are in the midst of a major health-care debate on the Patients’ Bill of Rights. This crucial bill should be the beginning, not end, of reform in the health care system.

Now we need to take this momentum and turn to Medicare reform.

Reform is not a word to be tossed around lightly. When we bat around the term Medicare reform, this is what we need to be talking about, ideas that go to the very heart of the existing Medicare program and reform it.

The Medicare Reform Act offers such ideas. It keeps what is best about Medicare intact. Under this bill the program will remain, as it has always been, reliable and affordable. But the Medicare Reform Act also does just what it says. It reforms the program to reflect new realities both scientific and economic, that the program’s creators could not possibly have planned for in 1965.

One of these realities is that prescription drugs are a crucial part of any modern health care regime. In fact it is unthinkable that prescription drugs would be excluded if Medicare were created today.

The Medicare Reform Act offers a benefit that, like the existing Medicare program, is both affordable and available for all seniors, regardless of income. The benefit also harnessed the power of today’s competitive health care marketplace to keep costs down and offer seniors choice.

Perhaps most importantly, the benefit offered by the Medicare Reform Act has no caps, no gaps and no gimmicks.

This is our line-in-the-sand. Other plans being discussed have major gaps.

Let’s look at one: the bill the House Republicans passed last year offers seniors a benefit of a scant $1,050—a year. Once they hit that cap, coverage stops. It picks up again only if the beneficiary spends $6,000 the following year.

Imagine this scenario: An 85-year-old woman pays her monthly prescription drug premium. For the first 6 months of the year, she goes to the drugstore each month to pick up her cholesterol medication and pays $25.

But then she comes to the 7th month, and has hit her benefit cap. Now she has to pay $50 for the same prescription. She’s still paying her premium, but she’s getting no benefit. Under this benefit, Medicare says “Sorry. Can’t help. Come see me if you have a catastrophe.”

I call plans like this donuts, substance around the edges, giant hole in the middle. I also call them pointless. We don’t need insurance you can’t be sure of?

No caps, no gaps, no gimmicks. That is set in stone. What is not set is stone is the exact level of the coinsurance or deductible. We’re going to be listening to senior citizens ask us to add a mark-up, and if we hear they would prefer a lower premium in exchange for higher cost-sharing, we can turn those dials, as long as it’s within the parameter of $300 billion.

In structure, the Medicare Reform Act represents a true compromise. It takes the best ideas of all engaged in this issue.

One school of thought has been that the private sector is best equipped to offer an affordable prescription drug benefit.

We agree, up to a point. We do not believe that private insurers should assume all of the risk for this benefit. We do not believe this because private insurers have told us they want no part of this type of system. We know that we can pass all the laws we want, but we can’t make private companies take on Medicare patients.

Rather than foreign the private sector to attempt to do something they do not want to do, we take advantage of the fact that we already have an efficient, workable mechanism in place. That mechanism is the pharmacy benefit manager of PBMs. These businesses operate successfully today in every ZIP code of the country. They are in a perfect position to manage the Medicare prescription drug benefit—and to offer seniors a choice.

The Medicare Reform Act would allow multiple PBMs in each geographic region to administer, manage and deliver the prescription drug benefit. They would be allowed to use all of the methods they use currently in the private sector to provide benefits economically, including the use of formularies, preferred pharmacy networks, and generic drug substitution. Additionally, PBMs would be allowed to use mechanisms to encourage beneficiaries to select cost-effective drugs,
including the use of disease management and therapeutic interchange programs.

Beneficiaries in every part of the country would have access to coverage provided by PBMs that would not assume full insurance risk for drug costs. In this way, adverse selection and inappropriate incentives would be avoided.

However, to ensure that PBMs pursue and are held accountable for high quality beneficiary services, improved health outcomes, and managing costs, we require PBMs to put a substantial portion of their management fees at risk for their performance. Performance goals would include price discounts and generic substitution rates, timely action with regard to appeals, sustained pharmacy network access and notifications to avoid adverse drug reactions.

Although all PBMs would be required to offer the standard benefit at a minimum, payments received on the basis of their performance could be used to reduce beneficiary cost-sharing or to waives, the deductible for generic drugs.

Requiring PBMs to share risk provides a middle ground between proposals that have included no risk being assumed by the private sector, and proposals that have required the assumption of insurance and selection risk for the cost of drugs.

This arrangement would bring us the benefits of private sector competition without the instabilities that would be associated with a full risk-bearing model. It would take advantage of the fact that the private sector has provided an efficient, workable, stable system for the delivery of prescription drugs, and the management of drug costs, and would allow beneficiaries to choose between multiple vendors.

Prescription drugs are not all that is missing from Medicare.

We live in a world of near miracles. We can stop disease in its track. We live in a world of near miracles. We can stop disease in its track. Medicare+Choice program. There are several proven-effective preventive measures that the National Park Service and highway engineers collaborated to produce many feats of road engineering that opened the National parks, wildlife refuges, Federal recreational areas, and other public lands.

Mr. SARBANES. Mr. President, I rise today to introduce legislation to help protect our nation’s natural resources and improve the visitor experience in our National Parks and Wildlife Refuges. "TRIP," will establish a new Federal transit grant initiative to support the development of mass transit and alternative transportation services for our national parks, wildlife refuges, Federal recreational areas, and other public lands. I am pleased to be joined by Senators BAUCUS, BAYH, CLELAND, CORZINE, DODD, FEINSTEIN, Reid, Mr. SCHUMER, Ms. Snowe, MS. STABENOW, Mr. THOMPSON, and Mr. Wyden, who are cosponsors of this legislation.

Let me begin with a little history. When the National parks first opened in the second half of the nineteenth century, visitors arrived by stagecoach along dirt roads. Travel through parklands, such as Yosemite or Yellowstone, was long, difficult, and costly. Not many people could afford or endure such a trip. The introduction of the automobile gave every American greater mobility and freedom, which included the freedom to travel and see some of our Nation’s great natural wonders. Early in this century, landscape architects from the National Park Service and highway engineers from the U.S. Bureau of Public Roads collaborated to produce many feats of road engineering that opened the National park lands to millions of Americans.

Yet greater mobility and easier access now threaten the very environments that the National Park Service is mandated to protect. The ongoing tension between preservation and access has always been a challenge for our national park system. Today, record numbers of visitors and cars has resulted in increasing damage to our

The "Medicare Reform Act of 2001" would lay the groundwork for a sound, workable, competitive system by moving forward with the Demonstration project in the state of Florida. The plan exists. Our seniors are waiting.

By Mr. SARBANES (for himself, Mr. BAUCUS, Mr. BAYH, Mr. CLELAND, Mr. CORZINE, Mr. DODD, MRS. FEINSTEIN, Mr. REID, Mr. SCHUMER, Ms. SNOWE, Ms. STABENOW, Mr. THOMPSON, and Mr. WYDEN):

S. 1136. A bill to provide for mass transportation in certain Federally owned or managed areas that are open to the general public; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, I rise today to introduce legislation to help protect our nation’s natural resources and improve the visitor experience in our National Parks and Wildlife Refuges. The Transit in Parks Act, or "TRIP," will establish a new Federal transit grant initiative to support the development of mass transit and alternative transportation services for our national parks, wildlife refuges, Federal recreational areas, and other public lands. I am pleased to be joined by Senators BAUCUS, BAYH, CLELAND, CORZINE, DODD, FEINSTEIN, Reid, SCHUMER, SNOWE, STABENOW, THOMPSON, and WYDEN, who are cosponsors of this legislation.
The Grand Canyon alone has almost five million visitors a year. As many as 6,000 vehicles arrive in a single summer day. They compete for 2,400 parking spaces. Between 32,000 and 35,000 tour buses go to the park each year. During the peak summer season, the entrance route becomes a giant parking lot.

In 1975, the total number of visitors to America's national parks was 190 million. By 1999, that number has risen to 287 million annual visitors, almost equal to one visit by every man, woman, and child in this country. This dramatic increase in visitation has created an overwhelming demand on these areas, resulting in severe traffic congestion, visitor restrictions, and in some instances, vacationers being shut out of the parks altogether. The environment during the Grand Canyon is visible at many other parks: Yosemite, which has more than four million visitors a year; Yellowstone, which has more than three million visitors a year and experiences such severe traffic congestion that access has to be restricted; Zion; Acadia; Bryce; and many others. We need to solve these problems now or risk permanent harm to our nation's natural, cultural, and historical heritage.

Visitor access to the parks is vital not only to the parks themselves, but to the economic health of their gateway communities. For example, visitors to Yosemite infuse $3 billion a year into the local economy of the surrounding area. At Yellowstone, tourists spend $725 million annually in adjacent communities. Wildlife-related tourism generates an estimated $60 billion a year nationwide. If the parks are forced to close their gates to visitors due to congestion, the economic vitality of the surrounding region would be jeopardized.

The challenge for park management has always been twofold: to conserve and protect the Nation's natural, historical, and cultural resources, while at the same time enhancing visitor access and enjoyment of these sensitive environments. Until now, the principal transportation systems that the Federal Government has developed to provide access into our national parks are roads, deliberately for private automobiles, and we have not provided alternatives.

In developing solutions to the parks' transportation needs, this legislation builds upon the 1997 Memorandum of Understanding between Secretary of Transportation Rodney Slater and Secretary of the Interior Bruce Babbitt. It reflects the commitment of the two Departments to work together to address transportation and resource management needs in and around National Parks. The findings in the MOU are especially revealing: Congestion in and approaching many National Parks is causing crowding to such an extent that it substantially detracts from the visitor experience. Visitors find that many of the National Parks contain significant noise and air pollution, and traffic congestion similar to that found on the city streets they left behind. In many National Park units, the capacity of parking facilities at interpretive or scenic areas is well below demand. As a result, visitors park along roadsides, damaging park resources and subverting people to hazardous safety conditions as they walk near busy roads to access visitor use areas. On occasion, National Park units must close their gates during high visitation periods and turn away the public because the existing transportation systems are at, or beyond, the capacity for which they were designed.

In addition, the TRIP legislation is designed to implement the recommendations from a comprehensive study of alternative transportation needs in public lands that I was able to include in the Transportation Equity Act for the 21st Century, TEA–21, as section 3039. The study is nearing completion, and is expected to confirm what those of us who have visited our National parks already know: there is a significant and well-documented need for alternative transportation solutions in the national parks to prevent lasting damage to these incomparable natural treasures.

The Transit in Parks Act will go far toward meeting this need. The bill's objectives are to develop and expand mass transit services throughout the national parks and other public lands to protect our national parks and other public lands, including National Forest System lands, and to their state and local partners. The program will provide capital funds for transit projects, including rail or clean fuel bus projects, joint development activities, pedestrian and bike paths, or park waterway access, within or adjacent to national parks and other public lands. The bill authorizes $65 million for the program for each of the fiscal years 2002 through 2007. It is anticipated that other resources, both public and private, will be available to augment these amounts.

The bill formalizes the cooperative arrangement in the 1997 MOU between the Secretary of Transportation and the Secretary of the Interior to exchange technical assistance and to develop procedures relating to the planning, selection and funding of transit projects in national park lands. The bill further provides funds for planning, research, and technical assistance that can supplement other financial resources available to the Federal land management agencies. The projects eligible for funding would be developed through the TEA–21 planning process and prioritized for funding by the Secretary of the Interior in consultation and cooperation with the Secretary of Transportation. It is anticipated that the Secretary of the Interior would select projects that are diverse in location and size. While major National parks such as the Grand Canyon and Yellowstone are clearly appropriate candidates for significant transit projects under this section, there are numerous small urban and rural Federal park lands that can benefit enormously from small projects, such as bike paths or improved connections with an urban or regional public transit system. No single project will receive more than 12 percent of the total amount available in any given year. This ensures a diversification of projects selected.

In addition, I firmly believe that this program will create new opportunities for the Federal land management agencies to partner with local transit agencies in gateway communities adjacent to the parks, both through the TEA–12 planning process and in developing integrated transportation systems. This will spur new economic development within these communities, as they develop transportation centers for park visitors to connect to transit links into the national parks and other public lands.

The ongoing tension between preservation and access has always been a challenge for the National Park Service. Today, that challenge has new dimensions, with overcrowding, pollution, congestion, and resource degradation increasing at many of our national parks. This legislation—the Transit in Parks Act—will give our Federal land management agencies important new tools to improve both preservation and access. Just as we have found in metropolitan areas, transit is essential to moving large numbers of people in our national parks—quickly, efficiently, at low cost, and without adverse impact. At the same time, transit can enhance the economic development potential of our gateway communities.

As we begin a new millennium, I cannot think of a more worthy endeavor to help our environment and preserve our national parks, wildlife refuges, and Federal recreational areas than by encouraging alternative transportation.
June 28, 2001

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in these areas. My bill is strongly supported by the American Public Transportation Association, the National Parks Conservation Association, Environmental Defense, Community Transportation Association, Friends of the Earth, National Association of Counties, American Planning Association, Surface Transportation Policy Project, Smart Growth America, Scenic America, National Center for Bicycling and Walking, National Association of Railroad Passengers, Great American Station Foundation, and others.

Mr. President, I urge my colleagues to support this important legislation and to recognize the enormous environmental and economic benefits that transit can bring to our national parks.

I ask unanimous consent that the bill, a section-by-section analysis, and letter(s) of support be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

SEC. 2. FEDERAL LAND TRANSIT PROGRAM.

Parks Act'' or the ''TRIP Act''.

Smart Growth America, Scenic America, Transportation Association, Friends of the Environmental Defense, Community Transportation Association, Great American Station Foundation, and others.

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 the ''Transit in Parks Act'' or the ''TRIP Act''.

SEC. 2. FEDERAL LAND TRANSIT PROGRAM.

(a) In General.—Chapter 53 of title 49, United States Code, is amended by inserting after section 5316, ''5316. Federal land transit program''

(1) FINDINGS AND PURPOSES.—

(a) FINDINGS.—Congress finds that—

(A) section 3039 of the Transportation Equity Act for the 21st Century (23 U.S.C. 138 note; Public Law 105-178) required a comprehensive study, to be conducted by the Secretary of Transportation, in coordination with the Secretary of the Interior, of alternative transportation needs in national parks and related public lands; and

(b) DEFINITIONS.—In this section:

(1) purpose of the Secretary of Transportation and the Secretary of the Interior to carry out this section;

(2) encourage the planning and establishment of mass transportation systems and nonmotorized transportation systems needed within and in the vicinity of eligible areas, located in both urban and rural areas, that—

(1) enhance project cost-effectiveness; and

(2) prevent or mitigate adverse impacts on those resources;

(3) improve visitor mobility, accessibility, and the visitor experience; and

(4) conserve energy; and

(5) increase coordination with gateway communities;

(C) to assist Federal land management agencies and State and local governmental authorities to prepare and implement mass transportation systems and nonmotorized transportation systems to be operated by public or private mass transportation providers, and determine by local and regional needs, and to encourage public-private partnerships; and

(D) to assist in research concerning, and development of, improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private companies, and other entities engaged in the provision of mass transportation service.

(b) DEFINITIONS.—In this section:

(1) ELIGIBLE AREA.—The term 'eligible area' means any Federally owned or managed park, refuge, or recreational area that is open to the general public.

(B) INCLUSIONS.—The term 'eligible area' includes—

(i) a unit of the National Park System; and

(ii) a unit of the National Wildlife Refuge System; and

(iii) a recreational area managed by the Bureau of Land Management.

(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area—

(A) in General.—The term 'mass transportation' means transportation by bus, rail, or any other publicly or privately owned transportation service that provides general or special service on a regular basis.

(B) INCLUSIONS.—The term 'mass transportation' includes sightseeing service.

(C) DEFINITIONS.—The term 'qualified participant' means—

(A) a Federal land management agency; or

(B) a State or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency.

(D) the Department of Transportation can enter a contract, grant, cooperative agreement, or other agreement to carry out a qualified project under this section.

(1) interagency and multidisciplinary teams to develop Federal land management agency master transportation plans; (2) a travel demand analysis and implementation; (3) coordination of local and regional transportation plans; and (4) provision of Federal land management agency transportation services;

(5) Qualified Project.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

(A) is an activity described in section 5302(a)(1), 5309(g), or 5309(a)(1)(A);

(B) involves—

(i) the purchase of rolling stock that incorporates clean fuel technology; or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

(ii) the deployment of mass transportation vehicles that introduce innovative technologies or methods;

(C) relates to the capital costs of coordinating the Federal land management agency mass transportation systems with other mass transportation systems; and

(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).

(6) Secretary.—The term 'Secretary' means the Secretary of Transportation.

(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

(1) technical assistance in mass transportation;

(2) interagency and multidisciplinary teams to develop Federal land management agency master transportation plans; (2) a travel demand analysis and implementation; (3) coordination of local and regional transportation plans; and (4) provision of Federal land management agency transportation services;

(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

(4) TYPES OF ASSISTANCE.—

(A) IN GENERAL.—The Secretary may enter into a contract, grant, cooperative agreement, interagency agreement, intra-agency agreement, or other agreement to carry out a qualified project under this section.

(B) OTHER USES.—A grant, cooperative agreement, interagency agreement, intra-agency agreement, or other agreement to carry out a qualified project under this section.

(C) DEFINITIONS.—The term 'eligible area' means any Federally owned or managed park, refuge, or recreational area that is open to the general public.

(iii) create more livable communities;

(iv) conserve energy; and

(v) reduce pollution and congestion in all regions of the country.

(E) immediate financial and technical assistance by the Department of Transportation, working with Federal land management agencies and State and local governmental authorities to develop efficient and coordinated mass transportation systems within and in the vicinity of eligible areas, is essential to—

(i) protect and conserve natural, historical, and cultural resources; and

(ii) prevent or mitigate adverse impacts on those resources;

(iii) relieve congestion;

(iv) minimize transportation fuel consumption;

(v) reduce pollution (including noise pollution and visual pollution); and

(vi) enhance visitor mobility, accessibility, and the visitor experience; and

(F) it is in the interest of the United States to—

(i) improve mobility;

(ii) reduce pollution (including noise pollution and visual pollution); and

(iii) conserve energy; and

(iv) conserve energy; and

(v) increase coordination with gateway communities;

(C) to assist Federal land management agencies and State and local governmental authorities to prepare and implement mass transportation systems and nonmotorized transportation systems to be operated by public or private mass transportation providers, as determined by local and regional needs, and to encourage public-private partnerships; and

(D) to assist in research concerning, and development of, improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private companies, and other entities engaged in the provision of mass transportation service.

(b) DEFINITIONS.—In this section:

(c) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area—

(i) enhance the environment;

(ii) improve mobility;
agency agreement, or other agreement for a qualified project under this section could be available to finance the leasing of equipment and facilities for use in mass transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement for any Federal land management agency that are more cost-effective than purchase or construction. 

"(e) Limitation on Use of Available Amount.—

"(1) IN GENERAL.—The Secretary may allocate not more than 5 percent of the amount made available for a fiscal year under section 5303 to any Federal land management agency that is carrying out, planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

"(2) AMOUNTS FOR PLANNING, RESEARCH, AND TECHNICAL ASSISTANCE.—Amounts made available under this subsection are in addition to amounts otherwise available for planning, research, and technical assistance under this title or any other provision of law.

"(3) AMOUNTS FOR QUALIFIED PROJECTS.—No qualified project shall receive more than 12 percent of the total amount made available under section 5303(b) for any fiscal year.

"(f) PLANNING PROCESS.—In undertaking a qualified project under this section—

"(1) if the qualified participant is a Federal land management agency—

"(A) in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

"(i) the metropolitan planning provisions under sections 5303 through 5305; and

"(ii) the statewide planning provisions under section 135 of title 23; and

"(ii) the planning requirements under section 5307(c); and

"(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

"(2) if the qualified participant is a State or local governmental authority, more than 1 State or local governmental authority in more than 1 State, the qualified participant shall—

"(A) comply with sections 5303 through 5305;

"(B) comply with the statewide planning provisions under section 135 of title 23; and

"(C) comply with the public participation requirements under section 5307(c); and

"(D) consult with the appropriate Federal land management agency during the planning process.

"(g) Cost Sharing.—

"(1) DEPARTMENTAL SHARE.—The Secretary, in cooperation with the Secretary of the Interior, shall establish the share of assistance to be provided under this section to a qualified participant.

"(2) CONSIDERATIONS.—In establishing the departmental share of the net project cost of a qualified project, the Secretary shall consider—

"(A) visitation levels and the revenue derived from the project in the eligible area in which the qualified project is carried out;

"(B) the extent to which the qualified participant coordinates with a public or private mass transportation agency under the authority of the Secretary;

"(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms; and

"(D) the clear and direct benefit to the qualified participant; and

"(E) any other matters that the Secretary considers appropriate to carry out this section.

"(3) NONDEPARTMENTAL SHARE.—Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the nondepartmental share of the cost of a qualified project.

"(h) SELECTION OF QUALIFIED PROJECTS.—

"(1) IN GENERAL.—The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine an annual program of qualified projects in accordance with this section.

"(2) CONSIDERATIONS.—In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

"(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

"(B) the location of the qualified project, to ensure that the selected qualified projects are—

"(i) are geographically diverse nationwide;

"(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

"(iii) the size of the qualified project, to ensure that there is a balanced distribution;

"(D) the historical and cultural significance of a qualified project;

"(E) safety;

"(F) the extent to which the qualified project would—

"(i) enhance livable communities;

"(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

"(iii) reduce congestion; and

"(iv) improve the mobility of people in the most efficient manner; and

"(G) any other matters that the Secretary considers appropriate to carry out this section, including—

"(i) such legislation;

"(ii) the use of innovative financing or joint development activities; and

"(iii) coordination with gateway communities.

"(j) FULL FUNDING AGREEMENT; PROJECT COST OF QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

"(1) IN GENERAL.—When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary may pay the departmental share of the net project cost of a qualified project if—

"(A) the qualified participant applies for the payment;

"(B) the Secretary approves the payment; and

"(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

"(2) INTEREST.—

"(A) IN GENERAL.—The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that the proceeds of the bond are expended in carrying out that part.

"(B) LIMITATION.—The rate of interest under this paragraph may not exceed the rate of interest most favorably available for the qualified project at the time of borrowing.

"(C) CERTIFICATION.—The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

"(k) FULL FUNDING AGREEMENT; PROJECT COST OF QUALIFIED PROJECTS ANTICIPATED TO BE REQUIRED.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Secretary of the Interior, annually submit to the Committee to report to the Committee on Transportation and Infrastructure of the House of Representatives and the Subcommittee on Transportation and Infrastructure of the Committee on Banking, Housing, and Urban Affairs the amount of amounts to be made available to assist qualified projects under this section.

"(2) ANNUAL REPORT.—A report required under paragraph (1) shall be included in the report submitted under section 5309(b).
CONGRESSIONAL RECORD—SENATE 12403

June 28, 2001

(b) AUTHORIZATIONS.—Section 5338 of title 49, United States Code, is amended by adding at the end the following:

“(c) CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 53 of title 49, United States Code, is amended by inserting after the item relating to section 5315 the following:

“5316. Federal land transit program.”.

(2) PROJECT MANAGEMENT OVERSIGHT.—Section 5309(i) of the Federal Transit Act of 1998, 112 Stat. 356, is amended by inserting after “The” the following:

“(j) EXPENDITURES.—The expenditures for any fiscal year shall remain available for obligation until the last day of the third fiscal year commencing after the last day of the fiscal year for which they were initially made available under this subsection.”.

(3) in section 5337, by redesignating the subsection designated as subsection (o) (as added by section 3028(b) of the Federal Transit Act of 1998 (112 Stat. 356)) as subsection (p);

(4) TECHNICAL AMENDMENTS.—Chapter 53 of title 49, United States Code, is amended—

(1) in section 5309—

(A) by striking “or 5311” and inserting “5311, or 5316”;

(B) by striking “5311, or” and inserting “5311, 5316, or”;

(d) TECHNICAL AMENDMENTS.—Chapter 53 of title 49, United States Code, is amended—

(1) in section 5309—

(A) by redesignating subsection (p) as subsection (q); and

(B) by redesigning the second subsection designated as subsection (e) (as added by section 3028(b) of the Federal Transit Act of 1998 (112 Stat. 356)) as subsection (r).

TRANSIT IN PARKS ACT—SECTION BY SECTION

Section 1: Short title

Title IV: Transit in Parks (TRIP) Act

Section 2: In General

Amends Federal transit laws by adding new section 5316, “Federal Land Transit Program.”

Section 3: Findings and purposes

The purpose of this Act is to promote the planning and establishment of alternative transportation systems within, and in the vicinity of, the national parks and other public lands to protect and conserve natural, historical, and cultural resources, mitigate adverse impact on those resources, relieve congestion, minimize transportation fuel consumption, reduce pollution, and enhance visitor mobility and accessibility to the parks and the visitor experience. The Act responds to the need for alternative transportation systems in the national parks and other public lands identified by the Secretary of Transportation pursuant to section 3039 of TEA–21, by establishing Federal assistance to finance mass transportation projects within and in the vicinity of the national parks and other public lands, to increase coordination with gateway communities, to provide public/private partnerships, and to assist in the research and deployment of improved mass transportation equipment and methods.

Section 4: Definitions

This section defines eligible projects and eligible participants in the program. A “qualified participant” is a Federal land management agency, or a State or local government, that is authorized with the consent of a Federal land management agency, or a State or local government, that is authorized to carry out the provisions of programs or projects—

(1) project justification, including the extent to which the project contributes to the conservation of resources, prevents or mitigates adverse impact, and enhances the environment;

(2) project location to ensure geographic diversity and both rural and urban projects; (3) project size for a balanced distribution; (4) historical and cultural significance; (5) safety; (6) the extent to which the project would enhance livable communities, reduce pollution, and conserve and improve the mobility of people in the most efficient manner; and (7) any other considerations the Secretary deems appropriate, including visitation levels, the use of innovative financing or joint development strategies, and coordination with gateway communities.

Section 11: Undertaking projects in advance

This provision applies current transit law to projects funded under this section, allowing projects to advance prior to receiving Federal funding, but allowing the advance activities to be counted toward the local share as long as certain conditions are met.

Section 12: Full funding agreement; project management plan

This provision provides that large projects require a project management plan, and shall be carried out through a full funding agreement to the extent the Secretary considers appropriate.

Section 13: Relationship to Other Laws

This provision applies certain transit laws to projects funded under this section, and permits the Secretary to apply any other terms or conditions he or she deems appropriate.

Section 14: Innovative financing

This provision provides that a project assisted under this Act can also use funding from a State Infrastructure Bank or other innovative financing mechanism that is available to fund other eligible transit projects.

Section 15: Asset management

This provision permits the Secretary of Transportation to transfer control over a transit project or asset acquired with Federal funds under this section to a qualified government participant in accordance with certain Federal property management rules.

Section 16: Coordination of research and deployment of new technologies

This provision allows the Secretary, in cooperation with the Secretary of the Interior, to enter into grants or other agreements for research and deployment of new technologies to meet the special needs of eligible areas under this Act.

Section 17: Report

This provision requires the Secretary of Transportation to submit a report on projects funded under this section to the House Transportation and Infrastructure Committee and the Senate Banking, Housing, and Urban Affairs Committee, to be included in the Department’s annual report.

Section 18: Authorization

$65,000,000 is authorized to be appropriated for the Secretary to carry out this program for each of the fiscal years 2002 through 2007.

Section 19: Conforming amendments

Confirming amendments to the title, including an amendment to allow 0.5% of the funds made available under this section to be used for project management oversight.
CONGRESSIONAL RECORD—SEROPE

June 28, 2001

We look forward to working with you to move this legislation to enactment.

Sincerely,

DAVID HIRSCH,
Transportation Policy Coordinator.

ENVIRONMENTAL DEFENSE,

Hon. PAUL SARBANES,
U.S. Senate,
Washington, DC.

DEAR SENATOR SARBANES: I am writing on behalf of the Environmental Defense Fund and our 300,000 members to express support for your bill, the Transit in Parks Act, which will provide dedicated funding for transit projects in our national parks. To many of our parks suffer from the consequences of poor transportation systems; traffic congestion, air and water pollution, and disturbance of natural ecosystems.

Increased funding for attractive and effective transit services to and within our national parks is essential to mitigating these growing problems. A good working transit system in a number of our national parks will make the park experience not only more enjoyable for those who visit there, it will help improve environmental conditions. Air pollutants that exacerbate respiratory health problems, damage vegetation, and contribute to haze which too often obliterates the views at our parks, will be abated by decreasing the number of cars and congestion levels in the parks. Improved transit related to our parks is key to diversifying transportation choices and access for the benefit of all who might visit our national park system. It is also vital to assuring equal access for all citizens to our parks, including those without cars.

We appreciate your leadership on this issue and your dedication to the health of our national parks and expanded choices in our transportation systems. We look forward to working with you to move your legislation forward.

Sincerely,

MICHAEL REPLOGLE,
Transportation Director.

COMMUNITY TRANSPORTATION
ASSOCIATION,

Hon. PAUL SARBANES,
Committee on Banking, Housing and Urban Af-
airs,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: The Community Transportation Association continues to support your efforts to provide alternative transportation strategies in our national parks and other public lands. Our association's 3,400 members provide public and community transportation services in many of the smaller communities that border these national parks, monuments, and recreational areas, and our association has members actively involved in providing transportation services at several national parks.

All of us know the danger that congestion and increased traffic pose for the future of these sites and locations. Your continued sponsorship of the Transit in Parks Act is an important step in helping ensure that America's natural beauty and cultural resources remain a continuous part of our nation's future. We have members throughout the country whose experiences support the principle that through the use of public transit, movement of park visitors, and management of park visitor services and facilities, the national parks and public lands can improve mobility, support the economic vitality of these parks' "gateway communities," and maintain the dynamic experience of visitors to the diverse experiences of park visitors, employees, and community residents alike.
As an illustration of this point, enclosed is an article recently published in our Community Transportation magazine that discusses public transportation as part of the solution to traffic congestion and mobility issues in Acadia, Yosemite and Zion National Parks. These success stories could be replicated in many other communities under your Transit in Parks proposal.

We appreciate your dedicated efforts and initiative in this regard, and look forward to helping you advance this important piece of legislation.

Sincerely,  
DALE J. MARSICO,  
Executive Director.

AMENDMENTS SUBMITTED AND PROPOSED

SA 831. Mr. BOND (for himself, Mr. ROBERTS, and Mr. HELMS) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

SA 832. Mr. FRIST (for himself, Mr. BREAUX, and Mr. JEFFORDS) submitted an amendment intended to be proposed by him to the bill S. 1052, supra.

SA 833. Mr. WARNER proposed an amendment to the bill S. 1052, supra.

SA 834. Ms. SNOWE (for herself, Mrs. LINCOLN, Mr. DWYER, Mr. NELSON, of Nebraska, Mr. SPECTER, Mr. MCCAIN, Mr. BAUCUS, Ms. STABENOW, and Mr. CHAFEE) proposed an amendment to the bill S. 1052, supra.

SA 835. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 836. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 837. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 838. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1052, supra; which was ordered to lie on the table.

SA 839. Mrs. HUTCHISON (for herself and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 1052, supra.

SA 840. Mr. ENZI proposed an amendment to the bill S. 1052, supra.

SA 841. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, supra.

SA 842. Mr. DWYER submitted an amendment intended to be proposed by him to the bill S. 1052, supra.

SA 843. Mr. GRAMM (for himself and Mr. MCCAIN) proposed an amendment to the bill S. 1052, supra.

SA 844. Mr. SPECTER proposed an amendment to the bill S. 1052, supra.

SA 845. Mr. GRASSLEY proposed an amendment to the bill S. 1052, supra.

SA 846. Mr. NICKLES (for himself and Mr. ENSIGN) proposed an amendment to the bill S. 1052, supra.

SA 847. Mr. BROWNBACK proposed an amendment to the bill S. 1052, supra.

SA 848. Mr. ENSIGN proposed an amendment to the bill S. 1052, supra.

SA 849. Mr. ENSIGN proposed an amendment to the bill S. 1052, supra.

TEXT OF AMENDMENTS

SA 831. Mr. BOND (for himself, Mr. ROBERTS, and Mr. HELMS) proposed an amendment to the bill S. 1052, to amend the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 154, between lines 2 and 3, insert the following:

"(11) MINIMUM SHARE OF SETTLEMENT OF AWARD.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a participant or beneficiary (or the estate of such participant or beneficiary) shall receive not less than 85 percent of any award made as a result of a cause of action brought by the participant or beneficiary (or estate) under this subsection, after subtracting the amount of any attorney's fees from the total amount of such award.

"(B) EXCEPTION.—This paragraph shall not apply where the amount awarded as a result of a cause of action brought by a participant or beneficiary (or estate) under this subsection, after subtracting the amount of any attorney's fees from the total amount of such award.

SA 832. Mr. FRIST (for himself, Mr. BREAUX, and Mr. JEFFORDS) submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 156, between lines 2 and 3, insert the following:

"(11) MINIMUM SHARE OF SETTLEMENT OF AWARD.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a participant or beneficiary (or the estate of such participant or beneficiary) shall receive not less than 85 percent of any award made as a result of a cause of action brought by the participant or beneficiary (or estate) under this subsection, after subtracting the amount of any attorney's fees from the total amount of such award.

SA 833. Mr. WARNER proposed an amendment to the bill S. 1052, supra; which was ordered to lie on the table.

SA 834. Ms. SNOWE (for herself, Mrs. LINCOLN, Mr. DWYER, Mr. NELSON, of Nebraska, Mr. SPECTER, Mr. MCCAIN, Mr. BAUCUS, Ms. STABENOW, and Mr. CHAFEE) proposed an amendment to the bill S. 1052, supra.

SA 835. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 836. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 837. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 838. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1052, supra; which was ordered to lie on the table.

SA 839. Mrs. HUTCHISON (for herself and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 1052, supra.

SA 840. Mr. ENZI proposed an amendment to the bill S. 1052, supra.

SA 841. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, supra.

SA 842. Mr. DWYER submitted an amendment intended to be proposed by him to the bill S. 1052, supra.

SA 843. Mr. GRAMM (for himself and Mr. MCCAIN) proposed an amendment to the bill S. 1052, supra.

SA 844. Mr. SPECTER proposed an amendment to the bill S. 1052, supra.

SA 845. Mr. GRASSLEY proposed an amendment to the bill S. 1052, supra.

SA 846. Mr. NICKLES (for himself and Mr. ENSIGN) proposed an amendment to the bill S. 1052, supra.

SA 847. Mr. BROWNBACK proposed an amendment to the bill S. 1052, supra.

SA 848. Mr. ENSIGN proposed an amendment to the bill S. 1052, supra.

SA 849. Mr. ENSIGN proposed an amendment to the bill S. 1052, supra.

CONGRESSIONAL RECORD—SENATE 12405

June 28, 2001

On page 105, line 2, after "treatment" insert the following: "The name of the designated decision-maker (or decision-makers) appointed under section 522(n)(2) of the Employee Retirement Income Security Act of 1974 for purposes of making final determinations under section 103 and approving coverage pursuant to the written determination of an independent medical reviewer under section 104.'

Beginning on page 139, strike line 21 and all that follows through line 14 on page 171, and insert the following:

SEC. 302. AVAILABILITY OF COURT REMEDIES.

(a) In General.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

"(i) CAUSE OF ACTION RELATING TO DENIAL OF A CLAIM FOR HEALTH BENEFITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a participant or beneficiary (or the estate of such participant or beneficiary) in connection with a claim for benefits under a group health plan, if—

"(ii) a designated decision-maker described in paragraph (ii) fails to exercise ordinary care in approving coverage pursuant to the written determination of an independent medical reviewer under section 104(d)(3)(F) of the Employee Retirement Income Security Act of 1974 that reverses a denial of the claim for benefits; and

"(ii) the failure described in clause (i) is the proximate cause of substantial harm (as defined in paragraph (10)(G)) to the participant or beneficiary;
such designated decision-maker shall be liable to the participant or beneficiary (or the estate) for economic and noneconomic damages in connection with such failure and such injury or death (subject to paragraph (4)).

(B) Wrongful Determination Resulting in Delay in Providing Benefits.—With respect to an action commenced by a participant or beneficiary (or the estate of the participant or beneficiary) in connection with a claim for benefits under a group health plan, if—

(i) a designated decision-maker described in paragraph (2)—

(I) fails to exercise ordinary care in making a determination denying the claim for benefits under section 102 of the Bipartisan Patient Protection Act (relating to an initial claim for benefits); or

(II) fails to exercise ordinary care in making a determination denying the claim for benefits under section 103 of such Act (relating to an initial claim for benefits); or

(ii) the delay attributable to the failure described in clause (i) is reasonable under the circumstances, the health plan, the health insurance issuer shall—

(1) notify the participant or beneficiary (or the estate of the participant or beneficiary) of such failure and the reasons therefor in writing (on a form to be prescribed by the Secretary) to substitute another person as the designated decision-maker; or

(2) employ one or more persons to provide administrative support (and qualified health claims professionals associated with such health claims professional) solely for the purpose of processing and making determinations on claims for benefits under section 103 of such Act (relating to an initial claim for benefits).
CONGRESSIONAL RECORD—SENATE

June 28, 2001

12407

"(A) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—Notwithstanding any other provision of law, in the case of any action commenced pursuant to paragraph (1), the total amount of damages received by a participant or beneficiary under such action shall be reduced, in accordance with clause (ii), by an amount equal to the product of the following:

(i) the total amount of any payments made to or on behalf of the participant or beneficiary; and

(ii) the percentage of the total amount of such payments which will, with reasonable certainty, be ascribed to a collateral source. Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or compensation for noneconomic loss in connection with a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, involved in an accident, if the participant or beneficiary did not receive from the participant or beneficiary (or authorized representative) the information requested by such participant or beneficiary that is specifically excluded under the plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, involved in an accident, if the participant or beneficiary did not receive from the participant or beneficiary (or authorized representative) the information requested by such participant or beneficiary.

"(B) CLAIM FOR BENEFITS .—Except as provided in section 103(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsection (a), a period of time elapsing after coverage has been authorized. Nothing in this paragraph shall be construed to limit the application of any other affirmative defense that is applicable to the cause of action involved.

"(C) GROUP HEALTH PLAN .—The term 'group health plan' shall have the meaning given such term in section 733(b)(1) of the Bipartisan Patient Protection Act. In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

"(D) HEALTH INSURANCE ISSUER .—The term 'health insurance issuer' has the meaning given such term in section 733(b)(2).

"(E) HEALTH INSURANCE ISSUER .—The term 'health insurance issuer' has the meaning given such term in section 733(b)(2).

"(F) ORDINARY CARE .—The term 'ordinary care' means the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a connection with a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, of such a nature as would enable the participant or beneficiary to meet the timelines applicable under section 102, 103, or 104 of such Act; or a period of time elapsed after coverage has been authorized.

"(G) SUBSTANTIAL HARM .—The term 'substantial harm' means the loss or significant impairment of limb or bodily function, significant mental illness or disease, significant disfigurement, or severe and chronic physical pain.
may be maintained only if the class, the derivative claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms ‘group health plan’ and ‘health insurance coverage’ have the meanings given such terms in section 733.’’

‘‘(2) EFFECTIVE DATE.—This subsection shall apply to all civil actions that are filed on or after the date of enactment of the Bipartisan Patient Protection Act. This subsection shall apply to civil actions that are pending and have not been finally determined by judgment or settlement prior to such date of enactment.’’

(2) RICO.—Section 1964(c) of title 18, United States Code, is amended—

(1) by inserting ‘‘(1)’’ after the subsection designation ‘‘(A)’’;

(2) by adding at the end the following:

‘‘(2)(A) No action may be brought under this subsection, or alleging any violation of section 1962 of title 18, or concerning, established, administered, or otherwise operated a group health plan, or health insurance coverage in connection with a group health plan. Any such action shall only be brought under the Employee Retirement Income Security Act of 1974.

In this paragraph, the terms ‘group health plan’ and ‘health insurance issuer’ shall have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

‘‘(B) Subparagraph (A) shall apply to civil actions that are pending and have not been finally determined by judgment or settlement prior to the date of enactment of the Bipartisan Patient Protection Act and all actions commenced on or after such date.’’

(d) CONFORMING AMENDMENT.—Section 502(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(1)(A)) is amended by inserting ‘‘or (B)’’ after ‘‘(A)’’.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to acts and omissions (from which a cause of action arises) occurring on or after October 1, 2002.

SA 833. Mr. WARNER proposed an amendment to the bill S. 1552, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 154, between lines 2 and 3, insert the following:

‘‘(II) LIMITATION ON AWARD OF ATTORNEYS’ FEES.—

‘‘(A) IN GENERAL.—Subject to subparagraph (C), with respect to a participant or beneficiary (or employee) who brings a cause of action under this subsection and prevails in that action, the amount of attorneys’ fees that a court may award to such participant, beneficiary, or estate under subsection (g)(1) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved in such action) may not exceed the sum of the amounts described in subparagraph (B).

‘‘(B) AMOUNTS DESCRIBED.—For purposes of subparagraph (A), the amounts described in this subparagraph are as follows:

(i) With respect to a recovery in a cause of action described in subparagraph (A) that does not exceed $100,000, the amount of attorneys’ fees awarded shall be an amount equal to 1/5 of the amount of the recovery.

(ii) With respect to a recovery in a cause of action that exceeds $100,000 but does not exceed $500,000, the amount of the attorney’s fees awarded may not exceed an amount equal to 25 percent of such excess recovery above $100,000.

(iii) With respect to a recovery in a cause of action that exceeds $500,000, the amount of the attorneys’ fees awarded may not exceed an amount equal to 15 percent of such excess recovery above $500,000.

(C) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys’ fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the following:

‘‘(9) LIMITATION ON ATTORNEYS’ FEES.—

‘‘(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys’ fees, subject to subparagraph (B), a court shall limit the amount of attorneys’ fees that a court may award to such participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) to the amount of attorneys’ fees allowed under subparagraph (A) as equity and the interests of justice may require.

SA 834. Ms. SNOWE (for herself, Mrs. LINCOLN, Mr. DEWINE, Mr. NELSON of Nebraska, Mr. SPECTER, Mr. MCCAIN, Mr. BAUCUS, Ms. STABENOW, and Mr. CHAFEE) proposed an amendment to the bill S. 1552, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 106, between lines 16 and 17, insert the following:

‘‘(19) DESIGNATED DECISIONMAKERS.—A description of the participants and beneficiaries with respect to whom such designation is made shall be determined by the plan administrator in accordance with section 733 of the Employee Retirement Income Security Act of 1974 and the name and address of each such designated decisionmaker.

On page 141, strike lines 16 through 21, and insert the following: ‘‘tions of the plan or coverage, and

On page 142, lines 10 and 11, strike ‘‘or the failure described in clause (I)’’.

On page 143, strike lines 12 through 18, and insert the following: ‘‘of a denial of a claim for benefits.

On page 145, strike lines 15 through 20, and insert the following: ‘‘of a denial of a claim for benefits. Beginning on page 145, strike line 22 and all that follows through line 6 on page 146, and insert the following: ‘‘(4) DESIGNATED DECISIONMAKER.—For purposes of subparagraph (B), the term ‘direct participation’ means, in connection with a decision described in paragraph (1)(A), the actual mak-
prohibit a cause of action under paragraph (1) relating to quality of care; or

(2) qualifications for designated decisionmaker—

(A) in general.—Subject to subparagraph (B), an entity is qualified under this paragraph as a designated decisionmaker with respect to a group health plan if the entity has the ability to assume the liability described in paragraph (1) with respect to participants and beneficiaries under such plan, including those arising from its service as a designated decisionmaker under this subsection with respect to such participant or beneficiary.

(B) certain causes of action permitted.—Notwithstanding subparagraph (A), paragraph (1) applies with respect to any cause of action that is brought by a participant or beneficiary under a group health plan (or the estate of such a participant or beneficiary) to recover damages resulting from personal injury or for wrongful death against any employer or other plan sponsor maintaining the plan (or against an employee of such an employer acting within the scope of employment) if such cause of action arises by reason of a medically reviewable decision, to the extent that there was direct participation by the employer or plan sponsor in the denial of payment for the provision of such item or service.

(II) EXEMPTION FROM PERSONAL LIABILITY FOR INDIVIDUAL MEMBERS OF BOARDS OF DIRECTORS, JOINT BOARDS OF TRUSTEES, ETC.—Any individual member of a board of directors of an employer or plan sponsor or a member of a joint board of trustees, or similar group of representatives of the entities that are the plan sponsor of plan maintained by two or more employers or one and more employee organizations;

shall not be personally liable under this subsection for conduct that is within the scope of employment of the individuals unless the individual acts in a fraudulent manner for personal enrichment.

(0) requirements for designated decisionmaker for group health plans—

(I) in general.—For purposes of subsection (n)(17) and section 514(d)(9), a designated decisionmaker meets the requirement with respect to any participant or beneficiary if—

(A) such designation is in effect throughout the term for which the individual acts as a designated decisionmaker under this subsection with respect to such participant or beneficiary; and

(B) the designated decisionmaker—

(i) meets the requirements of paragraph (2); and

(ii) assumes unconditionally all liability of the employer or plan sponsor involved (and any employee thereof acting within the scope of employment) either arising under subsection (n) or arising in a cause of action permitted under section 514(d) in connection with actions (and failures to act) of the employer or plan sponsor (or employee) occurring during the period in which the designation under subsection (n)(17) or section 514(d)(9) is in effect relating to such participant or beneficiary; and

(iii) agrees to be substituted for the employer or plan sponsor (or employee) in the action and not to raise any defense with respect to such liability that the employer or plan sponsor (or employee) may not raise, and

(iv) where paragraph (2)(B) applies, assumes unconditionally all liability under the group health plan to make medically reviewable decisions under the plan with respect to such participant or beneficiary.

(C) the designated decisionmaker and the participants and beneficiaries for whom the decisionmaker has assumed liability are identified in the written instrument required under section 402(a) and as required under section 121(b)(19) of the Bipartisan Patient Protection Act.

Any liability assumed by a designated decisionmaker with respect to a group health plan if the entity has the ability to assume the liability described in paragraph (1) with respect to participants and beneficiaries under such plan, including those arising from its service as a designated decisionmaker under this subsection with respect to such participant or beneficiary shall not be personally liable under this subsection with respect to any cause of action described in paragraph (1)(A) under State law insofar as such cause of action provides for liability of an employer or plan sponsor (or any employee thereof acting within the scope of employment) with respect to a participant or beneficiary, if with respect to the employer or plan sponsor there is deemed to be a designated decisionmaker that meets the requirements of section 502(o)(1) with respect to such participant or beneficiary. Such paragraph (1) shall apply with respect to any cause of action described in paragraph (1)(A) under State law against the designated decisionmaker of such employer or other plan sponsor with respect to the participant or beneficiary.

(II) automatic designation.—A health insurance issuer shall be deemed to be a designated decisionmaker for purposes of subparagraph (A) with respect to the participants and beneficiaries of an employer or plan sponsor, whether or not the employer or plan sponsor makes such a designation, and shall be deemed to have assumed unconditionally all liability of the employer or plan sponsor under such designation in accordance with subsection (o), unless the employer or plan sponsor affirmatively enters into a contract to prevent the service of the designated decisionmaker.

(III) previously provided services.—

(A) in general.—Except as provided in this paragraph, a cause of action shall not arise under paragraph (1) if the denial involved relates to an item or service that has already been fully provided to the participant or beneficiary under the plan or coverage and the claim relates solely to the submission or denial of payment for the provision of such item or service.

(B) exception.—Nothing in subparagraph (A) shall be construed to prevent a cause of action under paragraph (1) where the nonpayment involved results in the participant or beneficiary being unable to receive further items or services for which the participant or beneficiary was entitled to receive service involved in the denial referred to in subparagraph (A) or that are part of a continuing treatment or series of procedures; or

(ii) prohibit a cause of action under paragraph (1) relating to quality of care; or

(iii) limit liability that otherwise would arise from the provision of the item or services or the performance of a medical procedure.

(III) exemption from personal liability for individual members of boards of directors, joint boards of trustees, etc.—Any individual who is—

(A) a member of a board of directors of an employer or plan sponsor; or

(B) a member of an association, committee, employee organization, joint board of trustees, or other similar group of representatives of the entities that are the plan sponsor of plan maintained by two or more employers and one or more employee organizations;

shall not be personally liable under this subsection for conduct that is within the scope of employment of the individuals unless the individual acts in a fraudulent manner for personal enrichment.
SA 835. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

On page 119, between lines 5 and 6, insert the following:

SEC. 136. PRESERVATION OF THE HIPPOCRATIC OATH.

(a) In General.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a group health plan or health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a physician (or group of physicians) shall require that such physician—

(1) provide notice to each participant, beneficiary, or enrollee that the physician does not uphold any part of the Oath, disclose the part of the Oath to such participant, beneficiary, or enrollee that the physician does not uphold the Oath. The plan or issuer shall provide coverage for the treatment of such physician making a disclosure under subsection (a) in violation of the Hippocratic Oath.

(b) Concealment.—If any penalty is assessed, or non-economic or punitive damages are awarded with respect to a cause of action under section 502(n) or 514(d) of the Employee Retirement Income Security Act of 1974 (as added by section 902), the court shall award the amount described in paragraph (2) to the State health insurance trust fund established under subsection (b) for the State in which the claim filed to enable the State to provide refundable tax credits to eligible individuals in the State to purchase health insurance coverage.

(c) Limitation.—The amount awarded to a State under paragraph (1) shall consist of—

(A) any non-economic or punitive damages awarded in excess of $2,000,000.

(b) STATE REQUIREMENTS.—

(1) STATE HEALTH INSURANCE TRUST FUND.—

A State that desires to receive payments under subsection (a) shall establish a State health insurance trust fund.

(2) FUND.—

(A) IN GENERAL.—The refundable tax credit described in subsection (a) shall—

(i) be available to any resident of a State who—

(I) is without access to adequate health insurance through the resident’s employer; or

(II) is defined by State law to be at risk of losing health insurance through the loss that 220 percent of the poverty line, is not eligible for benefits under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396a (as added by section 902)), or is not eligible for veteran’s health benefits, and is younger than 65 years of age; and

(ii) be used to provide a benefit for private insurance that includes, at a minimum, catastrophic coverage.

(B) TIME PERIOD.—

(i) IN GENERAL.—A State shall have in place a refundable tax credit as described in subsection (a) not later than 2 years after the date of enactment of the Bipartisan Patient Protection Act.

(ii) TRANSITION PERIOD.—A State that fails to have a refundable tax credit in place as required by clause (i) shall transfer any funds described in subsection (a)(2) to the National Institutes of Health.

SA 836. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 306. DEDICATION OF PUNITIVE DAMAGES FOR VIOLATION OF OATH OF HEALTH INSURANCE COVERAGE.

(a) AWARD OF PORTION OF DAMAGES.—

(1) IN GENERAL.—If any penalty is assessed, or non-economic or punitive damages are awarded with respect to a cause of action under section 502(n) or 514(d) of the Employee Retirement Income Security Act of 1974 (as added by section 902), the court shall award the amount described in paragraph (2) to the State health insurance trust fund established under subsection (b) for the State in which the claim filed to enable the State to provide refundable tax credits to eligible individuals in the State to purchase health insurance coverage.

(b) AMOUNT.—The amount awarded to a State under paragraph (1) shall consist of—

(A) any non-economic or punitive damages awarded in excess of $2,000,000.

(b) STATE REQUIREMENTS.—

(1) STATE HEALTH INSURANCE TRUST FUND.—

A State that desires to receive payments under subsection (a) shall establish a State health insurance trust fund.

(2) FUND.—

(A) IN GENERAL.—The refundable tax credit described in subsection (a) shall—

(i) be available to any resident of a State who—

(I) is without access to adequate health insurance through the resident’s employer; or

(II) is defined by State law to be at risk of losing health insurance through the loss that 220 percent of the poverty line, is not eligible for benefits under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396a (as added by section 902)), or is not eligible for veteran’s health benefits, and is younger than 65 years of age; and

(ii) be used to provide a benefit for private insurance that includes, at a minimum, catastrophic coverage.

(B) TIME PERIOD.—

(i) IN GENERAL.—A State shall have in place a refundable tax credit as described in subsection (a) not later than 2 years after the date of enactment of the Bipartisan Patient Protection Act.

(ii) TRANSITION PERIOD.—A State that fails to have a refundable tax credit in place as required by clause (i) shall transfer any funds described in subsection (a)(2) to the National Institutes of Health.

SA 837. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

SEC. 307. IMPROVED FLEXIBILITY FOR EMPLOYEES IN OBTAINING HEALTH INSURANCE COVERAGE.

(a) FREEDOM FROM EMPLOYER LIABILITY.—

In the case of a group health plan, or health insurance coverage provided by a health insurance issuer, that meets the requirements of subsection (b)–

(1) an employer maintaining the plan or entering into an arrangement for the coverage provided by the issuer shall not be liable pursuant to subsection (a) with respect to such coverage to the provision of (or failure to provide, or manner of provision of) benefits under any health insurance coverage that may be secured by the participants or enrollees in connection with the plan or under the coverage provided by the issuer for participants, beneficiaries, or enrollees; and

(2) there shall be no right of recovery, indemnity, or contribution against such an employer (or an employee of such an employer acting within the scope of employment) for damages assessed against the person pursuant to any such cause of action.

(b) REQUIREMENTS.—A group health plan or health insurance coverage provided by a health insurance issuer meets the requirements of this subsection if—

(1) such plan or coverage provides compensation to employees for personal injuries or sickness, within the meaning of section 106(a) of the Internal Revenue Code of 1986;

(2) under such plan or the arrangement for such coverage, all employer contributions are in the form of payments on behalf of participants, beneficiaries, or enrollees and are placed into a separate trust that forms a part of such plan or the arrangement for such coverage and that meets the requirements of subsection (d);

(3) the assets of such trust consist solely of such employer contributions and any income earned from investments of such employer contributions;

(4) the assets of such trust (other than assets used for payment of necessary and reasonable administrative expenses of the trust) are held in such trust for the sole purpose of, and are available for, payment by participants, beneficiaries, or enrollees of premiums for, or otherwise providing for the care or treatment of, participants, beneficiaries, or enrollees of—

(A) health insurance coverage for the participants, beneficiaries, or enrollees that is made available under such plan for acquisition by the participants, beneficiaries, or enrollees and that meets the applicable requirements of law; or

(B) coverage provided by the issuer for participants, beneficiaries, or enrollees that meets the applicable requirements of law;

(5) under such plan or arrangement for such coverage, at least 2 alternatives shall substantially different forms of health insurance coverage are available for acquisition by each participant, beneficiary, or enrollee with respect to the assets of the most attributable contributions to the trust on behalf of such participant, beneficiary, or enrollee; and

(6) the participant, beneficiary, or enrollee (and not the employer, plan, or issuer) has a right to the health insurance coverage provided to the participant, beneficiary, or enrollee under the plan or the coverage provided by the issuer.

(c) FIDUCIARY LIABILITY.—In the case of any group health plan or health insurance coverage provided by a health insurance issuer that meets the requirements of subsection (b)–

(1) the trustee of the separate trust referred to in subsection (b)(2) shall be the named fiduciary of the plan or the issuer, with respect to such coverage; and

(2) such trustee shall be treated, for purposes of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and any other applicable provision of law, as the sole and exclusive fiduciary of the plan or the issuer with respect to assets held in such trust.

(d) SEPARATE TRUST REQUIREMENTS.—

(1) IN GENERAL.—A separate trust referred to in subsection (b)(2) meets the requirements of this subsection if each trustee of the trust—

(A) is not a related party;
CONGRESSIONAL RECORD—SENATE

SA 838. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, which was ordered to lie on the table; as follows:

Beginning on page 98, strike line 2 and all that follows through line 21 on page 109, and insert the following:

SEC. 121. PATIENT ACCESS TO INFORMATION. (a) PERMISSIBILITY.—Nothing in this section shall be construed to prohibit receipt by a participant, beneficiary, or enrollee under the plan or issuer with respect to such participant, beneficiary, or enrollee of the following:

(1) PROVIDER’S INFORMATION.—The disclosure required under subparagraph (A) shall include:

(i) a description of the person, entity, or organization that provides such services; and

(ii) the name, address, and telephone number of each participating provider, and the State licensure status of such provider.

(2) PREAUTHORIZATION.—A description of the preauthorization process, and procedures to be used by participants, beneficiaries, and enrollees in obtaining access to non-network services, and the right to select a participating provider.

(3) BENEFITS.—A description of:

(A) any in-network benefits, services, or treatment that are covered under the plan or coverage if such services are covered;

(B) any specific exclusions or express limitations on benefits described in section 118 if such benefits are covered;

(C) any other benefit limitations, including any annual or lifetime benefit limits and any monetary limits or limits on the number of visits, days, or services, and any specific coverage exclusions; and

(D) any definition of medical necessity used in making coverage determinations by the plan, issuer, or claims administrator.

(4) CIRCUMSTANCES.—A description of the circumstances under which such treatments are covered by the plan or issuer.

(5) PROVIDER’S INFORMATION.—A description of the circumstances under which participation in clinical trials is covered under the terms and conditions of the plan or coverage, and the right to obtain coverage for approved clinical trials if section 119 if such section applies.

(6) APPROPRIATION METHODS.—A summary description by category of the applicable methods.

(b) RULES OF CONSTRUCTION.—(1) PROVIDER’S INFORMATION.—The definitions contained in section 3321 of the Public Health Service Act (42 U.S.C. 1320a-2(f)) shall apply to the disclosure required under subparagraph (A) of paragraph (1).

(2) PREAUTHORIZATION.—A description of any requirements and procedures to be used by participants, beneficiaries, and enrollees in obtaining access to non-network services, and the right to select a participating provider.

(3) BENEFITS.—A description of:

(A) any in-network benefits, services, or treatment that are covered under the plan or coverage if such services are covered;

(B) any specific exclusions or express limitations on benefits described in section 118 if such benefits are covered;

(C) any other benefit limitations, including any annual or lifetime benefit limits and any monetary limits or limits on the number of visits, days, or services, and any specific coverage exclusions; and

(D) any definition of medical necessity used in making coverage determinations by the plan, issuer, or claims administrator.

(4) CIRCUMSTANCES.—A description of the circumstances under which such treatments are covered by the plan or issuer.

(5) PROVIDER’S INFORMATION.—A description of the circumstances under which participation in clinical trials is covered under the terms and conditions of the plan or coverage, and the right to obtain coverage for approved clinical trials if section 119 if such section applies.

(6) APPROPRIATION METHODS.—A summary description by category of the applicable methods.

section applies.

(c) ADDED INFORMATION.—The information to be provided under the request of a participant, beneficiary, or enrollee, as applicable, for the conduct of the trustee’s duties.

(2) PARTICIPATING PROVIDERS.—A directory of participating providers (to the extent a plan or issuer provides coverage through a network of providers) that includes, at a minimum, the name, address, and telephone number of each participating provider, and an explanation about how to inquire whether a participating provider is currently accepting new patients, and the State licensure status of the providers and participating health care professionals, including the education, training, specialty qualifications or certifications of such professionals.

(d) CHOICE OF PRIMARY CARE PROVIDER.—A description of any requirements and procedures to be used by participants, beneficiaries, and enrollees in selecting, accessing, or changing their primary care provider, including the method for investigating and resolving complaints about a group health plan or health insurance coverage the following:

(1) SERVICE AREA.—A description of the plan or issuer’s service area, including

(2) PROVIDING INFORMATION UNAFFECTED.—Nothing in this section shall be construed to affect any cause of action in connection with the health insurance coverage referred to in subsection (a)(1) against the plan sponsor or health insurance issuer providing such coverage or any other party.

(f) RULES OF CONSTRUCTION.—(1) PROVIDER’S INFORMATION.—The definitions contained in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91) shall apply for purposes of this section.

(2) PROVIDING INFORMATION UNAFFECTED.—Nothing in this section shall be construed to affect any cause of action in connection with the health insurance coverage referred to in subsection (a)(1) against the plan sponsor or health insurance issuer providing such coverage or any other party.

(g) REGULATIONS.—The Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury may issue regulations to implement this section.

(1) PROVIDER’S INFORMATION.—The definitions contained in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91) shall apply for purposes of this section.

(2) PROVIDING INFORMATION UNAFFECTED.—Nothing in this section shall be construed to affect any cause of action in connection with the health insurance coverage referred to in subsection (a)(1) against the plan sponsor or health insurance issuer providing such coverage or any other party.
(9) Emergency Services.—A summary of the rules and procedures for access to emergency services, including the right of a participant, beneficiary, or enrollee to obtain emergency services under the prudent layperson standard described in section 113 of the Employee Retirement Income Security Act of 1974 and applicable State law.

(10) Claims and Appeals.—A description of the plan or issuer’s rules and procedures pertaining to claims and appeals, a description of the first tier of review (including an explanation of the process for exercising rights) of participants, beneficiaries, and enrollees seeking redress or engaging in other activities under subsection (a), and a description of any additional legal rights and remedies available under section 502 of the Employee Retirement Income Security Act of 1974 and applicable State law.

(11) Advance Directives and Organ Donation.—A description of procedures for advance directives and organ donation decisions that the plan or issuer maintains such procedures.

(12) Information on Plans and Issuers.—The name, mailing address, and telephone number or numbers of the plan administrator and the issuer to be used by participants, beneficiaries, and enrollees seeking information about plan or coverage benefits and services, payment of a claim, or authorization for services and treatment. Notice of whether the benefits under the plan or coverage are provided under a contract or policy of insurance issued by an issuer, or whether benefits are provided directly by the plan sponsor who bears the insurance risk.

(13) Translation Services.—A summary description of any translation or interpretation services (including the availability of printed information in languages other than English, audio tapes, or information in Braille) that are available for non-English speakers and participants, beneficiaries, and enrollees with communication disabilities and a description of how to access these items or services.

(14) Accreditation Information.—Any information that is made public by accrediting organizations as part of the process of accreditation if the plan or issuer is accredited, or any additional quality indicators (such as the results of enrollee satisfaction surveys) that the plan or issuer makes public or makes externally available (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 502 of the Employee Retirement Income Security Act of 1974 and applicable State law.

(15) Notice of Requirements.—A description of any rights of participants, beneficiaries, and enrollees that are established by the Bipartisan Patient Protection Act (excluding those described in paragraphs (1) through (14)) if such sections apply. The description required under this paragraph may be combined with the notices of the type described in sections 711(d), 713(b), or 602(a)(1) of the Employee Retirement Income Security Act of 1974 and with any other notice provision that the appropriate Secretary may determine to be combined, so long as each combination does not result in any reduction in the information that would otherwise be provided to the recipient.

(16) External Review Activities.—A description of procedures used and required elements (including circumstances, timeframes, and appeals rights) under any utilization review program under sections 101 and 113 of the Employee Retirement Income Security Act of 1974, including any drug formulary program under section 118.

(17) External Appeals Information.—A description on the number and outcomes of external medical reviews, relative to the sample size (such as the number of covered lives) under the plan or sub-paragraph.

(18) Rules of Construction.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer or corporation with health insurance coverage, from—

(1) distributing any other additional information determined by the plan or issuer to be necessary in assisting participants, beneficiaries, and enrollees in the selection of a health plan or health insurance coverage; and

(2) complying with the provisions of this section by providing information in brochures, through the Internet or other electronic media, or through other similar means, so long as—

(A) the disclosure of such information in such form is in accordance with requirements as the appropriate Secretary may impose, and

(B) in connection with any such disclosure of information through the Internet or other electronic media—

(i) the recipient has affirmatively consented to the disclosure of such information in such form,

(ii) the recipient is capable of accessing the information so disclosed on the recipient's individual workstation or at the recipient's home,

(iii) the recipient retains an ongoing right to receive paper disclosure of such information and receives, in advance of any attempt at disclosure of such information to him or her through the Internet or other electronic media, notice in printed form of such ongoing right and of the proper software required to view information so disclosed, and

(iv) the plan administrator appropriately ensures that the intended recipient is receiving the information so disclosed and provides the information in printed form if the information is not received.

SA 889. Mrs. HUTCHISON (for herself and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the Senate Amendments SA 839, SA 838, and SA 839.

SA 840. Mr. ENZI proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

SEC. 304. IMMUNITY FROM LIABILITY FOR PROVIDING COVERAGE OF INSURANCE OPTIONS.—

(a) In general.—Section 106 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

"(p) Immunity from Liability for Provision of Insurance Options.—"
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At the end, add the following:

SEC. 9511. HEALTH INSURANCE REFUNDABLE CREDITS TRUST FUND.

(a) Creation of Trust Fund.—There is hereby established in the Treasury of the United States a trust fund to be known as the ‘‘Health Insurance Refundable Credits Trust Fund’’, consisting of such amounts as may be—

(1) appropriated to such Trust Fund as provided in this section, or
(2) credited to such Trust Fund as provided in section 9622(b).

(b) Transfer to Trust Fund of Amounts Equivalent to Certain Awards.—There are hereby appropriated to the Health Insurance Refundable Credits Trust Fund amounts equivalent to the awards received by the Secretary of the Treasury under section 733.

(c) Expenditures From Trust Fund.—Amounts appropriated to the Health Insurance Refundable Credits Trust Fund shall be available to fund the appropriations under paragraph (2) of section 1323(b) of title 31, United States Code, for any refundable tax credit to assist uninsured individuals and families with the purchase of health insurance under this title.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

‘‘9511. Health Insurance Refundable Credits Trust Fund.’’.

(3) Effective date.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SA 842. Mr. DeWINE submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 303. LIMITATION ON CERTAIN CLASS ACTION LITIGATION.

(a) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

‘‘(g) Limitation on Class Action Litigation.—

(1) In General.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative action claimant, or group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms ‘‘group health plan’’ and ‘‘health insurance coverage’’ have the meanings given in section 733.

(2) Effective date.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.

(b) RICO.—Section 1961(17) of title 18, United States Code, is amended—

(1) by inserting ‘‘(1)’’ after the subsection designation;
and
(2) by adding at the end the following:

‘‘(2)(A) No private action may be brought under this subsection, or alleging any violation of section 1962, where the action seeks to recover losses in whole or in part on the basis of information concerning, established, administered, or otherwise operated a group health plan, or health insurance coverage in connection with a group health plan. Any such action shall only be brought under the Employee Retirement Income Security Act of 1974. In this paragraph, the terms ‘‘group health plan’’ and ‘‘health insurance issuer’’ shall have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

(B) Subparagraph (A) shall apply to private civil actions that are filed on or after January 1, 2002.’’.

SA 843. Mr. GRAMM (for himself and Mr. MCCAIN) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

Insert at the appropriate place:

Notwithstanding any provision of this Act, any exclusion of an exact medical procedure, any exact time limit on the duration or frequency of coverage, and any dollar limit or the amount of coverage that is specifically enumerated and defined in the plain language of the plan or coverage documents under the plan or coverage offered by a group health plan, or a health insurance issuer offering health insurance coverage and that is disclosed under section 121(b)(1) shall be considered to govern the scope of the benefits that shall be provided to the participants and beneficiaries that is the subject of such action occurred.

In any such action, the court shall apply the laws of the State in determining liability and damages. If such State limits the amount of damages that may receive, such limits shall apply in such actions.

On page 156, between lines 2 and 3, insert the following:

‘‘(c) Limitation on Class Action Litigation.—

(1) Limitation.—

(A) In General.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative action claimant, or the group of claimants is limited to the participants, beneficiaries, or enrollees with respect to a group health plan established by only 1 plan sponsor or with respect to coverage provided by only 1 issuer. No action maintained by such class, such derivative action claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In such action, the court shall apply the laws of such State in determining liability and damages. If such State limits the amount of damages that may receive, such limits shall apply in such actions.

On page 156, strike lines 15 and 16 and insert the following:

‘‘(2) Limitation on Class Action Litigation.—

(A) In General.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative action claimant, or the group of claimants is limited to the participants, beneficiaries, or enrollees with respect to a group health plan established by only 1 plan sponsor or with respect to coverage provided by only 1 issuer. No action maintained by such class, such derivative action claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative action claimant, or group of claimants or consolidated for any purpose with any other proceeding.

(B) Definitions.—In this paragraph, the terms ‘‘group health plan’’ and ‘‘health insurance coverage’’ have the meanings given in such terms in section 733.

(2) Effective date.—Paragraph (1) shall apply to all actions that are pending and have not been finally determined by judgment or settlement prior to the date of enactment of the Bipartisan Patient Protection and Affordable Care Act, and all actions that are filed not earlier than that date.’’.

(2) Racketeer Influenced and Corrupt Organizations Act.—Section 1961(c) of title 18, United States Code (A) by inserting ‘‘(1)’’ after the subsection designation; and
**SEC. 01. SHORT TITLE.**

This title may be cited as the "Human Germline Gene Modification Prohibition Act of 2001":

**SEC. 02. FINDINGS.**

Congress makes the following findings:

(1) Human Germline gene modification is not needed to save lives, or alleviate suffering, of existing people. Its target population is "prospective people" who have not been conceived.

(2) The cultural impact of treating humans as biologically perfectible artifacts would be entirely negative. People who fall short of some technically achievable ideal would be seen as less than "normal," while the standards for what is genetically desirable will be those of the society's economically and politically dominant groups. This will only increase prejudices and discrimination in a society where too many such prejudices already exist.

(3) There is no way to be accountable to those in future generations who are harmed or stigmatized by wrongful or unsuccessful human germline modifications of themselves or their ancestors.

(4) The nature of effects of human germline manipulation would not be fully known for generations, if ever, meaning that countless people will have been exposed to harm probably often fatal as the result of only a few instances of germline manipulations.

(5) All people have the right to have been conceived, gestated, and born without genetic manipulation.

**SEC. 03. PROHIBITION ON HUMAN GERMLINE GENE MODIFICATION**

(a) In General.—Title 18, United States Code, is amended by inserting after chapter 6, the following:

"Chapter 16—Germline Gene Modification

"Sec. 301. Definitions

"(b) Definitions.—In this chapter:

(1) HUMAN GERMLINE GENE MODIFICATION.—The term "human germline gene modification" means the intentional modification of DNA in any human cell (including human eggs, sperm, fertilized zygotes, blastocysts, embryos, or any precursor cells that will divide and differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including inserting, deleting, or altering DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA. The term does not include any modification of cells that are not a part of and will not be used to create human embryos. Nor does it include the change of DNA involved in the normal process of conception.

(2) HUMAN HAPLOID CELL.—The term "haploid cell" means a cell that contains only a single copy of each of the human chromosomes, such as eggs, sperm, and their precursors.

(3) SOMATIC CELL.—The term "somatic cell" means a diploid cell (having two sets of chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development. Somatic cells are diploid cells that are not part of either eggs or sperm. A genetic modification of somatic cells is therefore not germline genetic modification.

Rule of construction: Nothing in this Act is intended to affect cell gene therapy, or to effect research involving human pluripotent stem cells.

(b) Prohibition on germline gene modification.

(1) In General.—It shall be unlawful for any person or entity, public or private, in or affecting interstate commerce—

(1) to perform or attempt to perform human germline gene modification;

(2) to intentionally participate in an attempt to perform human germline gene modification;

(3) to ship or receive the product of human germline gene modification for any purpose.

(2) Importation.—It shall be unlawful for any person or entity, public or private, to import the product of human germline gene modification for any purpose.

(c) Penalties.—

(1) In General.—Any person or entity that is convicted of violating any provision of this section shall be fined under this section or imprisoned not more than 10 years, or both.

(2) Civil Penalty.—Any person or entity that is convicted of violating any provision of this section shall be subject to, in the case of an individual, a civil penalty of not less than $1,000,000 and not more than an amount equal to the amount of the gross gain multiplied by 2, if that amount is greater than $1,000,000.

(3) Clerical Amendment.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 15 the following:


SA 848. Mr. ENSIGN proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

At the end, add the following:

**SEC. 1. IMMUNITY.**

(a) In General.—Notwithstanding any other provision of law, no health care professional shall be liable for the performance of, or the failure to perform, any duty in providing pro bono medical services to a medically underserved or indigent individual.

(b) Definitions.—In this section:

(1) HEALTH CARE PROFESSIONAL.—The term "health care professional" has the meaning given in the term in section 151.

(2) MEDICALLY UNDERSERVED OR INDIGENT INDIVIDUAL.—The term "medically underserved or indigent individual" means an individual that does not have health care coverage under a group health plan, health insurance coverage, or any other health care coverage program, or who is unable to pay for the health care services that are provided to the individual.

SA 849. Mr. ENSIGN proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

Subtitle C of title I is amended by adding at the end the following:

**SEC. 122. GENETIC INFORMATION.**

(a) Definitions.—In this section:

(1) CONTROLLED GROUP.—The term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

(2) FAMILY MEMBER.—The term "family member" means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is adopted or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraphs (A) or (B) of this paragraph.

(3) GENETIC INFORMATION.—The term "genetic information" means information about...
(4) Collection of predictive genetic information.—

(A) In general.—The term ‘‘predictive genetic information’’ means—

(i) information about an individual’s genetic tests;

(ii) information about genetic tests of family members of the individual; or

(iii) information about physical exams of the individual, and other information relevant to determining the current health status of the individual.

(B) Limitations.—The term ‘‘predictive genetic information’’ shall not include—

(i) information about the sex or age of the individual;

(ii) information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; or

(iii) information about physical exams of the individual, and other information relevant to determining the current health status of the individual.

(2) No discrimination in group rate based on predictive genetic information.—A group health plan, and a health insurance issuer offering health insurance coverage, shall not deny eligibility to a group or adjust premium or contribution rates for a group on the basis of predictive genetic information concerning an individual in the group or information about a request for or the receipt of genetic services by such individual or a family member of such individual.

(3) Limitation on genetic testing.—

(A) Limitation on requesting or requiring genetic testing.—A group health plan, or a health insurance issuer offering health insurance coverage, shall not request or require an individual or a family member of such individual to undergo a genetic test.

(B) Limitation on disclosure.—Nothing in this section shall be construed to limit the authority of a health care professional, who is providing treatment with respect to an individual, to request that such individual or family member of such individual undergo a genetic test.

(4) Collection of predictive genetic information.—

(A) In general.—The term ‘‘genetic services’’ means—

(i) means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites in order to detect genotypes, mutations, or chromosomal changes;

(ii) genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling;

(iii) predictive genetic information; and

(C) the Medical Information Bureau or any other person that collects, compiles, publishes, or otherwise disseminates insurance information;

(D) the individual’s employer or any plan sponsor;

(E) any other person the Secretary may designate by regulation.

(B) No enrollment restriction for genetic services.—A group health plan, or a health insurance issuer offering health insurance coverage, shall not deny eligibility to a group or adjust premium or contribution rates for a group on the basis of predictive genetic information about an individual or a family member of such individual.

(5) Disclosure of predictive genetic information.—

(A) A group health plan, or a health insurance issuer offering health insurance coverage, shall not request, require, collect, or purchase predictive genetic information (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) to—

(i) any entity that is a member of the same controlled group as such issuer or plan sponsor of such group health plan;

(ii) any other group health plan or health insurance issuer or any insurance agent, third party administrator, or other person subject to regulation under State insurance laws;

(C) the Medical Information Bureau or any other person that collects, compiles, publishes, or otherwise disseminates insurance information;

(D) the individual’s employer or any plan sponsor;

(E) any other person the Secretary may designate by regulation.

(6) Rule of construction.—Nothing in this section shall be construed to limit the authority of a health care professional, who is providing treatment with respect to an individual, or a family member of such individual, to—

(A) permit a group health plan or health insurance issuer to request (or require) the results of the services referred to in such paragraph;

(B) require that a group health plan or health insurance issuer make payment for services described in such paragraph where the individual (or a family member of such individual) provides prior, knowing, voluntary, and written authorization for the collection or disclosure of predictive genetic information.

(2) Disclosure for health care treatment.—Nothing in this section shall be construed to limit or restrict the disclosure of predictive genetic information from a health plan sponsor to a health care provider for the purpose of providing health care treatment to the individual involved.

(3) Violation of genetic nondiscrimination or genetic disclosure provisions.—

(A) In general.—In any action under a covered provision against any administrator of a health plan, or a health insurance issuer offering health insurance coverage (including any third party administrator or other person acting for or on behalf of such plan or issuer) alleging a violation of subsection (b), (c), or (d), the court may award any appropriate legal or equitable relief. Such relief may include a requirement for the payment of attorney’s fees and costs, including the costs of expert witnesses.

(B) Definition.—In this subsection, the term ‘‘covered provision’’ means section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) or section 2722 or 2761 of the Public Health Service Act (42 U.S.C. 300gg–2, 300gg–61).

(3) Special rule in case of genetic information.—With respect to health insurance coverage offered by a health insurance issuer, the provisions of this section relating to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) shall not be construed to supersede any provision of State law that establishes, implements, or continues in effect a standard, requirement, or remedy that more completely—

(A) protects the confidentiality of genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) to the extent that the subsections and sections of the Public Health Service Act and the provisions of section 2702(b) of the Public Health Service Act (42 U.S.C. 2702(b)(2), (C)) are applicable to the provisions referred to in subsection (f), except that any such relief awarded shall be paid only into the general fund of the Treasury;

(B) protects discrimination on the basis of genetic information.

At the end of title II, insert the following:

SEC. 203. ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.

Section 2721(b)(2) of the Public Health Service Act (42 U.S.C. 300gg–21(b)(2)) is amended by—

(1) amending subparagraph (A), by striking ‘‘If the plan sponsor’’ and inserting ‘‘Except as provided in subparagraph (D), If the plan sponsor’’; and

(2) adding at the end the following:

‘‘(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A), shall not be available with respect to the provisions of subsections (b), (c), and (d) of section 122 of the Bipartisan Patient Protection Act and the provisions of section 702(b) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2001 et seq.), to the extent that the subsections and sections of the Public Health Service Act and the provisions of section 2702(b)(2), (C) of the Public Health Service Act (42 U.S.C. 2702(b)(2), (C)) are applicable to the provisions referred to in subsection (f), except that any such relief awarded shall be paid only into the general fund of the Treasury.’’
SEC. 204. APPLICATION OF GENETIC NON-DISCRIMINATION REQUIREMENTS TO MEDIGAP PLANS.

(a) NONDISCRIMINATION.—Section 1882(e)(2) of the Social Security Act (42 U.S.C. 1396ss(e)(2)) is amended by adding at the end the following:

"(E) Each issuer of a medicare supplemental policy, and each such policy offered by such issuer, shall comply with the requirements under section 122 of the Bipartisan Patient Protection Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to each issuer of a medicare supplemental policy and each such policy for policy years beginning after October 1, 2002.

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section; or

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to each issuer of a medicare supplemental policy and each such policy for policy years beginning after October 1, 2002.

SEC. 205. APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Section 9821(a)(1) of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsection C as subchapter D; and

(2) by inserting after subchapter B the following:

"SUBCHAPTER C—PATIENT PROTECTION REQUIREMENTS"

"SEC. 9821. PATIENT PROTECTION REQUIREMENTS.

"Each group health plan shall comply with patient protection requirements under title I of the Bipartisan Patient Protection Act, and each health insurance issuer shall comply with patient protection requirements under such title with respect to group health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this section.''

(b) APPLICATION TO EMPLOYERS WITH FEWER THAN 2 EMPLOYEES.—Section 9821(a) of the Internal Revenue Code of 1986 is amended by striking "this chapter" and inserting "this chapter (other than section 9821(a)) is amended by striking "section 711 and 714(a) (with respect to the application of section 122 of the Bipartisan Patient Protection Act)".

"After section 901, insert the following:

"SEC. 981A. APPLICATION TO EMPLOYERS WITH FEWER THAN 2 EMPLOYEES.

"Section 711 and 714(a) of the Internal Revenue Code of 1986 is amended by amending section 981A (with respect to the application of section 122 of the Bipartisan Patient Protection Act)".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURAL, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, June 28, 2001. The purpose of the hearing will be to discuss the next Federal farm bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, June 28, 2001, at 2:30 p.m., in open session to receive testimony on the fiscal year 2002 budget amendment, in review of the Defense authorization request for fiscal year 2002 and the Future Years Defense Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during these sessions of the Senate on Thursday, June 28, 2001, at 7:45 a.m., to conduct hearings on the following:

"Reauthorization of the Iran and Libya Sanctions Act."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, June 28 at 9:30 a.m., to conduct an oversight hearing. The committee will receive testimony on science and technology studies on climate change.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 28, 2001, at 2 p.m., to conduct an oversight hearing. The committee will receive testimony on the following:

"Zimbabwe's Political and Economic Crisis" as follows:

WITNESSES

Panel 1: Walter H. Kansteiner, Assistant Secretary of State for African Affairs, Department of State, Washington, DC.

Panel 2: Professor Robert Roberger, President, World Peace Foundation, Cambridge, MA.

Mr. John Prendergast, International Crisis Group, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet Thursday, June 28, 2001, at 9:30 a.m., to receive testimony from Members of the House of Representatives on election reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, June 28, 2001, at 10 a.m., to receive testimony from Members of the House of Representatives on election reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, June 28, 2001, at 10 a.m., in room 418 of the Russell Senate Office Building, for a hearing on pending veterans' benefits legislation as follows:


S. 1089: U.S. Court of Appeals for Veterans Claims (CAVC) succession plan to address judges retiring in 2004/2005. Repeals the NOD as a jurisdictional threshold for appearing before the CAVC. Sponsor: Senator ROCKEFELLER.

S. 1091: (1) Eliminates the 30-year limit on manifestation from time of exposure for the presumption of service connection for Agent Orange-related respiratory cancer. Requires a presumptive rebuttable VA presumption, eliminated by a Court decision, that in-country Vietnam veterans were exposed to Agent Orange; (2) tasks the National Academy of Sciences to continue reporting on Agent Orange and its association with...
CONGRESSIONAL RECORD—SENATE 12417

June 28, 2001

Mr. REID. Mr. President, I ask unanimous consent that at 1 p.m., Monday, July 9, the Senate proceed to the consideration of Calendar No. 76, S. 1077, the supplemental appropriations bill; that the bill be considered under the following limitations: that the managers be authorized to offer any listed first-degree amendments in order other than a managers’ amendment be the following list which is at the desk; that all listed amendments must be offered by 6 p.m. Monday, July 9, with the exception of the managers’ amendment; that the managers or designees be authorized to offer any listed first-degree amendment in order for that amendment to qualify under the deadline; that any listed first-degree amendment be subject to relevant second-degree amendments; that any time limitation for debate on a first-degree amendment specified in this agreement then a second-degree amendment to that amendment would be accorded the same time limit; further, that upon disposition of the above amendments, the bill be advanced to third reading and the Senate then proceed to the consideration of Calendar No. 77, H.R. 2216; that all after the enacting clause be stricken and the text of S. 1077, as amended, be inserted in lieu thereof; that the bill be advanced to third reading and the Senate then vote on passage of the bill, with no intervening action or debate; finally, I ask unanimous consent that S. 1077 be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The list of amendments is as follows:

1. Biden amendment re: Relevant
2. Bond amendment re: Department of Defense
3. Bond amendment re: Corp of Engineers
4. Boxer amendment re: Sudden Oak Death
5. Boxer amendment re: Path 15
6. Byrd amendment re: Relevant
7. Byrd amendment re: Relevant to any on list
8. Cleland amendment re: B-1 bomber transportation
9. Conrad amendment re: Turtle Mountain Indian Reservation
10. Conrad amendment re: Devil’s Lake
11. Conrad amendment re: Relevant
12. Craig amendment re: Relevant
13. Daschle amendment re: Relevant
14. Daschle amendment re: Relevant to any on list
15. Feingold amendment re: Relevant
16. Feingold amendment re: KLamath Basin
17. Feinstei amendment re: KLamath Basin
18. Hutchinson (AR) amendment re: AR ice storms
19. Inouye amendment re: Relevant
20. Johnson amendment re: Relevant
21. Lott amendment re: Relevant
22. Lott amendment re: Relevant to any on list
23. McCain amendment re: Defense
24. McCain amendment re: Dept. of Defense with a time limit of 2 hours equally divided and controlled
25. Nickles amendment re: Relevant
26. Miller amendment re: Relevant
27. Roberts amendment re: B-1 bombers
28. Schumer amendment re: B-1 bombers
29. Schumer amendment re: IRR
30. Schumer amendment re: Relevant
31. Smith (OR) amendment re: KLamath Falls
32. Stevens amendment re: Relevant

The PRESIDING OFFICER. Without objection, it is so ordered.
ORDERS FOR FRIDAY, JUNE 29, 2001
Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business tonight, it adjourn until the hour of 9 a.m. tomorrow, Friday, June 29. I further ask consent that on Friday, immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the Patients’ Bill of Rights.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM
Mr. REID. Mr. President, on behalf of Senator Daschle, I announce that tomorrow we will convene at 9 a.m. and that shortly thereafter, as soon as the prayer and pledge are completed, we will resume consideration of the Patients’ Bill of Rights, with the votes as outlined previously in the unanimous consent request.

ADJOURNMENT UNTIL 9 A.M. TOMORROW
Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:30 p.m., adjourned until Friday, June 29, 2001, at 9 a.m.

NOMINATIONS
EXECUTIVE NOMINATIONS RECEIVED BY THE SENATE JUNE 28, 2001:

DEPARTMENT OF COMMERCE
LINDA MYSLIWY CONLIN, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE MICHAEL J. COFFS, RESIGNED.

DEPARTMENT OF ENERGY
DAN R. BROUILLETTE, OF LOUISIANA, TO BE AN ASSISTANT SECRETARY OF ENERGY (CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS), VICE JOHN C. ANGELL, RESIGNED.

ENVIRONMENTAL PROTECTION AGENCY
DONALD R. SCHREGARDUS, OF OHIO, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE STEVEN ALAN HERMAN, RESIGNED.

DEPARTMENT OF STATE
STUART A. BERNSTEIN, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO DENMARK.

CHARLES A. HEMBOLD, JR., OF CONNECTICUT, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWEDEN.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
CAROLE BROOKINS, OF INDIANA, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF TWO YEARS, VICE JAN FORSY, TERMS EXPIRED.

DEPARTMENT OF DEFENSE
H. T. JOHNSON, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE NAVY, VICE ROBERT B. PIRK, JR., RESIGNED.

IN THE AIR FORCE
THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general
LT. GEN. PAUL V. HESTER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general
MAJ. GEN. LANCE L. SMITH, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general
MAJ. GEN. THOMAS C. WASKOW, 0000
Mr. GILMAN. Mr. Speaker, I rise today to honor a wonderful woman, Sophie Heimbach who will be 100 years old on August 10, 2001. As is the case with most Jews born in the early twentieth century, Sophie’s life began very peacefully, and happily. She was born on August 10, 1901 in Ochtrup, Germany. In 1938, with the rising strength of the Nazi party, Sophie was forced to flee Germany. While at first she was able to make a new home in Belgium, the outbreak of World War Two forced her to flee again, this time for France, Spain, Portugal, and finally Casablanca. As if being uprooted from one’s home and having a death marking on one’s chest were not bad enough, Sophie was also separated from her family for a very painful period of time. We have all heard tales of the horrors for the Jews during World War Two, but this woman lived them, and she did it not knowing what would become of her family.

Sophie was reunited with her husband and family in Casablanca, and from that point slowly began to relearn the small joys in life, even amidst pain. Casablanca led Sophie and her family to Cuba, and then eventually to the United States in 1942. They moved to Gothen, New York where Sophie earned her U.S. citizenship in 1947. Sophie and her husband worked diligently and humbly in their first months in the United States. She worked as a housekeeper for a wealthy landowner, and her husband Arthur as a farm hand. After a mere nine months, Sophie and Arthur had the resources to fulfill their American dream enabling them to purchase the family farm in Walkill, New York. The Heimbach family flourished during their time in Walkill, and succeeded in developing their farm to over 400 acres.

Arthur is now deceased, but he and Sophie are followed by two children, Charlotte and Louis, five grandchildren, and six great grandchildren.

Sophie is a woman of great devotion and dedication to her temple, her home and her family. She has lived a full life with as much grief as joy, hardship as luck. I invite my colleagues to join me in honoring her on her millstone 100th birthday.
threats to u.s. interests

Chávez’s recent association with such U.S. ‘enemies’ as Saddam Hussein and Fidel Castro, has heightened the State Department’s anxiety over his intentions. In particular, his evolving friendship with Castro puts the U.S. in a quandary, given that Venezuela is the third largest foreign supplier of crude oil to this country. Chávez flouted U.S. efforts to isolate Havana in devising a five-year deal with the Cuban leader to provide the island with oil to compensate for Cuba’s lost Soviet aid. Venezuela will supply Cuba with $3,000 barrels of oil a day, at an annual market price of $3 billion. By granting cheap credits and a barter system, the cost to Cuba will be substantially less. Increased oil revenues from growing U.S. imports that fill Chávez’s coffers help to subsidize Cuba’s own consumption. Before his visit to Cuba, Chávez suggested, “We have no choice but to form an ‘axis of power,’” challenging U.S.-hemispheric dominance. Chávez’s declared objective is to generate good will for Venezuela throughout the region by offering similar preferential oil deals to many other Caribbean countries.

despite climbing oil prices in the past two years, Chávez also expanded his presidential powers to undermine the independent power of the judiciary, legislature, media and civic offices, all of which were known for their corruption under previous regimes. Up to this point, Washington has restrained itself, implicitly adjusting to Chávez’s style of rule, a difficult position to maintain in light of the growing tempo of his socialist rhetoric and recent controversial policy proposals.

potential u.s. action

While the Clinton administration overlooked Chávez’s political maneuvers in Latin America to maintain a semblance of amicable relations, some of his outrages evoked the wrath of pro-American groups wishing to punish him for pro-Castro activism. This is likely to build up the pressure on the Bush administration to “get tough on Chávez.” Observers in Caracas assert that he has never concealed his goal of a unified Latin America distanced from Washington. It is doubtful whether a tougher response from Washington would hinder Chávez’s defense of such a union. Former State Department official, Bernard Aronson, is already claiming that any disruption of oil agreements with Venezuela could weaken the U.S. economy. Due to economic difficulties and heightened crime, Chávez’s promises of jobs and increased security have had to be delayed. However, it is notable that he has been in office a relatively short period, and appears to have factored in U.S. scorn while seeking his public sector reforms. Whether Washington can long maintain its positive engagement policy towards Chávez’s actions remains to be seen. If it is a certainty, he will continue to promote his messianic vision for Venezuela and Latin America.

extensions of remarks

federal photovoltaic utilization act

hon. james l. oberstar
of minnesota

in the house of representatives

thursday, june 28, 2001

Mr. OBERSTAR. Mr. Speaker, the recent increase in oil prices has focused national attention on the benefits we could achieve by reducing our dependence on fossil fuels by meeting more of our energy needs from renewable sources, such as solar, wind, biomass and geothermal energy. Today, I am introducing legislation to promote one of the most promising of these technologies, solar photovoltaics.

Quite simply, a photovoltaic, or PV, system converts light energy into electricity. The term “photo” is a stem word from the Greek “phos,” which means light. “Volt” is named for Alessandro Volta, a pioneer in the study of electricity. Photovoltaic literally means “light electricity.”

PV-generated power offers distinct advantages over diesel generators, primary batteries, and in some instances, over conventional utility power lines. PV systems are highly reliable, and have no moving parts, so the need for maintenance is virtually non-existent. This is one of the main reasons they are used in satellites today, for which maintenance is both costly and time consuming. In addition, PV cells use sunlight to produce electricity—and sunlight is free.

The potential of photovoltaics is boundless. By way of illustration, solar panels in 1% of the Mojave Desert would provide enough energy to meet California’s expected electric shortfall. The electricity needs of the entire United States could be met by panels in a 100 by 100 mile area in the South-Western United States.

PV cells are ideal for supplying power to remote communication stations, such as those in our National Park system, and on navigational buoys. With PV systems, we can provide electricity for pumps to water cattle as the animals are rotated to different grazing areas. After Hurricane Andrew in 1993 the Florida Solar Energy Center deployed several PV emergency systems to the Key West area, where they were highly successful in meeting the energy needs of the Keys.

Another important feature of PV systems is their modularity—they can be easily adapted to any size, based on energy consumption. Homeowners can add modules as their needs expand, and ranchers, for example, can use mobile stations to provide electricity to pumps for water cattle as the animals are rotated to different grazing areas. After Hurricane Andrew in 1993 the Florida Solar Energy Center deployed several PV emergency systems to the Keys where they were highly successful in meeting the energy needs of the Keys.

Because a PV system can be placed closer to the user, shorter power lines can be used if power were brought in from a grid. Shorter lines, lower construction costs, and reduced paper work make PV systems especially attractive.

Transmission and distribution upgrades are kept to a minimum, which is especially important in urban areas. PV systems can be sized, sited, and installed faster than traditional energy systems.

I have had a longstanding interest in promoting the development of this technology. In June 1977 I introduced H.R. 7629, which established a program for the Federal government to encourage the development of PV technology by using it in federal facilities. At that time, photovoltaic technology was in its early developmental stage, and produced energy at a cost of more than $1 per watt hour, compared to less than $.10 a hour for energy from fossil fuels. In these circumstances, there is a “chicken and egg” problem: because the technology is expensive, consumers will not purchase it, but, unless there are purchases, the producers will not be able to make the investments and engage in the large-scale production needed to bring the cost down.

The Federal government, which purchases billions of dollars of energy each year, is in a unique position of facilitating a breakthrough for photovoltaics. Under my 1977 bill, the Federal government would have purchased substantial quantities of photovoltaic technology. These purchases would have given industry the revenue and confidence they need to bring this technology to market. PV systems have now been installed in federal facilities through the year 2000. For example, the U.S. Coast Guard Air Station in San Francisco developed a solar hot water heating project, which qualified as part of the Federal commitment. The project was completed easily and quickly, cost less than $10,000 and has energy savings of $1,100 per year, which means that has a 9-year payback period.

Just across the Anacostia River, here in the Nation’s Capitol, at the Sullivant Federal Center, the General Services Administration has installed a large PV system to supply electricity for the Federal center. From the Presidio in San Francisco to Fort Dix in New Jersey, the Federal government has installed numerous effective PV systems. Solar power is used
curements to "jump start" a technology is not of the most advanced technology. Systems used in Federal facilities to ensure that establishes a program for evaluation of the systems.

Of funding needed to purchase approximately million a year for the next five years, the level necessary funding. My bill establishes a goal five years to acquire photovoltaic systems for necessary funding. My bill will express Congressional customer, and help the technology reach its full potential. Many and Japan each has a larger market share than our country. Germany has about 20% of the world market and Germany and Japan each has a larger market share than our country.

I believe that we need to continue the Federal government's role in promoting the development of this technology. The Federal government should continue to be a major customer, and help the technology reach its full potential. My bill will express Congressional support for the type of program established by the Clinton administration, and provide the necessary funding. My bill establishes a goal for the Federal government during the next five years to acquire photovoltaic systems for Federal buildings which will produce at least 150 megawatts of electricity. This will accomplish the goal of the 20,000 solar roof initiative. The bill authorizes appropriations of $210 million a year for the next five years, the level of funding needed to purchase approximately 18,000 photovoltaic systems. The bill also establishes a program for evaluation of the systems used by Federal facilities to ensure that the government is encouraging development of the most advanced technology.

Mr. Speaker, using Federal government procurements to "jump start" a technology is not without precedent. In fact, photovoltaic technology itself is a product of space technology, and was advanced by NASA in the Hubble space station program. As a result, photovoltaic systems power nearly every satellite today as they circled the earth. Similarly, in the early days of the computer era the cost of microchips was prohibitive. Large-scale purchases by the government (NASA and DOD) helped bring the costs down to commercially competitive levels. As another example, the General Services Administration, using its FTS 2000 telecommunications contact, was also successful in promoting advancements and enhancements in telecommunications.

Mr. Speaker, I believe that the program established by my bill can make a major contribution to energy efficiency, protection of the environment and reduced dependence on foreign energy. I will be working to incorporate this program in any energy legislation passed in this Congress.

AMERICA HAS EARNED OUR RESPECT AND ALLEGIANCE EVERY DAY

HON. ROSCOE G. BARTLETT
OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BARTLETT of Maryland. Mr. Speaker, on July 4, our nation will commemorate the 225th Anniversary of the signing of the Declaration of Independence—an astounding historic achievement for liberty and freedom. It's said that in 2001, political correctness has replaced patriotism and respect for America's achievements with cynicism and even disrespect.

James Merna, Past Maryland Commandant of the Marine Corps League brought this example to my attention during his speech entitled, "Heroes and Role Models for Today and Tomorrow," at the Elks Club Flag Day Observance in Frederick, Maryland on June 10.

In May, Mr. Fran Parry, a track coach from Gaithersburg High School in Maryland was suspended for 12 days. Why? He confronted and reprimanded a student who was disrespectful during the Pledge of Allegiance. The student replied that he wasn't American and didn't have to be respectful during the Pledge.

It took support and pressure from other students, parents and the community after the incident became public before Coach Parry was reinstated.

America has earned our respect and allegiance every day.

I submit Mr. Merna's entire speech for the Record and I urge my colleagues and all Americans to read it.

REMARKS OF JAMES E. MERRA, PAST MARYLAND STATE COMMISSIONER, MARINE CORPS LEAGUE, AT THE ELKS CLUB FLAG DAY OBSERVANCE, FREDERICK, MD, JUNE 10, 2001

"HEROES AND ROLE MODELS FOR TODAY AND TOMORROW"

Thank you for inviting me. I am honored to speak to the Elks, one of America's largest and most influential fraternal organizations.

At the outset, allow me to extend my congratulations to the Frederick community on the celebration of your 100th anniversary this year. This is an accomplishment of which you should be justifiably proud, for a century of service to each other, to your community, and to the nation. I wish you many more years of good fellowship and service.

I have a number of ties to the Frederick community, forged in years of friendship and admiration. Let me mention just three.

(1) The Shangri-La Marine Corps League. This great organization was originally formed here in Frederick, I believe. In 1948. After many years of service, it became somewhat inactive. A few of us came here in 1968, helped reissue its charter and get it reinvigorated, and today it flourishes as one of the most active detachments in the entire League. I made many good friends here in Frederick. Gathers-Grunwell, Ken Bartgis, and the late Charlie Horn.

(2) Mr. Ken Wright, your football coach here at Governor Thomas Johnson High School. Earlier in his career, before he coached your Patriots, he coached three of my four sons when they were the head football coach at Roosevelt High School, in Greenbelt. He's a true winner in every respect, athletically and morally.

(3) My son John Merna, Major, U.S. Marine Corps. Two summers ago, John commanded a reinforced Marine rifle company (Echo 2–5) on a five month cruise in the South China Sea. The float was part of the Seventh Fleet whose purpose, besides being a good will mission for the U.S., was to conduct amphibious exercises and training with designated Asian forces.

Nonetheless, let me offer a few of my observations on the current fervor, or the lack thereof, for patriotism in America today, and what needs to be done, if anything, particularly with regard to our youth.

We can start by asking ourselves, who still observes Flag Day today? We may see a few houses in our neighborhoods who will fly their flags on their porches or in their front yards. But, increasingly, we no longer feel compelled to honor the flag. The patriotic display is steadily regarded as old-fashioned or tedious. Contrast today to a little more than 100 years ago when Flag Day in 1892 drew some 300,000 marchers in Chicago alone. Unfortunately, powerful forces in our society, popular culture, and political circles oftentimes emphasize our cultural differences, rather than our unity as Americans.

Let me mention a recent incident that occurred only two and half weeks ago, just down the 270 Pike from here, in Gathersonburg, Maryland, which should give us cause for concern. Many of you may already know the story. It was in the Washington Post on May 23rd. It involves a local high school track coach from Gaithersburg High School who was suspended for 12 days for confronting a student who was disrespectful during the school's reciting of the Pledge of Allegiance.

I was incensed as soon as I heard of this incident. How we have a 27-year veteran of the Montgomery County school system, a highly successful track coach who has won three state and 15 regional titles, suspended from his teaching and coaching jobs only because he attempted to get a student to show respect while the Pledge of Allegiance was being recited in the school.

The coach's name is Fran Parry. He lives a stones throw from here, in nearby Clarksburg. I called and spoke to Coach Parry.
Tuesday, just five days ago. He told me that it was a shock to him and that Parry was the first to tell me that Parry was a football player and who was on the track team, rushed past the coach who asked him to stop while the Pledge of Allegiance was being recited. The student attested that he wasn’t an American and didn’t have to. The coach told him that he was a bad attitude and that he had relatives who died for the very freedoms that the student enjoys. The student just laughed at Coach Parry and said “So what.” The coach told him he didn’t think too much of the incident until then. He was surprised that the principal’s office and told him he was being suspended from his duties and placed on administrative leave.

There’s more to this story. Coach Parry told me 80 percent of his track team is African-American and they backed the coach 100 percent. There wasn’t one dissenting voice among them. The coach met with the student’s parents, expressed regret over the incident but told them he wouldn’t change his message. He was the head of the school district. The student did not tell him that he was on leave indefinitely and that there would be an investigation focusing on whether he was a racist.

Coach Faulk said that the community was unbelievably behind him. Families and students called. He had 29 calls one night from people that he didn’t even know, from all cultures. Chris Core, on WMAL Radio, Washington’s most popular afternoon radio talk show, had a two-hour call in. Chris Core supported the coach “110 percent.” Only two callers came on the air the next day. Coach Parry told me, he was called by the principal and told he was being reinstated.

So here’s a case of a student who shows blatant disrespect for the symbol of our freedom and the American way of life, who places the tenure and career of an outstanding and highly successful coach in jeopardy, and walks away blameless. At the same time, Coach Parry was told that he was “too caustic,” was suspended from his job for 12 days, and given a letter of reprimand. Something’s wrong here. The wrong guy has been punished. This is political correctness at its zaniest. Whatever happened to accountability? Who’s supposed to assume responsibility for one’s own behavior? Instead of being portrayed as the villain, Coach Parry should be hailed as a patriot. Webster’s dictionary defines “patriot” as a person who loves his country and zealously supports its authority and interests.” The coach did what you and I would have done.

There’s more to this story, as I found out in talking to Coach Parry. As I said earlier, the student used to be on the track team at school. He and the coach knew each other well. The student sometimes ate his lunch in the coach’s office, used his microwave. Coach Parry even drove him home after track practice at times when he needed a ride. But the student had an attitude problem, and it came to the fore with his disrespect for the Pledge of Allegiance.

Where does Coach Parry derive his patriotic fervor? From his dad and his uncle who fought with the Marines on Iwo Jima, the bloodiest battle in World War II. His uncle was with the Division that landed on the beach at Iwo with 48 Marines in his platoon. When he left on a stretcher, 40 of the 48 Marines were killed. The remaining 8, including Coach Parry’s dad, were wounded. Coach Parry’s dad was with the Fourth Marine Division. After he learned that his brother was wounded, he visited him later aboard a hospital ship.

raising families who can truly say—my fa-
ther came up the hard way.’’

Now you can see why I said earlier that
someone like Coach Faulk was the greatest
coach that I have ever known. Our nation
needs strong coaches like Coach Faulk,
Coach Parry, and Ben Wright, because they
are doing as much to build the character of
our future leaders as any other group of men
or women.

One last final thought. Our nation is in the
midst of a huge nostalgia fest with the Sec-
ond World War. A number of “Greatest Gen-
eration” books have been written, the best
by Tom Brokaw of NBC News, box-office at-
tendance records have been set for the new
blockbuster movies like “Saving Private
Ryan” and now “Pearl Harbor.” There has
also been significant publicity about the
World War II Memorial now finally approved
for the Mall in Washington, D.C.

Let us build on this momentum. We have
elections coming up next year, and another
Presidential election in 2004. As George Will
pointed out recently, during the last admin-
istration, at times, we had a president, a CIA
director, a Secretary of Defense, a Secretary
of State, and a National Security Advisor,
none of whom had any military experience.
It’s almost as appalling in the Congress. Ac-
cording to the National Association for Uni-
formed Services, in 1965, 82% of the members
of Congress and 80% of the staffers had mili-
tary experience. Now less than ½ of Congress
and 5% of their staff have had any military
experience. And on the civilian side, only 6%
today of Americans younger than 65 have
ever served in uniform.

Those numbers by themselves are not
alarming because it’s recognized that we are
not at war and we have at present an all-vol-
unteer military. We just need to be sure that
we elect public officials who have a greater
understanding and a strong commitment to
support our national security and defense by
deeds, not mere words. We need their solid
support, as well as from local school board
officials, for military recruiters who were de-
nied access to high school campuses 19,228
times in 1999.

Thank you for inviting me to participate
in your Flag Day celebration today. As mem-
bers of the Benevolent and Protective Order
of Elks, you have long set an example the
rest of us must try to follow if we are going
to preserve for our future generations the
same priceless treasures of liberty and free-
dom which our forebears passed on to us.