SENATE—*Thursday, June 11, 1998*

The Senate met at 9:45 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, our purpose is to glorify You by serving our Nation. We want to express an energetic earnestness about our work today. Help us to know what You want and then want what we know; to say what we mean, and mean what we say. Give us resoluteness and intentionality. Free us to listen to You so intently that we can speak with courage. Keep us in the battle for truth rather than ego-skirmishes over secondary issues. Make us party to Your plans so we can give leadership to our parties and then help our parties work together to accomplish Your purposes. Make us one in the expression of our patriotism. In the Name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

Mr. SMITH of Oregon. Thank you, Mr. President.

SCHEDULE

Mr. SMITH of Oregon. Mr. President, this morning, the Senate will be in a period for morning business until 11:15 a.m. Following morning business, the Senate will resume consideration of the tobacco bill, and it is expected that a Republican amendment will be offered regarding attorneys' fees. It is hoped that a short time agreement can be reached on that amendment so that remaining amendments can be offered and debated throughout today's session. At 12 noon, the Senate will proceed to a vote on the motion to invoke cloture on the modified tobacco committee substitute. Assuming cloture fails, the Senate will continue debate on the tobacco bill. The Senate may also consider any other legislative or executive items that may be cleared for action. Therefore, rollcall votes are possible throughout today's session of the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I know my colleague wants to address the Senate and I will only take a minute on the business side. It is my understanding with respect to the tobacco bill, in a discussion with the majority leader last night, that there would be a Democratic amendment, I believe, at 11:15, with the understanding that the attorneys' fees amendment will follow that. I can say to a certainty that on the Democratic amendment, we will gladly enter into a time agreement. It will not be a long time agreement. So we can anticipate moving to the attorneys' fees amendment, hopefully, in the early afternoon.

Mr. SMITH of Oregon. Mr. President, the last amendment last night voted on was a Democratic amendment, and going back and forth, I believe the next one will be a Republican amendment. However, the chairman is not here. We will check with him, and if an accommodation is necessary, we will pursue that.

Mr. KERRY. Mr. President, let me just say to my friend, that is accurate in the sense there was a Democratic amendment. But the discussion we had with the majority leader and the manager of the bill is the Democratic amendments that have flowed to date were essentially responsive amendments on the same subject to the Republican amendment. Effectively, there hasn't been a proactive, free-standing Democratic amendment. I think that is why the majority leader was happy to say he will allow the Democrats to have sort of a substantive amendment of their own choosing, and then we can proceed forward. But we can work this out. I just wanted to make sure at least that was on the record at this time.

Mr. SMITH of Oregon. Mr. President, I don't suspect that will be a problem. We are going to check with the chairman and try and accommodate.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a period for the transaction of morning business until 11:15 a.m, with Senators permitted to speak for up to 5 minutes, with the following exceptions: the Senator from West Virginia, Mr. ROCKEFELLER, for 10 minutes; the Senator from New Jersey, Mr. TORRICELLI, for 15 minutes; the Senator from Montana, Mr. BAUCUS, for 30 minutes; the Senator from Maine, Ms. COLLINS, for 15 minutes; the Senator from Massachusetts, Mr. KERRY, for 15 minutes; and the distinguished Senator from Oregon, Mr. SMITH, for 5 minutes.

Mr. SMITH of Oregon addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

STATE OF RURAL OREGON

Mr. SMITH of Oregon. Mr. President, this coming weekend the President of the United States will travel to my home State of Oregon to deliver the commencement speech at Portland State University. As Oregon's junior Senator, I welcome President Clinton. I look forward to seeing his remarks and want him to know he is welcome in my State.

While in Portland, he will find a vital, vibrant community, like much of the Nation, which has enjoyed very good economic times. Because of this, the President might leave Portland thinking his administration's policies, even those regarding natural resources and the environment, have been good for Oregon. And if he does that, if he has that impression, he will be sadly mistaken.

During the last recess, I traveled through the rest of Oregon. I returned from Washington last weekend having spent 5 days in eastern Oregon. I went to the communities of Condon, Boardman, Hermiston, Pendleton, LaGrande, Baker City, Ontario, Nyssa, Burns, John Day, Enterprise, Milton-Freewater, and Ione.

This region is the home to honest, hard-working people. It is a region that is also home to some of the most breathtaking scenery on the Earth. It is a region of forests and rivers, mountains and valleys. It is a region where people earn their living from the land. But it is a region in dire economic straits. It is a region which is fighting for its survival.

Many States have what I term country-city divides, conflicts between rural and urban areas. I happen to be the first Senator elected in Oregon who has lived in rural Oregon in nearly 70 years. I take the issues with respect to all of my State very seriously. I take the issues that affect rural Oregon very personally.

I would like to report to my colleagues on the State of rural Oregon, the rest of Oregon, today, and to invite the President not just to go to Portland but to come with me to John Day, to come with me to Nyssa, to come with me to Burns, OR, and to see for himself an area of my State that has been terribly damaged by many of his administration's policies.

These are Oregonians who have made their living off the land for generations. They are now being forced out of business by policies of this administration. These policies are often driven by emotionally generated, questionable science to institute severe restrictions on agriculture, forestry, grazing, and

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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mining on both public and private lands.

Mr. President, there are people in the administration now who talk with straight faces, without blinking, about tearing out the Columbia River dams. These are assets built by the Federal Government in the Second World War. They were built to serve a multiple of purposes. They were built to provide public safety from spring flooding; they were built to provide irrigation for agriculture; they were provided to move crops from country to city, the city of Portland, the Port of Portland, where 40 percent of the wheat in the West goes right through and down that river.

They were built also to produce electricity. Heaven forbid, people need electricity. They were built specifically to provide the production of metals for weaponry in the Second World War. But now we are being told that all of these values must be subordinate to the single value of supposedly protecting the environment. They want to blow up these dams.

I am afraid I probably motivated some of my environmental opponents when I told them that when they blow the dams I will be on top of them, because I feel very strongly that the multiple of public values that are to be served by these are still worthy values. And there are many things we can do to make them more environmentally friendly, and we are doing that as we speak.

Well, that is an aside. But the people that I know in rural Oregon are good stewards of their land. After all, they need their land for their livelihoods, and they desperately would like to pass it on to their next generation, to their children. Moreover, these people make their living by producing food and wood fiber that all Americans need and use in our everyday lives.

I sometimes begin to think that we are so removed from rural communities in our modern society that we think we do not need farmers because there is a Safeway down the street, we do not need foresters because there is a lumber yard down the street, and we forget this connection.

As we forget this connection, we begin to enact laws that shut down all of our basic American industries of mining, grazing, farming, forestry, fishing, drilling—all of these things that we have done that have produced this American standard of living.

I fear as we shut these things down, we will then lament the day when our economy takes a very serious downturn. And it is difficult to reverse, because even in this room, Mr. President, everything around us is the product of the Earth in one way or the other. It came out of the Earth, and we bring these materials into commerce to produce products. Well, we all use them.

The PRESIDING OFFICER. The time requested by the distinguished Senator has expired.

Mr. SMITH of Oregon. I ask unanimous consent to have an additional 5 minutes, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of Oregon. For all the talk of a postindustrial service economy, Mr. President, people's most basic needs are still food and shelter.

Let me offer some facts and figures to help put things in perspective. Eleven of Oregon's thirty-six counties had double-digit unemployment in March, including Grant County with a rate of nearly 20 percent, Lake County at 15 percent, Wallowa County at 14.4 percent. It is about to get much worse.

For example, Mr. President, people do not like the way a clearcut looks, but nature has a way of clearcutting, too. It is called a forest fire. We have them very commonly in my part of the world, and yet even the salvage of burnt timber is not being allowed to be harvested in my State now. That makes no sense.

And 122 mills have shut down in Oregon since 1990. Timber receipts to Grant County for roads and schools declined from a high of $12.4 million in 1992—$12.4 million—to $1.9 million in 1997. What are we saying about schools? What are we saying about roads?

The amount of timber harvested from our public lands has been reduced by approximately 80 percent. Under the President's Northwest Forest Plan, only 3 million of the 24 million acres—or 12 percent of the available acreage—is open for sustainable timber production. All this despite the fact that tree growth rates exceed harvest rates by 85 to 90 percent.

The Clinton administration would have us believe that they need to take over the management of Oregon's natural resources because we are incapable of doing so. Nothing could be further from the truth. In fact, Oregon has some of the toughest land use laws in the Nation. Despite the utilization of forest lands for agriculture, urbanization, and infrastructure, 91 percent of the forest land base that existed in Oregon in 1630—in the year 1630—91 percent of that land still exists as forests and for growing trees.

Mr. President, the final visit of my week in eastern Oregon was to the Ione High School commencement, where I had the privilege of delivering the graduation address. Ione is a small community, and its class of 1998 is also small. There were nine graduates. Yet nearly 500 people packed the high school gymnasium on a Friday evening to lend their support as a community to these outstanding young people.

As I looked at the graduates, I could not help but wonder what future there was for those who wished to live and work and raise a family in eastern Oregon. Will there be jobs for them? Will there be good schools for their children? Will this administration sentence them to a future with no option but to move to a city, to an urban area, in order just to make a living?

I returned from that trip, Mr. President, with a commitment to redouble my efforts on behalf of the good people of rural Oregon and to do everything within my power to ensure that their communities and their way of life will survive.

Finally, the next indignity to be visited upon rural Oregon involves the implementation of the Glenn amendment which now may invoke unilateral sanctions that unjustly impact our farmers. I think the distinguished Senator who has just left the Chair has a bill, I think Senator MURRAY has a bill, and I have a bill to address this very issue. Now, I know Senator GLENN and I know he is a good and decent man, and I know his bill was designed to deter nuclear proliferation. I am all for it. It didn't work.

Now we are about to witness the incredible spectacle of wrestling ourselves to the ground. The government is about to impose sanctions that will ultimately not hurt Pakistan because the truth of the matter is our competitors love this. The people that will be hurt are the people of rural Oregon, Washington, Idaho and others, who will lose 40 percent of their markets to U.S. sanctions on U.S. farmers that have had no ability to deter nuclear nonproliferation.

I hope my colleagues will look at a bill which I am proud to cosponsor. It is a bill by Senator LUGAR that has a "stop, look, and listen" provision to this whole episode of unilateral sanctions, which in effect makes war on our own people. I think we need to stop and look at this very, very seriously.

Mr. President, I indicated how devastated wheat farmers will be in the rural parts of Oregon, Idaho, and Washington by the sanctions now about to be imposed by the Clinton administration by the Arms Export Control Act. Food aid under this act is supposed to be exempted. It is important that credits and credit guarantees for export of wheat also be exempted.

For that reason, I am introducing legislation this morning to exempt credit guarantees from any sanctions to be imposed.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Massachusetts is recognized for 15 minutes.

Mr. KERRY. Mr. President, I thank the Chair.

(The remarks of Mr. KERRY, Mr. CLELAND and Mr. ABRAHAM pertaining to the introduction of S. 2157 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CLELAND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TORRICELLI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATIENTS' BILL OF RIGHTS

Mr. TORRICELLI. Mr. President, last month the Senator from Massachusetts, Mr. KENNEDY, came to the floor to urge the Republican leadership to allow the body to consider reform of managed health care in our country. Today, I also want to join his plea that this institution be allowed to consider the consequences for American families of the managed health care system in our country.

The simple truth is health care in America is in a state of crisis—not a crisis of competence or technology. Most assuredly, it is a crisis of confidence. Confidence in health care in many respects is as important as the quality of the providers or the level of our technology. I have rarely in my life seen an issue where so many Americans are of a similar mind with such a depth of concern regarding the availability and quality of health care under the HMO system.

I realized myself the depth of these feelings when, only a few months, ago I joined with my colleague, Congressman PALLONE from New Jersey, in a field hearing in our State. During the hearing, families told me about their own experiences in attempting to care for their children, gaining access to the best health care providers, and the enormous frustration and feeling that the costs of operations were being placed before the health of their children.

Perhaps the best example came from a single family in New Jersey, the Bolingers. Their daughter, Kristin, is 15 years old, and lives in Spotswood, NJ. She has experienced the frustration of managed care that has been visited upon many American families. As an infant, Kristin developed unexplained intractable seizures which left her in need of very specialized care and expensive diagnostic tests. Five years before, Kristin's parents had enrolled themselves in an HMO. But because of the rules of the HMO, Kristin could no longer see the pediatricians and the specialists who had been treating her for her entire life. Those who had the experience with Kristin, had seen her symptoms and knew her case, were now separated from her treatment, and in their place the HMO on its list of available doctors made a pediatrician available who was not qualified, who had no experience with her condition, and did not know her or how to treat her.

Her family then was left in an extraordinary position. In caring for their 15-year-old daughter, do they absorb all of the financial costs which they are unable to bear when treating their child or do they go to doctors who, on their face, were not qualified to deal with the case?

The family was left in a desperate financial position. The HMO refused to pay many of her medical bills deeming them "not medically necessary." The case only gets worse.

In 1994, scoliosis, caused by Kristin's condition, required the use of a back brace. The HMO gave her a back brace which was inferior and not usable.

Last year, Kristin had to undergo corrective spinal surgery. Her physician prescribed home nursing care and physical therapy. For a long time the HMO refused to pay for the physical therapy or the home care. They would pay for nothing. After they started to pay, the physical therapy was only half complete when payments stopped.

This, of course, leaves Kristin Bolinger's family with a question that they will ask themselves all their lives. The bills were not being paid, the family had to make these sacrifices in spite of the fact they were paying an HMO all of this time on time in full. The finances aside, the Bolinger family for the rest of their lives is left with the question: How much did their child suffer, and how much of her condition might have been reversed if she had gotten the right care at the right time?

Obviously, Mr. President, Kristin Bolinger and her family are not alone. She is one of 4 million people in my State of New Jersey and 50 million in our country who have absolutely no protection from the judgments of their health maintenance organizations. They live at the whim of whatever decisions may come from the officials who manage these health care organizations. That is true, even though I am very proud that in New Jersey we probably have the best patient protection system for those in managed care of any State in the Nation. But it doesn't work. State protections don't work because only 25 percent of those in health maintenance organizations in New Jersey can be covered by State protections. The other 75 percent, who like Kristin Bolinger are in ERISA-based plans, are left to their own devices to fight their insurance companies for their rights because State protections cannot shield them.

It is no wonder that more than half of all Americans who are enrolled in health maintenance organizations are significantly dissatisfied with the quality of their care.

Fifty-one percent of Americans believe that health maintenance organizations are eroding the quality of health care for their families. Fifty-five percent fear that if they become ill while in a managed health care plan, those who administer their plan would have their highest priority in saving money rather than caring for their patients. And if that is not bad enough, the worst indication may be that this lack of confidence of those who are enrolled in the plan is mirrored by health care professionals themselves. Forty percent of all physicians who work in these very plans every day watching these judgments believe that the quality of health care and of the judgments made by health care professionals is eroding and prevent them from making the best medical judgments for patients.

I cannot tell you that the movement in America to managed health care plans has not had benefits. The truth is the spiraling upward costs of health care in America are being contained. I do not believe we ever could have developed the current Federal budget surplus without managed care. It has been of enormous benefit to the American economy as corporations have contained costs, but there is a loss of balance. If we are achieving the controlling of these costs, but the price is that families and physicians do not have confidence they can get the care they are purchasing, we are paying a very high price for this efficiency. What is required is to restore the balance between the efficiencies of delivering care and ending the upward spiral of rising health care costs, but assuring quality and access and balance of judgments.

The truth is this loss of balance is not necessary. Patients should have access to health care professionals who are qualified to treat their conditions and not forced to accept people without the proper professional credentials simply because they are preferred by health care managers in these organizations. Insurance companies should not withhold the care that family physicians and specialists alike deem necessary. If a health care professional, a doctor believes a certain treatment is necessary, as a matter of right that doctor's judgment should prevail. Obviously, if a doctor believes that an HMO is making the wrong judgment for the health of an individual, there should be a fair and speedy appeals process to someone who can make the best judgment for the patient.

Mr. President, this case is so obvious, it is so compelling, it comes as close to a consensus judgment as can ever be reached in a country of this size and complexity. It is at issue in every State, in millions of American families, borne out by the practical experience of people that Senators meet every day. It is true today. It was true yesterday. It was true last month. It was true last year.

I join with the Senator from Massachusetts, Mr. KENNEDY, in urging that this Congress this year deal with health maintenance organization reform. There is legislation before this Senate that is prepared. It is ready. It

is comprehensive. It deals with the issue. Senator DASCHLE's legislation, S. 1890, would deal with the very issues that Kristin Bolinger had to face in her own life. Senator DASCHLE's Patients' Bill of Rights, consistent with the call of President Clinton in his State of the Union Address, would ensure that patients like Kristin would have (1) access to providers who are qualified to treat their conditions, including referrals to specialists when necessary; (2) that any member of a health maintenance organization, wherever they are in America, wherever they travel, whatever community they are in, have access to emergency care in a hospital that is proximate to them when they are in trouble or in need; (3) have access to a fair and immediate appeals process.

More than anything else, this would convince the American people that their interests and the needs of their families are being put before the profits of these organizations. It is obviously too late to deal with Kristin Bolinger's pain or the terrible financial plight of her family. Kristin's experience and those of millions of other Americans can be instructive to this Senate and remind us of our obligations to deal with the problems of health care in America. We can still acknowledge the enormous efficiencies of managed care and its benefits of ending the rising costs, helping with corporate efficiency and the predictability of health care costs. But simply because these organizations are working to add efficiency, does not attest to the fact that all families are being treated fairly as demonstrated by Kristin Bolinger's experience. Senator DASCHLE's legislation, his Patients' Bill of Rights, deals with that balance. I urge the majority leader, Senator LOTT, to bring the Patients' Bill of Rights for managed health care reform before the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

METHAMPHETAMINE CHALLENGE

Mr. BOND. Mr. President, I rise today to discuss a serious challenge to law enforcement, to communities, to our youth, and to the future of our country.

Methamphetamine, as most of us in this body know, is a growing danger in many of our communities. We have the dubious distinction in Missouri of having achieved the highest ranking in the number of clandestine methamphetamine labs busted in the last year. Seven hundred labs were busted where they were cooking up this deadly brew to endanger their neighbors, to threaten the lives and the future of our young people and our adults. Methamphetamine, or crank, is a hot new drug, and it is supposed to have a wonderful temporary feeling. The problem is it destroys the body and the minds of the users. It also, when it is prepared, leaves a deadly residue and threatens explosion and fires that have injured many innocent people.

Methamphetamine dealers are the very worst kind of social predators, far worse than even an average drug dealer, and that is saying something. They have the same disregard for young lives they seek to spoil, but they also possess a callous indifference to the entire public. Meth cookers prepare their drugs in homes, in rented apartments and hotel rooms, but the meth cooking process is a very dangerous one because it produces dangerous byproducts including carcinogens and toxins and combustible gases. While it is being cooked, it is highly explosive.

I have talked with law enforcement officers who go in who have to use low-powered flashlights because a really hot flashlight could set off a spontaneous combustion in a meth lab. I have seen the pictures of young children who have been on cooking sites with their parents or care givers when the mess caught fire and burned them horribly. The aftermath of the process is a mini toxic waste site. The waste sites litter my State of Missouri.

Despite the danger, law enforcement officers in my home State continue their heroic effort every day to bring more of these labs down. They are currently outgunned because the methamphetamine production and sales have been spreading. The problem is severe, and many of the lab sites are so dangerous that local law enforcement agencies cannot handle the responsibility alone.

We have been very gratified that many of the local police agencies and law enforcement agencies in my State have been provided invaluable assistance by the Drug Enforcement Agency, the DEA. As I said, last year, 700 labs were taken down. This year, it looks like they may even exceed that number.

The lab sites must be cleaned up promptly, and that is where the problem comes in. The responsibility initially falls on local law enforcement officials, and the drug dealers are not very concerned about what mess they leave with the community. Cleaning up the waste on these sites can cost anywhere from $4,000 to $40,000. Our law enforcement agencies are not funded to do this. Our law enforcement agencies, when I talked with the DEA and the local police and the local sheriffs around Missouri, find out they have to waste valuable manpower just babysitting the sites, keeping people away from these sites so they do not stumble in and get caught in one of these dangerous meth sites.

For that reason, I believe we should embark on a State-Federal partnership to ensure that these labs are fully cleaned up and the nuisance is removed immediately from local communities. In the HUD–VA appropriations bill, we have included a pilot project for $2 million to go to our Department of Natural Resources for the State of Missouri, to institute a cleanup partnership between the State and local law enforcement.

With these valuable resources, the State environmental expert will team up with local law enforcement agencies on the sites promptly and rid the town of toxic waste. The State will have funds to outfit a cleanup detail, expand that detail, and equip itself to respond to all corners of the State. The State will also have the resources to share with local governments, who must move in and respond to emergency cleanups, a process that could otherwise bankrupt many small communities.

On a broader basis, we recognize this problem is a nationwide problem. In the Superfund measure that has been reported out of the Environment and Public Works Committee, that I hope this body will be able to take up, we provided that brownfields money can be used for toxic waste cleanups of methamphetamine sites because, in fact, they are toxic waste sites and, in essence, may be more dangerous than many of the sites already classified as toxic waste sites.

What happens when one of these sites becomes a site for cooking meth is deadly. The meth labs can blow up—blow the front off the building. If they are in a motel, people innocently taking a room in the adjacent room may find themselves victims of a blast. But whoever comes on a site, a methamphetamine site, after cooking has occurred there, is in a very dangerous position.

We need to crack down to the fullest extent of the law on these predators, but until we win that war we must protect our community. This effort will go a long way toward helping our law enforcement fulfill that responsibility.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent for 10 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

U.S. FOREIGN POLICY

Mr. GORTON. Last week, Mr. President, Secretary of State Madeleine Albright traveled to Geneva to meet with the other permanent members of the U.N. Security Council. The purpose of her meeting was to convince the world's declared nuclear powers to join the United States in condemning India and Pakistan for their recent nuclear tests and somehow to prevent an arms race from escalating in South Asia. To no one's surprise but her own and President Clinton's, no agreement was reached.

The foreign policy of the United States in the Clinton Administration has now come down to this. In dealing with the People's Republic of China, a country with a developing internal free market, but repressive of any political dissent, with systematic restrictions against competitive American products, and a blind eye toward billions of dollars of intellectual property piracy, we not only don't defend the victims of these practices, we generously supply the PRC with missile technology that allows it to increase in its already immense threat to its neighbors.

The Clinton Administration gives "Most Favored Nation" treatment for China a whole new meaning. What it means now is, what China wants, China gets—even an American president to be greeted on Tiananmen Square, insulting the memory of its martyrs.

And then we are surprised when India tests nuclear weapons, joining a club we founded fifty years ago. We react by sanctioning—unilaterally—the world's most populous democracy. And we follow up by imposing the same sanctions on Pakistan, a long time ally, for a natural and justified reaction to India's tests.

As Charles Krauthammer so eloquently put it in his column in Friday's Washington Post, the President:

. . . is guilty of more than mere fatuousness, however, in dealing with the India-Pakistan nuclear arms race,. He is guilty of fueling it. While for years his administration has claimed deep concern about proliferation, [he] has shamelessly courted the world's worst proliferator of weapons of mass destruction: China.

Not only is the administration in large part to blame for the current crisis, but is now taking steps to ensure that our economy will suffer together with our national security. The President has decided to impose harsh economic sanctions on both India and Pakistan.

It has already been made alarmingly clear that unilateral sanctions do not work. For the law the President stands behind in his decision to impose sanctions was designed not to punish other nations for flexing their nuclear muscle, but to deter them from entering the nuclear club. As David E. Sanger wrote in The New York Times on May 24, "passionate national causes—particularly the urge for self-sufficiency—almost always trump economic rationality." Mr. Sanger goes on to say, wisely, that "unilateral sanctions almost never work—precisely because they are unilateral. In a global economy, there are too many producers of almost everything."

The President has told the American people that he has no choice but to impose the sanctions, claiming that they are required under the Nuclear Proliferation Prevention Act of 1994. What he doesn't say is that Sections 102(b)(4) and (5) of that law provide the President authority to waive the sanctions in whole or in part if he uses the 30-day delay allowed him before imposing the sanctions. The President did not use the 30-day delay. The reason for his rush to impose sanctions is clear. The President has no other solution.

But unilateral sanctions do little to produce results. Instead, they harm U.S. workers, farmers, and families. My home State of Washington has a lot at stake in this international dispute. In 1996, Washington exports to India totaled $429.39 million and India was the state's fourteenth largest export market. Boeing airplane sales to India totaled $372.8 million in 1996 and accounted for a large majority of overall Washington state exports to that country. Most of the planes India purchases from Boeing are financed by the Export-Import Bank. If the President cuts off Ex-Im Bank loans to India, Boeing, and Washington state's economy will feel a major strain.

Washington is the largest producer of soft white wheat, Pakistan's grain of choice. Pakistan is the largest market for Washington state wheat exports.

During Fiscal Year 1997, Pakistan purchased 2 million metric tons of soft white wheat from the Pacific Northwest—32 percent of total soft white wheat exports from the region. So far in FY 1998, Pakistan has purchased 2.14 million metric tons of soft white wheat—37 percent of total wheat exports from the region, with purchases from Washington totaling $140 million.

While American farmers and manufacturers stand today at risk of losing these important markets, their counterparts in Canada, Europe, and Australia are celebrating the shortsightedness of the U.S. Administration. For the U.S. sanctions are better for their businesses than the most ingenious of marketing campaigns. They are happy to step in and fill the place of American exporters in India and Pakistan.

Mr. President, if the U.S. is the only country imposing sanctions on India and Pakistan for actions strongly supported by a large majority of their people, then the Indian and Pakistani governments and the Indian and Pakistani people will turn to nations that are not criticizing their actions for their imports. Airbus and Canadian or Australian grain farmers will benefit from U.S. actions, while Boeing and U.S. farmers will be left out in the cold.

The President must take action now to resolve the situation in South Asia and end the sanctions. If he does not, the American people will suffer the consequences of his mistakes for a long time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BREAUX. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered

Mr. BREAUX. I ask unanimous consent to be recognized for 10 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TOBACCO LEGISLATION

Mr. BREAUX. Mr. President, we are in the middle of the debate on the so-called tobacco legislation which has been ongoing for a number of days. I think that it is appropriate to pause for a moment and to consider where we are and where we have been and to try to come up with an idea of where this debate is likely to go. Because I think that with all the debate and discussion we have had, there is some confusion as to exactly what has been happening.

I think it is very important to recognize that in order to know where you are going, it is also important to actually know from where you started. I think if you look at where we started, Congress became involved in this tobacco legislation really as a result of attorneys general litigation on behalf of all the various States trying to recover money for the States' Medicaid programs, which had suffered a loss because of payments for people who had suffered disease and injury because of smoking-related activities.

When it comes to this issue, I want to make one point very, very clear. I do not think any of us need to be lectured to about the problem that is facing us. All of us have examples and instances in our own lives that make the problems associated with cigarette smoking and the tobacco industry very, very clear. In my own family, my mother died of lung cancer—lung cancer that was clearly and directly related to years of tobacco use. In addition, my father-in-law died of lung cancer and tumors related clearly to smoking and exposure, probably at the same time, to asbestos.

Probably each Member of this body and also the other body has similar stories they can relate that personally affect them in their approach to this legislation. You simply cannot divorce it. People are affected for a lifetime by personal experiences, and mine are not any different from probably many of my colleagues'. So when I approach this issue, it is with the intent of wanting to do something to reduce underage smoking in this country.

In order to determine where we are going, it is important to look where we started. The June 20 agreement was the baseline. It was the agreement the attorneys general of this Nation, who deserve a great deal of credit, were able to reach as a result of litigation in the courts of America against the tobacco companies of America. That settlement that was immense in what it did.

It was immense in the proportions of good that it did. I would like to outline it for a moment to show where we started.

That June 20 agreement would have settled the lawsuits brought by all 40 States. It would have settled them. The States would have been compensated in their State Medicaid programs for funds that they spent to treat smokers. That is what the States wanted. It affected literally millions of people.

In addition, it would have settled all of the individual lawsuits around this country, and people would have been compensated as a result of that settlement. In addition, it provided funds to cover the costs of implementing and enforcing several public health programs related to solving the problems of underage tobacco use and also to try to find ways to cure diseases caused by smoking.

The tobacco companies, under that agreement, would have paid $368.5 billion, not including the attorneys' fees, over a 25-year period. Payments at the rate of $15 billion per year would have continued forever.

It is important for us to note that for the previous 40 years there was not an individual in this country who ever put a nickel in their pocket as a result of litigation against tobacco companies. So to say that you get $368 billion-plus to cover the costs of individual suits, and to use those moneys for health programs, is monumental in what it achieved because no one had ever walked off with a nickel in their pocket as a result of that litigation. This settlement did that.

It also did something that the FDA was never able to do. It said in the agreement that the FDA would regulate tobacco products under the Food, Drug and Cosmetic Act, and the FDA would have the authority to reduce nicotine levels in those products.

It also said we are going to set some goals, and the goals are going to be that you would have to show a 30-percent decline in cigarette and smokeless tobacco use by minors within 5 years —a 30-percent reduction—a 50-percent reduction within 7 years; and a 60-percent reduction within 10 years. If not successful, penalties would be assessed against the companies of up to $2 billion a year.

That had never been done before in the history of this country, where you set absolute targets that companies agreed to and suffered penalties if they did not meet those targets, which were substantial.

It also said, on advertising and marketing, that tobacco advertising would be banned on billboards, in store promotions, and displays over the Internet. No more Marlboro Man, no more cartoon characters like Joe Camel. Tobacco would also be banned from sponsoring all sporting events. No more race car events, no more race track events, no more anything from a sporting standpoint at which they would be able to sell or advertise. No more clothing, no more baseball caps, no more jackets, none of that would have been allowed under this agreement. Tobacco companies agreed to that. Companies agreed to the targets; companies agreed to the FDA regulation; companies agreed to pay $368.5 billion.

Also, the warning labels were stronger than ever. Like, "Smoking can kill you." Can you get it any stronger than that? You read that and still want to do it? Is there something loose somewhere in your head? That was going to be part of it.

It includes substantial restrictions on youth access to cigarettes; a ban on cigarettes being sold from vending machines unless they are adult-only facilities; minimum standards for retailers. All of that was in there.

If you had said this was possible to have 5 years ago, they would have looked at you and said, "No way. You can't get that done." But that is all part of the agreement. That is where we started.

I would just like to talk about some things that I think are part of this agreement that are not going to be able to be accomplished if we do not have an agreement that includes the companies.

Marketing and advertising restrictions under this agreement took everything that the FDA wanted to have done and said, it is part of the agreement. It bans nontobacco brand names or logos on tobacco products. It bans tobacco brand names, logos and selling messages on nontobacco merchandise, i.e., the T-shirts, baseball caps, jackets; no more of that.

It bans the sponsorship, as I said, of all sporting and cultural events in the name, logo or selling message of a tobacco product brand. It restricts tobacco advertising to black text on white background only, like this chart. It requires tobacco advertising to have a statement, "Nicotine delivery device." It bans offers of nontobacco items or gifts based on the proof of purchasing a cigarette product. All gone. That is all what the FDA would like to have done, which, incidentally, is being litigated. Companies accepted that as part of that settlement agreement.

It also said, we are going to do a lot more than that beyond what FDA wanted to do on marketing and advertising. This agreement spelled out some other things. We talked about it; that is, banning all outdoor tobacco product advertising, as in stadiums; and for indoor facilities directed outdoors. It bans the human images, again, like the cartoon characters of Joe Camel and the Marlboro Man. No more advertising on the Internet. It limits point-of-sale advertising to black-on-white. All of these things that no one has ever been able to accomplish was agreed to by the lawyers, agreed to by the defendants, agreed to by the tobacco companies as part of the settlement agreement.

In addition to that, we also have youth-access restrictions. Retailers are prohibited from selling cigarettes or smokeless tobacco to children under 18, and all of the things they have to do under a youth-access restriction program.

The point that I make is that all of this is part of their agreement. I am concerned that what we have done is to take this agreement, which no one would have thought possible 5 years ago, 4 years ago, and have turned it into an attempt to make a Christmas tree, to take care of all kinds of additional items, increase the amount everywhere you possibly can. I understand that.

It is a race to see who can be the toughest on tobacco companies, and I understand that, too. My concern is, in our race to be the toughest, that we will lose all of the things that I have just outlined. Because I am absolutely convinced, from testimony in the Commerce Committee, that those restrictions on marketing and advertising that are in the current legislation, without the companies agreeing to it, is not going to be constitutionally upheld by the courts of this country—will not be. We cannot restrict advertising to adults. We cannot restrict advertising of legal products to adults that only incidentally affect children.

The court cases are very, very clear with regard to what we can do and cannot do. The first amendment applies, yes, even to tobacco products, as long as they are legal, and no one is yet saying we will outlaw tobacco products like we tried to outlaw alcohol.

I am concerned that as we increase everything that we are increasing, we lose the company's participation in this effort, and we are going to end up with something that may make us feel good temporarily but will not get the job done. An analogy is of the little boy who puts his hand in the cookie jar and tries to take all the cookies out of the jar; he has so many in his hand, he can't get anything out.

We went from the base of $368.5 billion from the settlement; we increased that with a tax of $1.10, so now it is $574.5 billion. Then after we added to the base payments, we also added the look-back provisions. The look-back was the penalty for companies that didn't meet the targets I talked about. The June 20 agreement had penalties. The Commerce bill raised the penalty potential to $706 billion. Floor amendments raised it to $810 billion on the look-back.

I think that is questionable constitutionally. I think it is questionable whether you can say to a company, you have to do all kind of things, but if you do all those things and still don't meet

the targets we will penalize you. I think it is questionable constitutionally for the ability to do that unless the companies agree to it. I think what we are doing is penalizing companies without any fault on their part. We are saying, do all of these things, but if you don't reach these targets we are going to hit you with $810 billion worth of penalties. They can agree to that; but if they don't agree to it, I doubt whether it will pass constitutional muster.

I think the marketing and advertising restrictions happen to be the most important thing we can do in order to get teens to stop smoking. The $1.10 is not going to do it. Kids pay $100 for a pair of sneakers. Do you think $1.10 will get that many to quit smoking when they are paying $100 for a pair of tennis shoes? I doubt it. Marketing and advertising restrictions are very important—probably not constitutional.

The look-back provisions: Sounds good. Let's make it as high as we can. If the companies don't agree, I question whether that is constitutional.

Look what we did when you add it up. The base payments were increased, the look-back provisions, and now the judgments. We used to have a $5 billion annual cap for liability payments. This is for future suits. People say we are giving them all kinds of limitations on liability. Individuals can still sue in the future, can still have criminal actions against companies in the future, under the agreement. You can still have punitive damages in the future for companies who do wrong, and intentionally do it, but what we have done—we have gone from adding an increase in base payments, increased the look-back penalties, and took the cap off any annual limitations on future payments. We have gone from $435 billion to $906.4 billion, and now we add it up and there is no limit. Why would a company agree to all of those marketing and advertising restrictions, agree to all these look-back penalties and targets that they have to meet, and get nothing in return?

I am not arguing their case. I made it very clear where I come from in the beginning. An agreement, unless it is comprehensive, an agreement, unless everybody is involved in it, is an agreement on paper that may make us feel good temporarily but is not an agreement that is going to get the job done.

It is incredibly important that we look at reality and come up with something that works. I suggest that we take the June 20 agreement as the basis, pass it, go to conference in the House, and we can work out something that will work. Senator HATCH, I understand, and Senator FEINSTEIN and others on our side are working together to take what people thought was impossible and pass it.

Let's get out of the cookie jar. Let's get back to reality. Let's do something that will pass, that will work, and that will make good sense.

I yield the floor.

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I am deeply concerned about the continuing lack of commitment by the Republican Leadership to schedule floor debate on legislation to end abuses by health insurance managed care plans. Today, more than 100 groups have sent a letter to Senator LOTT and Speaker GINGRICH asking for quick, full and fair floor consideration of this legislation, which is called the Patients' Bill of Rights. These groups represent millions of patients, doctors, nurses, therapists, and working families.

Yet, in a memo sent to all Senators and in recent floor statements, it appears that our patient protection legislation—the Patients' Bill of Rights—is not even on the Republican Leader's radar screen. It is not on the list of priorities designated by the Republican Leadership to be taken up this month, or even this session. I have here a list of more than 20 bills, ranging from regular appropriations bills and reauthorization bills to the nuclear waste disposal legislation and a constitutional amendment on flag burning.

But, I have yet to see any interest from the Republican Leadership in taking action to ensure that medical decisions are made by treating physicians, and not by insurance company accountants. And I have yet to see any interest from the Republican Leadership in curbing abusive activities by the worst plans and insurance companies that are dedicated to their profits, not their patients. Instead, it appears that, by this inaction, the Republican Leadership is interested only in defending the indefensible, the status quo.

In addition, the House Republican Leader, DICK ARMEY, recently lashed out at doctors, nurses and other health care professionals by grossly misinterpreting and distorting a provision in the Patients' Bill of Rights that allows health care professionals to support their patients in appeals procedures, and to report concerns about the quality of care without fear of retaliation. These are reasonable patient-oriented protections. Congressman ARMEY's misguided effort offends and impugns the character and professionalism of hundreds of thousands of nurses, doctors and patients.

In fact, his harsh attack has helped mobilize even more organizations to support the bill. Representatives LOIS CAPPS, CAROLYN MCCARTHY and EDDIE BERNICE JOHNSON, who are former nurses, and nurses from communities around the country have rallied around the Patients' Bill of Rights. Today, they have sent a letter to Congressman ARMEY asking for a meeting on these critically important issues. They are supported, in a separate letter, by a number of groups who represent persons with disabilities, mental illness and HIV/AIDS, and other organizations that rely regularly on trained and devoted health care professionals.

These issues matter a great deal to families across the country. Too often today, managed care is mismanaged care. In state after state across the country, patients are paying for these industry abuses with their lives.

Just ask Frances Jennings of Andover, Massachusetts. In November, 1992, at the age of 57, her husband Jack was diagnosed with mild emphysema by his pulmonologist. A few years later, in March, 1997, Mr. Jennings was hospitalized for a pneumothorax, which can lead to a collapsed lung. His physician, Dr. Newsome, determined that a lung reduction procedure would improve Jack's health and overall quality of life.

Two months later, in May, 1997, Jack's condition was stable enough for the operation, and he was referred to Dr. Sugarbaker, a top surgeon who specialized in the procedure.

But in late May, Jack's insurance plan—U.S. HealthCare—denied his referral to the specialist. Frances and Jack were disappointed that the plan refused to authorize the referral, and they requested a referral for consultation with a plan-approved physician. This appointment was finally scheduled for June 12. But, on June 11, the new doctor's office called Jack to cancel his appointment, stating that the physician no longer accepted patients from the health plan.

Immediately following this cancellation, Jack's primary care physician—Dr. Newsome—contacted the health plan to obtain yet another referral. On June 18, a new appointment was confirmed for mid-July, four months after his initial hospitalization.

Tragically, Jack Jennings never had the opportunity to benefit from the procedure recommended by his doctor. Jack had been having trouble breathing, despite his continuous use of oxygen, and had been hospitalized at the end of June. During this hospitalization, they discovered a fast growing cancer in his chest. Lung surgery was out of the question, and it was too late for chemotherapy to be effective.

Mr. Jennings died on July 10—four days before his long-awaited appointment with the specialist. In fact, this appointment would have been with Dr. Sugarbaker's group, the same physician that U.S. HealthCare had prevented Jack from seeing in May.

This is a clear case where needed health care was unnecessarily delayed, with tragic implications. Timely care could have saved Jack's life. The health plan's inability or unwillingness to provide it cost him his life.

Unfortunately, such abuses are far too common in managed care plans

today. Congressional offices are flooded with letters and calls from constituents who need assistance. Newspapers tell story after story of the human costs of these abuses.

The Patients' Bill of Rights will help solve these problems, and restore confidence in the health care system. The Patients' Bill of Rights is a common sense solution. Nearly all of its provisions were recommended by the Presidential Advisory Commission on Quality in the Health Care Industry. Many are included in the voluntary code of conduct for members of the American Association of Health Plans, the managed care trade association. Some of the provisions are already being implemented for Federal health programs, including Medicare. Still others are included in model laws written by the National Association of Insurance Commissioners. The Senate should act on this important legislation, and it should act now.

Mr. President, I ask unanimous consent that the letters I have mentioned may be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JUNE 10, 1998.

Hon. RICHARD K. ARMEY,
Majority Leader, House of Representatives, Washington, DC.

DEAR MAJORITY LEADER ARMEY: As organizations representing health care consumers, we strongly support efforts to establish meaningful patient and quality protections. We believe that an essential component of that effort is to protect the rights of physicians, nurses and other health care professionals to speak out about quality concerns without fear of retribution. While the rise of managed care has created strong incentives to reduce costs and cut corners, many of those impacts are not evident to patients. Instead, patients need to rely on the ability of health care professionals to provide information and advocate on their behalf.

For that reason, we take strong exception to your May 15th "Dear Colleague" expressing your opposition to H.R. 3605, the Patient's Bill of Rights. First, we do not believe that patients are served when those who care for them are gagged or handcuffed, unable to speak out because of contractual arrangements or the very real threat of retaliation. This is not just a question of being informed of all available and appropriate treatment options; it is also a question of knowing when patient safety is the risk because of quality problems.

Second, we strongly disagree with your contentions that nurses and doctors are only seeking financial gain and would use "good faith" reporting protections "to rationalize a financially motivated lie." Nurses and doctors across this country have had the courage to challenge managed care and other health industry abuses, often at personal risk. Those abuses will not disappear if the health industry is allowed to continue using retaliatory threats to shield itself from investigation. If nurses, physicians and other health care professionals are afraid to speak out, quality concerns will go unreported and problems will be ignored. If this situation is allowed to continue, patients will be the real losers.

Our organizations understand that health care consumers benefit when workers have the ability to report poor quality, including medication errors, problems created by early discharges from hospitals, or fraud and abuse. We hope that you will come to realize the need for such patient protections and reverse your opposition, both to this provision and to the entire Patients' Bill of Rights. Patients know that nurses and doctors have been their advocates. It remains our hope that you and the Republican leadership will demonstrate that you also are advocates in the fight for quality care.

Sincerely,

AIDS Action Council; The Arc; Bazelon Center for Mental Health Law; Center on Disability and Health; Children and Adults with Attention Deficit Disorder (CHADD); Communications Workers of America; Consumer Federation of America; Consumers Union; Epilepsy Foundation of America; Families USA; Friends Committee on National Legislation; Gay Men's Health Crisis.

National Association of People with AIDS; National Association of Protection and Advocacy Systems; National Association of Social Workers; National Council of Senior Citizens; National Multiple Sclerosis Society; National Partnership for Women and Families; Neighbor to Neighbor; Older Women's League; San Francisco AIDS Foundation; Summit Health Coalition; United Cerebral Palsy Association; United Church of Christ, Office for Church in Society.

JUNE 9, 1998.

Hon. RICHARD K. ARMEY,
Majority Leader, House of Representatives, Washington, DC.

DEAR MAJORITY LEADER ARMEY: On behalf of over 200,000 nurses, we would like to express our deep disappointment with Your May 15 "Dear Colleague" letter accusing nurses and other health care workers of being willing to lie about quality concerns in order to improve their financial status. Your letter demonstrates a profound lack of awareness of the integrity and concerns of nurses as well as the problems facing patients throughout this country.

The major impetus behind the patient protection bill is health care quality. An important part of that is providing patients with accurate information and ensuring that the health care professionals who treat them are able to meet their professional and ethical obligations to advocate on their behalf.

Every day, nurses are confronted with situations that place their patients in jeopardy. Insufficient numbers of nurses, the replacement of skilled nurses with untrained personnel, and incentives for early discharge are just a few of the problems. In some facilities, the growing crisis in quality has forced families to hire private duty nurses in order to ensure that their loved ones receive adequate care.

Nurses know about patient conditions and are justifiably alarmed. Yet, nurses who speak out risk termination, cutbacks in hours, and other forms of retaliation. The Patients' Bill of rights, H.R. 3605, seeks to protect nurses, doctors and other health care professionals who report quality problems to their employers, public entities and private accreditation organizations. It is an important first step in improving patient conditions.

Your opposition to even this limited provision is surprising and disturbing. Your statements that this provision is motivated by financial considerations is an insult to every nurse who struggles to provide the best possible care to her or his patients.

As Congress considers legislation to improve health care quality, we would like the opportunity to meet with you to discuss our views and describe the real world situation nurses see every day. We understand that your views as Majority Leader are likely to reflect, or at least influence, those of the Republican leadership and the task force appointed by the speaker to make quality care recommendations. Therefore, we would appreciate meeting with those representatives as well. Please contact Cathy Hurwit at (202) 429-5006 if you have any questions or to arrange a meeting.

Sincerely,

Martha Baker, RN, President SEIU Local 1991, Miami, Florida, Candice Owley, RN, Wisconsin FNHP, President, FNHP Local 5001, Milwaukee, Wisconsin, Kathy Sackman, RN, President United Nurses' Association of California Pomona, California, Sandra Alexander, LVN, Vice President, AFSCME Local 839, Council 57, Daly City, California, Norma Amsterdam, RN, Executive Vice President Registered Nurse Division 1199NY/SEIU, New York, New York, David Bailey, LPN, Director AFSCME District #3, Mt. Vernon, Ohio, Sylvia Barial, RN, New Orleans Public Schools, School Nurse Chapter Chair, AFT Local 0527, New Orleans, Louisiana, Rowena Blackman-Stroud, NMS, SUNY-Brooklyn College of Medicine, Treasurer, AFT Local 2190, Brooklyn, New York, Glenda Canfield, RN, SETU Local 707, Santa Rosa, California.

Pia Davis, Vice President, SEIU Local 73, Chicago, Illinois, Carol Flynn, RN, Danbury FNHP, President, FNHP Local 5047, Danbury, Connecticut, Anne Goldman, RN, Federation of Nurses/UFT, Special Representative, AFT, Local 0002, New York, New York, Rhonda Goode, RN, SEIU Local 535, Pasadena, California, Pat Greenberg, RN, SEIU Local 200A, Fayettville, New York, Jacqueline Himes, RN, Philadephia Public Schools, Executive Board Member, AFT Local 00003, Philadelphia, Pennsylvania, Doris Lee, RN, AFSCME Local 152, Mililani, Hawaii, Bonnie Marpoe, LPN, President, AFSCME Local 2245, Shippensburg, Pennsylvania, Linda McDonald, RN Rhode Island Hospital, President, FNHP Local 5098, Providence, Rhode Island.

Mary Lou Millar, RN, President, CHCA/NUHHCE, Wallingford, Connecticut, Carol Moore, LVN, AFSCME Local 1550, Houston, Texas, Sylvia Rawson, LPN, AFSCME Council 71, Sicklerville, New Jersey, Jan Salsich, RN, Westerly Hospital, President FNHP Local 5075, Westerly, Rhode Island, Katherine Schmidt, RN, Oregon FNHP, President, FNHP Local 5017, Portland, Oregon, Darla Shehy, RN, SEIU Local 1199P, Hummelstown, Pennsylvania, Diane Sosne, RN, President, SEIU Local 1199NW, Seattle, Washington, Al Thompson, RN, SEIU Local 660, Los Angeles, California, Ann Twomey, RN, Health Professionals and Allied Employees, President, HPAE/FNHP, Emerson, New Jersey, Nancy Yalanis, RN, CHCA/NUHHCE 1199, Southington, Connecticut.

JUNE 11, 1998.

Hon. TRENT LOTT,
U.S. Senate, Washington, DC.

Dear Mr. Majority Leader:

The American people want and need the protection of Patients' Bill of Rights. As more and more families face unreasonable barriers to getting necessary health care approved from health maintenance organizations (HMOs) and other health insurance plans, it is clear that legislative action is needed. Public opinion surveys repeatedly show that the public's desire for managed care consumer protections is both wide and deep.

It is more than half a year since the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry proposed, virtually unanimously, the adoption of a Bill of Rights. For many months it has been clear that strong support exists for the enactment of a genuine Patients' Bill of Rights. A number of bills including the Patients' Bill of Rights Act (S. 1890), the Patients' Access to Responsible Care Act (S. 644) and others have such support and demonstrate that many members are in favor of bipartisan patient protection legislation.

It is therefore both troubling and puzzling that there has been a delay in consideration of this legislation. We believe that it is wrong to obstruct congressional consideration of genuine patient protection legislation. Your colleagues want such legislation. America's families need it. And it is a violation of fundamental fairness, and a disservice to families seeking health care, for you to block a vote on this important legislation.

We hope that you will lend your support to efforts to enact genuine managed care patient protection legislation—not a watered-down version and not one that is combined with "poison pills." We urge you to schedule quickly a full and fair debate on such legislation. Protecting America's families should be your number one priority. We urge you to act now.

Sincerely,

ACT UP Golden Gate, AIDS Action, AIDS Legal Referral Panel, AIDS Policy Center for Children, Youth and Families, AIDS Treatment News, Alzheimer's Association, American Academy of Child & Adolescent Psychiatry, American Academy of Neurology, American Academy of Physician Medicine and Rehabilitation, American Association for Marriage and Family Therapy, American Association for Psychosocial Rehabilitation, American Association for Respiratory Care, American Association of Children's Residential Centers, American Association of Pastoral Counselors, American Association of Private Practice Psychiatrists, American Association of University Women, American Association on Mental Retardation, American Board of Examiners in Clinical Social Work, American Cancer Society, American Chiropractic Association, American Counseling Association, American Dental Association, American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).

American Federation of State, County and Municipal Employees (AFSCME), American Group Psychotherapy Association, American Lung Association, American Medical Association, American Medical Rehabilitation Providers Association, American Nurses Association, American Occupational Therapy Association, American Protestant Health Alliance, American Psychiatric Association, American Psychiatric Nurses Association, American Psychoanalytic Association, American Psychological Association, American Society for Adolescent Psychiatry, American Society of Plastic and Reconstructive Surgeons; American Speech-Language-Hearing Association; American Therapeutic Recreation Association; American Thoracic Society, Anxiety Disorders Association of America; Arc of the United States, Asian & Pacific Islander Wellness Center, Association for Ambulatory Behavioral Healthcare, Association for the Advancement of Psychology, Association of Women's Health, Obstetric and Neonatal Nurses.

Bazelon Center for Mental Health Law, Brain Injury Association Inc (BIA), Center for Patient Advocacy, Center on Disabilities and Health, Child Welfare League of America, Children and Adults with Attention Deficit Disorders (CHADD), Clinical Social Work Federation, Consumer Coalition for Quality Health Care, Consumer Federation of America, Corporation for the Advancement of Psychiatry, Families USA, Family Voices, Friends Committee on National Legislation (Quaker), Gay Men's Health Crisis, Health Initiatives for Youth, Human Rights Campaign, International Association of Psychological Rehabilitation Services, League of Women Voters of the United States, Legal Action Center, Lutheran Office for Governmental Affairs of the Evangelical Lutheran Church in America.

National Alliance for the Mentally Ill, National Association for Rural Mental Health, National Association for the Advancement of Orthotics and Prosthetics (NAAOP), National Association of Alcoholism and Drug Abuse Counselors, National Association of Developmental Disabilities Council, National Association of People with AIDS, National Association of Protection & Advocacy Systems, National Association of Psychiatric Treatment Centers for Children, National Association of School Psychologists, National Association of Social Workers, National Caucus and Center on Black Aged, Inc., National Citizens' Coalition for Nursing Home Reform, National Council for Community Behavioral Health, National Council on Aging; National Easter Seal Society, National Education Association, National Marfan Foundation, National Mental Health Association, National Minority Aids Council, National Organization for Rare Disorders (NORD), National Organization on Disability, National Osteoporosis Foundation, National Parent Network on Disabilities, National Partnership for Women & Families, National Patient Advocate Foundation.

National Therapeutic Recreation Society, National Women's Law Center, Neighbor to Neighbor, OWL, Paralyzed Veterans of America, Project Inform, RESOLVE, The National Infertility Association, San Francisco AIDS Foundation, Service Employees International Union (SEIU), Summit Health Coalition, United Cerebral Palsy Association, United Church of Christ, Office of Church in Society, Women's AIDS Network.

MEASURE READ THE FIRST TIME—H.R. 3978

Mr. ROCKEFELLER. I ask for regular order of H.R. 3978, for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (H.R. 3978) to restore provisions agreed to by the conferees to H.R. 2400, entitled the "Transportation Equity Act for the 21st Century," but not included in the conference report to H.R. 2400, and for other purposes.

Mr. ROCKEFELLER. I ask unanimous consent for the second reading of H.R. 3978.

The PRESIDING OFFICER. Is there an objection?

Mr. McCAIN. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ENZI). Morning business is closed.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, we have now been on this legislation for 3 weeks. We have taken some very important votes, and the bill has been significantly modified. I think it is time

for us to complete our business and do so with dispatch. Obviously, if we don't, the proponents of the status quo will achieve by delay what they can't with a majority of votes; and that is, obviously, to kill tobacco legislation that is aimed at saving the lives of over 1 million children.

The bill, as it has been modified, contains measures of enormous benefit to the Nation, including vital antiuse smoking initiatives that will stop or reduce the compelling aspect of this entire legislation—that is, the 3,000 children a day from taking up a habit that will kill a third of them. There is critical funding for ground-breaking health research, assistance to our Nation's veterans who suffer from smoking-related illnesses, a major antidrug effort to attack the serious threat that is posed by illegal drugs, the magnitude and importance of which was described very effectively by the Senator from Georgia, the Senator from Idaho, and others.

This legislation contains one of the largest tax decreases ever, and it eliminates the marriage penalty for low- and moderate-income Americans and achieves 100 percent deductibility of health insurance for self-employed individuals. It provides the opportunity to settle 36 pending State cases collectively and in a timely fashion.

I argue that those provisions which I just described—research, veterans, tax cut, attacking the problem of illegal drugs, and settling pending legislation—I believe have made this legislation far more important than it was when it was introduced.

We all know that the time is to finish the business and move the process forward. I think it is also clear for anyone who has turned on the television or listened to the radio or read the newspaper that the objective of the tobacco companies is to kill the legislation. I am sure they have come to expect a return on their enormous campaign contributions.

If we kill the bill, it doesn't do anything to stop tobacco companies from marketing to kids, it doesn't do anything to stop the death march of teenagers who are taking up a killer habit, and it does nothing to promote groundbreaking research on new treatments and cures for these terrible diseases, including cancer and heart and lung disease. We will not take a step forward to stop the flow of abuse of illegal drugs, and we will do nothing to assist our Nation's veterans. Inaction doesn't do anything to relieve the burden on the Nation's taxpayers, a burden not only in the form of a marriage penalty but in the $50 billion taxpayers have to shell out to treat smoking-related disease, which is almost $455 tax per household per year.

As I was driving from one place to another last night, I heard another one of these commercials. I do want to again express my appreciation to the tobacco companies for raising my name ID all over America, especially in the States of Arizona, Iowa, and New Hampshire. So I am very appreciative of almost making my name a household word—what kind of a household word, obviously, is up to interpretation. But I just want to repeat that there are two attacks that the tobacco companies are making on this legislation. We polled it, and one is that it is a "big tax bill," and the other is the issue of "contraband." I have addressed those issues before, but I want to point out again and again because the attacks are made again and again. Right now, today, $50 billion per year is paid by the taxpayers to treat tobacco-related illness. Mr. President, that number is bound to go up. If teenage smoking is going up, then the tax bill is going up.

Now, you can argue, as some in the tobacco companies have argued, and some of my colleagues particularly on this side of the aisle have argued, that there is no way you can reduce teen smoking; that there is nothing you can do; that raising the price of cigarettes won't work and antismoking campaigns won't work.

This tax bill is big and it is getting bigger. Some don't accept—and I am not clear why—the view of the Centers for Disease Control that teenage smoking is on the rise in America. I think a visit to any local high school in your State or district might indicate that teenage smoking is on the rise. But, more important, people whose statistics on these public health issues that were unchallenged are now being challenged as to whether teenage smoking is on the rise or not. I think the burden of proof is on those who disagree to prove that these statistics are wrong, given the credibility of the organizations who state that teenage smoking is on the rise. If you accept the fact that teenage smoking is on the rise, then over time there would be more people who would require treatment for tobacco-related illnesses. The tax bill goes up. It is sort of elemental, but it needs to be said over and over again. If we are paying this huge tax bill to treat people as a result of tobacco-related illness, and it is getting bigger, then it seems to me that you have a much bigger tax bill than the costs associated with this legislation.

Mr. President, I believe we are reaching a crucial point, as I mentioned earlier in my remarks. We are either going to have to invoke cloture and address the germane amendments, which is still part of cloture, part of the Senate procedures after the invocation of cloture, or we are going to have to move on to other things. At that point, as is usual, we assess winners and losers. That is appropriate and fun here, especially inside the beltway. I don't disagree with that approach.

I think we ought to understand who the losers will be. The losers will be the children of America. They are the only ones who lose. Anybody else who loses can probably survive, probably go on to other things, probably lead their well and healthy lives. But I don't believe that the American people will treat us kindly, nor should they, if we fail to act on this issue. Is it the most important and compelling issue that affects America today? Probably not. Crime is important, drugs are important, education is of critical importance. But do we use that rationale to ignore this problem? Is that appropriate logic? Do we say, well, crime and education are far more important issues to the American people than teenage smoking; OK, so therefore ignore it?

I don't get that logic, Mr. President. I was reading in some of the newspapers this morning that there are polls out now that have convinced some Americans—and perhaps in the view of some pollsters, a majority of Americans—that this is a "big tax bill." A lot of Americans believe we really aren't going to do anything about kids smoking. Why would anybody be surprised at that? If you spend $100 million, which is what many—or suppose only $50 million on advertising, it is going to sway American public opinion. But the effect of those kinds of advertising campaigns fades. The American people then focus back on the problem because the problem will remain. And if we do nothing to address it as a body, I think the American people have every reason to be less than pleased at our performance at addressing what I believe most Americans correctly view as a very important issue, which is—obviously, we have stated many times—our children.

So I think it is important that we recognize that we are now ending the third week of considering this legislation, and we are going to have to either file cloture and move forward with a vote on it, and if the vote carries, move to a conclusion. Otherwise, I believe that we should obviously move on to other things, and with the full and certain knowledge that the issue is not going away because the problem is not going away.

I understand that my friend from Massachusetts will have an amendment, and that an agreement has been made with the majority leader. I hope we can reach a time agreement on that and then move to our side for an amendment.

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. KERRY. 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. KERRY. Mr. President, I will be sending up an amendment shortly. When that amendment is called up, I will ask unanimous consent that we have 1½ hours—Mr. President, a small change, a quick change in plan, which is not unusual in the last 2½ weeks. We are going to debate this amendment. It is our intention to debate this amendment for an hour, at which time there will be a motion to table, and hopefully after we have disposed of this amendment, should we be able to do so, we would proceed to the Faircloth-Sessions-McConnell amendment on attorneys' fees.

That is the current plan. We hope to be able to proceed with that plan. I, therefore, ask that amendment No. 2541 be called up.

AMENDMENT NO. 2689 TO AMENDMENT NO. 2437

(Purpose: To reduce youth smoking)

Mr. KERRY. Mr. President, I withdraw that request, and I send this amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, and Mr. BOND, Mr. CHAFEE, Mr. KENNEDY, Mr. DODD, Mr. WELLSTONE, Mr. JOHNSON, Mrs. BOXER, Mr. SPECTER, Ms. LANDRIEU, Mr. DURBIN, and Mr. GRAHAM proposes an amendment numbered 2689 to amendment numbered 2437.

Mr. KERRY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following:

( ) ASSISTANCE FOR CHILDREN.—A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

Mr. KERRY. Mr. President, the amendment that I am offering, together with Senator BOND, Senator CHAFEE, Senator KENNEDY, Senator DODD, Senator WELLSTONE, Senator JOHNSON, Senator BOXER, Senator SPECTER, Senator LANDRIEU, Senator DURBIN, Senator GRAHAM, and others is a bipartisan amendment with considerable support, I believe, both in the Senate and outside of the Senate. It would be my hope that we would be able to dispose of it rapidly.

Over the course of the last couple of weeks we have had some very contentious issues on the floor of the Senate regarding liability, regarding lookbacks, the marriage penalty, and drugs. I won't suggest that the drug penalty didn't have some focus with respect to children. Of course it does.

But this is primarily children. This amendment is the primary focus of this legislation. This amendment goes to the core effort of how we will best get this legislation to assist in the effort to reduce our young people from smoking. That is why this amendment, I believe, has broad support. That is why this amendment has been supported by editorials across the country. That is why this amendment is supported by different advocacy groups on behalf of children across the country.

We have been debating for 2½ weeks now about the Nation's first opportunity to try to deal comprehensively with tobacco, and, in so doing, comprehensively try to address the question of reducing teenage smoking. This is an amendment that can directly improve the lives of our children by adopting a national policy with respect to tobacco and our approach to children that is workable, proven, and fair.

I believe the reason that a number of colleagues on both sides of the aisle, from different political ideologies, have come together on this amendment is for the very simple reason that not only is it focused on children, not only is it about children, but it comes with a proven track record of making an impact on choices that children will make.

This is, frankly, not about politics. This is certainly not an effort to stall the bill. This is an effort to make this bill as constructively as possible a bill that is really going to assist us in accomplishing the purposes of the bill; that is, principally to raise a generation of young people who are able to live up to their potential, free from the grasp of what we know to be a dangerous drug.

This is an effort to try to guarantee that those 3,000 children who we have talked about day in and day out who begin smoking won't start smoking, and they won't start smoking because there is an intervention in their lives that is significant and meaningful at the time that it counts.

Senator BOND, I am pleased to say, comes to this amendment with considerable experience in how these kinds of efforts work. When he was Governor of Missouri, he started the parents and teachers plan there. There are few people in the Senate who I think speak with as much conviction about the difference that it makes for young people when adults are adequately involved in their lives and when the kind of structure is available in their lives so that we can make a difference when it makes the most importance to those children.

In my judgment, and I think in Senator BOND's judgment, Senator CHAFEE's judgment, Senator SPECTER, and others who are part of this legislation, this seeks to have an impact at the most direct connected level with our young people.

The legislation on the floor, Mr. President, currently directs that about 40 percent of the funds that are raised through the tobacco revenues be directed directly to the States over 5 years. That is in the billions of dollars. Those billions of dollars that are directed straight back to the States are divided into two groups. Half of that money is restricted to a certain set of programs in which the States can engage. Half of it is completely unrestricted, as many people in the Senate think it ought to be. That is so that the States can choose, on their own, what they think might make the most difference with respect to tobacco and how they would like to spend the proceeds in an effort that, after all, the States were significantly involved in. The States' attorneys general are the ones who brought the lawsuits and helped significantly to put us in the position to be able to be trying to arrive at a comprehensive national settlement. So that is the theory behind which those funds were distributed appropriately to the States.

However, given what has happened in the last days here on the floor, where a considerable portion of this legislation has now been diverted to a specific tax cut, and another considerable portion of the legislation has seen money directed specifically to the Coast Guard, or to the DEA, or to other drug-fighting efforts, it is even more compelling and more appropriate that at this point in time we seek to guarantee that some of those available funds are really going to go to the children on those activities that will most impact those children's choices.

So we want to assure that at least 50 percent of the restricted funds—not the unrestricted but 50 percent of the already restricted funds—will be spent on those activities that already exist within the menu of what the restricted funds can spend it on. We want to guarantee that it will go to the after-school programs, to the early childhood development, and to the child care that every expert in the field will tell you will make an enormous difference to the lives of those children.

Mr. President, let me just share with my colleagues an article that appeared in the Washington Times yesterday. It is called "After-School Crime Busing." It is an article by Edward Flynn. In fact, he is the chief of the Arlington Community Police Department. He writes:

In fact, the tobacco bill is an opportunity for Congress to take its most powerful step ever to fight crime—by investing half the new revenues in the child care and after-school programs proven to prevent crime and make communities safe.

This chief of police says to all of us in the Washington Times:

The tobacco companies are worried about their bottom line. I look at crime's bottom line. Educational child care for young children and after-school programs for school age kids are two of the most powerful weapons to fight crime and protect our kids from getting hooked on tobacco. For example:

Studies have shown that denying at-risk toddlers quality educational child care may

multiply by up to five times the risk that they will become chronic lawbreakers as adults, and by up to ten times the risk that they will be delinquent at age 16.

What's more, as a recent Rand report shows, these programs actually produce savings to Government—primarily from lower criminal justice and social service expenditures—as much as four times higher than their cost.

But today millions of Americans who must work earn less than the cost of quality child care for two kids.

And then it goes on to discuss the availability of child care.

Police Chief Flynn says the following:

FBI data tells us that violent juvenile crime triples in the hour after the school bell rings, and half occurs between 2 p.m. and 8 p.m. The good news: After-school programs can cut crime by as much as 75 percent. And they help kids do better in school, treat adults with respect and resolve conflicts without violence.

Unsupervised after-school hours aren't just prime time for juvenile crime. They're also prime time for youngsters to become crime victims and for other threats to children's health like teen sex and substance abuse.

That is what we are talking about here—substance abuse, tobacco.

There is good evidence that after school supervision can cut in half the risk that kids will smoke, drink or use drugs.

So in addition to their proven anticrime impact, after-school programs—because of the supervision they can offer while parents are at work and their positive effect on kids' values—are powerful antismoking and anti-drug programs as well.

Mr. President, I ask unanimous consent that the full text of this article be printed in the RECORD.

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

[From the Washington Times, June, 10, 1998]

AFTER-SCHOOL CRIME BUSTING

(By Edward A. Flynn)

If you've been reading the huge ads the big tobacco companies have been running recently, you might think tobacco legislation will cause a new American crime problem by creating a black market in cigarettes.

In fact, the tobacco bill is an opportunity for Congress to take its most powerful step ever to fight crime—by investing half the new revenues in the child care and after-school programs proven to prevent crime and make communities safe.

The tobacco magnates' claims deflate when you look at the facts:

They use grossly inflated projections of cigarette cost increases, as much as three times higher than the $1.25 or so the Treasury Department and most economists agree will be added to the price of cigarettes.

They ignore protections in the bill like requiring that each pack of cigarettes carry a serial number so it can be daily traced, that will probably reduce the smuggling that now occurs between states.

While there could be some increase to international smuggling, the best way to deal with that is to make sure a bit of tobacco revenues are left available to enforce the new law—not to eliminate tobacco penalties that would reduce smoking, save lives and compensate taxpayers for the billions we've paid to treat health problems caused by smoking.

In fact, if Congress allocates at least half of the new revenues to support educational child development and after-school programs, it can dramatically reduce crime, violence and addiction.

The tobacco companies are worried about their bottom line. I look at crime's bottom line. Educational child care for young children and after-school programs for school-age kids are two of the most powerful weapons to fight crime and to protect our kids from getting hooked on tobacco. For example:

Studies have shown that denying at-risk toddlers quality educational child care may multiply by up to five times the risk that they will become chronic law breakers as adults, and by up to ten times the risk they will be delinquent at age 16.

What's more, as a recent Rand report shows, these programs actually produce savings to government—primarily from lower criminal justice and social service expenditures—as much as four times higher than their cost.

But today millions of Americans who must work earn less than the cost of quality child care for two kids. Because Head Start and child care block grants don't have the resources to help most of those who need them, parents are forced to leave their children in poor-quality care—little more than "child storage." That damages child development, including kids' ability to get along with others and succeed in school, and ultimately puts your family's safety at risk.

FBI data tells us that violent juvenile crime triples in the hour after the school bell rings, and half occurs between 2 p.m. and 8 p.m. The good news: After-school programs can cut crime by as much as 75 percent. And they help kids do better in school, treat adults with respect, and resolve conflicts without violence.

Unsupervised after-school hours aren't just prime time for juvenile crime. They're also prime time for youngsters to become crime victims, and for other threats to children's health like teen sex and substance abuse. There's good evidence that after-school supervision can cut in half the risk that kids will smoke, drink or use drugs.

So in addition to their proven anti-crime impact, after-school programs—because of the supervision they can offer while parents are at work, and their positive effect on kids' values—are powerful anti-smoking and anti-drug programs as well.

Law enforcement leaders nationwide—from the Police Executive Research Forum and the Major Cities Chiefs organization to the National District Attorneys Association and Fight Crime: Invest In Kids—have called on legislators this year to provide the funds so communities can ensure all kids access to educational child care and after-school programs while parents are at work.

The way to do that—the one-two punch that also fights teen smoking—is by designating at least half of new federal tobacco tax revenues to support child care and after-school programs.

This would be one of the most powerful steps Congress has ever taken against crime, and a tremendous investment to help America build a healthy and productive generation for the twenty-first century, decrease long-term government financial burdens like welfare and crime costs, and start saving innocent lives today.

Mr. KERRY. I will discuss some further evidence of why this is so vital, but let me emphasize to my colleagues what we are doing in restricting this 50 percent of the already restricted funding is not a new program. We are not creating any new program. We are not creating any new bureaucracy. We are not requiring any new line of expenditure. We are using the existing child care development block grant, and we employ a mechanism that both parties, in a bipartisan fashion, have already accepted.

This existing, successful bipartisan program already helps States to invest in child care but not adequately. And it already helps this investment in early childhood development programs but still not adequately. I believe all we have to do is look at the example of President Bush, who signed the block grant into law originally, and the bipartisan effort of Senator HATCH and Senator DODD, who pushed the Senate to make this investment a reality.

This amendment spells out explicitly the truth that has been implicit in all of this debate, that children are at the heart of the debate about tobacco in this country. We know—and we now know it to a shocking degree because we have discussed it at length on the Senate floor—through the tobacco companies' own memoranda, the degree to which tobacco companies targeted young children for decades. We went through, about a week ago, some of the extraordinary documents that now exist as a result of the lawsuits that show the million dollars of advertising that researched ways in which the tobacco companies could target young children and, the tobacco companies themselves acknowledged, "get them when they're most vulnerable." The language was the most shocking and explicit statement of a kind of craven policy of how to corrupt young people that you have ever seen. And literally they said, get them hooked early, get them with all these symbols, get them with the advertising, and we won't say anything about the aftereffects because the pharmacological impact, they said—that is the way they politely labeled getting hooked—the pharmacological impact would see to it that the kids continued to buy down the road.

So here we have an opportunity to protect our children from exactly that kind of predatory practice that is unacceptable. We believe that is the compelling reason why the Senate should adopt this amendment.

According to a January 1998 poll, 83 percent of American voters support what I just said—83 percent of American voters believe that tobacco legislation ought to include significant investments in our children. It is a bipartisan consensus in this country that we ought to do that.

Two-thirds of the Republicans who were polled by Lake, Sosin and Associates strongly agreed that the funds from the tobacco bill ought to be invested in child care and other childhood development programs that will

make a difference as to whether or not those kids would then pick up smoking.

In the Philadelphia Inquirer, the editorial page recently praised this amendment, saying, "Using tobacco settlement proceeds for child care meshes with the goal of cutting the health toll of smoking and could produce benefits that go far beyond that."

The Deseret News in Salt Lake City, UT, recognized that support for child care programs "saves billions of tax dollars down the road." The Syracuse Herald-Journal on its editorial page, in urging the Senate to pass this amendment, said, "Let the tobacco bill do some good." The editors of that newspaper reminded us that "there are good reasons why tobacco revenues should go into child care. Child care and development block grant program, put in place during the Bush administration, simply doesn't have enough of a budget to fulfill the needs of working families—it wouldn't even if $20 billion is allotted. But it would be a start." And that is what these voices are telling us—that we ought to make the start.

There is, in addition to broad editorial support, Mr. President, the coalition of more than 100 national, State, and local organizations, called Child Care Now, fighting for this amendment because they recognize the connection between kids and smoking. And in that coalition you will find the National Council of Churches of Christ in the USA, the YWCA of the USA. I have a letter that I received from the children and parents of Camp Fire Boys and Girls, 700,000 members strong, asking each Senator to support this amendment because, "Children engaged in constructive after-school activities are less likely to smoke." These are mothers and fathers of working families, and they understand the tremendous pressures and temptations of smoking, and they have asked each and every Senator to support the notion that that is where a significant component of this revenue ought to go, to give their kids a fighting chance.

This amendment responds directly to the plea of parents who desperately seek help in the area of child care and early childhood development to help keep their kids away from the cigarettes that they know they are being exposed to during the hours when, because they are working, because they are compelled to be away from the home, and because they do not have enough money to provide adequate support otherwise, their kids are being exposed. And we have an opportunity here to help them do that.

Scientific research at the University of Southern California and the School of Public Health at the University of Illinois shows that 13-year-olds who are left home alone after school or during the day are significantly more likely to smoke cigarettes than children who participate in structured after-school activities. But today, only one-third of inner-city schools offer those programs, and, not coincidentally, it is in those very inner cities where youth smoking rates are now rising and going the highest.

The National Women's Law Center, committed to protecting the rights of women, but also committed to the economic security of low-income women, wrote to Senator BOND and to me in favor of this bill, because they recognize that under the child care development block grant today only 1 out of 10 eligible children in a low-income working family currently gets the child care assistance they need.

So if we are intent on reducing the number of kids who are smoking, and if we are really worried that smoking among high school seniors is at a 19-year high, and we are really worried about what the Senator from Georgia said when he came to the floor and talked about the drug problem, the marijuana increase among young people, then it is critical we focus on the 3 million young children in this country who are eligible but do not get it. We need to leverage the capacity of every State and local community to be able to take kids off the street corners, where they too often cave in to peer pressure and smoke each day, and put them instead into a structured environment that brightens their future, not one that jeopardizes it.

So if we are serious about reducing youth smoking, it is imperative that we engage now in this effort to cultivate a whole generation of young people who have the capacity to make the right decisions.

I have a letter from Dr. T. Berry Brazelton of the Harvard Medical School. Many people in America know him well, personally, and think of him as America's pediatrician. I would like to point out that he wrote, along with over 50 other doctors, public health officials and child development experts, to Senators about the early child development component of sound decisionmaking for our children. Among those who joined Dr. Brazelton were Julius Richmond, former Surgeon General of the United States, and the Chairman of Pediatrics at Johns Hopkins University School of Medicine, and Elizabeth McAnarney, the Chairwoman of the Department of Pediatrics at the University of Rochester. They tell all of us that scientific study after scientific study shows that the brain development in those first years of life is the most important—I quote from the letter of Dr. Brazelton:

> . . . for laying the foundation for adequate development, which results in self-confidence, smart decisionmaking, and the ability to later resist destructive habits like smoking.

So these aren't ideas that have been cooked up on a political basis somehow. These are the foremost experts in the field. They are telling us if we want to raise a generation of children who are able to make these decisions, who will not fall prey to the lure of tobacco, it is vital that we invest in their capacity to do so.

Again, I return to their letter, and read directly from it:

> We urge Congress to craft a comprehensive program for reducing teen smoking—and to ensure that such an effort includes an essential investment in early childhood development and after-school programs. You can support a down payment on this investment by voting for the Kerry-Bond amendment.

I think Dr. Brazelton said it best in a recent editorial when he said—simply—

> As a prescription for preventing teen smoking, I'd say that early childhood development and child care programs are just what the doctor ordered.

We also know from police officers and prosecutors like Ed Flynn, Chief of Police in Arlington, Virginia, who are leading a fight to invest tobacco money in child care. Chief Flynn has said that child care and after school programs "help kids learn the valuable skills to become responsible adults." An entire organization led by police, prosecutors, and crime victims is pushing the Senate to pass this amendment because:

> The hours from 2:00 p.m. to 8:00 p.m. are not only the peak hours for juvenile crime, teen sex and teen experimentation with drugs, but also the hours when teens are most likely to get hooked on tobacco. After-school programs are not only our best protection against juvenile crime, but also may be the most powerful anti-smoking programs available. Being unsupervised in the afternoon doubles the risk that kids will smoke, drink, or use drugs.

It is those individuals closest to our children who know this is the right way to deal with youth smoking.

This is an amendment every Senator ought to support.

I want to especially thank Senator MCCAIN for supporting this amendment. In view of the pressure on Senator MCCAIN, the Senator's support means a lot to me. I think I can speak for Senator BOND when I say we are honored to have JOHN MCCAIN by our side on this fight. I also want to thank Senators CHAFEE, CAMPBELL, and SPECTER for cosponsoring this amendment.

I think it proves that this is an amendment which is based not on Republican ideas or Democrat ideas, but simply on good ideas in touch with the mainstream view in this country.

Under the Kerry-Bond amendment states will enjoy the flexibility of the child care development block grant. The truth is we would simply be articulating once and for all the important standard which the public health community and most Governors have already endorsed: that child care and early childhood development are vital tools in reducing the rates of children smoking in this country. We then leave it to the leadership at the state and

local level to meet that standard, to design the programs that meet the local needs in places as different and diverse as Illinois, where Gov. Jim Edgar, a Republican, is experimenting with child care, and Rhode Island, where Gov. Almond has made after school care an integral part of preparing children in his state for the next century.

The Kerry-Bond amendment empowers communities to find their own way of saving a new generation from smoking. We know how after school programs like Girls Inc. of Worcester, MA have effectively incorporated anti-smoking curriculum designed to teach their participants about the dangers of tobacco and equip them with the values to resist the peer pressure to smoke. I have met with the case workers from Central, MA who tell you that the "Home Instruction Program for Preschool Youngsters" helps parents and teachers join in community partnerships to raise healthier kids. But in all these communities and around the country you will find that there are waiting lists for the services—for the programs which teach kids about responsible decision-making, for the anti-smoking programs and the programs which take kids off the streets and give them structure—and the demand far exceeds our capacity to serve. At the Castle Square Early Child Development Center in Boston, there were 67 kids in the program and 500 on the waiting list. I believe it's a moral dilemma that you have 500 children there who aren't receiving the structure they need to resist smoking, that today we have limited ourselves to saving just 67 of those kids. The Kerry-Bond amendment can change that, by ensuring that half of the restricted funds would go to child care programs which can play such an important role in reducing youth smoking.

I return to the original premise of this debate, the reason we are here on the floor of the Senate debating a bill that a few years ago would have been considered too hot to handle. We are all fortunate to have Republicans like Senator BOND here in the Senate who believe it is wrong to ignore our children in this tobacco debate. I want to especially thank him for his leadership in this discussion, for his initiative in pushing to include children in our legislation. Senator BOND has helped set a tone of bipartisan cooperation and along with Senator MCCAIN I think he has laid the benchmark for fairness. KIT BOND and I believe this Senate can find room in fair and workable tobacco legislation to put hundreds of thousands of children on the road to good health and responsible decisionmaking. In truth I wonder if we can really believe that fair tobacco legislation could ignore the kids who brought us here today as one unified Senate. Let us prove once again that the moral center can hold in this debate and let us join together in passing the Kerry-Bond amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri.

Mr. BOND. Mr. President, I particularly thank my distinguished colleague from Massachusetts for yielding to me. I am very pleased to join with him in offering this critically important amendment.

Late last year, Senator KERRY and I introduced legislation, which is bipartisan legislation aimed at providing support to help families give their children the kind of encouragement, love, early training and a healthy environment they need to develop their social and intellectual capacities. I have had the opportunity in my years both as Governor and in the Senate to work with children and work in the development of children. I am convinced that many of society's problems today—the high school dropout rate, drug and tobacco use, juvenile crime, even adult crime—can all be linked to inadequate child care and early childhood development opportunities.

Let me just tell you a brief story about the first really broad-based early childhood development program that we put into effect in Missouri. Our Parents As Teachers Program was designed to provide assistance through educating and informing and giving helpful advice to parents of children from birth to 3 years old—how they could relate to the children, how they could establish better contact with the children, how they could excite the child's curiosity, to get involved with reading and learning. I was having a difficult time getting it through the Missouri legislature. I recommended it in 1981 and 1982 and 1983, and someone always had a reason to vote against it. I never got it through.

Finally, in my last year as Governor I said we are going to make an all-out push because this program is making a difference. We were seeing in the pilot projects in four school districts that children whose parents had been in Parents As Teachers came to school ready to learn. Their parents had taken responsibility. The parents were involved in their education. They had developed the pattern of involvement. The program itself identified potential learning disabilities or physical disabilities early on, which could be best corrected at those early ages.

I told everybody I was going to focus attention on early childhood development. Without my direct suggestion or intervention, the Director of Corrections, the Missouri Department of Corrections, the man who managed all of the prisons and the parole and probation efforts in Missouri, Dr. Leroy Black, on his own, came before the committee that was hearing testimony on Parents As Teachers. We had just gone on a major prison-building exercise in Missouri. In that 4 years of my second term we had increased the prison spaces 88 percent. People were wondering whether we could ever catch up with the prison population.

He came before that committee with a very simple, straightforward message. He said if we want to cut down on the need to keep building prisons in the future, we are going to have to deal with early childhood development. He said the failures in early education, the failures of parental responsibility, the failures of the parents to be involved—for some care giver to make sure these children were getting an education, being taught responsibility—is the greatest cause of the increase in crime and the increase in prison population.

He was successful. He was a great help in getting this program established on a Statewide basis. Yes, as Senator KERRY mentioned, we now have studies based on this program and others that show a child's social and intellectual development is deeply rooted in the early interaction and nurturing a child receives in his or her early years and the scientific research shows that infant brain development occurs much more rapidly than previously thought.

We used to think of those cute little infants, birth to 3 years old, as being cuddly, wonderful things without much going on. But brains are developing—50 percent of a child's mature learning capabilities are developed by the age of 3. They are in a very rapid mode of development.

Anybody who has tried to teach a child to speak two languages instead of one language will find a very small child—you think they would learn English slowly—but they will learn another language, too, just as quickly, where an adult is having a great deal of difficulty trying to learn another language. They are in a rapid mode where they can accept new inputs and they are learning rapidly.

The role parents and adults play is critical. That is when the patterns are established for the future learning of future responsibility of the children. I had long said the first 3 years of life was the greatest learning experience for a child. I found when our son Sam was born, that the first 3 years of his life were the fastest learning experience in my life. I learned a lot more in those 3 years than I had learned in many years as Governor and various offices that I had held.

Learning about a child and learning how important that education is, is quite an experience. Frankly, some of the people who attacked our early childhood development program, Parents As Teachers, were accusing it of being subversive. They thought it was subversive because we were encouraging government to come in and take over the raising of children. That is not

the purpose of the program. We provided the parents the tools to be the first educators of the children.

Guess what happened. It was subversive in that it hooked the parents into the child's development and well-being and welfare and education. When we are talking about discouraging children from using tobacco, and as we did in the amendment adopted this week, from using drugs, from using alcohol, parental responsibility is a vitally important part of that program.

We believe establishing responsibility can best occur with assistance through early childhood development. Parental responsibility is very important. Yet, there are times when parents need some help. That is what the other part of this bill does. Parents today face a variety of stresses that were unheard of a generation ago. Many families with children rely on more than one paycheck. That doesn't necessarily mean two 9-to-5 paychecks. Many families are working tag-team shifts or part-time only, or own home-based businesses so one parent can always be with the children. The challenges are tremendous and the challenges are not going to get any easier.

As we all know, the most dangerous time of the day when children engage in harmful activities, such as tobacco or drug use or crime, is between the hours after school and before parents get home from work.

In an average week in America, over 5 million children under the age of 13 come home to an empty house. These are the kids who are most vulnerable and who engage in activities which may threaten their future.

Providing increased funding for early childhood development and constructive after-school activities will serve as a powerful deterrent to these damaging behaviors.

Ultimately, however, it is important to remember that the likelihood of a child growing up in a healthy, nurturing environment is most impacted by his or her parents and family. While government cannot and should not become a substitute for parents and family, we can help them become stronger by equipping them with the resources to meet every day challenges.

The Kerry-Bond amendment achieves that goal.

This amendment will lay the foundation needed to realize meaningful reductions in tobacco and drug use, juvenile crime, and other social ills which plague our society.

Again, prevention is the key. Investing in early childhood development initiatives and before and after school activities is an important weapon in our fight against our Nation's unhealthy and life-threatening activities.

The future well-being of our children is too important for us to break continually along partisan lines. I urge my colleagues to adopt this amendment, and I thank my distinguished colleague from Massachusetts for his hard work and dedication to this cause.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. HAGEL). The hour of noon having arrived, under rule XXII, the clerk will report the motion to invoke cloture on the modified committee substitute to S. 1415, the tobacco legislation.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the modified committee substitute for S. 1415, the tobacco legislation:

Thomas A. Daschle, Carl Levin, Jeff Bingaman, Daniel K. Akaka, John Glenn, Tim Johnson, Daniel K. Inouye, Dale Bumpers, Ron Wyden, Mary L. Landrieu, John D. Rockefeller IV, Paul S. Sarbanes, Harry Reid, Richard H. Bryan, Kent Conrad, J. Robert Kerrey.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call under the rule is waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute amendment to S. 1415 shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The yeas and nays resulted—yeas 43, nays 56, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—43

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Biden	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Torricelli
Daschle	Kohl	Wellstone
Dodd	Landrieu	Wyden
Dorgan	Lautenberg	
Durbin	Leahy	

NAYS—56

Abraham	Ford	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Robb
Brownback	Grassley	Roberts
Burns	Gregg	Roth
Campbell	Hagel	Santorum
Chafee	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hutchinson	Smith (NH)
Collins	Hutchison	Smith (OR)
Coverdell	Inhofe	Snowe
Craig	Jeffords	Stevens
D'Amato	Kempthorne	Thomas
DeWine	Kyl	Thompson
Domenici	Lott	Thurmond
Enzi	Lugar	Warner
Faircloth	Mack	

NOT VOTING—1

Specter

AMENDMENT NO. 2689

Mr. KERRY. Mr. President, I ask unanimous consent Senator BINGAMAN and Senator KOHL be added as cosponsors to the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. What is the pending business?

The PRESIDING OFFICER. The pending business is amendment 2689, offered by the Senator from Massachusetts.

Mr. DODD. Mr. President, I think this is a very fine amendment. I want to commend our colleagues, Senator KERRY and Senator BOND, for offering this amendment. I strongly support it.

This amendment is designed to invest in the well-being of our children in this country. It is a measure that ensures that the children of our Nation will get the right start for a far brighter tomorrow.

As our colleagues have already discussed, the amendment will earmark 50 percent of the Federal share of the tobacco funds going to the States for child care. Specifically, Mr. President, these funds will be used to increase our investment in child care and development block grants—a piece of legislation we were very proud to offer with my good friend from Utah, Senator HATCH, some 8 years ago.

The idea, Mr. President, is not to create here a new Federal child care program, but rather to do a better job with the well-established program that enjoys wide support from our States and Governors, Republicans and Democrats alike, across this Nation.

The child care and development block grant was created in 1990, as a partnership between the States and the Federal Government, to improve the availability and affordability and quality of child care. The block grant is a very efficient and popular way of providing States with sorely needed child care funds, and the States enjoy it. The reason is because it is so flexible. Perhaps most important, this is why parents also support the program.

Our colleagues on the other side of the aisle, in some cases, raised concerns during the child care debates that somehow our intent with this child care legislation is to limit the ability of parents to choose how their children would be cared for, that somehow we would like to see the Federal Government deciding how to raise them. Of course, Mr. President, this rhetoric could not be further from the truth.

The child care and development block grant is predicated upon parental choice. With assistance from the block grant, parents can choose to enroll their children in church-based care, they can choose to have their children cared for by a neighbor down the

street, or they can choose to have a family member care for their child. If they wish, they can choose to enroll their child in a child development center. But the benefits of this program are offered to far too few families. It is terribly underfunded. Only 1 out of 10 children in America who are eligible for child care assistance receives it. That still leaves far too many families without the help they need in child care. Full day care can easily cost $4,000 to $10,000 per child per year, which is equal to what some families pay for college tuition plus room and board in a public university in America.

I know concerns have been raised and are apt to be raised about giving any direction to the States in their use of these funds. I would like to remind our colleagues that half of the tobacco funds that would go to the States are unrestricted. These are the funds that reimburse States for their tobacco-related Medicaid expenses. Many States do with this money what they will, and they should be able to do so. However, since the other half of the funds to the States represents the Federal contribution, we feel we should have something to say about how those dollars are spent.

As this bill is currently written, the Federal share of the money earmarked for States would be restricted to a list of six programs. While child care is on the list, there is no guarantee that any of the funds would be used for that care. There is no guarantee that child care would get a single dime of these dollars. I think that would be unfortunate, Mr. President. We have talked a lot about child care, about caring for children during this debate on tobacco. We have talked a lot over the past weeks about things that, frankly, have little or nothing to do with the well-being of children in this country. Affordable, accessible, high-quality child care is about the well-being of children. The tobacco industry has preyed on America's children—all of us agree on that—stunting their growth and stealing their futures. This amendment is about turning the tide and making an investment in children and their families from the very beginning.

Mr. President, experts tell us that the first 3 years of the life of a child are critical to brain development and to laying the ground for self-confidence—a sound foundation for a healthy future. Investing early in childhood development is the best prevention against a whole host of problems, not the least of which is teenage smoking. Experts, again, including Fight Crime, Invest in Kids, an organization representing law enforcement officials from around the country, tell us time and time again that quality after-school activities are extremely important to preventing problem behaviors and criminal activity. Scientific studies support their claims that nearly 5 million children left home alone in the afternoon are much more likely to engage in at-risk behavior, from smoking to drugs and sex than their peers who are engaged in stimulating, productive activities.

Mr. President, the Senate has an opportunity in the next few hours to ensure that we make a concrete commitment to investing in the health and safety of America's children. Setting aside a specified percentage of funds—funds that we have already agreed to spend for the child care needs in this country—says to the American public that we will provide for a solid foundation for the future good health of America's children. Many of my colleagues know that I have introduced a comprehensive child care bill along with 26 other colleagues, including the sponsor of this amendment. This amendment is an important first step that I think we can take in making good and fulfilling the promise of that bill. Is this all we need to do? Obviously not, but it is a good beginning.

I hope that our colleagues, in considering this amendment offered by Senators KERRY and BOND, in a bipartisan way, would find a way to support expanding this block grant. It doesn't create any new programs. It is designed to give maximum flexibility to families across this country. It can make a huge difference for those parents, who don't have the choice about whether or not to be at home, to be able to afford that needed child care.

That $10,000, as I said a moment ago, is equivalent to the cost of a higher education and room and board. It is expensive. Child care is very expensive. If we can assist in the cost of that and relieve the financial burden and the tremendous anxiety the parents feel about wondering where their child is as they must work, then, in addition to doing something about reducing smoking among young people in this bill, that will be amplified by providing assistance to these families and seeing to it that their child care needs are going to be met, or at least it will take a significant step in meeting those needs. I commend my colleagues for offering this amendment and urge colleagues to support it.

I yield the floor.

Ms. LANDRIEU addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I join my colleague, Senator DODD from Connecticut, and commend him, Senator BOND, and Senator KERRY for offering this very important amendment to this very important bill. I want to say a few words, if I could, as a supporter.

The issue that has been most contentious about this tobacco legislation has been how do we really stop people—children, adults and young people—from smoking? We have debated that. Many of us feel like the best way, the surest way to stop people from smoking, from using a dangerous product that has now been proven beyond a shadow of a doubt to be dangerous, is to raise the price of a pack of cigarettes high enough to discourage as many young people as possible from even starting to smoke and, frankly, discourage adults, who most certainly have a choice, from continuing a habit. It is a purposeful levy. If we could stop people from smoking by not raising the price of a pack of cigarettes, perhaps we should consider that. But I am convinced, as many Members of this Chamber are, that this is the best and most effective way, along with counteradvertising, advertising restrictions, and other restrictions, which, in fact, will be effective.

The question becomes, what do we do with the proceeds generated? Because it is going to fall regressively, in a sense, on poorer people, I think we should try to get the money back to those who are going to pay the tax. We can do that in a number of ways. One way is to target a general tax relief, which, as this bill moves through, I hope we can do. But another way that my colleagues have come up with is targeting some of this money back to hard-working American families—in most instances, with both parents working full time and, in some instances, there is only one parent—to help them with the great costs they are incurring and the great challenge that they have, which is how to be good workers and how to be good parents. It is incumbent upon us to try to get some of this money back to these families that are going to pay this tax and their children for one reason: Because children were targeted by the industry. There is no question about it. They were targeted by the industry. In my opinion, they should benefit from the proceeds generated in this tobacco settlement. To leave the children out and not specifically designate a portion for them, even though they are going to get some benefit from their research that is done, would be a shame. It still gives States discretion about how they would like to spend a part of the money coming in. But it says that we want you to use at least 50 percent of your restricted funds to support child initiatives, child care particularly, and to improve the quality of child care. Because children were targeted, they should benefit. Because families who are paying the tax—poor families primarily, lower-income families—this amendment targets this benefit to them and allows them to get accessible, affordable, and quality child care.

Let me say one other thing that in some way angers me as a working mom myself. Some people would like to maybe make judgments about families that choose to work, or parents outside

of the home, or inside of the home. I would like to say maybe ideally it would be great for every child in America to have two parents, and perhaps it would be ideal if one of those parents would stay home full time. But this is not an ideal world; this is a world where families have to make tough choices.

Frankly, we have an economy now in America that depends on almost every able-bodied person over 18 to work. If people haven't noticed, there is a worker shortage in America for skilled work, for talented work. Our businesses can't survive unless there are workers working. So we have to do both. We have to work outside of the home. We have to be good parents to our children, and one way is to have the Government help parents who are doing everything that they can do. One way we can do that is to help them, be a partner with them, to find good-quality child care, because investing in our children is the best thing we can do to help our families, to help our country, to keep our economy strong, and do what is right with the proceeds of this tobacco bill.

So I urge all of my colleagues. I think this has great bipartisan support. It would be a shame to pass this bill without this amendment on it and to fall down in our commitment to the children and working families of our country.

Thank you, Mr. President.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. 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. BAUCUS. Mr. President, good afternoon.

ENGAGING CHINA IN THE 21ST CENTURY

Mr. BAUCUS. Mr. President, I rise today to address the upcoming summit in China and to stress the importance of this visit to U.S.-China relations.

Mr. President, as the age old adage says, "A journey of a thousand miles begins with a single step." We should begin this journey with the first step—by defining our goals in Asia, and, more directly, in China.

America's goals are simple: we want peace; we want prosperity and fair trade; and we want a decent world to live in.

How do we achieve these goals? First, by guaranteeing peace and stability in the Pacific. That means preserving our permanent military presence in Asia. Remaining committed to our alliances with Japan, Korea and Southeast Asia. Defining our interests clearly to China.

But it also means preventing unnecessary conflicts. And to do that we must find common ground. Remain engaged. Preserve and foster our working relationship with China. We must build and strengthen our diplomatic ties.

In many ways China remains a challenge—a great wall in and of itself. Its intransigence in many areas of trade, human rights and arms proliferation presents a clear challenge for U.S. policy. Whether the topic is pirated software or the incarceration of political prisoners, China has often proved unwilling to adopt practices that the rest of the world perceives as reasonable and just. And when China behaves contrary to accepted norms, or to the rule of law, we must not look the other way.

But we also must not fail to recognize China's importance to the United States and the rest of the world. And to engage China, we must understand China. This is a vast and old nation. When Kublai Khan conquered southern China in 1279, he presided over the largest empire the world had ever seen. And at that time the Chinese empire was already 1,500 years old, and Chinese history 2,500 years old. Today's People's Republic of China is the world's most populous nation, accounting for one-fifth of humanity; a nuclear power; and one of the world's fastest-growing economies.

It is also a diverse nation. China is a mosaic of language, religion and culture. The majority of its 1.2 billion population are Han. The remaining 70 million people belong to 55 different ethnic minorities. China has eight major languages and 600 dialects. Yet we often think of China as one mind, one voice. China has many voices.

Those who have not traveled to China may find it hard to truly grasp the differences in lifestyles. How many Americans today live without a telephone? Many have two or more. In China, one in four homes has telecommunications capability. And about six out of ten have a radio.

The average per-capita income in China is estimated at $360 to $700. Yet it is possible that in the next century China will become the world's largest economy. At the same time, it will continue to face enormous problems of unemployment, overpopulation, a low level of education, and poverty.

Now is the time for the United States to help bring China into the 21st Century. Now is the time to engage China with great expectations. In the areas of weapons proliferation, Most Favored Nation Trading status and the World Trade Organization. And with human rights and the environment.

Mr. President, Secretary Albright recently stated that "we have an abiding political interest in a region whose cooperation we seek in responding to the new global threats of proliferation, terrorism, illegal narcotics, and the degradation of our environment. And we have an abiding interest as Americans in supporting democracy and respect for human rights in this, the most populous region of the world."

Our relationship with China will be essential to all these interests. And we must begin with peace and security, because our diplomatic and security interests in China are critical to maintaining a peaceful and strategic relationship in Asia, as recent events in the Taiwan Strait, South Asia and the Korean Peninsula show.

China regards our Taiwan policy as the most critical and sensitive issue in this relationship. So while we must treat Taiwan policy with great care, our historic policy, based on commitments to Taiwan's security through the Taiwan Relations Act, and our commitments to acknowledge China's view of sovereignty under our three Joint Communiques, remains sound today. And the events of the past few years show that. China has made its point about how seriously it views independence in the crisis of 1996; and former Secretary Perry made our point about Chinese threats of military force.

Today the situation has calmed. Taiwan and China are beginning to talk once again. And we can, with caution and foresight from all three sides, expect if not reconciliation, at least stability in the Taiwan Strait. We need make no major changes, and in particular should avoid deals at Taiwan's expense as relations with China improve.

For us, the division of the Korean Peninsula, and the continuing threat posed by the 1.2-million-man North Korean Army just above the demilitarized zone, is equally sensitive. In fact, this is the only issue that ever brought the U.S. and China to war

And to maintain the peace, we need a cooperative working relationship with China; and on this issue we have it. China is doing precisely what we hope it will do. It offers the North Koreans advice that only a one-time ally can give. It provides food aid. And it does what it can to move the four-party talks ahead, even if that is limited to figuring out seating and handshake arrangements that the two Koreas will accept.

Then let us look to the spread of nuclear weapons in South Asia. This has created an immense danger for the world of a breakdown in the Non-Proliferation Treaty; an immediate danger of war between India and Pakistan; and a new strategic question for China, as the Indian government has indicated that its decision to test nuclear weapons was due to fears about China.

China's potential as a positive mediator in South Asia cannot be underestimated. I remain concerned that China may have contributed to the arms race by aiding Pakistan in its development

of a nuclear device. It is incumbent on all nations to prevent the spread of nuclear weapons, and we must hold China to its signed commitments on this issue. Just as China worked constructively to avert further spread of the recent Asian currency crisis, so too must it be expected to work towards preventing the further proliferation nuclear arms in Asia.

Mr. President, before I speak about the issue of China and trade, let me say a few words regarding the recent flap over satellite launches.

First, the concept of allowing China to launch American satellites is sound. It can be done without transferring technology useful for ICBMs. And to suggest that we would willingly facilitate the process of other countries launching ICBMs does not make any sense.

However, the controversy over this question indicates the large emerging question of a proper approach to the rapid advance of technology from military to commercial fields. This is the basic question not only in satellite launches but in software encryption, technology exports and many other issues. Our country needs a strategic approach to the entire question, and the time to begin is now. With respect to the specific question of satellite launches, if oversight was weak, we should strengthen our policy. If any American companies broke the law they should be punished. But derailing potential progress in U.S.-China relations does not improve the situation one iota.

The second thing we need is a fair, mutually beneficial economic relationship. And that begins with the most urgent question—the Asian financial crisis.

I think China's performance—along with that of the Hong Kong S.A.R. government—during the Asian financial crisis has been impressive. With Southeast Asia's currencies suffering, China's competing exports are under intense pressure. A devaluation of the yuan could ease life for many Chinese businesses. But it would start a new panic in the currency market, just as Thailand, South Korea, the Philippines and other Asian nations are beginning to rebuild from last year's collapse. Up to now, China and Hong Kong have remained committed to avoid devaluations. And if Asia recovers this year, it will be in no small part because of China and Hong Kong.

We also need a stable bilateral trade relationship. And the foundation for this relationship is Most Favored Nation Status.

President Clinton has just put forth his annual request for renewal of Most Favored Nation status for the Republic of China. Not surprisingly, this request has been greeted with suggestions that the United States should use MFN as a tool. As a weapon, to convince China into making dramatic reforms. It is not. It is the foundation of commercial relations and should be left alone.

As Winston Churchill once said: "A pessimist sees the difficulty in every opportunity. An optimist sees the opportunity in every difficulty." Those are good words to live by. I stand here today because I believe that we should use MFN as our way of helping China address its internal reforms while preparing for its accession to the World Trade Organization.

I do not believe that an open trade policy means Americans should be indifferent to human rights abuses in China. The United States should take a strong stand against serious infractions against workers, dissidents, women and children. But restrictions, such as the denial of MFN trading status or the use of sanctions that hurt Chinese people and fail to directly punish the abusers of power, do little to encourage social reconstruction on the mainland.

In fact we should do the opposite. We should give China unconditional MFN trading status, upon China's accession to the World Trade Organization. I have long promoted this process. And I will do so again as we prepare for this historic summit. The extension of permanent MFN status to China would benefit both of our countries. It would reduce uncertainty in our trade relations. It would increase the chances of China moving to a more open economy. In addition, it would ensure that the U.S. is able to benefit fully from the economic liberalization measures that China must adopt in order to be accepted as a WTO member.

Finally, we need a fair trade relationship. China's market should be as open to our goods and services as we are to theirs. And today it is not. In this case, the numbers speak for themselves. It may be true that we have a large and growing deficit with China. At the same time, U.S. exports to China have increased from $11.7 billion in 1995 to $12.8 billion in 1997. In the first quarter of 1998, our exports have reached $3.3 billion. My home state of Montana exported $6.2 million worth of products to China just last year.

Furthermore, our agriculture industry relies on Asia. Ag exports to Asia constitute 40 percent of all agricultural exports. In the United States we produce more than we could ever possibly consume. Our agricultural producers simply cannot survive without markets in China and the Pacific Rim.

Our economic goals and China's economic goals are not so far apart. China seeks a working market economy for China's people. We seek that as well. We want a fair and open market for our goods and services. Yet we continue to face the startling implications of the trade imbalance between the United States and China—our deficit is almost $50 billion and growing.

British writer G.K. Chesterson once said: "Do not free a camel from the burden of his hump; you may be freeing him from being a camel." We cannot change China to make its leaders think like Americans, act like Americans, and participate in the world marketplace like Americans. We should accept our differences. But we must insist on a minimum standard of behavior.

We must continually push for the elimination of unfair trade barriers, such as the phony ban on Pacific Northwest wheat due to TCK smut. We must encourage private investment over State-Owned Enterprises. We must fight for market transparency. We must insist that President Jiang Zemin and Premier Zhu Rongji open China to more U.S. imports. And the way to do that is a commercially meaningful accession for China to the WTO.

This is in everyone's best interest. It is good for China and it is good for the United States for the world's largest country to become a member of the WTO.

But the accession is going too slowly. It is not good enough to wait for China to reach internal consensus on WTO membership. We need to show China that the status quo is not acceptable. I believe that by engaging China, we can help China's reformers balance internal change and global opening. This does not mean delivering WTO carte blanche. Rather, the Administration and Congress should pursue a three-pronged approach to serious engagement.

First, the United States must give China a material incentive to enter the WTO. The Administration should endorse, and Congress should pass, a law to make permanent MFN status automatic when China enters the WTO.

Second, the United States should target China's moral incentive to enter the WTO. With our bilateral talks on Taiwan's WTO membership complete, the Administration should push for Taiwan's rapid entry into the WTO, regardless of where talks stand with China.

Third, the United States must convince China that unnecessary delay in entering the WTO is costly and counterproductive. Distribution and market access are just two issues that farmers and traders want fixed. At the same time, we want to make certain that China will be able to agree to, live with and abide by a signed agreement. If talks remain stagnant after President Clinton's visit to China at the end of this month, we should strongly consider opening a broad market access case under Section 301 of our trade law. It should begin with the areas where China is violating our 1992 agreement. It should set a deadline for sanctions if they do not shape up.

Let me now turn to our third goal: a decent world to live in.

President Clinton is right to go to Tiananmen Square when he visits China this month. But he will also be right to speak out on human rights and the rule of law.

It is a sad fact that those who would speak out against the government are still in danger of being imprisoned or subject to house arrest. Just as China will be expected to abide by the standards of nuclear non-proliferation and the WTO, it also should be expected to live up to the international standards of human rights, beginning with the Universal Declaration of Human Rights.

Although I welcome the recent release of political prisoners Wang Dan and Wei Jingsheng, I am disheartened that they are subject to a de facto exile, unable to return to their homeland because of their political activities. Upwards of 2,000 political prisoners remain in China, imprisoned for the simple expression of their beliefs.

Mr. President, Americans hold freedom of expression as one of their most cherished rights. It is a prerogative that is all too often denied the Chinese people, but one that I view as essential to that country's political and economic viability. Where ideas are suppressed, creativity and innovation are lost. And we need look no further than the world's leading economy to see the importance of innovation and expression. America's economic power is indicative of its political and economic freedom and the extent to which ideas and innovation are exchanged. It is true that China's economic success in the last 20 years is impressive. But how far can innovation and growth proceed in the absence of true freedom to carry out discourse and exchange ideas? The global marketplace grows increasingly competitive every day. China and the rest of the world stand to lose if that great country's people aren't allowed maximum ability to express, innovate and progress.

Finally, Mr. President, we must also engage China when it comes to environmental concerns. As economies develop throughout the world, they use more fossil fuels. Of course, with increased usage often comes significant pollution. Nowhere is that more true than in China. In the coming years, China will likely burn more fossil fuels, dispose of more chemical and industrial waste and emit more carbon dioxide than any country in the world. As economic growth in China accelerates, demand for electricity and the coal used to generate it will also increase.

Mr. President, 9 of the last 11 years have been the warmest of the 20th century. If the emissions from China's burgeoning power plants are not subject to controls, our efforts to prevent global warming will be undermined. China is part of the problem, and should be part of the solution. Although this is true for all developing nations, it is especially true for China, its appetite for hydrocarbons being what it is

When I worked on the Clean Air Act 1990, emissions trading was proposed as an alternative to inflexible, across-the-board efforts to control emissions. Initial reports indicate that the system of emissions trading works. I am interested in possibly applying the concept on a global scale, to include developing countries such as China.

Again, Mr. President, if we are to minimize the impact of these outputs, the United States must engage China in a cooperative relationship. We must do it in the areas of environmental protection, international security, human rights and trade. Although I agree with the Chinese proverb that says, "It is better to light a candle than curse the darkness," I also think that the words of that great American Henry Ford are apropos here: "Coming together is a beginning, staying together is progress, and working together is success." Mr. President, the United States and China have come together. For our benefit and that of the rest of the world, let us continue to work together for success.

Finally, Mr. President, let me say a few words about the approach I see developing in Congress.

We have not covered ourselves with glory recently. We have not passed our IMF replenishment. We have not passed our UN dues. We have not passed the Comprehensive Test Ban Treaty. We have not passed fast track. And some have seen the recent satellite launch controversy as an opportunity to make points in domestic politics.

This is not the way a great power behaves. We have serious responsibilities in our foreign affairs—whether in peace and security, in economics and trade, human rights or environmental protection. And we diminish our institution at home, and our country abroad, if we do not take these responsibilities seriously.

We have time to fix our deficiencies. But it is not unlimited time, and as we see in South Asia; in Hong Kong; in Korea; events will not wait for us. So as the President makes this historic trip, let us reflect a little more deeply on ourselves, on our responsibilities, and on what we can do for our national, rather than political, interest.

Thank you, Mr. President, and I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Texas.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2689

Mr. GRAMM. Mr. President, I know our dear colleague from Nebraska is here to speak, and I will try to be brief. I do not want to hold him up, knowing he has something we need to hear and I am eager to hear it. But I want to talk just a moment about the pending amendment.

Let me remind my colleagues that in this bill before us, one of the things the proponents of the bill say is good about the bill is that it transfers money to the States. While this bill allows attorneys to be paid $92,000 an hour, while this bill provides $18,615.55 per Native American who smokes for smoker abatement, while this bill pays farmers $21,000 an acre who are currently under the tobacco program while allowing them to keep their land and to continue to farm tobacco, we are told that at least a good thing about the bill is that it gives money back to the States.

However, when you open up the bill to page 201, you find that we do give money back to the States, but only half the money can be spent by the States as they choose to spend it. Basically this bill dictates Federal mandates as to how the other half of the money has to be spent.

The bill requires that "a State shall use not less than 50 percent of the amount received" for the following kinds of programs: maternal and child health services block grant, child care under section 418 of the Social Security Act, federally funded child welfare and abuse programs under title IV–B of the Social Security Act, programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title 19 part B of the Public Health Service Act, the Department of Education Dwight D. Eisenhower Professional Development Program under title II.

It is obvious that there is some lobbyist somewhere who has all these pet programs and is now having the Federal Government dictate to the State of Texas and to other States in the Union how they are supposed to spend the money that they are getting under this tobacco settlement.

If this weren't bad enough, if this weren't outrageous enough, now Senator KERRY and others come along and say, "Well, this is not enough. What we are going to do in addition to all these things is we are going to tell the States that they have to spend half of 50% on a specific program. "A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act."

In other words, not only are we making them do all these things, but now Senator KERRY and others want to say that 50 percent of the 50 percent that we are forcing the states to allocate has to go for this one particular use.

Yesterday and the day before, we went back and forth with amendments.

Senator COVERDELL got to offer a real amendment to try to target drug use among teenagers, and those who were opposed to it got to offer their supposed alternative. Yesterday, I offered an amendment to give a third of the money back to moderate-income working people by repealing the marriage penalty, and those who were opposed to it got a chance to offer their alternative. I have an amendment that will eliminate all the restrictions in the bill related to the Federal Government telling the States how to spend this money.

I want to make it clear I don't intend to see this Kerry amendment voted on up or down until I have an opportunity to offer my alternative. My amendment takes all these earmarks out of the bill and gives the Members of the Senate the opportunity to decide if they want to serve in the State legislature and allocate State moneys, or do they want to be U.S. Senators? If I wanted to tell the State of Texas how to spend money, I would have run for the Texas Senate or for the Texas Legislature. I didn't run for the Texas Legislature. I never served in State government, and I don't want to get into State government now by trying to tell my State how they have to spend this money.

We can have a motion to table this Kerry amendment. But, if it is not tabled, before this amendment is going to come to a final vote, I want to have the right to offer my alternative and give the Senate, as we did on drugs, as we did on taxes, two alternatives: One, do more to make the States spend the money they get under the bill the way Congress and all these special interest groups that have written this bill dictate it should be spent; or, two, rip out all the provisions of the bill relating to mandating how the States spend the money and let the States spend the money as they choose to spend the money.

I think the Senate ought to have that choice, not a choice between a bad provision and making it worse, but a choice between making it worse and getting rid of the whole process of telling the States how to spend their money.

I thank the Senator from Nebraska for his patience, and I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, first of all, let me say I appreciate the suggestion the Senator from Texas just made, because I intend to do approximately the same thing, only with the entire piece of legislation. Perhaps I am the only Member of the Senate who is becoming increasingly confused about what is in this bill. Perhaps everybody is crystal clear. I am not.

As I understand it, the tobacco companies will be required under law to pay into a trust fund, $15 billion in the first year, growing to $23 billion. If I were to make an inquiry, I suspect, of the managers of the bill right now as to what is in this bill, I am not sure I would like the answer.

What we have been doing since the bill was introduced is we have been deciding how we are going to allocate that money. As I understand it, the amendment of the Senator from Texas, which was accepted, will allocate a piece of that money for tax cuts, and the amendment of the Senator from Georgia will allocate a piece of that $15 billion to $23 billion for antidrug efforts, drugs other than nicotine.

What the Senator from Massachusetts and the Senator from Missouri, Senator BOND, have is an amendment before this body that will allocate an additional amount for child care. What the Senator from Texas is saying is he wants to have all that money undesignated. So do I, only I believe that a substantial portion of the $15 billion to $23 billion needs to be allocated in as unrestricted a fashion as possible to the States so that we can help people who choose to stop smoking stop smoking.

I appreciate that many Americans do not want to stop smoking. And if they have the freedom to choose, with full disclosure of what is in the substance, fine. Choose, and let the substance do to you what it is going to do.

However, I have approximately 350,000 Nebraskans who smoke, and they spend about $250 million a year on cigarettes alone, they smoke over 100 million packages of cigarettes a year. My belief is, if we organize this correctly, we can help those who choose to stop smoking stop.

We now know that nicotine is addictive. That is one of the reasons the tobacco industry was willing, on June 20, 1997, to say that, "We will pay in $15 billion a year as well as a $50 billion punitive damage payment." Indeed the 37 million documents in the Minnesota case showed far worse.

Yesterday, as we all know, a case in Florida was decided in the favor of an individual. I listened to a member of the jury this morning on television say he voted to give this individual damages because the tobacco industry is still saying that nicotine is not addictive, still saying it does not produce a powerful physical addiction.

Now, back when dinosaurs roamed the Earth, I was a pharmacist. That was 1961 to 1965. I went to the University of Nebraska and graduated with a degree in pharmacy. I was given a physical examination by the Government and served time in the Navy, so I did not have a chance to practice very much. But in those days we understood addiction. We were trained to study it.

So I am impressed with nicotine as a drug, because it crosses the blood-brain barrier and it is a powerful addictive substance. It is not just habit forming; it is as addictive, according to scientists, as cocaine, as heroin, and other drugs that produce such a strong physical pull on an individual that about a month ago a former mayor of Omaha, Gene Leahy, a wonderful human being, announced he is dying of lung cancer; and at the press conference he was smoking a cigarette because he can't stop. It isn't that he is choosing to smoke cigarettes; he has no choice; he is addicted to the nicotine.

So I have 350,000 people in Nebraska who smoke, who spend hundreds of millions of dollars a year on cigarettes. By my calculations, if they are spending all that money, and if we are asking them to pay all of this additional money to continue to smoke, we ought to at least offer to help those who want to quit, quit. And if we can help them stop smoking—not only are they going to become healthier as a result of that help, they are going to be more prosperous because they are not spending money on tobacco anymore.

I have never been convinced by the arguments that simply raising the price of cigarettes is going to dramatically reduce smoking. Not if you are addicted. What does the price increase of cocaine do to an addict? They just steal the money and buy the substance. If it is an addictive substance, I do not care what the price is—a person is addicted to it—they are going to do what is necessary to buy the product. That is what we are dealing with.

What we are doing with this piece of legislation, as I see it, is we are nicking away at the money raised as a result of this bill's increase in the price of cigarettes and thereby decreasing the chance we have to help those individuals who want to stop smoking not only become healthier but to become more prosperous. Again, the funds raised by this bill should be spent on reducing the number of people who are smoking in this country. In Nebraska, we should be concerned about reducing dollars spent on cigarettes from say $250 to $200 million—which is a relatively modest though difficult goal to achieve. And while it may not sound like an enormous decrease, it is a quarter of a billion dollars every 5 years into the pockets of those individuals.

So all the talk about this being a tax increase, to me, is misleading. It takes us in the wrong direction, puts us on the slippery slope of cutting taxes instead of reducing smoking. What we ought to be trying to do is cut people away from an addictive substance that, taken as directed, would decrease their chance of living a long and healthy life and decrease their chance, as well, of getting a shot at the American dream of having a little bit of prosperity.

One of my friends in life is an extremely conservative businessperson. He will not hire anybody who smokes. I understand that the U.S. Chamber of

Commerce opposes this legislation. I am a member of the Chamber of Commerce in my business. I think they are wrong. I think they have looked at this thing only as a tax increase, because some are describing it as that, and they are not understanding that if their employees decrease their addiction to this substance, that they are healthier. And if they are healthier, the cost of their insurance goes down, their absentee rates go down.

Everybody who has employees working for them wants their employees to be as healthy as possible. The Chamber of Commerce, in my judgment, and the National Restaurant Association are missing the point. If there is cessation money in this bill, I can go to Nebraska and appeal to the business community, to the Nebraska restaurant association, to the Nebraska Chamber of Commerce, and say, "Let's get involved with this cause of helping the people in Nebraska who want to quit, quit." You say, "Well, that ought to be easy enough to stop." Mr. President, again, it is addictive, and to stop and to get off an addiction is not an easy thing to do. As a result, it is extremely hard for these people to not pay the price increase being imposed on them—they have a physical need for the product.

And it is made even more difficult—I have met, on a number of occasions now, with Nebraskans who smoke, especially with young people who smoke; and one of the interesting things that I acquire from those conversations is an answer to the question, "Why don't you just do smoking cessation if you want to stop?" And one of the answers is, it is not only easier, it is cheaper to smoke than to stop smoking.

Most places where you buy cigarettes, they are right there in the open. They are right there in the open. You can go and buy them for a current per pack price of about $2.50.

But if you want to stop smoking—as we all know who have had friends who have either been addicted to this substance or addicted to alcohol or addicted to other sorts of substances, who are trying to get off the urge—the desire for this substance comes back. You need much more than just an opportunity to buy.

But go into a store, go into any store in your home State, and try to buy a smoking cessation kit. No. 1, you are going to find out that it is substantially more expensive than a pack of cigarettes. For lower-income people, who tend to smoke in higher percentages, it is a barrier. And it is especially a barrier as I have talked to young people who say they simply do not have the out-of-pocket money to be able to buy it. So it is easier for them to buy cigarettes. The physical environment for buying smoking cessation kits in stores is more difficult, oftentimes kept under lock and key.

So as I see this legislation, the original purpose of the legislation was to collect from the tobacco companies a fee, which started at $15 billion, and increased to $23 billion as a result of the Minnesota court decision, to help adults who want to quit, quit as well as to stop young people from smoking. That is a laudable goal—40 percent of my underage teenagers in Nebraska smoke; one out of three of them will die prematurely as a consequence. A very high percentage of them believe they are going to stop, even though all the statistics show that they do not stop because they are addicted. They do not understand the nature of addiction. They do not understand that nicotine is addictive. They have been told otherwise by the tobacco companies for all of these years.

So, Mr. President, I have heard the distinguished Senator from Texas say that before he will allow a vote on this amendment by Senator KERRY and Senator BOND, which seems like an altogether reasonable amendment to me—at least it puts money into children; he wants an agreement that he is going to get a vote on his amendment.

Well, I want the same. I am here to say that I will insist on the same, an amendment that allows us to say that this legislation will give each of our States a designated amount of money, that we will know what that amount of money is going to be, for a block grant that will go for smoking prevention and cessation. Let the States decide. I do not believe any of us really understands what it is going to take to get people to stop smoking. I think the people at the community level understand it an awful lot better.

It is not going to be easy to get the job done. My amendment would create a single block grant, not only to help young people not to smoke, but also to help those who currently smoke to stop. I believe it will make our people not only healthier, as a consequence of getting off an addiction that causes them to have significant health care problems, but it will also make them more prosperous by decreasing the amount of money they are spending on a substance that, taken as directed, will make them unhealthy.

So the Senator from Texas gave me an excellent idea. I had not intended on doing that when I came to the floor. One of the things I am trying to get to is—as I said earlier, I am confused about what is left in this bill. I understood it in the beginning that it was a $15 billion fee from the tobacco companies, growing to $23 billion; that 26 percent of it was going to be allocated to research; that 16 percent of it was going to be allocated to farmers; that 40 percent of it was going to be allocated to States; and the balance was going to be allocated to public health for education, cessation. As I understand it, of the total amount only 6 percent would go to smoking cessation programs.

As I said, I had drafted an amendment that would have taken a significant portion—46 percent—of the funds raised by this legislation and given it to the States in a single smoking cessation and prevention block grant.

I have prepared numbers that show what every single State would get under this block grant designed to work to reduce those people who are addicted to smoking, reduce their health care costs, and increase their prosperity by helping them kick the habit and get off of an addiction that is not only costing them their health but also costing them a great deal of money.

I will insist on my amendment that will restore the money that was taken out of the $23 billion in the Gramm amendment, that will restore the money that was taken out with the Coverdell amendment, that will restore any other money that is taken out.

I believe if this bill is going to be effective, if it is going to help us organize the coalitions at the community level to help Americans become healthier and more prosperous, we have to help especially those adults who are addicted to a substance that is extremely difficult to kick.

One of the most frustrating things I am dealing with right now on this piece of legislation is I don't know what is in it. I believe before we proceed further with any additional amendments we need to know how that $15 to $23 billion is allocated. I heard some who are arguing in favor of the amendment of the distinguished Senator from Texas having to do with the marriage penalty, that we would still have 40 percent going to the States. It is 40 percent of a much smaller number. Forty percent of the people on the floor of this chamber is a much smaller number than forty percent of the people in this country.

My math tells me the best way to look at this is to start off and say, $15 billion coming from the tobacco companies, growing to $23 billion, how much is going to be designated under this law for various items? At this stage of the game, I am not able to get an answer. I understand that the managers of the bill are going to try to crunch the numbers and give us an answer, but I don't think we can seriously consider it unless we presume we will accept every single amendment and write the bill in conference, which I think is a bad way of doing things.

Our most distinguished Senator, George Norris, served in this body for a number years. He went back to Nebraska, hating the conference committee—hating the process by which House and Senate differences are resolved. We keep hearing that the problems with this bill can be fixed in conference, that a conference committee

will take care of them. That is undemocratic. We should not be writing a piece of legislation as important as this one in a conference committee. I think it is a very bad thing to do, and I think we need to consider every single amendment that is brought down here as seriously as possible, based upon an understanding of what is in the bill.

I do not know what is in this bill right now. I do not know how the $15 to $23 billion is being allocated. I know every single amendment that has been passed has changed that allocation, but I don't know what we are left with. I knew prior but I don't know now. I am hopeful we are able to get that.

I will declare, as the Senator from Texas did, that before we have a vote on the Kerry-Bond amendment, which I support, I want to vote on my amendment which will take this bill back to what I think it was originally intended to do, which is to reduce addiction in the United States of America on a substance called nicotine, that we discovered on the 20th of June, 1997, is addictive.

For those who understand the nature of addiction, it is a very serious public health problem. I thought we were going to try to solve a very serious public health problem. I thought we were going to try to empower our citizens to participate in solving that problem, as well. I hope that at some point in this debate we are able to get back to that.

As I said, I appreciate very much that there is a lot of enthusiasm to move this thing along. I read in the paper we have dealt with this controversial tax issue and all that is left is the controversial farm provision—we just deal with that thing and this thing will move out and put pressure on the House then to pass it. All of that legislative process confuses me, let alone confuses the people I represent. What they are not confused about is their desire to have an opportunity to improve their health and improve their prosperity through this legislation. As I see it, we decrease the chances of that happening with the amendments that have been agreed to thus far.

I have come to the floor to ask for two things, and I hope at some point I can get them. One, what is in the bill? How is that $15 to $23 billion allocated? How much goes to the reduction in tax in the marriage penalty and whatever else was in the Gramm amendment? How much of it goes now to fight the war on drugs? For gosh sakes, we don't have the political courage to put enough money in the drug war on our own without taking it from this bill—I don't understand that, frankly. How much is now going to the war on drugs? How much will be going to child care under the Kerry-Bond amendment? I want to know what the lay of the land is.

Second, I will insist, as the Senator from Texas has just done, that my amendment be considered as well, that we convert this bill into what it was intended to do in the first place, and that is to give our people at the community level the opportunity to fight this war against nicotine addiction. I believe when we win this war, this piece of legislation is going to be seen as a very important piece of legislation. But if we don't win this war, if all we do is go home and issue press releases saying I cut your taxes, I gave you some more money for this and some more money for that, then it seems to me, Mr. President, that whatever else it is that we get done through those peripheral efforts, we will have not empowered the people in our States and our communities to be able to fight a battle that we now know—and, indeed, I argue one of the problems we are having is we don't know the full ramifications and details of all of the new information that we have since the 20th of June, 1997—about the seriousness of this health care problem.

I am hopeful, as I said, that not only can I get the information about what is in the bill right now, but I will hopefully not offend too many by insisting, as the Senator from Texas has, that my amendment be given an opportunity to be voted on at the same time that the Kerry-Bond amendment is considered.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent to address the Senator for 15 minutes on the bill and the underlying amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON. Mr. President, I take this opportunity to talk about the underlying bill and the Kerry amendment that is pending. This is, obviously, the most serious effort ever by any Congress to address the critical public health issue of smoking.

Now, what has brought us to this point? Obviously, the historic settlement negotiated last year by the States and the tobacco industry provided the most incentive for this, but the tremendous success of several States—and I particularly note the State of Minnesota and their attorney general, Skip Humphrey, in aggressively pursuing their claims against the tobacco industry—has revealed what has been the massive deception that underlies the tobacco industry's traditional position.

It has been now conclusively demonstrated that tobacco is, in fact, addictive. That is a claim which the tobacco industry had consistently denied and, frankly, covered up. We have learned that the tobacco industry has targeted children to addict them to tobacco products, another claim that the tobacco industry has lied and covered up. We have also learned if you do not start smoking when you are underage, it is unlikely that you will ever become addicted to tobacco. All the more reason, then, all the more incentive, then, for some to try to addict children to this product.

I support adult choices and adult responsibility, but when an industry targets kids, knowing full well the children are vulnerable to addiction, and then argues for adult choice, it is time for this Congress to step up and protect our kids.

I don't need to recite the statistics that everyone in this Chamber has heard the past couple of weeks now. Let me just say this: 3,000 children start smoking every day; 1,000 of them will die prematurely due to this addiction. Every day we delay this process, we sentence another 1,000 children in America to die early.

There are many critical amendments to be reviewed and debated, but let us not lose sight of the fact that we have to act now. There is an urgency to act now. Any further delay would be unconscionable. The lives of our children are at stake, literally. We must protect them from the predatory industry that views youth as "our replacement smokers" good for many decades of addiction to their deadly product.

Cigarettes are one of the most heavily marketed consumer products in our country. Tobacco companies currently spend almost $6 billion a year to promote and advertise products, and they have increased their spending by more than 12 times since 1971, when advertising on radio and television was banned.

Children are, obviously, the most vulnerable to tobacco company tactics. They have targeted kids because of this vulnerability to nicotine addiction, and they are the most easily affected by slick advertising and promotional ploys. The evidence is overwhelming that smoking is a pediatric disease. I support a comprehensive approach to ensure success in our efforts to protect kids. For every 10 cents added to the price of cigarettes, approximately 700,000 fewer teens will begin smoking.

To further promote public health, I have supported investment in public health and research. We must maintain and support FDA authority to restrict advertising directed at teens. Finally, we have to strengthen the look-back provisions and, ultimately, hold tobacco companies responsible for their efforts to addict kids. These important decisions will influence companies to stop marketing to children with advertising and promotional techniques.

I commend my colleagues on both sides of the aisle who have supported our efforts to address this critically important issue.

My own State of South Dakota holds the dubious distinction of having the

second-highest rate of underage tobacco use in America. Now, I am committed to doing what I can to see these rates reduced.

Almost one out of every nine high school boys in my State will die prematurely from tobacco use. Of the teenagers in our State, we can now expect 15,000 South Dakota teenagers to die early because of their tobacco use. These odds are way too high to be permitted or to be tolerated by this body. The expeditious passage of this tobacco bill will have a real and immediate impact on releasing those rates. We cannot delay any longer. I am also pleased that as we debate this issue, Senator KERRY, Senator BOND, and others, have joined in an effort, which I have joined in as well, to direct a modest portion of the revenue generated for child care purposes.

I appreciate that there has been a significant debate on the floor of this body on the use of revenue generated by this legislation. I think it is correct that this legislation ought to be directed at cessation of smoking and tobacco use and not as a revenue generator. However, the reality is that any realistic bill that has a chance of reducing tobacco usage will generate revenue, and this body has a responsibility of determining how best, then, to use that amount of revenue generated—some $62 billion over the first 5 years.

It makes sense to me the first emphasis ought to be on health care, reimbursing the States, clearly, for the health care expenses they have incurred. It makes sense to me that there ought to be a high emphasis on medical research, on cancer, lung cancer, heart disease, and other diseases that are smoking-related. There ought to be a huge effort in that direction. There ought to be an effort and a priority for smoking cessation programs. But it also seems to me that some of these dollars ought to roll back to families and to children through some tax relief. No doubt, that will be a part of the package. But I think it is a mistake to include a tax package that is so enormous that it drains, overall, the revenue, or a large share of the revenue that could otherwise have been utilized for medical research, help for the States, smoking cessation, or for child care. I think there needs to be a balance in that regard.

I am particularly troubled by the amendment that was passed yesterday, which would, in fact, not only drain these resources away, but would ultimately dip into the budget surpluses and, in fact, Social Security surpluses to make good on its obligation. But I believe that if we can use the revenue that Senators KERRY and DODD have proposed, it would go a long way toward promoting at least a portion of the goals of our Early Childhood Development Act, which I have cosponsored with them.

This amendment, if adopted, would go a significant way toward assisting working families, recognizing the reality that more and more families now have both parents in the workforce, and in the case of single-parent families, quality child care is all the more essential. Each day, an estimated 13 million children younger than 6 years old, including 6 million toddlers, spend all or part of their day in child care of some form, and child care experts tell us it easily costs between $4,000 and $10,000 a year for a child.

Now, augmenting the block grants to the States where we do not create a Federal bureaucracy, we do not federalize child care, we do not run things from Washington, but we give the resources necessary for States to devise their own innovative, strong child care strategies, makes all the sense in the world, particularly given the fact that, as I have held child care meetings all around the State of South Dakota, it has become obvious to me that not only do people have too few choices—quality choices—but all too often the child care providers themselves find themselves on the economic edge, with good people leaving that particular profession because of the low salaries and the high stress of that particular occupation. So we have children at the most vulnerable point in their lives, where the greatest share of brain development is taking place in the course of their lives, with a patchwork system that has simply not received the national attention it deserves. This amendment would go a long way toward augmenting the child care options, the affordable quality options that working parents in our country deserve to have.

I appreciate that there are people in this body and around the country on the far political right who seem to lie awake nights worrying that somehow this legislation may generate the resources essential for the Government to actually do something for kids. I don't lie awake nights worrying about that. I worry about how can we work on a partnership basis with States, local governments, and private organizations to provide more affordable and quality options for child care and improve the health of the next generation of Americans. I think that is the underlying concern. For that reason, I am very supportive of this amendment and the underlying bill.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, my understanding is that we may have a vote soon on the amendment, so I will take a couple of minutes. My colleague from Massachusetts is here and others are here on the floor. Let me just say that I am honored to be a part of this effort and to join with Senators KERRY and BOND. And I appreciate the words spoken by my colleague from South Dakota.

Mr. President, I will try to be succinct. The focus of this legislation is children. The focus of this legislation is, of course, to go after the addiction of children to tobacco, to focus on cessation programs, to focus on the goal of making sure that we don't have children addicted to this very lethal drug any longer, and to make sure that we, in fact, focus on the overall health of children in our country, and that we focus on ways in which children cannot only be healthy, but have hope and can do well in school and do well in their lives.

In that respect, I think this amendment is right on point, right on target. We are talking about at least trying to make sure that about $6 billion-plus over the next 5 years would go to early childhood development, both for children before they go to kindergarten and also for afterschool care.

I will just raise two questions in 2 minutes. No. 1, to tell you the truth—that is an interesting expression; it is not like everything else I have said has not been the truth—but to tell you the truth, I don't even know why it is that for some reason, somebody decided the only way we are going to have funding for child care in this country is out of a tobacco bill. I think if we really care about this, we are going to make the investment. But I also believe this is a very appropriate vehicle on which to have this focus. As my colleague from South Dakota said—and I know my colleague from Massachusetts will focus on this—we have all this research, and the Federal evidence is irrefutable, irreducible. We have to make sure that children by the age of 3 are ready for school and ready for life. If they are not, they may never do well in school; they may never do well in their lives.

What more important investment, what more important feature of this legislation could we support than to make sure we invest in the health, skills, intellect, and character of our children? That is what this is about. It is related to how they feel about themselves, their confidence—both early childhood development before kindergarten and afterschool care. That is also related to the question of whether or not they care enough about themselves and feel good enough about themselves that they don't get addicted to tobacco and that they think about a positive life, about a healthy life, and about what they are going to do in their lives.

This is an extremely important amendment which goes to the heart of what this legislation is supposed to be all about—public health, focusing on the improvement and the betterment of our children's lives, and all of these children are God's children.

This amendment should pass. It is a bipartisan effort. I am very pleased to be on the floor supporting it.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I strongly support the Kerry/Bond Youth Smoking Reduction Amendment. This year has featured hearings, press conferences, and legislation from both sides of the aisle promoting children's programs. Over 50 bills have been introduced to improve childhood development and afterschool programs. Headlines have focused the nation's attention on the difficulties that many parents face in finding quality care for their children. The struggle for decent child care is a daily fact of life that all working families understand, regardless of their income. Yet millions of families today cannot afford the child care they need in order to raise, and protect their children.

Both Republicans and Democrats agree that the number one goal of this tobacco bill ought to be protecting our children and reducing teenage smoking. Rightly, so. Millions of young lives hang in the balance. Every piece of tobacco legislation that has been introduced is intended to help children. Republicans have called their bills "Placing Restraints on Tobacco's Endangerment of Children and Teens Act" and the "Kids Deserve Freedom from Tobacco Act." Democrats have introduced the "Healthy Kids Act." It's time to make this legislation reflect the rhetoric about children.

Senator GRAMS was right when he recently explained why he will not support the tobacco settlement—"It's not about protecting kids from tobacco, because if it were, the dollars the federal government collects would go to the kids."

I agree that these funds should be used for early childhood development, child care and afterschool programs—programs that directly help kids. These programs are effective ways to curb teen smoking and promote a healthy future for our children. It's time to stand up for the nation's children, and stand against the tobacco industry.

During this debate, there has been a great deal of discussion about restricting tobacco advertising and increasing the price of cigarettes. Both steps are intended to curb teenage smoking, and both will help to do just that. But there are other steps we can take as well to deal with realities that make children vulnerable to the lure of tobacco. By investing in essential early childhood development and care that can really help us save children from the dangers of smoking.

The purpose of this tobacco legislation is to help children and to stop teenage smoking. For more than a generation, the tobacco industry has been profiteering by abusing the nation's children, stunting their growth and stealing their futures. The full dimension of this cynical tobacco industry strategy is finally becoming clear. The avalanche of secret industry documents disclosed in recent months reveals a blatant nationwide scheme to target children and addict them to tobacco in order to maximize industry profits.

For a quarter century the R.J. Reynolds Company has referred to children as "tomorrow's cigarette business." Newly released documents show that Philip Morris provided money to movie makers to add smoking scenes to popular movies, such as the Muppets, in order to observe attitudes toward smoking by children as young as 5 years old. As a result of the tobacco industry's tactics, 93 percent of 6 year olds can identify Joe Camel as a symbol of smoking.

Investing in child development is sensible "public health" strategy. It is based on sound science and common sense. Doctors and public health officials who are on the front lines, working tirelessly to help children grow and develop into productive citizens, know all too well the dangers of tobacco. They have seen all too frequently its tight grip on our young people. They have called upon us to do all we can to reduce teen smoking, including an essential investment in early childhood development and afterschool programs. Forty-two doctors, public health officials, business leaders, and child development experts including Dr. T. Berry Brazelton, America's foremost pediatrician, have strongly supported this strategy, and have asked Congress to invest in child care and afterschool programs to prevent youth smoking addiction.

Recent research reminds us that brain development in the first three years of life is critical to laying the foundation for positive self esteem, effective decision-making and the ability to resist destructive habits such as smoking. If we want children to grow up healthy and tobacco free, we must ensure that they receive the stimulation and nurturing they need early. If we wait until adolescence to help them develop the will and the skill to say no to smoking—what we do will be too little and too late.

Afterschool and summer programs also make a large difference. Over 5 million children are left home alone afterschool each day. They are more vulnerable to negative peer pressure and pressure from the tobacco industry. These are precisely the teenagers targeted and manipulated by the industry's marketing schemes. Afterschool programs help keep young people off the streets and engaged in constructive activities that do not jeopardize their futures. Many of these afterschool programs specifically incorporate anti-smoking initiatives to teach participants about the dangers to tobacco and equip them with the skills to make important life and death decisions.

Teenagers left home alone are significantly more likely to smoke cigarettes, drink alcohol, and experiment with drugs. In stark contrast, children who participate in productive afterschool activities are far less likely, to smoke, drink alcohol, or use drugs. We also know that cigarettes are a "starter drug" and often lead to hard drug use and substance abuse.

High quality child care and afterschool programs can help children develop the skills they need to avoid unhealthy habits such as smoking. But, every day across America, millions of low-income working families face the daunting task of finding affordable child care on their limited budgets. The reality is that far too many children are at risk. Ten million low-income children today theoretically qualify for services under current federal child care programs. But because of the lack of funding, only 1 in 10 actually receive it. The cost of decent child care often ranges from $4,000 to $10,000 per year—yet a minimum wage job pays only $10,700 a year. Low-income parents need support to ensure that their children are safe and well cared for. Unfortunately, far too few of them receive the help they need and deserve. Sadly, they are the one group that has been deliberately targeted by the tobacco industry for addiction and early death. That is why I support the Kerry-Bond Amendment, which will ensure that at least half of the federal share of the State funds received under this legislation will be spent by states on afterschool care and early childhood development by increasing the Child Care Development Block Grant.

The American people understand the importance of funding these child development programs. They agree that tobacco settlement revenues should be invested in child care and child development programs. I have received numerous letters from groups, experts, and parents from across the country urging Congress to do so.

If we want children to say no to tobacco, then Congress needs to say yes to making children's programs part of our national strategy for keeping children healthy and tobacco free.

Mr. President, I join in commending my friend and colleagues, Senator KERRY and Senator BOND, for bringing up this amendment. I think it is very consistent with the central thrust of this legislation which is addressed to reducing the number of young people in this country—the children of this country—from becoming involved in smoking.

What we all find out in listening to those who have thought about this, studied it, and reviewed the various real-life experiences that we have seen in different communities, countries,

and States is that there are some very, very powerful conclusions. There is no one single answer, but there are a series of answers.

I believe that this amendment addresses one of the very important conclusions that have been drawn on the basis of sound science and common sense. We have learned that if you see a significant increase in the cost of a pack of cigarettes, that it provides a significant disincentive to children to involve themselves in smoking. We find out that if you provide counteradvertising in making young people aware of the dangers, that it can have a powerful impact in offsetting the $5 billion a year that is out there to try to draw young children into smoking by presenting the case that, if they start to smoke, their life will be more exciting, more pleasurable, and more successful. You don't need to match the tobacco industry dollar for dollar, but you do need to have an effective counteradvertising campaign. That reduces youth smoking. We have seen it in Massachusetts. We have seen it in California. I have referred to those studies at other times in the course of this debate.

Cessation programs to help young people to stop smoking have had some important success.

Support for school-based programs, which I see in my own State of Massachusetts, where young people involve themselves in working with law enforcement to discourage retailers from violating the law, has had some success.

We have a number of young people now in my State of Massachusetts who are involved in programs to have the various malls around Massachusetts smoke free. They are doing it as volunteers. The young people are doing it. They are also educating the public and their colleagues about the dangers of smoking.

There are a number of things that can be done. But the importance of providing early child development to equip young children with the confidence-building tools so that they have the ability to resist various peer pressures and develop those skills of competence is absolutely imperative and essential if we are expecting the children in the future to resist dangerous types of behavior. That has been demonstrated time in and time out. The various Carnegie studies have amply demonstrated that.

This legislation is focused on early child development, building those confidence-building skills, helping and assisting in augmenting and supporting children at the earliest ages. We find as the study goes on and on that the earlier, really, the better.

Then by providing an atmosphere where these children are going to be able to be challenged intellectually and socially in child care settings provides the kind of supporting atmosphere and climate, again, for building their confidence-building skills.

Also, providing some afterschool programs, whether it is in the day when the children are attending school, or whether it is at a time when the children are not in school, such as during vacations and also the summertime, considered together, have a very powerful impact in strengthening the willingness of children to resist the negative behavior patterns that start out with smoking, then yield to smoking and drinking, and then, as the law enforcement experts provide, smoking and drinking lead their way to significant substance abuse. That empirical evidence has been included during the period of these last couple of weeks and has been amply justified over a period of time.

The benefit of this particular amendment, I think, primarily rests with helping the children at their most vulnerable time, as they are developing their own kinds of confidence-building skills—giving them the kind of help, support, and the power to resist abnormal, negative, and destructive behavior.

Second, it provides an important investment in terms of the children so they will have a more useful, constructive, happier, and productive life.

All we have to do is consider the Beethoven studies that have been done in Chicago and the Ypsilanti studies that have been done, which have demonstrated this kind of investment in terms of children's attitude and support pays off in just the way that has been represented by those who have advanced this amendment.

This is right on target in helping to reduce children's smoking. It is right on target in ensuring that children who are the most vulnerable will be able to develop the kind of skills to resist smoking.

It is right on target and consistent with the public health drive, which is the central purpose of this bill, and cannot be distorted and cannot be misrepresented by those who are opposed to any kind of legislation. As hard as they try, this legislation is moving forward.

But with this particular amendment, it will be a more effective bill in helping the children in this country. It is an amendment that should be accepted, supported, approved, and made a part of this bill.

Mr. President, I hope that the amendment will be accepted.

Mr. ROTH. Mr. President, the Kerry amendment once again raises the fundamental questions as to why the United States Senate is considering this tobacco settlement bill. Is its purpose to reduce the number of children who will become addicted to nicotine, or is it cover for another Washington power grab?

In recent days, the Senate has debated various amendments which affect the agreement Senator MCCAIN reached with the nation's governors to secure their support for this legislation. Members have voiced opposition to amendments on the grounds that it violates the agreement reached between the governors and the White House.

There can be no doubt that the Kerry Amendment fractures that agreement.

On a bipartisan basis, Governor Voinovich of Ohio and Governor Carper of Delaware have issued a letter opposing the Kerry amendment. Their May 19 letter states, "the National Governors' Association strongly opposes the Kerry amendment which dictates state funding choices."

Governor Carper and Governor Voinovich go on to state, "This fundamentally undercuts the agreement included in the manager's amendment and would make it impossible for Governors to continue to support this agreement.

"In addition, by locking states into a specific child care requirement, the Kerry amendment would prevent states from meeting other compelling needs as their particular circumstances dictate."

Mr. President, the Kerry amendment is the old broken record that Washington knows best. Only Washington can set the priorities.

Mr. President, by imposing this restriction on the states, the Kerry amendment has changed the rules of welfare reform. The effect of the Kerry amendment is to increase the state matching requirement for receiving funds out of the child care and development block grant. Why are we imposing such a policy on a tobacco bill?

If the Kerry amendment is adopted, the tobacco bill will contain two completely contradictory policies. The McCain May 18 modification already establishes new rules for claiming additional federal dollars for child care. Under section 452, "Grants to States," the bill now changes the federal match rate for new child care dollars to 80 percent. This is a higher match rate than any state receives for the Medicaid Program.

Why must the federal government bribe the states to claim federal dollars for child care by lowering the cost to the states? Simple. Because the states are not spending all of the child care dollars already available to them.

In fiscal year 1997, the states spent only 72 percent of what they could have spent out of the child care and development block grant. The tobacco bill includes this higher match rate at insistence of the White House. The Clinton administration fully understands it must change the rules in order to pump more dollars into child care.

Mr. President, this administration proposal is so troublesome to me because the White House is blowing hot and cold air at the same time on the

issue of child care. The White House proposed cutting funds for child care under the title XX program. The President's budget requested a reduction in this important program for fiscal year 1999 and in the years beyond.

Under the Clinton administration's budget, the SSBG would receive $1 billion less than what is authorized under welfare reform in 2003.

Mr. President, you cannot profess to be for child care when you propose to reduce the social services block grant. The two ideas are mutually exclusive. Every state uses SSBG funds to provide day care for children.

Mr. President, the Kerry amendment does not define who is for child care or who is against child care. The Clinton administration has acted in a contradictory way and those who voted to cut the social services block grant have acted in a contradictory manner. If we are serious about child care, the first priority should be to restore the social services block grant.

If the Kerry amendment is adopted, the U.S. Senate will be saying that the state match for child care funds is both too high and too low.

Mr. President, this simply does not make sense.

The Kerry amendment is not needed. The states are free to spend their entire amount of unrestricted funds on child care if they so choose. Of the 50 percent of funds which are restricted, child care is one of the options the states can spend their tobacco funds on.

Mr. President, Delaware is considering using its tobacco funds for expanding health insurance to low-income families. The Kerry amendment would substitute the judgment of the U.S. Senate about what priorities should be funded for the judgment of the elected men and women of Delaware.

That is a mistake we should not make.

Mr. McCAIN. Mr. President, as we had agreed earlier, I will in a few seconds propose to table the Kerry amendment. Following that, under a previous agreement, Senator FAIRCLOTH and Senator SESSIONS will be recognized for their amendment, which I understand has to do with attorneys' fees, and I hope we can complete that in a reasonable length of time. This issue has been fairly well ventilated in the past and is well known now.

I think it is well known that the amount of money attorneys would receive under this settlement and are receiving or scheduled to receive under State settlements is inordinately high, to make one of the grossest understatements of this debate. I think it is important Senator FAIRCLOTH and Senator SESSIONS intend to debate this.

Mr. President, at this time I move to table the Kerry amendment.

Mr. NICKLES. Will the Senator yield for just a moment?

Mr. McCAIN. Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of New Hampshire). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague from Arizona for not moving to table just yet because I would like to make a couple of comments concerning the amendment that is pending.

The amendment that is pending deals with section 452 of this bill. Section 452 deals with how the money is going to be spent, or at least how it applies to the States. It has a couple of different sections. It states: "Restricted Funds." That is, 50 percent that States could spend any way they wish. That is under title (b).

Under the funding for child care, under section 418 of the Social Security Act, it has some new language that was put in. I don't know what the purpose of it is, but it states that notwithstanding subsection (b)(2) of that section—we looked that up and basically it means we eliminate the means testing for this program. The program that we are dealing with in child care is supposed to be for low income, and now we find this tobacco bill coming in and saying, well, we are going to eliminate means testing. So millionaires' kids will qualify for this.

That is not the purpose of the child care block grant program. And then the child care block grant program was supposed to be on a State share identical to Medicaid. In some States, that is 50–50, 50 percent Federal, 50 percent State. We put in a little change in this bill that says it is 80–20, 80 percent Federal, 20 percent State.

Now, I am bothered by that. I am bothered by it for two or three different reasons. One, I have stated all along I have felt this entire bill was a tax-spend bill. We raise a lot of taxes. We are transferring about $102 billion from consumers over the first 5 years—I think over 25 years probably well in excess of $8- or $900 billion but just for the first 5 years alone, $102 billion. Half of that money we allocate and we say to the States, you are going to get your fair share, you are going to get part of it, and now we dictate how the States have to do it. But now we find out there is a little language change to say, well, we are going to allocate this new money; we are going to take child care development block grants, which right now total about $3 billion, and we are going to make it $5 billion. This is $2 billion on top of what we already have. That is a 66-percent increase per year.

Then we change the eligibility and say it is not means tested. Then we change the ratio where the States don't have to put up their matching share in Medicaid. We just say the Federal Government is going to pay 4 to 1—80 percent Federal Government, 20 percent by the State. So we have a massive expansion of an entitlement program, a massive expansion of who is eligible. We make higher income people eligible. It is just another way to see, can't we funnel more money? Can't we spend more money? This is living proof this amendment is not about curbing smoking. It has nothing to do with curbing smoking—nothing, not one thing. It is not going to reduce consumption by teenagers one iota, but it will spend $50 billion.

The amendment that we have before us says to the States, you will spend 50 percent, or basically $49.25 billion, over the next 25 years in child care, basically $2 billion a year—$2 billion a year for a program in which we are already spending $3 billion. So we spend $3 billion now. We increase that $2 billion per year, a 66-percent increase in spending on child care development block grants. Then we change the rules and say, well, we don't have means testing on the new money. And we won't use the old Federal match of Medicaid. We are going to come up with a new match that says, Federal Government, you have to pay four times as much as the States. I think that is a serious mistake.

Mr. President, I hope that our colleagues will say, wait a minute, this is not about reducing smoking. This amendment has nothing to do with reducing smoking. It does have to do with increasing social spending. It is something that some people maybe have wanted to do. It is something we have had an increase on in the last couple of years. But I would just urge my colleagues, this is not the right way to spend this money. This is people saying, wait a minute, there is money available. Let's take it and use it for what we deem is right. It has nothing whatsoever to do with curbing teenage consumption or addiction to tobacco or drugs, and so I would urge my colleagues to vote in favor of the McCain tabling motion.

Mr. McCAIN. Mr. President, I move to table the Kerry amendment and 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Kerry amendment, No. 2689. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The result was announced—yeas 33, nays 66, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—33

Allard	Grams	McConnell
Ashcroft	Gregg	Nickles
Brownback	Hagel	Roberts
Coats	Helms	Roth
Cochran	Hutchinson	Santorum
Craig	Inhofe	Sessions
DeWine	Kempthorne	Smith (NH)
Enzi	Kyl	Stevens
Frist	Lott	Thomas
Gorton	Lugar	Thompson
Gramm	Mack	Thurmond

NAYS—66

Abraham	Domenici	Lautenberg
Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Bennett	Faircloth	Lieberman
Biden	Feingold	McCain
Bingaman	Feinstein	Mikulski
Bond	Ford	Moseley-Braun
Boxer	Glenn	Moynihan
Breaux	Graham	Murkowski
Bryan	Grassley	Murray
Bumpers	Harkin	Reed
Burns	Hatch	Reid
Byrd	Hollings	Robb
Campbell	Hutchison	Rockefeller
Chafee	Inouye	Sarbanes
Cleland	Jeffords	Shelby
Collins	Johnson	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Torricelli
D'Amato	Kerry	Warner
Daschle	Kohl	Wellstone
Dodd	Landrieu	Wyden

NOT VOTING—1

Specter

The motion to lay on the table the amendment (No. 2689) was rejected.

The PRESIDING OFFICER. The question is on the amendment.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 2163 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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. MCCAIN. Mr. President, we are working on a unanimous consent agreement so we can make the Gramm amendment in order after a Democrat amendment. As we had previously agreed amongst all parties, I ask that Senator FAIRCLOTH be recognized to propose his amendment while we work out this unanimous consent—that he be allowed to start debate on his amendment.

Mr. KERRY. Mr. President, reserving the right to object, it is my understanding that no amendment will be sent to the desk at this point.

The PRESIDING OFFICER. No amendment can be sent to the desk because there is a pending amendment.

Mr. KERRY. Mr. President, I ask the cooperation of our colleague that once we have the unanimous consent request worked out, that the Senator would yield back to us for the purposes of propounding that request, and allow that interruption in the debate.

Mr. FAIRCLOTH. I plan to start the debate on my amendment, and shortly the amendment will be made germane.

Mr. KERRY. Do I understand from the Senator from North Carolina that he will allow us to interrupt him in order to propound the unanimous consent request?

Mr. FAIRCLOTH. Absolutely, yes.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I rise to offer an amendment to limit attorneys' fees in this tobacco settlement to $1000 per hour, and I am joined by the Senator from Alabama, Mr. SESSIONS, and the Senator from Kentucky, Mr. MCCONNELL.

The tobacco legislation is about public health—not the enrichment of trial lawyers—and I believe that this is more than ample compensation for these lawyers.

I offered a fee limitation amendment last month at $250 per hour, and I considered that excessive, but I was reluctant to lose votes from those inclined to believe otherwise. I believe that passage of a fees limitation amendment is a legislative imperative, Mr. President, but I am a realist. It is the obligation of this Senator to set aside personal reservations and sentiments and to offer an amendment that will pass the Senate and restrain the trial lawyers from their plunder of the Treasury.

I thought that $250 per hour was an inordinate reward for these trial lawyers and favored a far lower limitation, but I can count votes, and I regret that passage requires a higher cap. The trial lawyers are the ultimate Washington special interest, Mr. President, and these courtroom predators marshaled all their forces against the Faircloth cap and indeed forced another vote on this issue.

The Federal government cannot put its imprimatur on legislation that diverts billions from the taxpayers to pay trial lawyers. Mr. President, this is the legislative process of the Senate, not "Wheel of Fortune" for trial lawyers.

If the Congress fails to enact fee limitations, Mr. President, trial lawyers will collect from $3 billion to $15 billion per year in fees. The state Medicaid suits will yield $1 billion to $3 billion per year, and, the lawyers will be further enriched through their contingency fees from individual smoker cases, from which they will reap between $2 billion and $12 billion per year.

In fact, if the Congress fails to enact fee limitations, trial lawyers stand to collect at least $100 billion over the next 25 years. This $100 billion sum exceeds the annual gross domestic product of 24 States and 98 foreign countries.

The failure to replace the arbitration provision in the McCain bill with a fees limitation provision, if the Senate were so blind, would constitute acquiescence to the most blatant and insidious special interest legislation since the Senate convened in 1789.

This is a $100 billion payoff for the ultimate special interest. This is the Washington special interest that leads the pack in its passion for personal interest over national interest.

The trial lawyers, Mr. President, will not bloat their stock portfolios at the expense of taxpayers across this nation. This tobacco legislation is, in essence, the fruit of an extortion pact. The Congress cannot reward this legal vigilantism. The Senate is not for sale.

The four state cases that settled portend a dreadful abuse of the taxpayers and underscore the imperative of federal fee limitations. Judge Harold Cohen of the Florida circuit court estimated that their fees of $2.8 billion were, in fact, equivalent to $185,186 per hour. The five trial lawyers about to share $2.3 billion in Texas will collect, in effect, close to $92,000 per hour.

Who are these modern Sir William Blackstones?

Who are these latter day Clarence Darrows and William Jennings Bryans?

I discovered that Hugh Rodham, the President's brother in law, is amongst their ranks. It is estimated that he will collect $50 million as a Castano group lawyer. Mr. President, permit me to read two newspaper reports of his contributions to these lawsuits.

And just for good measure, the state of Florida has hired Hugh Rodham (Hillary Clinton's brother) to be a part of their litigation team, despite his complete lack of experience in these types of cases." Knoxville News-Sentinel, July 20, 1997.

Hugh Rodham "spen[t] the last hours of the talks in a corner reading a paperback by Jack Higgins, 'Drink with the Devil.'" Washington Post, June 23, 1997.

Mr. President, I also wish to address some misinformation about the Faircloth cap, and I believe that I can rebut all the arguments made against the amendment last month.

Mr. President, it was said on this floor last month that my amendment was unprecedented, but this is not the

case. The Federal government often sets professional fees.

Medicare and Medicaid, for example, limit physicians' fees for professional services. These doctors contribute far more to public health than the trial lawyers, but the Congress decided to limit their fees, so I find it remarkable that Senators will argue to exempt lawyers from policies intended to protect the taxpayers.

There are numerous federal laws that set attorneys' fees. The Equal Access to Justice Act sets fees at $125 per hour in civil rights cases. The Internal Revenue Code sets fees at $110 per hour in successful taxpayer cases. The Criminal Justice Act sets fees at $75 per hour. Certainly, Mr. President, these are not uncharted waters.

These statutes restrict fees awards against the United States to protect the taxpayers. The taxpayers, after all, pay the expenses of the United States. Dan Morales, the Attorney General of Texas, admitted that the taxpayers will pay part of the attorneys' $2.3 billion share of the Texas settlement. The principle is the same, Mr. President, and these fee limitations protect the taxpayers.

There are countless other federal provisions that limit attorneys' fees—from the Veterans' Benefits Act to the Trading with the Enemy Act—and preempt contingency fee contracts to impose restrictions on the lawyers' share of the recovery.

These statutes serve, in effect, to protect clients from their lawyers.

The taxpayers deserve the same protections, Mr. President, and these arguments about an unprecedented fees limitation are specious and unfounded. The McCain bill addresses attorneys' fees provisions through its flawed arbitration clause, so, clearly, reasonable limitations on fees are within the scope of this legislation.

Mr. President, several members pointed to the arbitration clause in the bill as an alternative to the fees cap, but the arbitration clause is really a "trial lawyers' bill of rights" rather than a protection for American taxpayers. Their argument that the arbitration clause will alleviate concerns about excessive attorneys' fees is, in fact, a concession that the fee contracts are excessive and merit review.

The Congress of the United States cannot shunt that obligation to a panel of unnamed arbitrators.

The arbitration clause in this bill is a one-way street that permits lawyers—but not their clients—to compel arbitration of attorneys' fees disputes. In effect, the lawyers can compel the States to participate in binding arbitration, and the outcome cannot be appealed.

If arbitration is indeed the exclusive remedy for fee disputes, it locks in these fees because the lawyers will not object to the billion dollar contingent fee arrangements, and the States are not empowered to challenge the fees under the arbitration clause in the bill. The lawyers can just file court papers to pursue enforcement of their contract.

If arbitration is an exclusive remedy, however, it is a clear violation of both the Seventh Amendment right to a jury trial and state sovereign immunity provisions. These are serious and indeed insurmountable constitutional hurdles.

If arbitration is not an exclusive remedy, the clause purports to let trial lawyers choose between arbitration and litigation, but it forces their clients—taxpayers and tobacco users—into expensive and protracted litigation battles.

The language in the bill authorizes the arbitration panel to award attorneys' fees and expenses for "legal services" that "in whole or in part resulted in or created a model for programs" in the bill. The bill thus appears to authorize fees for attorneys who played no role in the underlying litigation that gave rise to the bill.

This bill incorporates elements of many—if not most—of the tobacco control programs that the public health groups advocated in recent years. The panel thus stands to draw fee and expense applications from the armies of lawyers and legal assistants that provided public agencies and private organizations with advice about tobacco control measures over the years.

Mr. President, let us not underestimate the creative spirit of the plaintiffs' bar, because I assure you that this flood of fee petitions will indeed materialize under this provision.

Finally, the arbitration mechanism applies to fee and expense disputes related to litigation "affected by" this Act. In light of the broad scope of this bill, it is possible that this mechanism will be invoked not only in tobacco and health cases, but in other cases that involve tobacco manufacturers.

It is not impossible that pure commercial cases will come within the scope of the arbitration mechanism to the extent that these cases are "affected by" the tobacco legislation. Certainly, Mr. President, billboard owners with abrogated contracts and other parties "affected by" the settlement appear to fall within the broad scope of this provision.

I heard a lot of rhetoric last month about the constitutionality of this fee limitation. However, despite the specious arguments of the plaintiffs' bar, the Faircloth cap is constitutional. The Supreme Court precedents are clear that Congress can upset economic expectations as part of a comprehensive regulatory scheme. In fact, I heard members praise the bill last month because its regulations are so pervasive and its reach so broad, so the legislative history will support my arguments.

Mr. President, Federal courts have routinely upheld laws that abrogate past contracts, so long as those laws possess a rational basis. It is certainly rational to regulate fees as part of a broad regulatory package to ensure that an equitable amount of finite resources will be available to protect the national public health and welfare and to compensate those who suffer from tobacco-related diseases.

This bill will force tobacco companies to abrogate contracts with a range of parties—from retailers to advertisers—but, curiously, I do not see hand-wringing about the abrogation of those contracts.

It is a ludicrous constitutional proposition to suggest that private parties can enter into contracts in order to preempt congressional actions.

Further, Mr. President, this bill minimizes the risks in tobacco litigation. The McCain bill makes it far easier for the lawyers to win their cases against the tobacco companies. This new courtroom landscape compels the Congress to revisit these fee arrangements that date to a different and distant era of tobacco litigation.

The McCain bill establishes unprecedented evidentiary presumptions that reverse the traditional burdens of proof on two critical issues—nicotine addition and disease causation—and thus relieve trial lawyers of litigation expenses for these complex issues.

The McCain bill also establishes a tobacco document repository, which will curtail—if not eliminate—the need for the discovery process. The discovery process is long and intensive, so the McCain bill, in effect, relieves lawyers of the most expensive element of the litigation, which is often cited as the justification for their enormous fees.

Indeed, the Chairman of the Senate Judiciary Committee stated that, "[O]nce we establish this document repository, it should be easier to prove cases that can go to jury and, I think, increase the chances of jury awards * * *. It would be easier to recover * * *. [A]ttorneys today will have everything going for them because of the tobacco settlement."

It is manifest that this bill will ease their burden in the courtroom, Mr. President, so it defies common sense to assume that the Congress will permit fees predicated upon a dramatically different legal position.

These lawyers are officers of the court, Mr. President, so they are fiduciaries. These arguments about the sanctity of contract are thus specious because there are different rules applicable to attorneys' fees. Mr. President, to argue otherwise is, in effect, to advocate the repeal of the canons of ethics.

The common law tradition, which we uphold today, enshrines a quid pro quo that offers lawyers monopolistic access

to the courts but that requires reasonable fees to preclude exploitation of clients.

The old rules of the Model Code stated that "clearly excessive" fees were unethical and unenforceable. The old rules imposed a standing obligation—from the execution of the fee agreement to the remittance of the fee—to conform the fee to fiduciary principles. The more recent Model Rules, in fact, strengthened this limitation and replaced the prohibition on "clearly excessive" fees with a ban on "unreasonable fees." Mr. President, if there is some semblance of ontological certitude to the definition of "reasonable," then the Senate will enact this amendment to amend these contingent fee contracts.

These lawyers stand to collect unimaginable rewards—billions of dollars—without commensurate risk. These fees and the underlying contingency fee contracts are thus unreasonable under any appropriate standard.

The most logical standard, of course, is to look to comparable work. The payments to the defense lawyers—those lawyers who analyzed and contested the same issues—are thus the most appropriate standard. It is clear that the proposed caps in this amendment far exceeds the fees for defense lawyers.

I summarize my position as comparable pay for comparable work.

The contingency fee structure of these contracts further deepens this ethical morass. The contingency fee arrangement earmarks a percentage of the judgment to the lawyer without limitation. These funds are, quite simply, diverted from the victim to the lawyer.

Consequently, ethicists point out that contingency fees compel a heightened scrutiny because these arrangements thus benefit the lawyer at the expense of his client. Indeed, reductions of the lawyers' fees accrue to the benefit of the client, and that balance compels the Congress to weigh in on behalf of the clients. Mr. President, those clients are injured smokers and the taxpayers of the United States, and they deserve our support.

Mr. President, this amendment is fair, and it is consistent with the rest of this bill. The trial bar argues that a fees cap violates free market principles. It was, however, their submission of the proposed tobacco settlement to Congress for review and approval that removed the agreement from the free market and brought it into the legislative process.

The Congress cannot condone billion-dollar payments to a small band of trial lawyers for minimal efforts. Some of these lawyers copied court papers from other state lawsuits and filed these documents in elaborate productions choreographed for the television news. This is the essence of "jackpot justice."

The trial bar cannot expect Congress to enact broad and detailed legislation to regulate tobacco and, yet, believe that their component of the bill is sacrosanct and above congressional review.

Mr. President, despite vehement protestations last month, it is incontrovertible that this bill uses taxpayer dollars to pay off trial lawyers. This use of taxpayer dollars is an unacceptable diversion of public funds. The Attorney General of Texas conceded to the New York Times on May 27, 1998 that federal funds will be used for part of the $2.3 billion payment for lawyers' fees.

Indeed, Mr. President, the bill permits the use of revenues from the National Tobacco Trust Fund to pay trial lawyers' fees. In fact, 40 percent of Trust Fund revenues are sent to the States for Medicare expenses, but half of this sum is untethered. There is a finite pot of resources from the tobacco companies, so the billions of dollars that will flow to trial lawyers under the McCain bill will be available for state public health initiatives if Congress passes the Faircloth Cap.

In response to some of the other concerns voiced on the floor last month, I made some changes, which I am confident will alleviate the concerns of some Senators.

This version of my amendment eliminates the reports to the Judiciary Committees, and it simply permits the judge assigned to the tobacco case to determine fees. Judges routinely review petitions for attorneys' fees and expenses, so this will not present any difficulties, and I am confident that it is the most prudent route for resolution of these fee disputes.

Mr. President, a spokesman for Public Citizen, the group founded by Ralph Nader, conceded that, "My gut feeling is that these fees are very, very difficult to justify."

The United States Senate represents the taxpayers, not the trial lawyers, and this amendment is a litmus test of our commitment to the taxpayers. The breadth of support for this amendment reaches across the spectrum because these jackpot fees offend our sense of justice.

The Congress cannot permit the ultimate Washington special interest—the trial lawyers—to dictate this legislation and to reap unimaginable rewards and riches. The Congress cannot endorse an extortion pact foisted upon the American public—and the Congress—by a pack of legal predators. The Congress cannot tax the poorest Americans—those least able to shoulder additional taxes—in order to shower golden dragoons upon trial lawyers.

I want to touch on one quick thing because I am ready to close.

If this bill passes, 70 percent of the largest tax in history is going to be paid by people making less than $35,000 a year. If anybody can tell me that it is unfair to restrict the attorneys to $1,000 an hour when the people who are paying this tax make less than $35,000 a year, 70 percent of it is going to be paid by people making less than $35,000 a year. No one can tell me that it is not right to restrict the attorney fees to $1,000 an hour.

The Congress cannot tax the poorest Americans, those least able to shoulder additional taxes, in order to shower this tremendous amount of money upon the trial lawyers of the Nation.

I thank the Chair.

Mr. President, I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Thank you, Mr. President. I appreciate very much the conviction and hard work done by the Senator from North Carolina on this important issue. It is not a political issue, although I think it could become one as time goes along. It is a question of right and wrong. It is a question of just how rich persons can get with the money that should be available to benefit children and the health care of Americans.

So I think we have an issue of great importance. I think the Senator from North Carolina is also correct when he says that we came here a few days ago and we talked about a $250 per hour containment of attorney fees and they said that was not enough. So we have attempted, again, to come up with a bill that will pass muster in this body, that will have support from both sides of the aisle, Democrats and Republicans, with the kind of fees that nobody can object to, that are rational and just and fair and quite generous, and will, in fact, make multimillionaires out of many, many lawyers.

I do not believe and I resist the suggestion that this capping of these fees in this litigation is somehow an attack on attorneys and an attack on the contingent fee contracting in general. It has nothing to do with that. It involves only tobacco litigation—tobacco litigation and legislation that was brought to the U.S. Senate. And we were asked to pass legislation on it. It spun out of litigation. It certainly has not been completed. None of the verdicts have been affirmed on appeal. Other cases have just gotten started. And we in the Federal Government are about to pass legislation that could, in fact, terminate all of that and bring it all to a conclusion. The trial lawyers who had contracts, some of whom have done little work, on a contingent basis, now want to be paid billions of dollars in fees. Perhaps 20 or more attorneys will receive $1 billion in fees.

I would just like to point out how much $1 billion is. This Nation spent $450 million last year on diabetes research. The Alabama general fund budget for the entire State, apart from education, is less than $1 billion.

So we are talking about huge sums of money by any standard, the kind of money that we have never seen before. These are the largest fees ever awarded in America, many of them for litigation only a few months old. It is "unconscionable," as a judge in Florida has said, and it cannot be allowed to continue.

I hope this very generous legislation that allows the lawyers to state their case for up to $1,000 an hour in fees will be the kind of amendment in which everybody in this body could join.

I want to note why someone could not feel comfortable with that.

Let me share with this body a report from "20/20" that was done recently involving the Florida litigation. This will explain how that litigation prevails, just how much was involved, and how much the attorney gets out of it. It began with Hugh Downs. This is what he said.

What is your time worth? How does $7,000 an hour sound? That's what some lawyers want to be paid for their work on Florida's suit against the tobacco industry. Each and every one of them could become a millionaire many times over just from this one case. So did they really earn their fee?

John Stossel tells us about it.

JOHN STOSSEL: "The children are supposed to benefit * * *"

You know that we have heard a lot of talk about children and helping children. Let me ask this question: Will allowing an attorney to become a billionaire help children? Could that money be used for other antismoking programs, or tax reductions for the American people? It certainly could.

JOHN STOSSEL: "The children are supposed to benefit from new money from antismoking programs. And later the Governor invited in some children and dummied up a check to celebrate the first $750 million payment. But now it turns out that the Florida taxpayers may not get as much of that money as they thought because Florida's lawyers are in a legal battle over how much money they should get. Montgomery says they deserve $2.8 billion. That's right, billion. He doesn't exactly need money. This is his multimillion-dollar house in luxurious Palm Beach right next to the ocean. The house is so huge, it looks more like a palace. Even his Rolls Royce and his Bentley live in a garage that's bigger than many houses. Montgomery got this rich suing car makers and hospitals and insurance companies."

The interview with Bob Montgomery was right there at his house. He describes his lawn.

So this is my putting green, and this is my sand trap. And what I do is I have these balls, and this is where I drive them:

JOHN STOSSEL: "Out into the water."

BOB MONTGOMERY: "Out into the water."

JOHN STOSSEL: "The inside of the house is even more grand. Montgomery has a vast art collection."

Ladies and gentleman, we are talking about a lot of money. We are talking about hundreds of millions of dollars, not just $1 million. One million dollars is a lot of money. A million dollars. It is an American dream to be a millionaire. We are talking billions, a billionaire.

Mr. Stossel goes on. He talks about how they were selected. How do people get selected to file these lawsuits? Did they bid on it? Did they go out and say what lawyer will take this lawsuit and what kind of rate will you give us and let's evaluate the best bid?

JOHN STOSSEL: Friendship starts to explain how some of these private lawyers were selected and ended up with a contract that says each is now entitled to hundreds of millions of dollars. It began four years ago when Levin came up with a scheme to use Florida's legislature to make it easier to win a suit against big tobacco.

They interviewed Mr. Levin, a fine lawyer. I had occasion to meet the man, a skilled attorney, and he was very, very frank about what happened.

Mr. LEVIN: I took a little known statute called a Florida Medicaid recovery statute—

This is his exact quote—

changed a few words here and a few words there, which allowed the State of Florida to sue the tobacco companies without ever mentioning the words "tobacco" or cigarettes. The statute passed in both the—the House and the Senate. No one voted against it.

JOHN STOSSEL: Well, did people know what they were voting for?

Mr. LEVIN: No. And if I had told them, they'd have stood up and made a—you know, they'd have been able to keep me from passing the bill.

JOHN STOSSEL: This made the suit much more winnable?

Mr. LEVIN: Oh, God, it meant it was almost a slam dunk . . .

Oh, this is tough litigation. The chief plaintiff lawyer who wrote the bill to make the suit possible in Florida said it wasn't tough litigation; it was a slam-dunk because he changed the law in a way that nobody knew what he was doing to create a lawsuit that had not been possible before.

Here, Mr. Stossel goes on.

Am I missing something here? The controversy's become should the dream team—

That is talking about the lawyers—

get billions from the 25-percent deal?

They had a contract, you see. We will sue these people for the State of Florida. We will take 25 percent of whatever we recover. And then they go in and change the law and it becomes a slam-dunk lawsuit and they want 25 percent of it. Then they come to Congress and say, well, we have some problems with just suing. We need the Congress to pass global legislation to control this whole area of the law but don't control our fees. You can control everything else. Tell the tobacco companies they are violating their contract, but you can't violate our contract, not ours, because ours is sacrosanct because we are lawyers. We are lawyers. That is our business and you can't violate our contract.

Stossel. This is his quote.

Why do private lawyers get so much of the State's money in the first place? When this construction company got the contract to replace this Florida bridge, they had to compete against other construction companies. There was competitive bidding. To win the job, they had to show they were qualified and submit the lowest bid. All States have such rules to prevent politicians from funneling projects to friends. But that's not what happened with the lawyers. Here, Fred Levin called some friends. You picked the dream team.

Then they interviewed Professor Lester Brickman, a law professor at Cardozo School of Law, an outstanding professional who studied legal fees and how they are awarded for a number of years, and asked Mr. Brickman about it.

Mr. BRICKMAN: It's an outrage. It's more than greed. It's a scam.

Those are strong words: "It's more than greed. It's a scam."

JOHN STOSSEL: Law Professor Lester Brickman, who's an expert on legal fees, says it's not right for a Governor to hand over such a potentially lucrative case to a friend.

Mr. BRICKMAN: There are politicians involved who are stroking the backs of lawyers because lawyers have stroked their backs before and may yet stroke their backs again. So I think the public perception here, which is probably pretty accurate, is that this smells.

JOHN STOSSEL: However it smells, the deal is now mostly done. Its main accomplishment is a huge transfer of wealth from not tobacco companies—they'll just raise the price—but from today's smokers, who will give it to State treasuries with a huge cut going to lawyers like Bob Montgomery. It's like an old boys' scam. You and your buddy, the Governor who sleeps in your house, do your little deal together. You get rich.

John Stossel says:

The taxpayers get burned. The smokers get burned.

Finally, Mr. Stossel points out—I am quoting him now—

Finally, another clever twist you might have missed in the tobacco deal is that usually when Americans want to tax something—

This is very important, and I will share with you my personal experience less than 2 years ago when I was attorney general of Alabama—

we vote on that. The legislature decides on behalf of the people, but not here. Here, a Governor—

Sometimes in other States the attorney general—

and some lawyers decided, in secret, that smokers should pay the State and lawyers a lot of money.

And then Mr. Levin explains why it is such a cool political deal and why many of the people in this body like it, those fellows and ladies who favor tax increases and tax and spend and tax and spend. And people are getting mad about it. They are getting alert to it. They are objecting to it. They are seeing how taxes get slipped in through this backdoor and that backdoor. It is not popular, and many of them are losing their places in Congress and in the State legislatures because they are

voting for too many taxes. That is not good.

So Mr. Levin tells why this is such a good deal.

The tobacco companies don't care. They can either pass it on as a tax, or they can pass it on as an increase in price, and tobacco companies settle with the Government. Beautiful.

JOHN STOSSEL: What's the difference? You're still paying 60 cents more for your cigarette?

Mr. LEVIN: But it's the tobacco company they can get mad at. You don't hold that against the Governor.

You see, make the public get mad at the tobacco company for raising the price, and the politician says, We didn't raise taxes. It was the tobacco company that raised the price of the cigarette. You get the deal? Good politics. Mr. Levin just flat said it.

John Stossel concludes:

So everybody wins. Well, not the smokers, but the politicians win, the tobacco companies win, the State and certainly the lawyers.

Hugh Downs concludes the report:

That's really outrageous, isn't it? And Bob Montgomery may well get his way because last week an appellate court judge reopened the door for what could be a big payday for these guys.

And Barbara Walters concluded.

As Mr. Montgomery said, "Oh, yeah." But you know Senator Crist is trying to have a bill that caps the amount they get paid at $250,000. But even that's not bad money.

Two-hundred-fifty thousand dollars is not bad money either. I say that to you.

I went through that report because, Mr. President, it shows how this thing has developed and that there is a sense and a tinge of corruption in the way this was done.

Another thing that was very unhealthy is how did the settlements occur and how were they justified? Well, the lawyers said for the taxpayers and public citizens not to worry about it, how we got this case settled and where it leads, because these fees are not paid by the State; they are paid by the tobacco companies. They agreed to pay our fee, see. I agreed with my tobacco company and they pay my fee. And it is not coming from the taxpayers.

Now, I have been a lawyer for a good while. I have litigated a lot, and most business people understand money and they know that the tobacco companies, when they settle a case, don't care whether the money they pay is called tobacco fees, lawyer fees or anything else. There is so much money, they are willing to pay. And so they are perfectly happy if they can pay off the lawyer and give him a lot of money for their fee to get them to agree to the whole settlement. It doesn't bother them in that circumstance.

So there is an unhealthy relationship there, and it is something good lawyers have to guard against at all times. You have to guard against that because it can even corrupt your judgment because your money may be paid from the person you are supposed to be suing and your fidelity, your loyalty, your integrity is due to the people you are representing.

That is an unhealthy relationship. I just say to you this money absolutely available to be paid to the Government to be used for tax reduction and the child smoking reduction effort and health care and health research, it will not be used for that; it will be sent to the attorneys.

Let's talk about something else. In Mississippi, the case there was an interesting case. In Mississippi, the case was brought before a single judge in Mississippi, and the case was filed in equity. It was not a jury trial, it was in equity. Many States still have a distinction between law courts, legal courts, and equity. Historically, in England, equity courts were run by the church and the law courts were run by the king. In matters of divorce and family, relief of that kind was done in equity. They came out with an equitable doctrine of unjust enrichment and pursued this case for a number of years, and under a theory that the tobacco companies were unjustly enriched, they made their recovery. So, hundreds of millions of dollars will be paid out of that Mississippi case, based on that.

In Texas, the fee came down to be $2.3 billion for the attorneys involved in that case. I believe the firm that was involved in that had four partners, five attorneys in that firm, who will split $2.3 billion—quite a lot of money.

Professor Brickman of the Cardozo Law School has testified, I believe—as Governor George Bush of Texas is furiously and aggressively doing everything he can to undermine and defeat these claims for this huge amount of money—Professor Brickman has testified that he figures the trial lawyers were asking for at least $92,000 per hour. I didn't make that up. This is a Cardozo Law School professor saying these lawyers were asking $92,000 per hour.

Stewart Taylor, writing for the Legal Times—he also is a senior writer for the National Journal—estimates that the total attorneys' fees will amount to $5 billion per year and quotes Professor Brickman as saying it will create 20 to 25 billionaire attorneys. I am talking about a billionaire. I had my staff pull up—I think it is Fortune magazine that lists the richest people in America. We counted 60 billionaires in America. We are talking about creating numerous new billionaires out of this one lawsuit—some of them have not filed a case this past year—will be making $1 billion. That is just not acceptable. That just cannot be.

So I appeal to all the Members of this body, whether you are Democrat or Republican, to look out for justice, to look out for fairness, to look out for decency. This is beyond making a good fee. I am quite willing to have these attorneys make a good fee. We will let them make $1,000 an hour and double their expenses that they have invested in it. I am willing to let them. But I am telling you, that is more than I really feel is necessary. But I want to gain support for this legislation. I think it is absolutely critical that we contain these fees.

Where is the money coming from? Is it from the waitress? the construction person? the businessman? the gas station owner? the secretary who smokes—that is who is paying it—to give it to a lawyer who already has a garage with his Bentley in it, bigger than somebody's house, and who practices golf by driving golf balls out into the Atlantic Ocean? That is what we are talking about—a wealth transfer from decent Americans who trust their Government. They trust us to treat them fairly, to pass legislation that gives them a fair chance. We are taxing them to pay for this kind of thing? Wrong. It is unjustifiable, unconscionable, as a judge in Florida has said.

How did it happen? How did this all happen? I want to tell you how it happened. I will tell you exactly how it happened because I was, in a way, there. I was attorney general of Alabama less than 2 years ago, and I was approached by a group of attorneys. They said, "Well, Jeff, we would like to talk to you about hiring us to sue these tobacco companies. We are working with a group of lawyers around the country, and we have this theory, and you can pay us 25 percent and we will just file this lawsuit for you. I know your attorney general's office doesn't have a lot of money, and we'll just fund that for you. You just give us 25 percent of whatever we recover."

And I said, "What's your legal theory? I don't think I can file a lawsuit, according to the ethical rules of law, if I don't believe it's a good lawsuit." So we spent a good bit of time talking about that first. When they got through, I said, "What you are telling me is, this is not an established principle of law but you want to expand the law and go further."

And they said, "Yes, that's correct. It hasn't been a proven theory. But we have this new theory. We think we maybe can prevail on this. It is very popular today. Nobody likes tobacco. We believe we might just win."

So I told them, "No, I don't think so. I think I'd rather have you go ahead with your suits, and I'm not going to spend 25 percent of the recovery. If you prevail in Mississippi or Florida or other States and you establish a cause of action, I may consider joining it. But I won't need you then, because I have lawyers on my own staff and they can handle the litigation, thank you."

They didn't want to do that. They persisted and told me certain names of attorneys that they wanted to participate. One of the best known attorneys in Alabama, Jere Beasly, was a name they suggested to me—that he would be part of it. And the person making the proposal to me, it wasn't Hugh Rodham, but he was the Lieutenant Governor of Alabama who was a part-time Lieutenant Governor and a lawyer. He was coming in as a private attorney, and he was going to make part of the fee out of the case.

I objected to all of this—by the way, the Lieutenant Governor has great power on legislation. We have had a lot of efforts to reform tort laws and lawsuits in Alabama, and they have died in the State Senate, where he presides over the State Senate in committees that he set up and established. He was popular with the trial lawyers, and he asked me to file the suit, and I said no, I didn't think that we ought to do that.

And he said to me, "Well, you can hire some of your law firms. You can hire some of your buddies, your Republican law firms—cut them in on the deal. Why don't you do that, Jeff? That will be fair, won't it?"

I am telling you, this is not good business that we are involved in here. There is an element of greed that goes beyond what is normal.

So, anyway, that is the way that went. They go around the States, then, approaching attorneys general with this kind of pitch. As it turns out, one attorney is apparently involved in litigation in 30 States and another attorney group is involved in litigation in 28 States. What does that mean? What they do is, they have this theory. They have come up with a theory of litigation that can make billions of dollars in recoveries. They go into a State and get a group of local people, and they also bring in the President's brother-in-law, Hugh Rodham, make him a $50-million man because he sits in the room and reads a novel while they are settling the case. Let him have a little bit, too. Make him happy. Maybe it will make the President happy. Maybe he will be supportive of us when we come in with the legislation. We cut in the Attorney General of Alabama; maybe he will continue to be friendly to us in the State legislature. What would his fee have been? I don't know.

They go around and they get investors. People, basically, as I would understand it, buy shares. They go out to a number of the big name plaintiff firms in this town, community or State, and they get them to agree to put up so much of the money. They put the money in. Each one of them has a share. These major law firms that are doing most of the work, they do all the brainwork, and the local guys file the pleadings and handle the PR and the political stuff and take care of the attorney general, and make him look good. That is how it happens.

And then, boom, after Mississippi—they had that unique single judge in Mississippi—you had the change of law in Florida, the tobacco companies lost those big settlements, and they just collapsed and they agreed to pay everybody. Listen to me. In some States, the attorneys had done little more than file the lawsuit and they are now claiming 25 percent, 15 percent, of billions of dollars in recovery.

Why? Because they had a contract. They signed a contract with the attorney general of Alabama, Georgia, whatever State. That is not good. That is not a good process. I will tell you with absolute certainty and conviction that money paid to those lawyers is money not available to children, to antismoking programs in America. It was simply allowed to go to the attorneys.

Why would not my brethren on the other side of the aisle, who profess to be so concerned about children, be involved in this? They have accused those who have opposed this tobacco legislation consistently of being tools of big tobacco—"Oh, they're just bought and paid for by big tobacco."

I will say this, I took not a dime from tobacco. I rejected tobacco money. I have not taken it and will not take it. I don't think at this stage of the game we ought to be taking money from tobacco. I realized we were going to have a contested issue concerning tobacco, and I wanted to keep my record clear, so I have not taken any. A lot of other Senators on both sides of the aisle don't take tobacco money.

Mr. GRAMM. Will the Senator yield on that point?

Mr. SESSIONS. Yes, I yield to the Senator from Texas.

Mr. GRAMM. I wonder if those on the other side of the issue are taking money from plaintiffs' attorneys?

Mr. SESSIONS. Well, you have asked an absolutely important question. Those who have been opposed to this legislation have had their integrity questioned and it was suggested that they are bought by tobacco. I have somewhere in this stack a little chart that indicates something about political donations.

From the years 1990 to 1994—I want the Senator from Texas to understand this—plaintiffs' lawyers in three States—my State and your State being two of the three—Alabama, California and Texas, spent $17.3 million on political contributions. During that time, the Democratic National Committee, in all 50 States, spent $12.4 million. During that time, the Republican National Committee, in all 50 States, spent $10 million. During that time, big oil in Alabama, California and Texas spent $1.7 million. I know oil is a big industry in Texas. They only spent $1.7 million in Alabama, California and Texas, whereas the trial lawyers spent $17.3 million. The automobile companies in Alabama, California and Texas spent $3,500.

That shows you what has happened here. I suggest that we need to rise above special interests. I believe every Member of this body has an obligation to his constituents—to that secretary, to that waitress, to that gas station operator, to that farm equipment dealer—if he takes their money and increases taxes, to not give it away to people who live in mansions who practice golf by driving their golf balls out into the ocean, and that is what we are talking about.

There are a number of other things that I can mention, but I see the Senator from Texas is here. I am pleased to yield the floor, Mr. President.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me first say that our dear colleague from Alabama, Senator SESSIONS, is a freshman Member of the U.S. Senate, and I am very proud of the leadership that he has provided on this issue and on other issues. I think he is a testament to the fact that we have good people in the U.S. Senate, and I am very proud of him.

Mr. President, when we tell people that we are debating a bill that is going to set in place a procedure whereby attorneys are going to receive $92,000 an hour, they find it hard to believe. But let me just read from an article by Robert J. Samuelson in the Washington Post:

> The hourly rates strains belief. Lester Brickman of the Cardozo School of Law, an expert in fees, estimates that the Texas lawyers spent, at most, 25,000 hours on their case which never went to trial. A $2.3 billion settlement values their time at $92,000 an hour.

This is absolutely predatory. It is totally unfair to be taxing my 85-year-old mother, because she started smoking 65 years ago, $1,015 a year, which is what she will pay under this bill because she is not going to quit smoking cigarettes. It is unfair to tax her to pay a plaintiff's attorney $92,000 an hour. It is predatory and it is outrageous, and something needs to be done about it.

The Senator from Alabama is not proposing that we be tightfisted with plaintiffs' attorneys. In fact, he is proposing that they be paid $1,000 an hour. How many people in America would figure that they were being cheated if they were getting $1,000 an hour in a fee for work that they had done? I don't think many people in America would think that we are cheating lawyers by requiring that they be compensated no more than $1,000 an hour for work that he had done on these cases.

But when asked about $1,000 an hour, a prominent attorney, who was quoted in the Washington Times, scoffed and said, "That would hardly pay for tips for my house staff."

"Hardly pay for tips for my house staff."

Our colleagues on the left are very fond of talking about how they are trying to protect average citizens. Our President is always talking about his position as champion of the average person. But yet what is happening here is our President is supporting provisions that allow attorneys to be paid $92,000 an hour. Many of the Members of the minority here, the great majority of them, are supporting provisions where attorneys will be paid $92,000 an hour. And our colleague from Alabama is saying, let's set a cap in this bill that says that attorneys on these cases will be paid no more than $1,000 an hour. I believe that it is totally outrageous that we cannot see this amendment adopted by 100 votes in the U.S. Senate.

I do not see how anybody can go back home and say we are going to tax Joe and Sarah Brown—a waitress and a truck driver. Seventy-five percent of the money we are going to collect in these taxes on cigarettes come from Americans and families that make less than $50,000 a year. We are going to reach in their pockets and take their money, and we are going to pay $92,000 an hour to plaintiffs' attorneys. It is predatory. It is outrageous. And something has to be done about it.

Is there no shame in this whole process? Is no one embarrassed by the fact that we are allowing this piracy to go on? I believe it is imperative that this amendment be adopted. I want to pledge that if this amendment is rejected, that we are going to come back and raise this figure and do it again and again and again and again until we cut these fees off at something less than $92,000 an hour.

If that is not enough, or if that is no more than enough to tip your house staff, then I want people to explain to people back in their States about how we are imposing a tax to raise $600 billion and turn around and let plaintiffs' attorneys make $92,000 an hour on the deal. I would be embarrassed to say that I was for allowing that to happen. I do not understand how anybody—anybody—could oppose this amendment and go back home and explain to people what they are doing.

Let me also say—this is something I do not do, but I want to respond to people who do it—one of the games that is played now in Washington is that when people cannot debate the issue, they try to attack your integrity.

We have all these little groups around town that try to find somebody who maybe runs a store that sells tobacco products—a 7-Eleven store for example—who contributed to Senator SESSIONS' campaign or contributed to Senator MCCONNELL's campaign or my campaign or to the campaigns of other of our colleagues who are here on the floor, and they say, "That was a tobacco contribution." But it is very interesting to me that when we are debating $92,000 an hour for plaintiffs' attorney fees, where are these groups?

Why are they so silent? Who took away their tongues and their pens to not write about the millions, tens of millions, perhaps hundreds of millions of dollars that plaintiffs' attorneys contribute to the Democratic National Committee, and who contribute to candidates who oppose this amendment and who support this bill?

Now look, I don't get into the business of trying to question people's motives. But the point I want to make is this: If these groups are going to run around trying to tag Senators as being the spokesmen for some interest, I think that is perfectly legitimate. It is a tactic that I do not agree with, but it is perfectly legitimate. But why are they silent on this issue? Why are they silent on the source of the contributions going to some of those who support the bill?

What we have here is a bill that has but one constituency. And that constituency reminds me of a large group of vultures who want to bring down this industry and then feed on the carcass. And the biggest appetite, in this case, belongs to the plaintiffs' attorneys who are going to make $92,000 an hour on this bill.

So I hope my colleagues will not stand up and say, "We can't give a tax cut and eliminate the marriage penalty. We don't have enough money to do that." Well, we have enough money for attorneys to make $92,000 an hour. As long as we have enough money to do that, we have enough money for tax cuts.

We are going to see an amendment offered in a couple of days to try to do something about teenagers drinking. I hope it is going to be a bipartisan amendment. I want to predict right now that the proponents of this bill will stand up and say, "We don't have enough money to do anything about teenage alcohol use. We are spending our money on teenage smoking," which is, in terms of public concern, a much less concern than teenage drinking. But they are going to say, "We don't have the money for it."

Let me suggest that we begin with $92,000 an hour legal fees. There is a source for money. Let us take the money from that, and let us use that money on programs designed to reduce teenage drinking, drunk driving, things of that nature.

I know my colleague from Kentucky wants to speak. Let me sum up and stop.

I am proud of our colleague from Alabama. He speaks with passion and with clarity, and he is absolutely right. There are no other terms for these kind of settlements other than predator and clear abuse of the system. We have in this bill a provision that sets out a commission made up of lawyers to review lawyer fees. It is not an issue over whether we are going to have the Federal Government involved. There is a provision in the bill that guarantees that.

But rather than letting lawyers oversee fees for lawyers so they get the $92,000 an hour, let us have a provision that simply says you cannot get more than $1,000 an hour in these cases.

Let me offer right now, if any of my colleagues want to come to my State and go with me into a local restaurant in the morning or go to McDonalds—and let us try to gather up a crowd—I would like them to explain why those folks ought to be taxed on their cigarettes or their chewing tobacco so that we can pay attorneys $92,000 an hour. If they can do that in Lubbock, for example, if they can sell that in Lubbock, TX, then I would come back and review my position on this issue.

But let me predict there will not be anybody to take me up on this because anybody who would vote for this would be ashamed for people to know it. But we are going to vote on it. And we are going to vote on it over and over and over and over until we do something about this predator behavior and this clear abuse of ordinary working people in America.

I thank the Chair and I thank my colleague.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Before the Senator from Texas leaves the floor—if that is the direction in which he is headed—I want to thank him for his important contribution to this. This bill is, more than anything else, I say to my friend from Texas, about lawyers, about raising taxes on working-class Americans and about unjustly enriching a bunch of soon-to-be billionaire lawyers.

I think we ought to call them the "sultans of smoke," because they are going to be as rich as sultans if we do not pass the amendment offered by Senator FAIRCLOTH, and spoken so eloquently on behalf of by the Senator from Alabama, Senator SESSIONS, and Senator GRAMM.

Mr. President, we have had a lot of debate over the past few weeks about what provisions of this bill are most outrageous. And there is a lot about this bill that is outrageous. I ask my colleagues—which provision is the most outrageous? Some say it is the terribly regressive tax on low- to middle-income Americans that is the most outrageous. And that certainly is outrageous. Others say it is the unconstitutional backdoor tax known as the look-back penalties. Still others say it is the unconstitutional advertising restrictions.

Here we spend 3 weeks on the floor of the Senate raising taxes on working-

class Americans and taking away the constitutional rights of legal companies.

I thought long and hard about which provisions of the bill truly deserve the trophy for the biggest outrage, in a bill replete with outrages. The hands down, slam-dunk, home run winner has to be the lawyers' fees—the lawyers' fees. The national tobacco settlement has now turned into the national trial lawyer enrichment deal. Other speakers have referred to Robert Samuelson's article in the Washington Post of June 3. Senator GRAMM referred to it extensively, and I think this article sums up much of what is wrong with the lawyer fees authorized by this bill.

More than anything else, what has become the hallmark of this bill—full of outrages—is the enrichment of the plaintiffs' lawyers of America. We are going to give a self-interested bunch of plaintiffs' lawyers $4 billion a year for the next 25 years—$4 billion a year for the next quarter century! This is an outrage. No bill ought to leave the Senate—not now, not tomorrow, not ever—that does not address this issue.

Senator GRAMM called it piracy. Maybe that is even too kind of a word.

Four billion dollars a year. The only person in the world I can think of that has that kind of annual take, Mr. President, may be the Sultan of Brunei, the wealthiest monarch in the world.

So what we are doing here is using the power of the State and the Federal Government to transfer private wealth and public dollars to create a bunch of little trial lawyer sultans, the "Sultans of Smoke." We are going to create the sultan of Mississippi, the sultan of Texas, the sultan of Florida, just to name a few.

Let's take a little trip around our currently upside-down world and preview our future "Sultans of Smoke." First, let's go to Minnesota where a few lawyers are reportedly seeking to rake in approximately $450 million. The lawyers in Minnesota actually took the case to trial, so it is reasonable to assume they employed more attorneys and put in more hours than lawyers in other States.

So let's assume that 50 lawyers worked a total of 100,000 hours. These 50 lawyers would each take home $9 million for his or her labors—$9 million. What is the hourly fee for the future sultans of Minnesota? That works out to about $4,500 an hour—not bad when you consider the minimum wage in America is $5.15. So the plaintiff's lawyers in Minnesota will make $4,500 an hour.

Now, let's stop off in Mississippi. The latest reports out of Mississippi are that the lawyers are seeking $250 million. The reports indicate that the $250 million will go to a handful of future "Sultans of Smoke." Assuming that 25 lawyers worked on these cases for 25,000 hours, the Congress would be authorizing each lawyer to receive $10 million apiece as a result of congressional action.

So let's break that down on an hourly basis. If each of these lawyers worked 1,000 hours exclusively on the tobacco litigation, that would enable the future "Sultans of Smoke" in Mississippi to earn $10,000 an hour. Now, that is a good day's wage, especially when you consider that the average lawyer in America only makes $48 an hour.

Now, let's stop off in Florida where a little band of trial lawyers are trying to take us for the ride of our lives. These soon-to-be "Sultans of Smoke" are looking to receive as much as $2.8 billion. One of the more eager Florida sultans has already sued for his $750 million share of the pot.

We don't even have to make assumptions in Florida because a judge has already done the math for us. The judge looked at the greedy grab by the lawyers and concluded that the demands for attorney fees, as the judge put it, "Simply shock[ed] the conscience of the court." The judge concluded that, even if the lawyers worked 24 hours a day, 7 days a week, including holidays, for over 3 years, they would earn over $7,000 an hour.

In fact, we know the actual hourly wage of the Florida lawyers is immensely higher because no one can seriously contend that any lawyer, much less every lawyer, worked 24 hours a day, 7 days a week, on tobacco litigation for 3½ years.

But it gets better, Mr. President. The final stop on our sultan preview tour is Texas. Senator GRAMM referred to Texas. A handful of lawyers in Texas are going after $2.2 billion. Let's see what kind of hourly fee the lawyers want in Texas. In the Texas case they did not go to trial, so it is reasonable to assume that Texas put in far less time than Minnesota.

Again, assuming that 25 lawyers worked a total of 25,000 hours, then each of these lawyers would earn $88 million—$88 million. What kind of hourly fee is that for the "Sultans of Smoke" in Texas? It is $88,000 an hour, Mr. President, $88,000 an hour. Not bad when you consider that even the average doctor in America only earns $96 an hour.

If the Texas grab is not outrageous enough, this excessive, grotesque sum for attorneys in Texas will have to be paid out of Medicare money. The New York Times recently reported that the Texas attorney general said publicly that part of the attorney fees will be paid by the Federal Government. And guess where it comes from? That is right, the Medicare money we are sending to the States in this bill.

So I ask you: Who do we pay—the sick and the elderly, or the greedy and the lawyerly?

Now the friends of the trial bar are arguing that the future "Sultans of Smoke" are expecting this money. We have heard that they are expecting this money and, therefore, it wouldn't be fair not to give it to them.

I don't mean to sound cold and hardhearted, but I have absolutely no sympathy for any lawyer who thinks he deserves $88,000 an hour. Moreover, there is no reasonable expectation that any Congress, in any State, or any nation, would allow this band of trial lawyers to pull off such a scam. I repeat, these lawyers have no reasonable expectation that public officials, elected to represent the best interest of the people, are going to stand by and codify a right to receive an excessive, gargantuan, and grotesque payment of attorney fees. Worst yet, these outrageous payments will continue for at least the next quarter century.

Every lawyer in this deal, and, in fact, every lawyer in this country, knows that the rules of professional conduct preclude them from charging fees that are unreasonable and clearly excessive. In fact, no attorney will dispute the fact that a judge could step in today and strike down any and all of these excessive fee grabs. It is absolutely ludicrous to argue that the very Federal Government that is approving, codifying, and regulating these deals is somehow unable to touch these outrageous fees.

In fact, let me tell you a little bit about the nature of contingency fees, as explained by George Will in a column earlier this year. George Will wrote:

> Among the things that make Congress, among others, irritable about the settlement are the stupendous jackpots, totaling perhaps $45 billion to $55 billion, that may come to lawyers hired by State governments on contingency-fee contracts.
>
> A Florida judge, who rejected the State's contingency fee agreement as "unconscionable and clearly excessive," calculated that the lawyers would be paid an hourly rate of $7,716—assuming each lawyer billed was working 24 hours a day, every day, during the 42-month case. Some lawyers around the country probably stand to be paid hundreds of thousands of dollars per hour of actual work.

Further quoting George Will in his column:

> Contingency-fee arrangements, under which a lawyer is paid nothing if his side loses and a fixed percentage of the settlement if his side wins, have traditionally been deemed unethical. This is because they give a lawyer a financial stake in the outcome of a lawsuit, which . . . "creates an inherent conflict of interest with the lawyer's role as an officer of the court." Contingency fees still are unlawful in Britain and most of the rest of the world.

Let me repeat that, Mr. President. "Contingency fees are still unlawful in Britain and most of the rest of the world."

> The United States long ago made a narrow "necessary evil" exception to the general

proscription of contingency fees in order to help give poor people access to the courts. And the American Bar Association's Code of Professional Responsibility stated that "a lawyer generally should decline to accept employment on a contingent-fee basis by one who is able to pay a reasonable fixed fee." State government can pay such a fee.

In other words, State governments could pay a reasonable fixed fee.

Mr. KERRY. Will the Senator yield?

Mr. MCCONNELL. I am sorry, I won't.

The states' tobacco lawyers demand, with more brass than plausibility, that their fees be treated as an island immune from Congress' general jurisdiction over the settlement.

Now, the Faircloth amendment agrees with Mr. Will's analysis and simply says that no trial lawyer's sweetheart deal is an island. I firmly believe that we cannot settle these State deals and create a sweeping Federal regulatory scheme for tobacco without also regulating the fees.

Let me repeat something that others have forcefully said. No bill should leave the Senate of the United States that does not deal with the unjust enrichment of lawyers contained in this bill.

Let me read another piece that makes similar points. The article appeared in a home State newspaper, the Lexington Herald-Leader:

Question: If on election day you were asked to chose between a political candidate who promised to work for a reasonable salary, and another candidate who wanted to be paid 25 percent of the government's proceeds, an amount which could reach billions of dollars, which candidate would you vote for?

Many voters thought they were voting for the former, but are getting the latter. That's because several dozen states have chosen to farm out legal work to lawyers who will be paid not for the number of hours they work but a percentage of the proceeds from lawsuits.

Advocates for trial lawyers give several reasons why lawyers should be paid large contingency fees instead of for work performed, like other state employees.

First, they say contingency fees are the only way states can afford to hire top-notch lawyers. Nonsense. Tobacco litigation pits 40 states with extensive revenues (the Texas state government alone collected $40.4 billion in 1996, which is about $4 billion more than the domestic and international tobacco revenues of the largest tobacco company, Philip Morris, for the same year) against tobacco companies who pay their lawyers by salary or by the hour. If tobacco companies can do it, so can the states. Some have: Maine has capped the fees for its lawyers at $150 per hour, and Vermont's lawyers, in the case of a national deal, will be paid no more than $200,000.

* * * * *

Private lawyers will likely reap tens of billions from tobacco settlements. After they do, won't they try to keep this cash cow going? If lawyers can make billions saying that states are due dollars for the adverse health effects of tobacco, won't they want to say the same about junk food? Or liquor? Or fast cars?

The answer is: Yes. And that's why private profit-making has no place in government decision-making. Government policies should be based on their merits, not on opportunities to give private lawyers billion-dollar profits.

Mr. President, I am proud to say that every state did not go out and cut a sweetheart deal with their trial lawyer contributors. Some states took the high road in this deal and refused to allow the conflict-of-interest contingency fee arrangement to taint the deal.

Let me read to you a piece from the Seattle Times that explains the rationale of these states that took the road less traveled:

Using the state's own attorneys has permitted California Attorney General Dan Lungren to claim high ground and dismiss suggestions that the lawsuits were motivated by the plaintiff's bar.

"The fact that we are not using outside counsel lends a lot more credibility to the legitimacy of these claims," said Tracy Buck Walsh, special assistant attorney general, who is managing California's case.

Colorado Attorney General Gale Norton, who also had the political backing of the governor, had another motive: She said she is philosophically opposed to her state using contingency-fee attorneys because these outside counsel are motivated by more than the pursuit of justice.

"We tend to be more objective than private counsel who are employed on a contingency basis and who maintain their own personal financial interest in the outcome of the litigation," said Norton, a Republican. "It gives them different motives."

The state of West Virginia's one-page contingency-fee contract agreeing to pay one-third of the recovery, by far the largest contemplated by any state, was thrown out of court as unconstitutional.

In arguing against the contract, tobacco-industry attorneys suggested that it was unethical because it compromised the independence and impartiality of the quasi-judicial role vested in state prosecutors.

"The litigation team is wielding the coercive, regulatory and punitive powers of the state," tobacco attorney Robert King argued. Such a contract "permits the power of the state to be exercised by attorneys with a direct financial stake in the exercise of that power."

The bottom line here is that the National Lawyer Enrichment Deal smells like an under-the-table arrangement cut in smoke-filled rooms.

The States have made deals with their lawyer friends to engage in what has been aptly referred to as "prosecution for profit"—and we can not simply bury our heads in the sand and pretend that we have no duty to regulate these deals.

In the words of the Weekly Standard:

Bribing judges was long ago made a crime. Bounty hunters were banished and state prosecutors put on salary for a reason—to remove any financial stake in their prosecution. Contingency-fee lawyers have a stake in litigation that reaches grotesque proportions. And now these lawyers are being deputized by attorneys general to prosecute under the cloak of state authority.

When these lawyers are making large political contributions to the attorneys general who hire them to sue, in lawsuits that have contingency fees running literally hundreds of millions of dollars, prosecution for profit takes on a whole new dimension. Such conflicts of interest once were considered a threat to justice. Indeed they were. Indeed they are.

So, Mr. President, I urge my colleagues to support Senator FAIRCLOTH's reasonable and fairminded amendment. Frankly, I had hoped the previous amendment offered by Senator FAIRCLOTH at $250 an hour would be approved. But certainly, $1,000 an hour, when the average American entering the work force at minimum wage is making $5.15 an hour and when the average lawyer in America is making $48 an hour, is not unreasonable.

The amendment says it is perfectly OK to make a great living in America—as a trial lawyer or in any other legal occupation—but it is not OK to cut sweetheart deals, "prosecute for profit," and use the massive, coercive, and punitive power of the State to transfer private and public dollars to make a few friends into instant billionaires.

I yield the floor.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise to support the amendment offered by the Senator from North Carolina, Senator FAIRCLOTH, and the Senator from Alabama, Senator SESSIONS. I believe that the least we can do is assure that the tobacco legislation does not become a lottery for trial lawyers at the expense of the American taxpayer.

We have been debating this for several weeks. It has been mentioned that we have been debating it for several weeks. Usually, when we debate for 2 or 3 days on a bill, my constituents start calling and saying, "Why don't you get that wrapped up, over with?" I have to tell you that those calls are not coming in. There is a fascination with the debate here—a fascination, an interest, and a very deep concern, because this could be the precedent for a whole bunch of other kinds of products. There is an interest in the attorneys' fees because this could set a precedent for other product attorneys' fees.

Why are we doing this as part of Federal legislation? Well, if the States would have been able to resolve this all on their own, the Federal Government would not have been involved in it. But that is not the point where we are. We are at the point where the Federal Government is going ahead on its own with a tobacco bill, not a tobacco settlement. We are in the process of taxing folks in the United States who smoke. When we finish taxing those people in the United States, there are some outstanding attorneys' fees that we will be paying out of the Federal funds.

We have to be concerned about the money and how much money is going to the attorneys. This is not just a matter of letting the States do their

own thing. This is a case where the States said: We need to have your involvement. And of course they do. It is interstate commerce. There are a whole bunch of constitutional issues that come into this that require Federal participation. We are now in this Federal participation. We say: Companies, you reached an agreement, but we don't agree with your agreement. And so we do our own thing and we start at $68.5 billion. We decided that wasn't enough money, and we raised it another couple hundred billion dollars, and maybe a couple hundred million dollars more than that. We are still coming up with ideas for spending money. That is easy. That is a normal thing. When the family has a little extra money, they are always able to figure out ways to spend it.

But we are talking about taking some of that money and giving it to people for a job that they did do. But we are saying, if we are responsible for that money, we want to show responsibility for that money, and we think the responsibility for the money says that an attorney shouldn't get more than $1,000 an hour.

Again, I can tell from the people who are getting hold of my office that they think $1,000 is a bit too high. In fact, they think it is a whole lot too high for tax money to be collected from tobacco and given out to other people as a precedent for the United States—$1,000 an hour. There are a lot of people in my State who do not make that much in a month. They see that as a lot of money. I see that as a lot of money—$1,000 an hour.

This is just a precedent. That is why we have to talk about it so carefully. We are talking about those terrible tobacco companies. They withheld information. They do have a drug that is addictive. But they are not the only people perhaps out there. I started keeping a list of the things that my constituents, the voters, the folks back home, think that we ought to put on the list next. I get a lot of calls for liquor and a lot of calls about caffeine. What don't we know about caffeine?

It is getting to the point on this list now where I thought maybe a project for the Senate might be to, each day, as a part of morning business, bring in a tray similar to a dessert cart that they serve to you at a restaurant that has different products on it, and we would try those products and determine how beneficial or how harmful they were to people and set a new tax on those. This might solve tax simplification for the whole Nation, because by the time we go through all the food products in the Nation and decide what a punitive tax we ought to put on them for information we don't know about them, that leaves a wide range and we will not need any other form of tax, except of course we will be figuring out new ways to spend the money as we go along.

The amendment before us would require the lawyers to provide a detailed accounting of their legal work to Congress in relation to the legal actions covered by the underlying bill, including any fee arrangements entered into. Then it would limit the payment of the attorneys' fees to $1,000 an hour.

I know people are wondering why that is a limitation. Of course, I am sure they are hearing that there are some out there that are maybe getting $88,000 an hour or $92,000 an hour. Then when they are checking, they are finding out that it is the wealthy and the connected lawyers who are being able to line their pockets from the settlements supposedly made on behalf of the American public. This bill would impose one of the most regressive taxes in America history on low-income Americans. Then we have to debate whether it is fair to limit somebody to $1,000 an hour.

Mr. President, to put these figures in a little bit of context, last year the average gross receipts for the 100 top grossing law firms in America averaged $18 million. That was for an entire firm—$18 million. If this tobacco bill is not amended, some of the law firms involved in the tobacco settlement will stand to gain nearly $925 million per firm. I would say that is a pretty good raise for relatively little work.

It is important that we reach a decision, that we put some limitations on it, and that we keep people from making an unusually large amount from the tax money of the lowest-paid Americans.

That is where we are. A thousand dollars is higher than I would like it to be, but we are trying to find a range where people will say that is enough. We will have enough other people who will say that is too much. But I will go with it. We will get a vote that will place some limitation on the way we are handling tax money for the American people.

I thank the President. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Wyoming is correct; we have a responsibility.

In meetings and almost marathon sessions around the clock with all Senators, 20 of us—1 finally disagreed and voted against us in the Commerce Committee—the distinguished Senator from Arizona, our chairman, made sure that everyone was factored in: That we certainly considered the health groups; Dr. Koop and Dr. Kessler were there. We considered the attorneys general. We seem to forget these agreements, and so forth, were made by the attorneys general in consultation with the White House, the health community, and the tobacco companies. We forget the fact, of course, that the tobacco companies—this thing has gotten all out of kilter—agreed to tax themselves. There was not a single Congressman and there was not a Senator at the table last June. They taxed themselves. Now we are running around, we are going to save victims, and everything else of that kind.

But let me get back to the Senator from Wyoming, because he is right, we have a responsibility. The 20 of us on the committee complied with that responsibility with respect to lawyers' fees that we would be engaged in, and the money would come to the Federal Government. Yes; as U.S. Senators, we are definitely responsible.

You will find that section, of course, on page 437 of the bill—"Attorneys' fees and expenses," and the criteria used, and everything else, on arbitration.

We have in a responsible fashion outlined the responsibility. There is none of this 25 percent—none of it. Absolutely, they are looking at settlements made by the several States—I think Florida, Texas, Mississippi, and now Minnesota I think is the last one. But we are not the Governor of Minnesota or Florida. We have not, as attorney general of Texas or Mississippi, anything to do with that. We could not legislate on it.

We believe, as the Senator does on that side of the aisle, in the 10th amendment, those things not outlined in the Constitution as responsibilities of the Federal Government are reserved to the States. While we have one wayward former attorney general who didn't want to do anything, we have some outstanding attorneys general who have done more—we are going to prove it—to save people from cancer than Dr. Koop and Kessler combined. I will get to that.

But I want the Senator from Wyoming to know that we have done just that. We have acted in a responsible fashion. It is arbitration.

Incidentally, since I mentioned Florida, they ought to be ashamed of themselves and take down that sign. Our distinguished President, take down that sign that is absolutely false. Rodham, I don't know him—Hugh Rodham, Hillary Clinton's brother. They put that up because they want to project partisan politics into this and Hugh Rodham as a part of the litigation team—absolutely ludicrous. But they put a sign up there and then "drink with the Devil." They have all kinds of expressions. They are running around on the floor of the U.S. Senate with all the pejorative terms of "corruption," "greedy," "predatory," "raising taxes," "slam dunk," "outrage," "sultans of smoke." Oh, boy, they are having a heyday.

Oh, boy, aren't they having a heyday. Aren't they having a heyday—a total smokescreen—with respect to what the actual fact is.

Incidentally, you are looking at a lawyer who practiced for 20 years, and

never by the hour. And let me identify myself as a defendant's lawyer as well as a plaintiff's lawyer. I represented the South Carolina Electric and Gas on their bus system, passenger bus. If you want to defend cases, defend the suits brought by passengers on a city transit system. And I can tell you here and now that about the middle of November, maybe even a little bit earlier, the Christmas club starts. Nobody who gets on a bus wants to catch their arm in the door, slip down in the aisle, fall down the steps. The bus is jerking off everywhere. And they got all of these little suits.

The corporate lawyers, the regular defendant lawyers, are lazy. I said that to the chief counsel of the electric and gas company because I was suing them as a plaintiff and making money doing it. I said, "Well, tell them to come in and try the cases." But they settle them all out because they are busy and they don't want to bring the cases.

So I lined them all up and saved that particular corporation millions of dollars, and I am proud of that. I am proud to stand here when the Senator from Texas says they ought to be ashamed. We had this nonsense. We have already voted on it. Sixty percent of the Senators, according to the Senator from Texas, ought to be ashamed—making all this thing up here of what has been going on now for years.

It has to do, Mr. President, with lawyers. We see it at every particular turn and the political opportunism that has come about as a result of an outstanding job done by lawyers. What really happened—and the Senator from Alabama said he was one who was approached and did nothing and is proud of it. Well, if every other attorney general had done that and waited for others to prove the new theory, as he said—and it was a new theory; nobody had ever won a jury verdict—nothing would ever have happened and we would not be here.

If you look in the CONGRESSIONAL RECORD from January to June of last year, you will not see an expression of children smoking in the CONGRESSIONAL RECORD. Nobody was concerned about it. I have been here almost 32 years, and I have worked with the National Cancer Institute and the American Cancer Society, won national awards and everything else of that kind. Other than putting up the notification asking for more research and everything else, we were not stopping smoking. This whole thing is going on here brought about by trial lawyers. It is going to eliminate a lot of cases, a lot of cancer deaths, as a result of smoking.

But, yes, they had the ingenious approach of a class action, the trial lawyers did, over the past several years, culminating in the agreement last June. They said: We are going to continue to bring these class actions even though we have not won one, and we think we have some of the company's records here that the jury would take notice of and change their mind and give us a verdict. The attorneys general were approached by these particular trial lawyers, and they all joined in.

I will cite later on, one attorney general had to defend his life, had to hide the witnesses, had to really withstand a lawsuit of hourly pay, hourly wages—hourly, hourly, hourly. Oh, my heavens. Twenty years I practiced law, and if I didn't do something for the client, I did not get paid. And if I brought a case on a contingent basis and lost, I lost it; the client paid nothing. That is a wonderful thing in America for middle America and the poor Americans. If you can think up a better system, think it up, because it has worked over the years. And, yes, our business leadership doesn't like it. They call it frivolous suits. What trial lawyer has time for a frivolous suit? He doesn't get anything if it is frivolous; it is going to get thrown out.

So the proof of the pudding on frivolous suits is to try them and win, and the lawyers will quit bringing those kinds of cases if they are frivolous. We don't have time for frivolous suits, sham claims, and those kinds of things that they talk about. We bring good cases. We bring good cases, and we make a mark.

That is exactly what has happened here with respect to this case. They went to the attorneys general, and the attorneys general finally got together with the companies. And the companies are saying: Well, we are winning these cases but it is costing us $500- to $600 million in lawyer's fees.

Now we want to control lawyer's fees. They never have, over here, worried about really making money—this crowd over on the other side of the aisle. I have never seen a more sham performance than they are worried about anybody making money. Otherwise, I have been up here, and if there is an outrage, it is this billable hour crowd where "I don't know the law so I charge you as a client so much per hour to go up in the library on the weekend." It is my call, and if I can stay ignorant long enough and go up more weekends, I get more money.

That is the crowd that ought to be controlled. The Senators around here have been involved in various hearings now that owe all kinds of millions in billable hours to downtown lawyers to come and look at their records and everything else of that kind. That is the outrage that bothers this particular Senator, not the lawyers who really brought the case and did something.

And none of it is 25 percent. The truth be out and the fact is—and charge me for this; it is going in the CONGRESSIONAL RECORD—8 percent is what is going in with respect to these cases in Florida, Mississippi, Texas, and Minnesota. But they throw around 25 percent and everything else of that kind, and all of it is subject to arbitration and agreement.

In the Texas case, they already have been petitioned by the distinguished Governor of Texas, and they are in a hearing, and I do not know whether it will lead to arbitration; I haven't kept up with it. But the States know how to look out for themselves. To this States rights crowd on the other side of the aisle, now all of a sudden all the attorneys general are dumb, don't know what they are doing, and we have to protect the farmer, the filling station operator, and the repairman at the garage.

Isn't it interesting, Mr. President. There is no plaintiff up here complaining, no plaintiff ever complaining about lawyer's fees. Who is complaining? The crowd that is crying is the one that is causing the injury. They posture themselves that they are looking out for the filling station operator and the working lady and the laundry woman and everybody else like that—poor America.

The only way to get a lawyer is to go in and get good representation on a contingency basis. Isn't it interesting. You find me the plaintiff who has come up and said, "I get paid too much money." They are tickled to death to get anything, because if you left it to the corporate crowd, they wouldn't get anything. I know. I have been in the game. I have watched it over the years.

But be that as it may, they made that agreement and they said on a contingent basis, which now averages out to 8 percent—despite that sign of pejorative terms—just to excite people around here and throw poison about, drinking with the Devil and all. They have all the wonderful little expressions, but I wish they would come out in the Chamber and debate this thing, because I am ready to debate it and stand up when they end up with their peroration that we ought to be ashamed.

Well, I am proud. I am proud of this particular initiative made by the lawyers and the States attorneys general, because they made that agreement and they went in never having won before. They put in their own money. And go to the distinguished Attorney General Mike Moore of Mississippi. Mr. President, you were an attorney general. Can you imagine bringing a case in the State of Washington and having the Governor of Washington sue you because you brought the case—not just say, "General GORTON, I think you might be mistaken." Just sue you. Just sue you and make you hire a lawyer to defend yourself to do your job. That is Mike Moore, from Mississippi. He fought that. Had to get in his own pocket, and hire lawyers there the whole time.

Otherwise, they had to hide witnesses that they got from the company. For 2 years they chased them around. They tried everything in the world to intimidate their witnesses. They really went on a struggle to come this far. And some of the lawyers they are talking about—I am not that intimate to the case—have yet to get a red cent. They have millions of dollars invested in time and effort—discovery, interrogatories, appeals, appearances, travel, on and on and on, on behalf of the public of America, and they are the ones who are doing the job and not these Senators with this particular amendment.

Because if they were really interested in billable hours, I would refer to some of them here who are listed by none other than our friend, Steve Forbes. I worked closely with Steve Forbes. He was always asking me for more money. I was chairman of a subcommittee of State, Justice, Commerce, and he had Radio Free Europe, and Liberty. I really respect him. He is a wonderful fellow, a dedicated American. He did an outstanding job. But don't let him act like he never saw this town, because he has, and he has been asking the town and the Government for more money.

But he listed here, since they brought in Intel—I just got this at the first thing—Andrew S. Grove, and he gets $164 million compensation a year, coming down to $77,000 an hour. Where is the bill about the predatory greed, corruption, "Sultan of Smoke," outrage, predatory, right on down the line? They don't say that Grove is all of those nasty things. They say that is pretty good. Right on. And I agree with that. I admire him.

I have been to the Intel plant in Dublin, Ireland. I have to tell that. I have to enjoy something this afternoon. Just to show how we do work with industry, I walked into the Intel plant, a billion-dollar plant outside of Dublin, and when I walked in the distinguished head of the plant named Frank McCabe—I know everything I say is going to be checked. In a campaign, they have nothing but lawyers and billable hours to check everything you say, so write that down—Frank McCabe is his name. And he said, "Governor, glad to see you."

Well, I don't remember him. But I remember him now, because he was with General Electric in Irmo, a plant we brought to Irmo, SC; GE. He was there for 10 years, managing that beautiful operation, and $1 billion invested.

He said, "You know how I got it operating and up and in the black?"

I said, "No, how is that, Frank?"

He said, "I went back and sent teams to Columbia, SC, where you had Midlands Tech, and we copied your technical training for skills, and we have it over here in Ireland."

So, we do not speak casually or critically of Mr. Grove. I am proud of him. I wish I had the ability to make $77,000 an hour.

The next fellow here is Mr. Eisner. Oh, I know him, and he is a wonderful operator. I have been out, talked to a board of young folks. I don't know the official name of that board, but I can tell you they were the smartest young gentlemen I ever met, and ladies. They cross-examined me and they knew more about what was going on in Washington than any group with whom I have met. They were really updated and had very thoughtful questions, and I learned from them. So I don't speak critically.

But they got Michael D. Eisner here. Steve Forbes lists him down at $245 million, or $120,000 an hour. Where is the bill? Here is a fellow who has more than your $90-some thousand or $80-some thousand. The floor is cleared. They are not around. There is no amendment to grab Eisner at $120,000 an hour.

Then, there is Stephen Hilbert. He gets $350 million, or $170,000 an hour. Man, this thing is going up, up, and away. I better start subscribing to this magazine and see where I can get out of this political rut, trying to defend the working people of America, those who cannot afford billable-hour lawyers—who cannot afford a lawyer, period—but can come in and if they have a claim or have a chance or whatever.

One of the last cases I handled, I said, "I don't think too much of that case." Well, the lady said, "Mr. HOLLINGS, we have been to four other law firms and finally the sergeant out there at the police station, he said that you didn't mind trying the cases. And what I am telling you is right. I wasn't at fault."

Well, it looked to me the way she described the particular injury, and the case that had come about, they had to have a moving bridge. If someone is ever interested, I will go, because I took that case all the way up past the circuit court of appeals in Richmond, and we won it. I worked for a year and a half easily, almost 2 years, my partner and myself. We had a fortune tied up in that. I wish I had the time to go into it this afternoon, it was very interesting. The point is, we didn't know we were going to get anything for that 2-year period until the end when we finally prevailed.

I could go down the list. Wait a minute—Sanford Weill, Travelers Group, $434 million—$200,000 an hour. Where are they? Man, come on. Don't give me about this $80,000 an hour or $1,000 an hour. We have people in America making $200,000 an hour. Yes. Yes. They are ashamed all right. They wouldn't come out here. They won't come out because they know what we are telling is the truth about this situation.

What goes into an agreement is a lot of things listed here: the time and labor, that is the billable hour; then the novelty and difficulty of the question; the skill requisite; the preclusion of other employment—you can go down the list of these things, on and on, about the tests, the experience, reputation, ability, the attorneys involved, the undesirability.

Can you imagine bringing a case more undesirable than to have your own Governor sue you for bringing the case and everybody else chasing you around and calling you predatory, and "Sultans of Smoke," and everything else like that, when what you have done was agreed upon by the State?

And no, no, no, Senator from Wyoming, we don't have a responsibility other than to leave that one alone; and the one in Florida alone; and the contract in Texas alone—because those were contracts made and cases disposed of without the Congress of the United States under formal agreement.

We are all good enough Americans to realize we are not going to abrogate the agreement or contract or whatever it is.

Even if we wanted to write it into this particular bill, we couldn't do it. Those are agreements made when we were sleeping at the switch and not doing anything about children smoking. Now, we are all in heat—"children smoking," "we've got to look out for the children," "they're victims, victims." People are bringing in their relatives saying they are victims, smoking for years on end. For 30 years we have been telling them the best we could about the danger to your health on a package of cigarettes.

There it is. There it is, Mr. President. They want to come in now with this assault, about how they are saving people, totally misrepresenting the record. There isn't any question about it, starting with the Hugh Rodham sign and going down to billable allowance and our duty and 25 percent and the outrageous—outrageous—words again and again and again.

Now, what's afoot? Well, any and everything on this bill, unfortunately, because we have drugs, we have tax cuts for marriage penalties, we have all kinds of little provisions here and little provisions there. If you take the political polls, they say, as they said in Henry VI, "Kill all the lawyers." That is what Dick the Butcher said. But it was the greatest compliment we ever had, I say to the chairman of the Judiciary Committee, my most distinguished friend, because they wanted to start anarchy and tyranny in that vast land. They knew as long as there was a living lawyer to protect individual rights, anarchy could not prevail. So Dick the Butcher shouts, "First, we must kill all the lawyers." But, of course, this crowd over here could care less about Shakespeare, and they are the ones who should be ashamed of themselves, absolutely ashamed of themselves bringing on this onslaught,

taking up this time on a matter we have already voted upon.

Why? Because we have the billable hour crowd downtown. A lot of good friends I have, and I have gotten most every award you can find from the Chamber of Commerce. I love them, but they even have TV ads about trial lawyers, trial lawyers. If they ever get in trouble, tell them to get one, because they don't want to get a corporate billable hour lawyer sitting on his duff up on the 32nd floor looking at his oriental rugs, at his mahogany desk, blinking his eyes, waiting to go to the club and charging you for it.

It reminds me of a Sam Ervin story, when he was a Senator here, about that poor doctor down there in North Carolina. He said the gentleman practiced medicine for 32 years and never had a vacation. He finally got his son out of med school and said, "Son, your mother and I are going to have to take off for a couple of weeks. You have to take over because we have never had a vacation."

He came back off vacation and was talking to his son.

"Dad, you know Mrs. Hurleeha?"

He said, "Yes, that's the lady with the bad back."

The son said, "She doesn't have a bad back."

"My God, son, did you settle that case? She paid your way through med school."

If you don't kill them, you can charge them, and if you don't bring the case to court and keep on studying it, you get into this billable hour thing. That is exactly what is going on.

They have it with respect to the product liability, with the Coast Guard bill, the transportation bill. Anytime that corporate America can hammer on lawyers who really are bringing about safety, bringing about good health, bringing about the end of smoking in America, you have done something.

Let's get to the point. The greatest call upon any profession, Mr. President, is to rid itself of the profession. Specifically, if the ministers can get rid of all sin, the doctors all disease, the greatest call upon the distinguished chairman of the Judiciary Committee and me is to get rid of all injury cases.

When I came up here 32 years ago, just about, one of the first things was Love Canal. We had all the toxic fumes and the people dying. What happened? We didn't sit around when it was brought to our attention, by whom? Trial lawyers. We put in the Environmental Protection Agency. And it bothers some people getting those EPA statements, environmental statements, but they have saved a lot of injury. It has saved a lot of lives. We have a much, much more healthy America.

Similarly speaking, we found little children burning up with flammable blankets in the cribs. The trial lawyers said, "Look, there is no sense trying these and winning and getting money; let's stop burning up the children. Let's get a Consumer Product Safety Commission."

I have been in test labs where they test not only the toys, not only the cribs, but all the particular devices that go into the kitchen as to safety, and we have corporate America on a safety course.

Ask Ford Motor Company. Just the week before last, they recalled 1,700,000 Ford pickup trucks. Why? Because of Mark Robinson out there with the Pinto case in San Diego. Mr. President, 20 years ago, he got a verdict of $3.5 million actual damages and $125 million punitive damages. He hasn't collected a dime on the punitive damages, but we in America have collected on it, because that is why they are calling in these things now. Time and again every week—Chrysler, just before that, called in hatchbacks. These automobile companies don't just get a CPA to factor in the cause of the injury—"We can afford that rather than pay the lawyers; we just settle the cases"—they are putting out safe products in America. And Europe is following our example.

So what happens then? Along comes the trial lawyers with the attorneys general. They have come in now and not taxed anybody. When I heard this figure last June, I was almost in shock. I have worked on the defense budget for 28, 29 years on the Defense Appropriations Subcommittee. The actual amount is $250 billion, but when they came up with $368 billion, I said my newspaper has gone loco. They don't know how to print things. They have a mistake here. They came up with $368 billion and said just increased a modest amount, and they are saying, "Oh, Congress is up there, tax and spend." And that is the companies' ads. They are the ones who agreed to it. It was their idea.

Come on, we have gotten totally off track here with this political charade that has been going on with attorneys' fees. "We'll come back again, and if we can't get $1,000, we'll come back for another amount; we'll come back next year, and we shall return," like MacArthur. Come on, they know better. We will not put in here to get the billable hours crowd downtown and limit them and or take these corporation fellows who "deserve" what they get. "They produce," and don't tell me the trial lawyers don't produce. We are here. No Congressman brought us here. No Senator brought us here. The trial lawyers brought us here on this particular initiative.

It is greed, trying to get even more, acting like we are the ones giving the fees. As the Senator from Wyoming says, the provisions are in here for responsibility of arbitration. You wouldn't have found 19 Senators who would have reported this bill out for a reckless 25 percent and billions and billions of dollars like they are talking about. It is less than what corporate America is doing, riding around smiling. I met with that crowd. I like the carpetbagger up in the Northeast and Boston and New York.

When you are a young Governor, they will let you in the door. And we have the blue chips, corporate America, down there. Now we travel over to Europe and Latin America, and we have—and we are proud of it—the hundreds of Hondas, the Hoffmann La Rouches, the BMWs.

But I can tell you here and now, let us not as a Congress bog down into this political thing on account of pollster politics and start limiting fees. Let us let them make their agreements. Let us, as a Federal program, have an arbitration like we have in everything else. They have subjected themselves, I know, in Mississippi and otherwise, to arbitration. The trial lawyers will agree with that. Let us get away from all of this onslaught of Hugh Rodham, Hillary's brother, everything else like that, that they might think is a good thing to put on national TV so they can get on C-SPAN and go again and again at the particular bill that we have before us.

Mr. President, as a question, we had hearings on this. And there is a legal question. I am sure the chairman of the Judiciary Committee will get into it.

Mr. HATCH. Will the Senator yield on that point?

Mr. HOLLINGS. Yes.

Mr. HATCH. You know, as chairman of the Judiciary Committee, and somebody who has been both a defense lawyer and a plaintiff's lawyer, I have some specific thoughts and first hand experience on this issue.

Mr. HOLLINGS. As has this attorney.

Mr. HATCH. As you have been an attorney who has tried cases on both sides of the issue, you understand very well that without the attorneys in the Castano group, we would not be where we are today with the original settlement.

Mr. HOLLINGS. Exactly.

Mr. HATCH. We would not have had a settlement that amounts to $368.5 billion; not anywhere near that amount without those attorneys.

Mr. HOLLINGS. No Congressman, no Senator—just those.

Mr. HATCH. Is it your understanding that not one of those plaintiffs has been paid a dime for this case so far?

Mr. HOLLINGS. That is right. None of the Castano lawyers, and they have been at it for years.

Mr. HATCH. Many of them have millions of dollars in unpaid fees in this matter. Is that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Isn't it also true a contract between a plaintiff and his attorney is a legally enforceable contract, which Congress should not impair?

Mr. HOLLINGS. Exactly. You cannot impair the obligation of a contract constitutionally. You and I both know that.

Mr. HATCH. If Congress, as it would be doing here, at least as I understand the intent of this amendment, were to interfere retroactively with private contracts, it would be unconstitutional for a variety of reasons; isn't that right?

Mr. HOLLINGS. It would not be worth the paper we would write it on. We would be wasting our time here.

Mr. HATCH. By capping a fee, such an interference is a taking under the Fifth Amendment of the Constitution. The Supreme Court cases clearly show that the Federal Government cannot confiscate money or interfere with a lawful contract. Is the Senator aware of that point?

Mr. HOLLINGS. The Senator is correct.

Mr. HATCH. In addition, the regulation of attorneys' fees properly, at least as I view it, belong in the domain of the States, and such usurpation of State prerogatives may very well violate the Tenth Amendment in the eyes of many constitutional authorities. Is that right?

Mr. HOLLINGS. Absolutely. If the Senator would yield for just a second.

Mr. HATCH. Sure.

Mr. HOLLINGS. Unconstitutional. It was cited by the constitutional professor of law at the Kansas City School of Law. And I quote: "It would violate the State sovereignty protected by the 10th amendment. Second, it would constitute an uncompensated taking of private property in contravention of the 5th amendment."

Mr. HATCH. Recent court opinions, if my colleague would permit me to ask another question, such as New York v. United States or Printz v. United States has made the Tenth Amendment a shield against Federal impositions on the sovereign authority of the States. Is that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. That was not always the case, but it has been so in those cases. Under any view of federalism, there is no justification for Congress, whatsoever, entering an area of pure State jurisdiction, altering the rights and the liabilities or remedies of private parties, and then dispensing with all due process protections guaranteed by the Constitution. Isn't that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. Well, let me ask the Senator just one or two more questions. I may have a lot more to say later in this debate.

The States have already shown a willingness to step in and prevent unreasonable and excessive fees in the tobacco settlements. Is that right?

Mr. HOLLINGS. The State of Florida has stepped in and has it as a hearing; so has the State of Texas.

Mr. HATCH. In the Florida settlement, the court threw out the contingency fee arrangement, which it found to be clearly excessive under the circumstances. This shows that the State courts are best equipped to address this issue by utilizing the arbitration provision of the Commerce Committee bill. Is that correct?

Mr. HOLLINGS. That is correct.

Mr. HATCH. As I understand it, the bill that the distinguished Senator has worked on, the one that is on the floor before us today—as much as I dislike the bill, as much as I think it will not solve the problem, as much as I think it will not bring the tobacco companies back to the table, as much as I think it could be written in a far better way, and as much as I think it has been substantially weakened by some of the amendments agreed to—the fact of the matter is that the bill does have a provision whereby attorneys' fees can be resolved. Is that not correct?

Mr. HOLLINGS. Certainly.

Mr. HATCH. The bill contains a provision whereby the attorneys' fees will have to be resolved in a legally reasonable manner. Isn't that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. It is very unlikely that anybody is going to get away with some big windfall under the provisions that apply in this bill and, I might add, in the substitute that we have worked on as well. Am I right on that?

Mr. HOLLINGS. The distinguished Senator is right on target.

Mr. HATCH. Well, let me ask the distinguished Senator this: It seems to me we must also examine the precedent we are setting here in having the U.S. Congress single out any one profession by capping their earnings.

Mr. HOLLINGS. That is my plea, Senator. It might in the one instance be an instrument of good, but it is the customary weapon to run amok and start into an area where it is totally up to the individual parties, on the one hand, making the agreement, but more particularly invading the sovereignty of several States.

Mr. HATCH. Can I ask my dear friend and colleague, do we single out the insurance executives or computer executives?

Mr. HOLLINGS. No, sir.

Mr. HATCH. Does the U.S. Congress set their fees or their salaries or their compensation?

Mr. HOLLINGS. No. I apologize for raising these, but I just wanted to show the sincerity. You know, these are all friends of mine. I admire them all. And they produce that amount.

Mr. HATCH. Do we single out labor union leaders and say they can only earn so much money?

Mr. HOLLINGS. No. The Congress has a lot of good work to do, but not to get off in the field of this thing.

Mr. HATCH. I remember when Jackie Pressler was the chairman of the Teamsters. He came before our committee and somebody brought out that he made over half a million dollars a year and was kind of needling him that it was too much money for a labor union leader to make. He looked right up at him and said, "Well, I want you to know that almost every one of my corporate counterparts makes a lot more. And I'm worth every penny that I make for my union."

Mr. HOLLINGS. Certainly.

Mr. HATCH. I had to agree with him. I thought he was worth every penny he made, whether you agree or disagree.

What about entertainers? Do we set an amount of money they can make?

Mr. HOLLINGS. No, sir.

Mr. HATCH. Or sports figures?

Mr. HOLLINGS. Not at all.

Mr. HATCH. If Michael Jordan wants to make $60 or $80 million a year, or Tiger Woods, who is earning millions of dollars a year, should Congress be setting their salary?

Mr. HOLLINGS. I appreciate the questioning of the distinguished Senator, because it brings into sharp focus exactly what we are about here.

Mr. HATCH. Let me ask one other question. I admire some of the top corporate leaders in the world as well as the top sports figures in the world.

Mr. HOLLINGS. Exactly.

Mr. HATCH. I admire people who are innovative and creative. Take Bill Gates, for example. I admire him. I think what he has done at Microsoft is nothing short of phenomenal. But should we begrudge the fact that he has earned his spot in our society as one of the wealthiest men in the world, worth somewhere between $40 and $50 billion?

Mr. HOLLINGS. What impressed me, Senator, about Mr. Gates—I missed him the other morning because I had to be on the floor—but he has some 21,000, 22,000 individuals working for him—all millionaires.

Now, how do you like that? That is a wonderful business and industry. And it is his genius that has gotten it there. It was nothing we did in the Congress.

Mr. HATCH. Not to dwell on that industry—Steve Jobs; he deserves every penny he made. He helped make the computer industry what it is today. Isn't that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. The head of Compaq, or the head of Hewlett-Packard or Larry Ellison, the head of Oracle, or any of them for that matter are all very wealthy people who some people think lucked their way into this wealth. I happen to believe they worked hard and with innovation and creativity they were able to make this kind of compensation.

Are they really that much different from really top-notch plaintiffs' lawyers like the Castano group lawyers who really made a difference here and who are responsible for bringing the tobacco industry to the table and getting

their agreement on the $386.5 billion settlement?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Nobody has been able to accomplish what these attorneys have achieved. They brought the whole tobacco industry to their heels and tried to get the U.S. Congress—at least the Senate, so far—to try to do something about the deplorable behavior of tobacco companies. Isn't that correct?

Mr. HOLLINGS. That is correct, Senator.

Mr. HATCH. Don't you think they deserve better than average compensation for that significant accomplishment?

Mr. HOLLINGS. At least what is agreed to. They are complaining about an agreement that you didn't make and I didn't make and we have a responsibility to leave alone.

Mr. HATCH. Let me ask the Senator this question. If the Senate falls to pass this bill and we wind up doing nothing here or if we cut out the attorney fees, they could wind up not recouping the $40 to $100 million in legal time and other expenses that they have incurred in this matter; isn't that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Isn't that what contingency fees are all about?

Mr. HOLLINGS. Contingency fees are absolute risk. You are assuming the cost.

Mr. HATCH. When I tried cases for plaintiffs on contingency fees, I won most all of them. It was not a matter of not getting paid, because I was always able to win a bigger verdict than I could have gotten through settlement or they could have gotten through settlement.

The fact of the matter is, if I hadn't won the cases, I would have assumed those losses; isn't that right?

Mr. HOLLINGS. I have done it. I have lost that.

Mr. HATCH. My point is, that is why contingent fees are so important. A lot of the people who came to me could in no way have spent a day in court without a contingency fee lawyer who was willing to take the risk of bringing their case before a jury and trying to recover just compensation for them before that jury; isn't that true?

Mr. HOLLINGS. That is correct.

Mr. HATCH. I have been there, and I have to say, when we start setting salaries for attorneys, or any other group of people, that is going to be the end of the free market system, as far as I am concerned.

Mr. HOLLINGS. No question about it.

I see the distinguished managers of the bill. Let me yield the floor.

Mr. HATCH. Will the Senator yield so I can compliment the two managers. I want to compliment the managers for the provision contained in this bill that resolves these matters. You have taken a reasonable set of language and a provision that would resolve the question of reasonable legal fees. I think both manages on this bill deserve credit for having done that.

I will have more to say on this issue later. I am sorry I interrupted my colleague, but I wanted to ask him these questions, since he had spoken so eloquently.

Mr. McCAIN. Mr. President, we had agreed earlier that, pending negotiations with Senator NICKLES, there would be a modification of the Kerry amendment, which was not tabled. Following that language being accepted, then the Kerry amendment would be taken on a voice vote.

The debate has been on the Sessions-Faircloth amendment, which has not been propounded. We would like to have Senator SESSIONS come over and propound his amendment at that time, and then Senator KERRY would move to table the Sessions amendment.

At this time, I yield the floor so that Senator KERRY can modify his amendment to which Senator NICKLES and others have agreed.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, it is my understanding then—and I ask unanimous consent that after my modification we would proceed immediately to the vote on my amendment—subsequent to that, there would be a 45-minute period of debate evenly divided on the Sessions amendment, at which time that would be followed by a motion to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2689, AS MODIFIED

Mr. KERRY. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself, Mr. BOND, Mr. CHAFEE, Mr. KENNEDY, Mr. DODD, Mr. WELLSTONE, Mr. JOHNSON, Mrs. BOXER, Mr. SPECTER, Ms. LANDRIEU, Mr. DURBIN, Mr. GRAHAM, Mr. BINGAMAN, and Mr. KOHL, proposes an amendment numbered 2689, as modified.

Mr. KERRY. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be so modified.

The amendment (No. 2689), as modified, is as follows:

On page 201, line 20, strike from the comma through line 21, and insert ";" after "Act."

On page 203, line 7, strike from the comma and all that follows through line 14, and insert a period after (b)(2) on line 7.

At the appropriate place insert the following:

( ) ASSISTANCE FOR CHILDREN.—A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 2689), as modified, was agreed to.

Mr. KERRY. I move to reconsider the vote.

Mr. NICKLES. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. KERRY. I ask my friend from Oklahoma if he wanted to proceed. I think we are going to proceed according to the unanimous consent request, which is to go immediately to the Sessions amendment.

Is that the understanding of the Senator from Oklahoma?

Mr. NICKLES. Yes.

Mr. President, I just want to thank both my friend and colleague from Massachusetts, as well as from Arizona, for accepting this modification. The modification did a couple of things. One, as I stated prior to the vote, we didn't want to pass an expansion that would basically take the means testing off of the child care development block grant, nor did we want to change the allocation or the ratio of the State match. We have corrected that.

I thank my friends and my colleagues for doing that. I have no objection to the unanimous consent request.

Mr. KERRY. Mr. President, just so the legislative record is absolutely clear here, there was, in the underlying bill, a change in section 418 of the Social Security Act which actually transfers money to the child development block grant. What we arrived at was an agreement that there was no intention to change the means testing and/or distribution with respect to section 418.

However, it is the understanding of the Senator from Oklahoma and the Senator from Massachusetts that as to the money that goes directly to the child care development block grant through the tobacco trust fund, that money may be disbursed according to the terms of the Kerry-Bond amendment.

Mr. McCAIN. Mr. President, I want to take a second to thank the Senator from Oklahoma. He and his very capable staff have been through this bill with a fine-toothed comb. By the way, I say this with full understanding that the Senator from Oklahoma does not agree with this legislation. But what he and his staff have done has been extremely constructive.

There have been several provisions, as would be the case with a very large bill, where mistakes were made either through unintentional or erroneous technical printing of the bill.

This is not the first time that the Senator from Oklahoma has found unintentional provisions of the bill violating existing law and the jurisdiction

of other committees, and I appreciate very much his effort, because I think whether the bill passes or not, it has been significantly improved due to his efforts.

Mr. NICKLES. I thank my friend.

Mr. KERRY. Mr. President, part of our agreement, and I want to make sure that Senator MCCAIN agrees, and I ask further modification of the unanimous consent request, simply to say that, after disposition of the Faircloth-Sessions amendment on attorney's fees, it is then agreed that it would be the Democrats' opportunity to offer an amendment.

Mr. MCCAIN. Reserving the right to object, and I won't object, the Senator knows that we always have an objection from this side, but we have always acted back and forth. I can assure the Senator that, if necessary, I will seek first recognition so that the amendment from that side could be allowed.

Mr. KERRY. I thank the Senator. That is certainly the fair way we have been moving. I thank the manager for his continued effort to make sure we move that way.

Let me say for Members who are trying to understand exactly where we are going, the amendment we voted on earlier this afternoon, the Kerry-Bond amendment which carried by 66 to 30-something, was passed by the Senate by voice vote.

We will now proceed to have 45 minutes of debate remaining on the amendment on attorneys' fees, at which point there will be a motion to table and we will vote again this evening in about 45 minutes on that amendment, at which point we will then lay down an amendment. I am not sure what the intentions of the majority leader will then be with respect to scheduling a vote on that.

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. FAIRCLOTH. 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. 2701

(Purpose: To limit attorneys' fees)

Mr. FAIRCLOTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. FAIRCLOTH], for himself, Mr. SESSIONS, Mr. MCCONNELL, and Mr. GRAMM, proposes an amendment numbered 2701.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 17. ATTORNEY'S FEES AND EXPENSES.

(a) FEE ARRANGEMENTS.—Subsection (c) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorney's fees.

(b) APPLICATION.—This section shall apply to all fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or politicial subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies tobacco-related expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(c) ATTORNEY'S FEES.

(1) JURISDICTION.—The determination of attorney's fees for compensation subject to this section shall be within the jurisdiction of—

(A) the court in which the action for which the claimant attorney is making a claim is pending; or

(B) an arbitration panel selected by the parties or otherwise selected by law.

(2) CRITERIA.—In the determination of attorneys' fees subject to this section, the court or arbitration panel shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment, a substantial settlement, or a successful negotiation towards a global settlement agreement for submission to the Congress;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous and reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or substantial settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) Whether the original fee arrangement includes a fixed or a percentage fee;

(J) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on a chronological progression of relevant developments from the 1994 Williams document disclosures to the settlement negotiations and the subsequent Federal legislative process; and

(K) Whether this Act or related changes to State laws increase the likelihood of success in representations subject to this section.

(3) LIMITATION.—Notwithstanding any other provision of law, any attorneys' fees or expenses paid to attorneys for matters subject to this section shall not exceed a per hour rate of $1,000 in addition to 200 percent of actual out-of-pocket expenses for which detailed documentation has been provided and which have been approved by the court or arbitration panel in such action.

(4) RECORDS REQUIREMENT.—All records submitted to a court or arbitration panel pursuant to this section shall be available for public inspection and reproduction for a period of one year from the date of adjudication of the attorneys' fees.

(d) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such section to any person or circumstance shall not be affected thereby.

Mr. FAIRCLOTH. Mr. President, there has been an agreement reached

that we will have a vote on this amendment after 45 minutes of debate, equally divided between the two sides.

The PRESIDING OFFICER. The Senator is correct.

Mr. FAIRCLOTH. 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. FAIRCLOTH. 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. KERRY. Mr. President, before the Senator proceeds, can I ask how is the time being allotted to both parties during the quorum call?

The PRESIDING OFFICER. Time is charged to the Senator who suggests the absence of a quorum, unless it is asked for otherwise.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that the time under the quorum calls be equally divided. I did not specify that.

Mr. KERRY. Reserving the right to object, and I will not object. I think it is important to keep moving and we will do that. Mr. President, I will not object.

The PRESIDING OFFICER. Without objection, the time during quorum calls will be charged equally to both sides.

Mr. FAIRCLOTH. Senator SESSIONS is coming to the floor and will be here momentarily to speak on the bill.

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. WARNER. 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. WARNER. Mr. President, I ask the Senator to yield me such time as I may require.

Mr. FAIRCLOTH. I am delighted to do so.

Mr. WARNER. Mr. President, I rise in strong support of this amendment. This effort on behalf of the U.S. Senate has a laudable and commendable goal to reduce smoking among teenagers. But I regret that I will not be able to support the bill for many reasons; foremost among them is the fact that we are trying to enable a certain class of lawyers who, in many instances, I am sure have rendered legal services of great value, but others of questionable value. We will set precedence for the collection of legal fees that have never, in my memory as a lawyer, been established in the history of this country. I joined the distinguished Senator in a similar amendment to curtail these fees.

I feel that the people of this country will sit back in absolute stunned shock should legislation pass that did not in some way try to properly and fairly compensate attorneys, but not do so at the levels that have been discussed in the course of this legislation.

I lend my strong support to this amendment.

Mr. President, the other features of this legislation which trouble me greatly is the concept of passing on to a class of persons who still use tobacco, which is perfectly legal to do so, an onerous tax, particularly on a class of persons that really in many respects are least able to pay the tax. What we are doing is like the old days in the West. We are going out and deputizing sheriffs to be tax collectors. We are actually creating their own deputy tax collectors now to go out and collect this tax. We are scrambling around here trying to figure out how to spend it.

I just cannot support legislation that increases, I think, in a most unfair manner a tax on this class of individuals.

This morning I watched, as I am sure many do, the various shows, television and news reporting shows about the reaction of the American public to this legislation. They had a group of young people on. They all admitted to the fact that they smoked. Some said they wished they didn't and would like to get off of it. I also find disturbing that we are putting a tax on a number of people—I don't know how you calculate the number—who are smoking and would like to get off, but they simply cannot for various personal reasons muster the strength to do so. But they are going to get punished.

But these young people are almost mocking the effort of the Congress thus far in dealing with this issue of smoking. Raising the cost of a pack of cigarettes is simply not going to, in my judgment, in any significant way curtail the smoker. It is just not going to do it.

I am proud, like most in this Chamber, to have raised children who are grown now. We know the nature of young people. If we raise the price per pack of these cigarettes, it will almost be a challenge for them to go out and in some way find the money to purchase cigarettes and use them almost as a status symbol. Indeed, I think we run the risk—and others have discussed this in great detail—of creating a black market situation and almost induce criminality among the younger generation.

For that and many reasons, eventually I will cast my vote against this legislation.

But on this issue this is, I think, the best attempt that I have seen thus far to try and recognize the injustice we are inflicting on people through taxation and that a class of beneficiaries of lawyers will be unjustly enriched.

Mr. President, I strongly support this amendment. I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise in support of the amendment by the Senator from Alabama and the Senator from North Carolina to try to put at least some limit or some reasonableness on legal fees in this bill.

I have heard some of my colleagues say, "Wait a minute. What about the Michael Jordans and the Bill Gates, and others?" They are not compensated out of the public trust fund that comes from a tax, that comes from a fee, whichever you want to call it. I call it a tax that is set up by Congress. Congress is in the process of raising taxes and fees in the first 5 years of $102 billion. That is a lot of money. And over the 25-year period, you usually hear the figure of $516 billion. But it is a lot more than that. $516 billion doesn't index for inflation, and so on. We have already had charts on the floor that show it to be up to $880-some billion. That doesn't even count the amendment of Senator DURBIN that was passed the other night that increased the look-back penalties from $4 billion a year to about $7.7 billion a year. So we may well have a tax package that over the next 25 years will transfer from consumers—not tobacco companies, from consumers—maybe $900 billion; maybe closer to $1 trillion.

These legal fees are coming out of this fund. This is a fund created by Congress. If this bill should become law—and I hope and pray that it doesn't, but if it does—these moneys are mandated by an act of Congress, and we have every right to say we want to make sure that the money goes to where we intend it to go.

I have heard everybody say we want it to go to reduce teenage consumption of tobacco. Now we say and also consumption and addiction to drugs. I think likewise we have every right—as a matter of fact, we have an obligation—to make sure that we don't spend excessively on legal fees. We want the money to go to its stated purpose—not to be going to enhance a few trial attorneys. In some cases these trial attorneys would become not just millionaires but billionaires.

Mr. President, there was an article in the Washington Times on June 7th. It talked about attorneys saying they deserve up to $92,000 an hour. This is written by Joyce Price in the Washington Times. It goes on. I will read a couple of paragraphs and insert it in the RECORD.

It says the Orioles owner in Baltimore, Peter Angelos, who earlier this decade earned about $250 million for representing ailing factory workers exposed to asbestos, stands to receive as much as $875 million if he settles the State suit against tobacco companies to recover the cost of treating a smoking-related illness. It goes on. It talks

about the Florida case. It talks about the Texas case. It talks about the total settlement of $113 billion. But the trial attorneys would receive $2.8 billion, or as much as 24.7 percent of the total received in Florida. In Texas, the total amount of settlement was $15.3 billion in legal fees and $2.2 billion or $2.3 billion, or about 15 percent.

Mr. President, those are outlandish fees. Those are fees in the neighborhood of $100,000 per hour. If those States negotiated, maybe that is one thing. But for crying out loud. We shouldn't set up a fund that is going to compensate trial attorneys all across the country to receive those kind of fees, and act like we are doing it so we can reduce teenage consumption and addiction to tobacco. That is ridiculous.

Certainly it makes sense for us, if we are going to create this trust fund, if we are going to have amendments, as my friend and colleague from Massachusetts just had, an amendment which said let's spend maybe $2 billion more in child care development. I didn't support it. He won. He had the votes; congratulations to him. But we have the authority to say here is where the money is going to go. This is Congress. So he won on his amendment. I don't agree with it. I think it further confirms that this bill is a tax-and-spend bill.

But on the spending side we have a right to say we are going to limit on how much money we are going to spend in administrative costs and in legal fees. I think it is one of the most important amendments that we have.

I urge my colleagues to vote yes. I will tell my colleagues if they don't support this at $1,000 an hour we are going to come back with another one and maybe another one. Where is the limit going to be? Surely we are going to have a limit?

I ask unanimous consent that an article from the Washington Times be printed in the RECORD.

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

[From the Washington Times, June 7, 1998]

LAWYERS, STATES TUSSLE OVER TOBACCO-SUIT FEES

(By Joyce Howard Price)

ATTORNEYS SAY THEY DESERVE UP TO $92,000 AN HOUR; OFFICIALS SAY THIS WOULD ROB THE PUBLIC

Orioles owner Peter Angelos, who earlier this decade earned about $250 million for representing ailing factory workers exposed to asbestos, stands to receive as much as $875 million if he settles the state's suit against tobacco companies to recover the costs of treating smoking-related illnesses.

And Mr. Angelos is far from being the only lawyer who could reap a staggering windfall from tobacco settlements.

Lawyers in six of the 12 private law firms that helped negotiate Florida's $11 billion tobacco settlement are refusing a deal that would let them share at least $280 million in legal fees for their efforts.

Instead, the firms—most of which used only one lawyer in the tobacco talks—want in excess of $2.5 billion, or as much as $280 million per practice, over 25 years, and they've gone to court to try to get it, says Jim Peters, special counsel in the Florida Attorney General's Office.

"The lawyers laugh at a payment of $280 million for all 12 law firms, which would be more than $23 million per attorney. One lawyer said that wouldn't be a decent tip for his house staff," Mr. Peters said in a telephone interview.

There's a similar financial flap among lawyers who represented the state of Texas and other plaintiffs in a class-action suit against tobacco companies that was settled for $15.3 billion. There, Gov. George W. Bush is fighting a contingency-fee agreement authorized by the state attorney general and upheld by a federal judge that will give the lawyers 15 percent of the recovery, or $2.3 billion over 15 years.

"This is simply a giveaway of the state's money," Lester Brickman, professor of legal ethics at the Benjamin N. Cardozo School of Law in New York, said of the fortune Mr. Angelos could receive.

But Mr. Angelos, in an interview, countered: "We competed with five other firms, and we were selected. We have a contingency-fee contract that will provide us with 12½ percent of recovery if we win the case [against tobacco companies]. If we lose, we would receive no fee."

As of April, the tobacco industry had already offered Maryland $4 billion to settle its tobacco lawsuit, which would give Mr. Angelos $500 million. But the Baltimore lawyer said Friday he expects the state will receive "a little better " than $7 billion, which would entitle him to $875 million.

Mr. Angelos pointed out that his firm will pay all litigation costs, which he says could run anywhere from $1 million to $50 million.

"We have discussed a [possible] reduction of the fee. We're reasonable," he said, but added he has nothing for which to apologize. "A San Francisco law firm that competed with us offered to underwrite $1 million but they wanted 40 percent of recovery," he said.

Legal compensation experts say Sen. John McCain's tobacco bill, the fate of which the Senate could decide this week and which has no limits on attorney fees, promises to make billionaires out of some plaintiffs' lawyers who are already millionaires.

"That is jackpot justice for the trial lawyers, who are already Washington's ultimate special-interest group," said Sen. Lauch Faircloth, North Carolina Republican, who, with Sen. Jeff Sessions, Alabama Republican, tried unsuccessfully to set a $250-an-hour cap on legal fees paid out under proposed federal tobacco legislation.

Undeterred, the senators plan to try again with a higher legal-fees cap, possibly as much as $1,000 per hour, aides said.

But Mr. Brickman of the Cardozo law school said contingency-fee lawyers "do not keep hourly time records." He explained: "They recognize an effective hourly rate would be thousands and thousands of dollars per hour, and such figures would be a public relations disaster," he said.

Mr. Brickman estimates that the Texas lawyers spent, at most, 25,000 hours on their case, which did not go to trial. "The Texas lawyers will be getting $2.3 billion, or $92,000 an hour. . . . I think the Florida lawyers will get $15,000 to $25,000 per hour," he said.

Stephen Later, legislative counsel for Mr. Faircloth, noted that Texas Attorney General Dan Morales already has said taxpayers in that state will be paying a share of the $2.3 billion in legal fees that a federal judge has approved in that state's $15.3 billion settlement.

"It's immoral to reach into the pockets of working-class taxpayers in order to send billions of dollars to trial lawyers so they can buy another Lear jet, another vacation home or another private island," said Mr. Faircloth, who is also mindful about how much tobacco companies in his state are required to pay in litigation fees.

"We all know attorneys are paid well in our society. But these are the mother of all attorneys' fees. We're talking about the greatest attorneys' fees in the history of the world," said John Cox, spokesman for Mr. Sessions.

The goal of the tobacco settlements "was to recoup Medicaid money the states spent to treat patients with smoking-related illnesses and to prevent youth smoking. It's not right for these lawyers to walk away with this kind of money," Mr. Cox said.

The McCain bill calls for legal fees to go to arbitration, which has no fee limits.

Asked to comment on the size of some of the legal fees being discussed, Scott Williams, a tobacco industry spokesman said, "The industry will pay reasonable attorneys' fees as determined by independent [arbitration] panels." He did not quantify that statement.

Mr. Later, spokesman for Mr. Faircloth, noted that staggering legal fees aren't the only way the McCain anti-smoking measure will ensure extreme wealth for many trial lawyers. The measure has been amended to remove a proposed $8-billion-a-year liability cap, he said, so "there will be a rush to courthouses all over the country" by trial lawyers representing plaintiffs in tobacco suits. An estimated 800 liability lawsuits against the tobacco industry are currently pending, an industry official said.

Mr. Peters of the Florida Attorney General's Office said the compensation law firms receive from that state's tobacco settlement will just be the first of many lucrative payments. "Some of these legal firms represented 25 or 30 states" that brought class-action lawsuits against tobacco firms, he said.

An editorial last week in the Wall Street Journal described Richard Scruggs, a Mississippi lawyer who helped broker tobacco settlements in three states and who is representing at least another seven states as a "tobacco billionaire-in-waiting." Mr. Scruggs happens to be the brother-in-law of Senate Majority Leader Trent Lott, Mississippi Republican, said Mr. Brickman.

Wayne Hogan, a Jacksonville, Fla., lawyer, said in a telephone interview it would "not be appropriate" to say whether he wants to receive $280 million for his work in the Florida settlement, since that's a matter to be settled by arbitration.

"But the work done was monumental and very risky, and it resulted in the disclosure of documents that were hidden behind the closed doors of attorney-client privilege," Mr. Hogan said in an interview.

"And the work achieved a result for Florida taxpayers that was tremendous for public health," he added.

Asked if he would be satisfied with $23 million in compensation, Mr. Hogan replied, "That would be less than what the contract [between the state and trial lawyers] called for."

That's where Florida state officials and the lawyers disagree. Mr. Peters and Gov. Chiles argue that under a contingency-fee contract

authorized by state law, Mr. Hogan and other private lawyers are entitled to an amount "not to exceed" 25 percent of the Medicaid funds spent to treat smoking-related disorders or "an amount that's commercially reasonable."

If the fees issue goes to arbitration, Mr. Peters said, it's virtually certain the "reasonable" fee the panel would award would exceed what the lawyers could get for Medicaid fund recovery.

But Mr. Hogan and other lawyers contend that, under the contingency-fee contract that was negotiated, they are entitled to "25 percent of the [full] recovery" amount.

"The lawyers filed charging liens against the state, saying they are entitled to 25 percent of everything," said Mr. Peters.

"This has embargoed 25 percent of the state's first payment from tobacco companies. In other words, $187.5 million is tied down in court due to the lawyers' liens," he said.

In addition, Mr. Peters said, "We had a court remove $203.3 million from our escrow account for money to pay the lawyers. This money had been earning 5½ percent interest. So we're losing $31,000 a day interest. Plus the court imposed a 1-percent handling fee. So we're out-of-pocket $35,000 a day."

Mr. KERRY. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I know the Senator from Alabama wants to go.

But let me just say to my friend from Oklahoma, I am not sure he is aware of it. All the States that have settled, the four States that have settled, not one dime comes out of the Federal Treasury; not one dime comes out of the money that is going to be raised through the tobacco industry in this bill. It is all paid by the industry. They settled. They agreed to pay the attorneys' fees. In fact, not one of the figures that the Senators have yet used in this debate is an accurate or real figure. Not one. Why? Because there is not a State where an attorney has yet been paid. Not one. And the reason they haven't been paid is that in every State it is going to arbitration. It is going to be settled by the courts. It is not going to be settled in the way they are saying. So they are talking about all of these fictitious numbers, the initial contracts. None of the new States that have come to the suits are, in fact, using the level of the early contracts with the lawyers when it was at 25 percent. Do you know what they are using? They are using about 2 or 3 percent now. This is a fictitious debate, one that we have been through before.

I will summarize some arguments about it a little bit later. I will reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I believe the Senator from Texas would like 3 minutes. I would be glad to yield to the Senator from Texas. I appreciate his leadership on this related issue. He has done a tremendous job in analyzing this legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I was yielded 3 minutes. Is that right?

The PRESIDING OFFICER. The Senator did not specify.

Mr. GRAMM. Let me take 3 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, our colleague from Massachusetts says not one cent of these settlements comes from the money in this bill. But this bill makes the payment of these settlements possible. The consumer is going to pay every penny of this in higher fees and taxes. So the net result is that while the Federal Government is not paying these bills, blue-collar workers who smoke are going to end up paying each and every one of these bills.

I want to remind my colleagues that on the front page of the Washington Times, in a story about these $92,000-an-hour fees paid to the attorneys, had the following quote:

The lawyers laugh at a payment of $280 million for all 12 law firms, which would be more than $23 million per attorney. This is $23 million an attorney that they are talking about as a payment. "One lawyer said that wouldn't"—that is, $23 million—"be a decent tip for his house staff."

Twenty-three million dollars would not be a decent tip for his house staff. How many Americans think $23 million is a pittance? The fact that we have in this bill $92,000 an hour for plaintiffs' attorneys is piracy; it is outrageous; it is predatory on the working men and women of this country who have to work hard for a living. Many of them have become addicted to tobacco and nicotine, and they are going to have to pay higher prices and higher taxes to pay $92,000 an hour to attorneys who say a $23 million payment for an individual attorney "wouldn't be a decent tip for his house staff."

If people do not have their stomachs turned at this kind of behavior, at this predatory, outrageous behavior, then absolutely nothing will turn their stomachs. I believe we have an obligation to limit these fees to protect working Americans who will have to pay these prices.

It is important to note that we already have in the bill a procedure whereby the Federal Government is sanctioning these fees with a review by attorneys. What the Senator from Alabama is saying is, rather than having a group of lawyers review these fees for $92,000 an hour, rather than having the provision which was in the original bill, we ought to have a clear definition, and the Senator from Alabama has defined it very simply: Give them $1,000 an hour. How many waitresses or truck drivers who will be paying this tax will take $1,000 an hour? Every single one of them.

The PRESIDING OFFICER. The Senator has used his time.

Mr. KERRY. Mr. President, parliamentary inquiry. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 17 minutes 34 seconds remaining; the Senator from Alabama, 5 minutes 23 seconds.

Mr. McCAIN. Mr. President, could I ask the indulgence of my colleagues: We have a colleague who has to leave in about 7 minutes, if we could possibly consider yielding back some of the time so that the Senator from Arkansas, who has an engagement, could vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I thank the Senator from Texas. And he referred to the proposal in the bill dealing with attorneys' fees. I say it is, at best, ambiguous, and it is a testament to the drafters, in my opinion. I am not sure what it means, but it says this: If the attorney involved is unable to agree with the plaintiff—that is, the attorney general—with respect to any dispute that may arise between them regarding the fee agreement, then they can go to arbitration.

Now, what does that mean? When you go to arbitration, you have a fee agreement. You are talking about the agreement. Now, some argue, well, this agreement allows the arbitrators to go around the fee agreement. To that I would say, if so, then the legislation already provides for the undermining, going around the agreement. You can't have it both ways.

But I submit to you that it is particularly interesting. The arbitration panel is composed of three persons, one chosen by the plaintiff, which is the attorney general; one chosen by the attorney, which is the plaintiff's lawyer; and those two choose the third one. Those are the people who entered into the agreement. What kind of agreement is going to come out of arbitration from that?

Let me just say that the $2.5 billion for four lawyers in Texas equals about $500 million each. That is more than we spend each year on diabetes in the United States. That is the kind of money we are talking about—$2.5 billion.

Let me make a couple of other points. The arbitration clause, as I pointed out, is ineffective and totally a sham, in my opinion, and will not protect the taxpayers. Of contract rights, they say you can't violate a contract. And this I say would be the principle we are dealing with: A person who signs a contract can keep the U.S. Congress or any other agency from passing a law that conflicts with that contract. It is just that simple.

That is the traditional law of America. We do it when we alter the minimum wage. Nobody has been crying

that the tobacco companies' contract to run advertising is going to be terminated by these things. When Congress legislates comprehensively, it can legislate on matters involving contracts. It is done every day. And I remind the Members of this body that, under the Equal Access to Justice Act, the top fee is $125; under Criminal Defense Attorneys, they are paid $75 per hour. I think this fee is particularly generous, Mr. President. I will share this with the body. Everybody has been talking about how much this body is influenced by tobacco contributions. I want to say I didn't take any contributions from tobacco, and I do not take tobacco contributions. But this is instructive about the influence and the involvement of trial lawyers from 1990 to 1994. And I submit they have been more heavily involved in recent years. But we have these numbers.

Plaintiff lawyers in these States: Alabama, my home State, Senator GRAMM's State of Texas, and California, gave $17 million. During that time, the Democratic National Committee in all 50 States gave $12 million; the Republican National Committee in all 50 States gave $10 million; big oil in Alabama, California, and Texas gave $1.8 million.

I don't consider that determinative of this issue, but I would just say this. I think some people need to ask themselves some serious questions about public policy. If they care about children, if they care about fairness and justice, if they care whether or not they tax a waitress $1,000 a year for her cigarettes, should we be turning that money over to lawyers who are making $92,000 per hour? I submit it is unconscionable, it is something that should not happen. It is a matter of the greatest importance to this body, and I ask that this amendment be supported.

Mr. GRAMM. Will the Senator yield for a question?

Mr. SESSIONS. I yield to the Senator from Texas.

Mr. GRAMM. I am sure the Senator has seen thousands of articles where outside groups rate how much money people received from groups that had interests before the Congress. You have seen thousands of those articles. Have you ever seen any of those groups rate how much money plaintiffs' attorneys have contributed on a bill where the plaintiffs' attorneys are the single largest beneficiary of the bill?

Mr. SESSIONS. I have not. I think it is an absolutely appropriate question to ask. I think it is appropriate to ask how much tobacco gives. I think it is appropriate to ask how much trial lawyers give. And my best judgment is, the trial lawyers are giving more to this body than tobacco companies.

The PRESIDING OFFICER. The Chair will advise the time allotted to the Senator from Alabama has expired.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will be brief and this side will be brief. We will yield back some time. I know my colleagues have pressing flight schedules. I yield myself such time as I may use.

Let me say to my colleague from Texas, earlier this morning he was on the floor of the U.S. Senate suggesting how outrageous it was for the U.S. Senate to tell a State what it ought to do or how it ought to spend its money. He said at that time, "If I wanted to do that, I would run for the Texas legislature—I would run for the State legislature." I assume this amendment amounts to his announcement of candidacy for the State legislature, because here he is, telling them how they can spend money in State contracts in the State.

These are private contracts. Lo and behold, here is the Republican Party that suddenly has decided it can interfere with the private contracting of private sector enterprises. I am astonished by that. Not only that, almost every single fact on which—not fact, every single assertion that they have made today, trying to claim it as a fact, is incorrect. There is no $92,000 mentioned anywhere in this legislation, and no lawyer has been paid $92,000 an hour. In fact, every single one of those cases is subject to arbitration. Take the Florida case. The judge threw it out because it was excessive—threw it out. And they are going to resolve what is an appropriate fee.

What the Senator does not say is there are a whole set of criteria they have to use to decide that fee. They have to consider the time and the labor required by plaintiff. They have to show time sheets. They are going to have to come in and prove how much time they worked. They are going to have to show how difficult the question was and the novelty of the question. They have to show they have the requisite skill for those claims or to litigate them. They have to show the amount that was involved in their litigation and the results that they achieved. And they have to show the undesirability of the action.

That is not an easy standard. I suggest the notion that arbitration—which requires both sides to come up with two additional people that they both agree on—is not somehow subject to a test is ridiculous. That is a tough process.

All the other arguments we are listening to today are the exact same arguments the Senate voted on previously. There is not one different thing here except that, instead of having Congress be the accounting factor, now they want to make the court the accounting factor. It is ridiculous.

Mr. President, I yield 2 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, although I am speaking on the same side of this proposition as did the Senator from Massachusetts, I believe it is appropriate for us to deal with this issue. Parties whose fee agreements we are interfering with have come to the Congress of the United States to ratify settlements that have already been made. If we can vote here on how much money States will receive and how they have to spend that money, if we can change the law to shift the burdens in tobacco litigation, we can address the issue of attorney's fees.

I also agree with the amendment's sponsors that we can and should set the attorneys' maximum compensation. I do not agree, however, that the amount proposed in this amendment is reasonable. It is too much for lawyers who bring lawsuits in the future, when, under this bill, it will be much easier to prevail against tobacco manufacturers. At the same time, the amount is considerably too little for those highly skilled attorneys who took on the tobacco companies on novel theories years ago, when their chances of winning were extremely remote.

If we are going to set maximum attorneys' fees, we ought to set them on a reasonable basis, a basis that fully accounts for the relative amounts of risk, skill, and investment on the lawyers' part. Unfortunately, this amendment does not do this. It does not make distinctions that I believe are fair and proper. For this reason, the amendment is not a good one, and I believe that it should be tabled.

Mr. KERRY. Mr. President, I yield 1 minute to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I associate myself with the remarks of the Senator from Washington. The reality is, the Senator from Texas has said in this bill it provides for $92,000 an hour to counsel. That is not true. You cannot find that on any page of this legislation. It is just not accurate. It is a fiction. It is made up out of whole cloth.

The fact is, what is provided for is, where there is a disagreement between the parties, that an arbitration panel determine what are the appropriate fees based on a set of criteria that includes the level of effort that needed to be expended, the quality of the legal counsel's work, the amount of the investment that they have made. Frankly, $1,000 an hour is too much if somebody just went and copied the case from somewhere else and then filed it. But it is much too little in the case of those who invested millions of dollars in court preparation of their own resources without knowing whether they would be victorious or not. In that case, it is much too little.

So the problem we have with this amendment is it is one-size-fits-all. That is why we adopted an arbitration

approach that would allow those who have a difference to have it worked out so there would be adequate compensation, but so there would not be the kind of ripoff that is, indeed, potential without what is provided for in the underlying McCain bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield the remainder of my time.

I move to table the Sessions-Faircloth amendment.

Mr. President, 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 2701. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from New Mexico (Mr. BINGAMAN), and the Senator from Arkansas (Mr. BUMPERS) are necessarily absent.

The result was announced—yeas 50, nays 45, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—50

Akaka	Glenn	Mikulski
Baucus	Gorton	Moseley-Braun
Bennett	Graham	Moynihan
Biden	Harkin	Murray
Breaux	Hatch	Reed
Bryan	Hollings	Reid
Campbell	Inouye	Robb
Cleland	Jeffords	Rockefeller
Cochran	Johnson	Roth
Conrad	Kennedy	Sarbanes
D'Amato	Kerrey	Shelby
Daschle	Kerry	Smith (OR)
DeWine	Kohl	Thompson
Durbin	Landrieu	Torricelli
Feingold	Lautenberg	Wellstone
Feinstein	Leahy	Wyden
Ford	Levin	

NAYS—45

Abraham	Enzi	Lugar
Allard	Faircloth	Mack
Ashcroft	Frist	McCain
Bond	Gramm	McConnell
Brownback	Grams	Murkowski
Burns	Grassley	Nickles
Byrd	Gregg	Roberts
Chafee	Hagel	Santorum
Coats	Helms	Sessions
Collins	Hutchinson	Smith (NH)
Coverdell	Hutchison	Snowe
Craig	Inhofe	Stevens
Dodd	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Dorgan	Lieberman	Warner

ANSWERED "PRESENT"—2

Boxer Lott

NOT VOTING—3

Bingaman Bumpers Specter

The motion to lay on the table the amendment (No. 2701) was agreed to.

FORCE DOWN LANGUAGE IN DRUG-FREE NEIGHBORHOODS ACT

Mr. INHOFE. Mr. President, I would like to enter into a colloquy with my friend, Senator COVERDELL, to clarify a situation that was brought to my attention during consideration of the Senator's Drug-Free Neighborhoods amendment to S. 1415. As an original cosponsor of the amendment, I fully support the Senator's efforts to stop the spread of drugs into our communities; however, one provision has the unintended effect of raising serious safety concerns for general aviation pilots.

Specifically, the amendment permits officers to order an aircraft to land, but does not require any reasonable suspicion of criminal activity. It also could make pilots responsible for paying thousands of dollars to reclaim their aircraft, even if they are totally innocent of any wrongdoing.

As a pilot for over 40 years, I can assure you that the "order to land" could be a dangerous and traumatic experience for a pilot. In fact, the International Standards, Rules of the Air, published by the International Civil Aviation Organization says "interceptions of civil aircraft are, in all cases, potentially hazardous."

As I understand it, the intent of the amendment was to provide additional authority to U.S. law enforcement officers to curtail border drug smuggling, which I am sure all of us agree is a laudable goal. However, because of the potential danger and immense burden to general aviation pilots, I have worked with my friends at the Aircraft Owners and Pilots Association to develop some relatively minor changes that could be done to take care of general aviation's concerns.

Mr. COVERDELL. I thank my friend, Senator INHOFE, for bringing this issue to my attention. I understand the potential safety problems involved in the "order to land" provisions, and I agree that we cannot jeopardize the safety of aircraft flying near the border for innocent purposes. I understand that we can achieve the goal of fighting drug smuggling without jeopardizing safety or undermining the rights of pilots by requiring reasonable suspicion and adding innocent owner provisions.

In fact, it was my intention to make the changes you have suggested. However, because of a parliamentary oversight, the corrections were not made prior to the vote on the amendment.

I appreciate your leadership in resolving this issue. With your assistance, I will work with the conferees should S. 1415 reach conference to make the necessary changes to resolve these problems or to eliminate the provision entirely as I understand the status quo is acceptable.

Mr. INHOFE. Thank you. I appreciate the Senator's assistance. This is an issue that is very important to general aviation pilots, and I look forward to working with you to correct this problem.

EXPLANATION OF ABSENCE

Mr. BIDEN. Mr. President, last night I was not present to vote on the two motions to table because I was in Wilmington attending the high school graduation ceremony of my godson and nephew, Cuffe Owens.

When I left the Senate yesterday, it was not clear that any votes would take place later in the evening and I did not anticipate that I would miss any votes. Nonetheless, after consultation with my colleagues, I left with the belief that, if these votes were ordered, my absence would not affect the outcome, and it did not. Had I been present, I would have voted to table the Gramm amendment, and against tabling the Daschle amendment.

Mr. McCAIN. Mr. President, after consultation with the majority leader and the Democrat leader and the Senator from Massachusetts, it is now our intention to move to an amendment on the Democratic side and lay it down, tomorrow morning debate it, and then move to a Gramm amendment after that.

It is my understanding that it is the intention of the majority leader, and I am sure he will make it clear, to have votes on these some time around 6 o'clock on Monday evening, dispose of those amendments, and it would be our intention to go back to a Democrat amendment.

I yield the floor.

Mr. McCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BENNETT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2702 TO AMENDMENT NO. 2437

(Purpose: To disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met)

Mr. REED. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] for himself, Mrs. BOXER, Mr. WYDEN, Mr. KENNEDY, Mr. DASCHLE, Mr. DURBIN, Mr. WELLSTONE, Mrs. FEINSTEIN, and Mr. CONRAD proposes an amendment numbered 2702 to amendment No. 2437.

Mr. REED. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. DISALLOWANCE OF TAX DEDUCTIONS FOR ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following:

"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

"(a) IN GENERAL.—No deduction shall be allowed under this chapter for any taxable year for expenses relating to advertising, promoting, or marketing cigars, cigarettes, smokeless tobacco, pipe tobacco, roll-your-own tobacco, or any similar tobacco product unless the taxpayer maintains compliance during such year with the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996.

"(b) GENERAL DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702.".

(b) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following:

"Sec. 280I. Disallowance of deduction for tobacco advertising, promotional, and marketing expenses unless certain advertising requirements are met."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. REED. Mr. President, this amendment would disallow the deduction for advertising expenses for tobacco companies who violate the Food and Drug Administration rules with respect to advertising. It is a sensible and constitutionally sound way to reinforce the important provisions that are necessary to prevent easy access to smoking by teenagers. The record has shown very clearly that the history of the tobacco industry is a history of advertising that invites, entices, some would even say seduces youngsters into smoking. If we are serious about preventing teenage smoking, underage smoking, we must have effective ways to curtail the advertising to marketing that is directly targeted to youngsters in our society. The record from numerous documents released in the ongoing litigation suggest strongly, overwhelmingly that the tobacco industries have for years deliberately targeted youngsters as young as 12, 13 and 14 years old to get them to start smoking.

If we are serious about our primary goal, which is to eliminate access to smoking by underage smoker, then we must pass this amendment.

In anticipation of further debate tomorrow on this particular measure, I yield the floor and 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. LOTT. 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. LOTT. Mr. President, for the information of our colleagues, there will be no further votes tonight. The Senate will debate a Democratic amendment and the Gramm amendment to the tobacco bill during the remainder of today's session and Friday's session of the Senate. The Senate could also consider the higher education bill, or vocational education, or NASA authorization, or the reauthorization of the Drug Czar office. These are all bills that are relatively noncontroversial, or there may be an amendment or two that Senators want to offer. We are trying to take advantage of time that may be available tomorrow to consider one of these bills. We want all Senators to be aware that we are trying to clear one of these four to be considered tomorrow after the Democratic amendment and the Gramm amendment. However, there will be no votes during the session on Friday. There will just be debate on these two amendments and any bill that can be cleared out of this group of four.

Any votes ordered with respect to the amendments on the legislation just identified, the tobacco bill, will be postponed to occur on Monday at a time to be determined by the two leaders, but not before 5 o'clock. We would like, though, to have those two votes back-to-back on the two amendments, if they are necessary, to the tobacco bill, as close to 5 o'clock as possible. We may begin at 5, or shortly thereafter, and have the two back-to-back. Then any vote, if necessary on any bill that is cleared, would not occur until Tuesday morning at approximately 9:30 or 10 o'clock. We will make that specific time available later.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

223RD ANNIVERSARY OF THE U.S. ARMY

Mr. THURMOND. Mr. President, for almost two and one quarter centuries, the United States Army, more than any other American institution, has stood at the forefront of protecting the borders, people, and ideals of our nation. Today, I am pleased to have this opportunity to pay tribute to the Army on the 223rd anniversary of its founding.

Formed on June 14, 1775, the United States Army is older than the nation itself, and for more than two centuries, its soldiers have stood tall as they carried out their duties patriotically and selflessly. In the history of the Army, more than 42 million Americans have raised their right hands, both in times of crisis and peace, to take an oath to protect and defend the nation from all enemies foreign and domestic. In that time, soldiers have been called to arms numerous times in order to preserve this Republic. From the Battle of Cowpens during our War for Independence, to Bosnia, where our troops help to maintain a fragile peace, those who serve prove that there is no finer citizen, no better warrior, and no more compassionate peacemaker than a soldier in the United States Army.

The success and excellence of our soldiers and Army are due to many contributing factors, but certainly the most important is that we live in a nation founded on the ideals of a democratic government. We have created a society that truly affords more liberties, more freedoms, and more opportunities than any other nation in the world. While we may have some differences amongst ourselves, and some problems which must be resolved, no quarrel or dispute will ever undermine the unity of our 50 States. It is this constitutionally mandated, democratic form of government, where every citizen is free to speak his or her mind, where every American is protected by the laws of the land, and every person has the chance to succeed that makes the United States a promised land to people throughout the globe. All of us recognize this is a nation and system worthy of defending, and our soldiers are the men and women who have volunteered to carry out this critical mission.

While our soldiers have always been "America's Finest", those who serve in today's Army are truly a breed apart. These are men and women who are well educated, well trained, and well equipped. They are individuals who possess a desire to serve, a strong sense of patriotism, and a willingness to make sacrifices so that others may be safe. We have created a fighting force that uses its mind as much as its might. A force that is able to adapt to fluid contingencies just as effectively as it is able to stick to a battle plan. There is no military force in the world that can match the abilities, capabilities, and spirit of the American soldier or the United States Army, there never has been and there never will be.

The very history of this nation and its Army helps to forge the spirit of the modern soldier. The soldier of today

can look back on more than 200 years of heritage and fighting spirit that helps to mold the mettle of those who stand firm for democracy and the safety of our nation. Rogers' Rangers, who fought in the New Hampshire mountains during the French & Indian Wars are the forefathers of today's Ranger Battalions. The same grit and determination that saw the first American soldiers through a brutal winter at Valley Forge was evident in Bastogne, Belgium in 1945 when the 101st Airborne Division, though surrounded and outnumbered by German Forces, refused to surrender and by stubbornly standing fast, they helped to win the Battle of the Bulge. The bravery demonstrated by Captain Roger Donlan, a Special Forces Officer who commanded Camp Nam Dong in the I Corps Tactical Zone in 1966, who was repeatedly and seriously wounded while battling off an enemy battalion of superior size was recognized by his winning the first Medal of Honor awarded during the Vietnam conflict. Twenty-seven years later, two Special Operations soldiers were decorated with the Medal of Honor for making the ultimate sacrifice in the streets of Mogadishu, Somalia fighting to protect a critically wounded American helicopter pilot. Their sacrifice allowed that pilot to live, and their actions proved that there is no greater bond than the one between soldiers.

Throughout the Army's history, success has been based on an ability to resist complacency, and while today's soldiers are justifiably proud of their past, they are looking and working toward the future. In battle labs across the nation, soldiers, strategists, scientists, and designers are working in concert to field an Army that will be able to dominate the battlefield of the next century. Revolutions in weapons, communications, tactics, and strategy are taking place and are being incorporated into Army Doctrine. By the Year 2000, the Fourth Infantry Division will become the first fully digitized division in the Army, and by 2004 the Army will have its first digitized corps. These digitized forces will ensure that commanders know where they are, where their troops are, and where the enemy is, and with this information, dominate the battlefield. Through research and development efforts like the ones that led to the digital division, we are assured that we will remain one step ahead of any nation that might threaten our security, and that we will truly have a force capable of meeting and defeating any threat to our nation, her people, and our interests.

As we mark this 223rd anniversary of the United States Army, it is an appropriate time to celebrate the successes of that service; the sacrifices made by millions of soldiers, including the ultimate sacrifice; and the invaluable contribution these men and women have made to keeping the United States and her citizens safe and free. Indeed, the history of our Army is a proud one, and as we approach the 21st Century, I know that its future will eclipse all its previous accomplishments.

DEATH OF MAJ. GEN. JIM PENNINGTON

Mr. THURMOND. Mr. President, I rise today to pay tribute to a man who was known to many of us in this Chamber, retired Major General Jim Pennington, who passed away on June 5, 1998.

Those of us who worked on national security and veterans related matters knew General Pennington very well. He served as both the President of the National Association for Uniformed Services and the Administrator for the Society of Military Widows. In those capacities, he was an able and effective advocate for a strong defense and for providing for an appropriate quality of life for those who serve and have served the Nation as members of the armed forces.

General Pennington had an impressive career as a soldier. He joined the Army on June 6, 1944, the day the Allies invaded Normandy and began their march toward Germany and victory, and he fought in the Battle of the Bulge. In his more than 37-year career, Jim Pennington rose from the rank of private to sergeant major, and then ultimately major general, the rank he held when he retired from military service in 1981.

As many tens of thousands of other World War II veterans did, Jim Pennington used the G.I. Bill to get a college education. This was an invaluable program that not only provided an important benefit to those who spent years of their lives in military service, but it created a generation of Americans who possessed the skills and knowledge required to make the United States the world's leader in matters of commerce, global security issues, and technology.

I had the pleasure of working closely with General Pennington on a number of issues throughout his tenure as the President of the National Association of Uniformed Services and the Administrator of the Society of Military Widows. I always welcomed his advice and insight, and without question, he served the members and organizations he represented well. Jim Pennington will be greatly missed and my sympathies go out to his family and friends.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 10, 1998, the federal debt stood at $5,495,636,727,532.95 (Five trillion, four hundred ninety-five billion, six hundred thirty-six million, seven hundred twenty-seven thousand, five hundred thirty-two dollars and ninety-five cents).

One year ago, June 10, 1997, the federal debt stood at $5,351,974,000,000 (Five trillion, three hundred fifty-one billion, nine hundred seventy-four million).

Five years ago, June 10, 1993, the federal debt stood at $4,298,707,000,000 (Four trillion, two hundred ninety-eight billion, seven hundred seven million).

Ten years ago, June 10, 1988, the federal debt stood at $2,530,516,000,000 (Two trillion, five hundred thirty billion, five hundred sixteen million).

Fifteen years ago, June 10, 1983, the federal debt stood at $1,309,637,000,000 (One trillion, three hundred nine billion, six hundred thirty-seven million) which reflects a debt increase of more than $4 trillion—$4,185,999,727,532.95 (Four trillion, one hundred eighty-five billion, nine hundred ninety-nine million, seven hundred twenty-seven thousand, five hundred thirty-two dollars and ninety-five cents) during the past 15 years.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting two treaties and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING THE GOVERNMENTS OF THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) IN RESPONSE TO THE SITUATION IN KOSOVO—MESSAGE FROM THE PRESIDENT—PM 139

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 Banking, Housing, and Urban Affairs.

To the Congress of the United States:

In response to the ongoing use of excessive military force in Kosovo by the police and armed forces of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Serbia, which has exacerbated ethnic conflict and human suffering and threatens to destabilize other countries in the region, the United States, acting in concert with the European Union, has

decided to impose certain economic sanctions. Consistent with decisions taken at the meetings of the Contact Group of countries, consisting of the United States, the United Kingdom, Germany, France, Italy, and Russia, in Birmingham, England, on May 16, 1998, and in Rome on April 29, 1998, the United States will impose a freeze on the assets of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and a ban on new investment in the Republic of Serbia. It is our intent to exempt the Government of Montenegro from these sanctions wherever possible.

The Contact Group originally agreed in Rome on April 29 to impose these sanctions in response to the increasingly dangerous situation in Kosovo and Belgrade's failure to meet crucial requirements concerning the adoption of a framework for dialogue with the Kosovar Albanian leadership and a stabilization package, as set out in earlier Contact Group meetings in London on March 9, 1998, and in Bonn on March 25, 1998. The G8 Foreign Ministers reaffirmed the need to impose sanctions at their meeting in London on May 8–9, 1998. The Russian Federation did not associate itself with these sanction measures.

At the May 16 meeting in Birmingham, England, the Contact Group welcomed the establishment of a dialogue between Belgrade and the Kosovar Albanian leadership. With the start of this dialogue, those Contact Group countries that had previously agreed to implement economic measures against the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Serbia agreed that the proposed measure to stop new investment in the Republic of Serbia would not be put into effect and that they would review at their next meeting the implementation of the freeze on funds. However, the use of indiscriminate force by the police and armed forces of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Serbia has undermined the basis for dialogue.

The Contact Group has concluded that the current situation in Kosovo is untenable and the risk of an escalating conflict requires immediate action. It has also found that, if unresolved, the conflict threatens to spill over to other parts of the region. The United States attaches high priority to supporting the security interests of the neighboring states and to ensuring security of borders. It is also of particular importance that developments in Kosovo should not disrupt progress in implementing the Dayton peace agreement in Bosnia and Herzegovina. This threat to the peace of the region constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

On June 9, 1998, by the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code, I declared a national emergency to respond to the unacceptable actions and policies of the Belgrade authorities and issued an Executive order to implement the measures called for by the Contact Group. That order freezes the assets of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro that are under U.S. jurisdiction and, in concert with the other Contact Group countries, restricts access of those governments to the international financial system. That order also prohibits new investment by United States persons, or their facilitation of other persons' new investment, in the Republic of Serbia. It is our intent to exempt the Government of the Republic of Montenegro, by means of licenses, from the prohibitions contained in the order wherever possible. That government has been included in the order to ensure effective implementation of sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), of which the Republic of Montenegro is a constituent part.

The order carries out these measures by:

—blocking all property, and interests in property, of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, including the prohibition of financial transactions with, including trade financing for, those governments; and

—prohibiting new investment by United States persons, or their facilitation of other persons' new investment, in the territory of the Republic of Serbia.

The order provides that the Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. Thus, in the event of improvements in the actions and policies of Belgrade with respect to the situation in Kosovo, the Secretary of the Treasury, in consultation with the Secretary of State, would have the ability, through the issuance of general or specific licenses, to authorize any or all transactions otherwise prohibited by the order. Also, in implementing the sanctions, we intend to license transactions necessary to conduct the official business of the United States Government and the United Nations. We further intend to issue licenses to allow humanitarian, diplomatic, and journalistic activities to continue.

The declaration of a national emergency made under Executive Order 12808, and expanded in Executive Orders 12810 and 12831, remains in effect and is not affected by the June 9, 1998, order.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 10, 1998.*

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:17 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 423. An act to extend the legislative authority of the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

At 6:21 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. 3150. An act to amend title 11 of the United States Code, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 102. Concurrent resolution recognizing Disabled American Veterans.

MEASURE READ THE FIRST TIME

The following bill was read the first time:

H.R. 3978. An act to restore provisions agreed to by the conferees to H.R. 2400, entitled the "Transportation Equity Act for the 21st Century," but not included in the conference report to H.R. 2400, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on June 11, 1998, he had presented to the President of the United States, the following enrolled bills:

S. 423. An act to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.

S. 1150. An act to ensure that federally funded agricultural research, extension, and education address high-priority concerns with national or multistate significance, to reform, extend, and eliminate certain agricultural research programs, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–5334. A communication from the Director of the United States Information Agency, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5335. A communication from the Attorney General, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5336. A communication from the Secretary of Labor, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5337. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5338. A communication from the Chairman of the Consumer Products Safety Commission, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5339. A communication from the Chief Executive Officer of the Corporation for National Service, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5340. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Reduction In Force Retreat Right" (RIN3206–AG77) received on June 9, 1998; to the Committee on Governmental Affairs.

EC–5341. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the removal of obsolete regulations on the transfer of marine equipment; to the Committee on Commerce, Science, and Transportation.

EC–5342. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; San Pedro Bay, CA" (RIN 2115–AA97) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5343. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Madison, SD" (Docket 98–AGL–17) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5344. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Rush City, MN" (Docket 98–AGL–18) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5345. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Fergus Falls, MN" (Docket 98–AGL–6) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5346. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Colorado Springs, CO" (Docket 98–ANM–06) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5347. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments" (Docket 29241) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5348. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments" (Docket 29242) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5349. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Rugby, ND" (Docket 98–AGL–13) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5350. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Traverse City, MI" (Docket 98–AGL–16) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5351. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Wooster, OH" (Docket 98–AGL–19) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5352. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Marion, OH" (Docket 98–AGL–20) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5353. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Minot, ND" (Docket 98–AGL–21) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5354. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Class D and Class E Airspace; St. Joseph, MO; Extension of Comment Period and Correction" (Docket 98–ACE–6) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5355. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Realignment of Jet Route J–66; TN" (Docket 97–ASO–28) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5356. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND" (Docket 97–AGL–61) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5357. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Eurocopter France helicopter models (Docket 96–SW–22–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5358. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Stemme GmbH and Co. Sailplanes (Docket 97–CE–129–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5359. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Pilatus Aircraft Ltd. airplanes (Docket 97–CE–09–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5360. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain SOCATA Groupe Aerospatiale airplanes (Docket 97–CE–76–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5361. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Alexander Schleicher Segelfugzeugbau sailplanes (Docket 97–CE–102–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5362. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Glaser-Dirks Flugzeubau GmbH gliders (Docket 98–CE–09–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5363. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 98–CE–15–AD) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5364. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding groundfish fisheries off Alaska (Docket 971208297–8054–02) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5365. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "South Atlantic Swordfish Fishery; Fishery Reopening" received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5366. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species Fisheries; Import Restrictions" (RIN0648–AJ93) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5367. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Swordfish Fishery; Annual Quotas" (RIN0648–AJ63) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5368. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category" received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5369. A communication from the Acting Director of the Office of Sustainable Fisheries, National Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (Docket 971208297–8054–02) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5370. A communication from the Acting Deputy Director of the National Institute of Standards and Technology, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Grant Funds-Materials Science and Engineering: Laboratory—Availability of Funds" (RIN0693–ZA15) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5371. A communication from the Assistant Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding nonindigenous species research and ballast water management (RIN0648–ZA40) received on June 3, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5372. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding Pacific halibut and red king crab bycatch rate standards (Docket 961107312–7021–02) received on June 9, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5373. A communication from the Assistant Secretary for Indian Affairs, Department of the Interior, transmitting, pursuant to law, a report on the Little River Band of Ottawa Indians award under Indian Claims Commission Docket 18–E, 58 and 364; to the Committee on Indian Affairs.

EC–5374. A communication from the Acting Assistant Attorney General (Legislative Affairs), Department of Justice, transmitting, pursuant to law, the annual report on the Police Corps for calendar year 1997; to the Committee on the Judiciary.

EC–5375. A communication from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule regarding the filing and processing of permanent resident status applications by refugees and asylees (RIN1115–AD73) received on June 9, 1998; to the Committee on the Judiciary.

EC–5376. A communication from the Acting Assistant General Counsel for Regulations, Department of Education, transmitting, pursuant to law, the report of a rule regarding final funding priorities for Rehabilitation Research and Training Centers and Rehabilitation Engineering Research Centers received on June 9, 1998; to the Committee on Labor and Human Resources.

EC–5377. A communication from the Assistant Secretary for Civil Rights, Department of Education, transmitting, pursuant to law, the annual report on civil rights enforcement for fiscal year 1997; to the Committee on Labor and Human Resources.

EC–5378. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the estimated cost of the premarket notification program for food contact substances for fiscal year 1999; to the Committee on Labor and Human Resources.

EC–5379. A communication from the Director of the Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers" (Docket 87F–0162) received on June 4, 1998; to the Committee on Labor and Human Resources.

EC–5380. A communication from the Director of the Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule regarding a secondary direct food additive derived from rapeseed oil (Docket 97F–0283) received on June 3, 1998; to the Committee on Labor and Human Resources.

EC–5381. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Incentive Programs-Fraud and Abuse" (RIN0938–AH86) received on June 9, 1998; to the Committee on Finance.

EC–5382. A communication from the United States Trade Representative, Executive Office of the President, transmitting, pursuant to law, a report on foreign unfair trade practices for the period June 1996 through January 1998; to the Committee on Finance.

EC–5383. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notice of the continuation of the waiver applicable to the Republic of Belarus; to the Committee on Finance.

EC–5384. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule regarding rates for interest on tax overpayments and interest on tax underpayments (Rev. Rul. 98–32) received on June 9, 1998; to the Committee on Finance.

EC–5385. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Permitted Elimination of Preretirement Optional Forms of Benefit" received on June 4, 1998; to the Committee on Finance.

EC–5386. A communication from the Chief of the Regulations Branch of the Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Recordkeeping Requirements" (RIN1515–AB77) received on June 9, 1998; to the Committee on Finance.

EC–5387. A communication from the President of the United States, transmitting, pursuant to law, the report of a Presidential Determination regarding sanctions against Pakistan for detonation of a nuclear explosive device; to the Committee on Foreign Relations.

EC–5388. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a proposed license for the export of major defense services to Turkey (DTC–54–98); to the Committee on Foreign Relations.

EC–5389. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the report of a Presidential Determination regarding the waiver and certification of statutory provisions regarding the Palestine Liberation Organization; to the Committee on Foreign Relations.

EC–5390. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, the report of a Presidential Determination regarding the use of funds from the Emergency Refugee and Migration Assistance Fund; to the Committee on Foreign Relations.

EC–5391. A communication from the Secretary of Defense, transmitting, notifications of military retirements; to the Committee on Armed Services.

EC–5392. A communication from the Secretary of Defense, transmitting, pursuant to law, the report of a certification relative to the Department of Defense reduction of acquisition positions; to the Committee on Armed Services.

EC–5393. A communication from the Under Secretary of Defense for Acquisition and Technology, transmitting, pursuant to law, a report regarding allocation of core logistics activities among Department of Defense facilities; to the Committee on Armed Services.

EC–5394. A communication from the Secretary of the Navy, transmitting, pursuant to law, notification of an exception to the use of competitive procurement procedures for the acquisition of (Stage II) retrofit kits; to the Committee on Armed Services.

EC–5395. A communication from the Chief of the Programs and Legislation Division, Department of the Air Force, transmitting, the report of a cost comparison to reduce the cost of operating base supply functions at Malmstrom Air Force Base, Montana; to the Committee on Armed Services.

EC–5396. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the annual report of the Panama Canal Treaty for fiscal year 1997; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations: Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 1999" (Rept. No. 105–211).

By Mr. COCHRAN, from the Committee on Appropriations, without amendment:

S. 2159: An original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1998, and for other purposes (Rept. No. 105–212).

By Mr. BURNS, from the Committee on Appropriations, without amendment:

S. 2160: An original bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes (Rept. No. 105–213).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SMITH of Oregon:

S. 2156. A bill to amend the Arms Export Control Act to exempt any credit, credit guarantee or other financial assistance provided by the Department of Agriculture for the purchase or other provision of food or other agricultural commodities from sanctions provided for under the Act; to the Committee on Foreign Relations.

By Mr. CLELAND (for himself, Mr. KERRY, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 2157. A bill to amend the Small Business Act to increase the authorized funding level for women's business centers; to the Committee on Small Business.

By Mr. ROBERTS (for himself, Mr. SMITH of Oregon, Mrs. MURRAY, Mr. BURNS, Mr. CRAIG, Mr. BAUCUS, Mr. LUGAR, Mr. KERREY, Mr. GORTON, and Mr. KEMPTHORNE):

S. 2158. A bill to amend the Arms Export Control Act to provide that certain sanctions provisions relating to prohibitions on credit, credit guarantees, or other financial assistance not apply with respect to programs of the Department of Agriculture for the purchase or other provision of food or other agricultural commodities; to the Committee on Foreign Relations.

By Mr. COCHRAN:

S. 2159. An original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. BURNS:

S. 2160. An original bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending Sepetember 30, 1999, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. THOMPSON (for himself and Mr. BREAUX):

S. 2161. A bill to provide Government-wide accounting of regulatory costs and benefits, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MACK (for himself and Mr. GRAMS):

S. 2162. A bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. ASHCROFT, Mr. ABRAHAM, Mr. THURMOND, Mr. SESSIONS, and Mr. KYL):

S. 2163. A bill to modify the procedures of the Federal courts in certain matters, to reform prisoner litigation, and for other purposes; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 2164. A bill to amend title 49, United States Code, to promote rail competition, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY:

S. 2165. A bill to amend title 31 of the United States Code to improve methods for preventing financial crimes, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARKIN (for himself, Mr. LEAHY, and Mr. JOHNSON):

S. 2166. A bill to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in such Acts through fiscal year 2002, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. COLLINS (for herself and Mr. GRASSLEY):

S. 2167. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to increase the efficiency and accountability of Offices of Inspector General within Federal departments, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MURKOWSKI:

S.J. Res. 52. A joint resolution proposing an amendment to the Constitution of the United States relative to limiting the terms of Senators and Representatives; to the Committee on the Judiciary.

By Mr. INOUYE:

S.J. Res. 53. A joint resolution to express the sense of the Congress that the President should award a Presidential Unit Citation to the final crew of the U.S.S. INDIANAPOLIS, which was sunk on July 30, 1945; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 247. A resolution to authorize testimony, document production, and representation of Member and employees of the Senate in United States v. Jack L. Williams, et al; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CLELAND (for himself, Mr. KERRY, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 2157. A bill to amend the Small Business Act to increase the authorized funding level for women's business centers; to the Committee on Small Business.

SMALL BUSINESS ADMINISTRATION WOMEN'S BUSINESS CENTER AUTHORIZATION ACT

Mr. KERRY. Mr. President, I am delighted to join the Senator from Georgia, Senator CLELAND, in introducing legislation with him to expand the authorized level of the Small Business Administration's Women's Business Centers. I appreciate the leadership of the Senator from Georgia on this issue.

We must provide and over the last few years have provided strong support to help women business owners meet their greatest potential. I am happy to say this bill does just that. The additional funding that would be authorized in the bill will ensure that the SBA is going to achieve the goal of establishing the Women's Business Center in every single State by the year 1999. It will also be used to expand the existing very successful Women's Business Centers in the currently underserved areas of their States.

Just 10 years ago Congress established a demonstration program to help women-owned businesses gain access to capital and assistance, technical assistance, in business development. This program has proven to be a really remarkable success. It has served nearly 50,000 American women, business owners, through 54 sites in 28 States and the District of Columbia.

Women-owned businesses have made extraordinary gains over the past decade, and everyone in America is sharing the economic advantage that has resulted from their endeavors. Current calculations by the Small Business Administration indicate that women now own one-third of all U.S. firms—more than 8 million businesses. Women-owned businesses employ one out of every five U.S. workers, a total of 18.5 million employees, and more people than the Fortune 500 companies. Each year, women-owned businesses now contribute more than $2.38 trillion into the national economy.

In Massachusetts, where 147,000 women-owned businesses account for over one-third of all our companies, the Center for Women and Business Enterprise has worked to empower women in becoming economically self-sufficient through entrepreneurship. The center provides in-depth courses, workshops, one-on-one counseling, and access to financing for women.

Unfortunately, notwithstanding this extraordinary record of women-owned business, credit has always been something that has been more difficult for women because of credit standards, and frankly some stereotyping that historically has taken place.

Since its inception in 1995, my State's Women's Business Center has served more than 1,000 women business owners, 40 percent of whom are minorities. One hundred cities and towns in eastern Massachusetts are benefiting from the programs and the activities that are available at the center.

I will share a couple of real stories of how this has worked and what it has done. Renata Matsson came to the Center for Women and Enterprise in October 1995 after she had developed a medical device to assist people suffering from chronic eye problems. But Renata didn't know how to transform her invention to a product in a small business. After completing an 11-week class which taught her "the language of business," she developed a detailed business plan and applied for a grant from the Small Business Administration's Small Business Innovation Research Program through the National Institutes of Health. She was recently awarded a grant of $100,000. Today she is using that grant to commercialize her technology and start her own small business.

Another example: 16 years ago, Nancy Engel was a young mother on welfare dreaming of giving her daughter the things that she never had—a home, financial security, and a college education. Nancy took $30 from her last welfare check and bought spices, which she then repackaged and sold at a flea market. She earned $200 from that investment of her $30 from her check. She then used those proceeds to develop a small business called the Sunny Window. In 1996, she enrolled in the Center for Women and Enterprise's business planning course. Since she completed the course, Sunny Window has grown and now generates $250,000 in annual revenues selling spices, dried flower arrangements and soaps throughout the world. It now employs seven women with what Nancy calls "part-time mothers' hours." Nancy was recently named the U.S. Small Business Administration's first Welfare-to-Work Entrepreneur of the Year for Massachusetts. Soon she will be volunteering for the Center for Women and Enterprise, assisting other women entrepreneurs who are trying to make the very difficult transition from public assistance to running their own small business.

These are just two of a myriad of stories, wonderful stories, of success as a result of our efforts at the Federal level to assist women-owned businesses. These success stories are, however, juxtaposed to the reality that far too many women still face unnecessary obstacles to developing their own businesses, ranging from the lack of access to capital to a lack of access to government contracts, to a lack of access to business education or even to training opportunities, not to mention some of the fundamental resistance that has, unfortunately, existed with respect to women's efforts to try to engage in entrepreneurial activities.

We need to expand on the policies and programs that allow women entrepreneurs to grow and to thrive. In turn, it is clear their successes will benefit our country and all of our communities. We know that women entrepreneurs are now breaking records. Women-owned business have a startup rate twice that of male-owned counterparts. Between 1987 and 1992, the number of women-owned businesses increased by 43 percent while business overall grew only 26 percent.

Particularly notable, women-owned companies with 100 or more workers increased employment by 158 percent, more than double the rate for all U.S. firms of similar size. These accomplishments illustrate the importance of women-owned businesses to our economy, and they underscore why we in Congress should support their growth and development.

Last year, I was proud to be an original cosponsor of the Women's Business Centers Act of 1997, which doubled the authorization of funding for women business center programs to $8 million for each of the next 3 years. I was extremely pleased that the major provision of that bill, as well as a mandate for the SBA to conduct studies on how women businesses fare in the contracting and finance areas, was included in the Small Business Reauthorization Act of 1997 and was enacted into law with President Clinton's signature.

The legislation that I join Senator CLELAND in introducing today takes the next step in developing the women's business center program by increasing the authorization to $9 million in fiscal year 1999, $10.5 million in the year 2000, and $12 million in 2001. I underscore that that is a remarkably small amount of money that we are seeking to do a large job, a job which obviously is returning extraordinary results to the Nation.

This increased funding will ensure that the SBA achieves the goal of establishing at least one women's business center in each State by the end of the year in 1999 and will strengthen and expand the existing centers. I also continue to support the development of the women's on-line center, which is a very useful tool for women businessowners—especially those located in rural areas—who want to avail themselves of the women's business center technical expertise.

The legislation that Senator CLELAND and I introduce today is the beginning of a new advancement for women-owned businesses, and I am very proud to be a part of it. I hope that all of our colleagues will join in this important effort. I would like to take the opportunity to thank Senator CLELAND and his staff, particularly John Johnson, for the work they have done in the preparation of this legislation.

Mr. CLELAND. Mr. President, I thank the Senator from Massachusetts, Senator KERRY, for his work on behalf of small businesses. We are both members of the Small Business Committee here in the Senate.

Mr. President, I speak this morning to introduce legislation with my colleague, the Senator from Massachusetts, Senator KERRY, and fellow cosponsors, including Senators DASCHLE, LAUTENBERG, MIKULSKI, ABRAHAM, D'AMATO, BREAUX, DODD, BINGAMAN, KOHL, LANDRIEU, TORRICELLI, LEAHY, GRASSLEY, SNOWE, HARKIN, BUMPERS, and FEINSTEIN. That is an impressive bipartisan list of Senators.

This legislation, simply stated, recognizes the outstanding contributions that women's business centers have made to women entrepreneurs across the Nation. In light of this outstanding achievement in the President's budget request, I am proud to offer this measure expressing the findings of Congress that funding for these centers, these women's business centers, should be increased. I note that the centers are the only organization, nationally, that focus exclusively on entrepreneurial training for women. Increased funding would allow for new centers and subcenters to be established and for continued funding for existing centers, including the on-line women's business center. Increased funding would achieve the goal of expanding centers to all 50 States. Our legislation would increase funding for women's business centers under the SBA in steps, from the current level of $8 million to $9 million for fiscal year 1999, $10.5 million for fiscal year 2000, and $12 million for fiscal year 2001.

Mr. President, I would like to take a moment to talk about four focal points of women's business centers. The first and most important focus is the customer. These centers have responded to women's needs by offering training, and during accessible hours at nights and on weekends. In addition to regular training courses, special instructions on starting at-home child care businesses have also been offered. As the SBA Administrator Aida Alvarez points out, the number of clients served in the second year of the program increased by 40 percent. Approximately 44 percent of clients served were actually socially disadvantaged. More than 33 percent of the clients were economically disadvantaged, nearly 40 percent were minorities, and 18 percent were actually on public assistance at the time.

Then there is the community focus. Women's business centers are a network of more than 60 community-based women's business centers operating in 36 States, the District of Columbia, and Puerto Rico. Each center offers long-term training, networking, and mentoring to potential and existing entrepreneurs, most of whom could not or would not start businesses without substantial help, and each center tailors its programs to the needs of the individual community it serves.

Next is the economic focus. In terms of job growth, significantly high numbers of full- and part-time jobs were created at average hourly wages at least double the minimum wage. In the area of loan growth, the number of small loans received by clients has more than doubled since the first year of the program. In terms of small business growth, 78 percent of all center clients were startup businessowners or aspiring entrepreneurs. The centers taught them business basics and provided practical support and realistic encouragement.

The last focus is that of technology. The on-line women's business center, at www.onlinewbc.org, is an interactive state-of-the-art web site that offers virtually everything an entrepreneur needs to start and build a successful business, including on-line

training, mentoring, individual counseling, topic forums and news groups, market research, a comprehensive State-by-State resource and information guide, and information on all of the SBA's programs and services, plus links to countless other resources. This site was developed by the North Texas Women's Business Development Center in cooperation with more than 60 women's business centers and several corporate sponsors. This summer, information will be available in nine different languages.

Mr. President, I want to conclude my statement by thanking the Senator from Massachusetts, Senator KERRY. I think this legislation offers small businesses and entrepreneurs in America hope, particularly women businessowners and potential women businessowners. It is the hope of a better life for oneself, one's family and community, which actually drives entrepreneurs and also drives the economic engine in this country, which is so vital to our well-being as a Nation. Women's business centers are a distributor of that hope. We in Congress need to recognize that this program works. It makes a positive difference in the lives of so many women and the countless citizens they employ.

I hope all of my colleagues will join me in cosponsoring our bipartisan legislation. I look forward to its future and timely consideration in the Senate Committee on Small Business. I thank my colleagues for the opportunity to be here this morning to present this legislation, which I think will serve the needs of so many.

Mr. ABRAHAM. Mr. President, I rise today as an original cosponsor of legislation increasing the authorization for the Small Business Administration's Women's Business Center program from $9 million in 1999 to $12 million in 2001. These centers provide management, marketing, and financial advice to women-owned small businesses.

Mr. President, the Small Business Administration's Women's Business Center program finances a number of very important initiatives at the state and local levels; initiatives that have proven crucial to women struggling to enter the job world and to start their own businesses. These initiatives have changed the lives of a significant number of women in Michigan and throughout the United States.

For example, Mr. President, Ann Arbor's Women's Initiative for Self-Employment or WISE program was started in 1987 as a means by which to provide low-income women with the tools and resources they need to begin and expand businesses. The WISE program provides a comprehensive package of business training, personal development workshops, credit counseling, start-up and expansion financing, business counseling, and mentoring. In addition to helping create and expand businesses, WISE fights poverty, increases incomes, stabilizes families, develops skills and sparks community renewal.

In addition, Mr. President, Grand Rapids' Opportunities for Women or GROW provides career counseling and training for women in western Michigan. This nonprofit group serves about 250 women per year. GROW helps women get jobs by providing them with basic training and helping them get funds for more specialized training. In addition, they help women obtain appropriate clothing so that they can start work in a professional manner.

I salute the good people at WISE and GROW for their hard work helping the women of Michigan. They provide the kind of services we need to revitalize troubled areas and empower women to build productive lives for themselves and their families.

Because the Small Business Administration's Women's Business Centers program makes these kinds of efforts possible, I believe it deserves our full support, and merits the increase in funding called for in this legislation. I urge my colleagues to support this important bill.

• Mr. LEAHY. Mr. President, I am pleased today to join with my colleagues, Senators CLELAND and KERRY, in introducing legislation that will bring the resources of SBA's Women's Business Center program much closer to those seeking this help as they work to start their own businesses. This bill does more than recognize the contributions that women make as business owners. This bill tangibly supports and encourages more women to become entrepreneurs.

The Office of Women's Business Ownership recently released a report to Congress on the success of Women's Business Centers. This report officially confirms what we already informally know: Women are interested in owning their own businesses, and women appreciate the targeted help the Centers offer that relates directly to the unique opportunities and challenges that women face in creating a business. While existing Small Business Administration offices and Small Business Development Centers help women entrepreneurs, this report found that more than three-fourths of the women who have turned to a Women's Business Center appreciate its special focus. SBA offices and SBDCs do not have the resources available to offer the same kind of help.

Our legislation will supply resources needed to establish a Women's Business Center in each of the fifty states, including in my home state of Vermont. Passage of this bill would give women in Vermont and in other states direct access to information on financing, marketing and managing their own business ventures. Under the provisions of this bill, Vermonters would have access to the wide range of resources that already are available to citizens in 36 other states.

The bill will also extend additional resources for the online Women's Business Center. This resource, located at www.onlinewbc.org, provides assistance to women who are unable to travel long distances to Centers. With this online resource, women have access to much of the same information that is available at the Centers, and they can ask questions of specialists, all with the click of a mouse. Our bill would enable the Center to expand its online services to women in business.

Even without the resources of a Women's Business Center, Vermont is a leader in women-owned businesses. The number of women entrepreneurs in Vermont has almost doubled over the last ten years. Women now own more than thirty-eight percent of all businesses in Vermont, which is above the national average of thirty-six percent. Women also employ thirty percent of Vermont's workers, which also exceeds the national average.

Women have faced unique obstacles and challenges in starting and growing businesses. Some obstacles have been lowered in recent years, and we can all hope that this progress will continue. One step we can take to promote continued progress is by bringing the resources of Women's Business Centers to more women entrepreneurs. We must encourage more Vermont women to tap into this incredible growth. An SBA Women's Business Center in Vermont will do just that by providing women with the framework and support necessary to thrive and excel as business owners.•

By Mr. THOMPSON (for himself and Mr. BREAUX):

S. 2161. A bill to provide Government-wide accounting of regulatory costs and benefits, and for other purposes; to the Committee on Governmental Affairs.

REGULATORY RIGHT-TO-KNOW ACT OF 1998

• Mr. THOMPSON. Mr. President, today I am introducing the "Regulatory Right-to-Know Act" of 1998. I believe that this legislation will serve as an important tool to promote the public's right to know about the benefits and burdens of regulation; to increase the accountability of government to the people it serves; and, ultimately, to improve the quality of our government.

This continues the effort begun by Senator STEVENS, then the Chairman of the Governmental Affairs Committee, when he passed the Stevens Regulatory Accounting Amendment in 1996. This legislation would not change any statutory or regulatory standard; it simply would provide information to help the public, Congress and the President to understand the scope and performance of our regulatory system. As

OMB stated in its first report under the Stevens Amendment, "Over time, regulation . . . has become increasingly prevalent in our society, and the importance of our regulatory activities cannot be overstated." It is my hope that more information on the benefits and costs of regulation will help us make smarter decisions to get more of the good things that sensible regulation can deliver, and reduce needless waste and redtape at the same time. That's plain common sense.

Regulations have played an important role in improving our quality of life—cleaner air, quality products, safer workplaces, and reliable economic markets—to name a few of the good things that sensible regulation can produce. Achieving these benefits does not come without cost. In its first regulatory accounting report, OMB estimated that the annual cost of regulation of the environment, health, safety and the economy is about $300 billion. Other studies, which include the full costs of paperwork and economic transfers, estimate that regulation costs about $700 billion annually. Those costs are passed on to American consumers and taxpayers through higher prices, diminished wages, increased taxes, or reduced government services. The tab for the average American household is thousands of dollars each year—$7,000 per year by some estimates. At the same time, the public wants and deserves better results from our regulatory system. As the costs of regulation rise with public expectations of better results, the need is greater than ever to get a handle on how regulatory programs are performing, so we can find ways for our government to perform better.

It's no surprise that the seriousness of this need is not widely appreciated, because the costs of regulation are not as obvious as many other costs of government, such as the taxes we pay each year; and the benefits of regulation often are diffuse. But there is substantial evidence that the current regulatory system often misses opportunities for greater benefits and lower costs. As noted by the President's chief spokesperson on regulatory policy, Sally Katzen:

> Regrettably, the regulatory system that has been built up over the past five decades . . . is subject to serious criticism . . . [on the grounds] that there are too many regulations, that many are excessively burdensome, [and] that many do not ultimately provide the intended benefits.
>
> Our regulatory goals are too important, and our resources are too precious, to miss out on opportunities to do better.

It's time to move toward a more open and accountable regulatory system. I am pleased to be introducing this bill with Senator BREAUX. It's important that members from both sides of the aisle work together to solve these problems. I appreciate that Chairman TOM BLILEY introduced a similar bill in the House last fall, and I look forward to working with him. Finally, I appreciate the effort that a few dedicated professionals put into OMB's first regulatory accounting report. While this report is certainly not perfect, it shows that regulatory accounting is doable and can help us better understand the benefits and burdens of regulation. Now let's do better. This bill will promote some important improvements, including:

Making regulatory accounting a permanent requirement.

Adding requirements for a more complete picture, including, to the extent feasible, the costs and benefits of particular programs, not just an aggregate picture, as well as an analysis of regulation's impacts on the State and local government, the private sector, and the federal government.

Ensuring higher quality of information. Requirements for OMB guidelines and peer review should improve future reports.

Ensuring better compliance with basic legislative requirements which the first report neglected. These deficiencies include failing to recommend improvements to current programs; failing to assess the indirect effects of regulation; failing to provide information on specific programs where feasible; and failing to provide a full accounting of all mandates. This bill will help address these problems.

As OMB said in their first regulatory accounting report, "regulations (like other instruments of government policy) have enormous potential for both good and harm." I believe that better information will help us to increase the benefits of regulation and decrease unnecessary waste and red tape. I think we need to work together to contribute to the success of government programs the public values, while enhancing the economic security and well-being of our families and communities.

Mr. President, I ask unanimous consent that the "Regulatory Right-to-Know Act" be printed in the RECORD.

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

S. 2161

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 "Regulatory Right-to-Know Act of 1998".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) promote the public right-to-know about the costs and benefits of Federal regulatory programs and rules;

(2) improve the quality of Federal regulatory programs and rules;

(3) increase Government accountability; and

(4) encourage open communication among Federal agencies, the public, the President, and Congress regarding regulatory priorities.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGENCY.—The term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(2) BENEFIT.—The term "benefit" means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including social, health, safety, environmental, economic, and distributional effects, that are expected to result from implementation of, or compliance with, a rule.

(3) COST.—The term "cost" means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including social, health, safety, environmental, economic, and distributional effects, that are expected to result from implementation of, or compliance with, a rule.

(4) DIRECTOR.—The term "Director" means the Director of the Office of Management and Budget, acting through the Administrator of the Office of Information and Regulatory Affairs.

(5) MAJOR RULE.—The term "major rule" means a rule that—

(A) the agency proposing the rule or the Director reasonably determines is likely to have an annual effect on the economy of $100,000,000 or more in reasonably quantifiable costs; or

(B) is otherwise designated a major rule by the Director on the ground that the rule is likely to adversely affect, in a material way, the economy, a sector of the economy, including small business, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities.

(6) PROGRAM ELEMENT.—The term "program element" means a rule or related set of rules.

(7) RULE.—The term "rule" has the same meaning given such term in section 551(4) of title 5, United States Code, except that such term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) rules issued with respect to a military or foreign affairs function of the United States; or

(C) rules related to agency organization, management, or personnel.

SEC. 4. ACCOUNTING STATEMENT.

(a) IN GENERAL.—

(1) ADMINISTRATION.—The President, acting through the Director, shall be responsible for implementing and administering the requirements of this Act.

(2) ACCOUNTING STATEMENT.—Not later than January 2000, and each January every 2 years thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the costs and corresponding benefits of Federal regulatory programs and program elements in accordance with this section.

(b) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement (other

than the initial accounting statement) submitted under this Act shall cover, at a minimum, the costs and corresponding benefits for each of the 5 fiscal years preceding October 1 of the year in which the report is submitted. Each statement shall also contain, at a minimum, a projection of the costs and corresponding benefits for each of the next 10 fiscal years, based on rules in effect or projected to take effect. The statement may cover any fiscal year preceding such fiscal years for the purpose of revising previous estimates.

(c) TIMING AND PROCEDURES.—

(1) NOTICE AND COMMENT.—The President shall provide notice and opportunity for comment, including consultation with the Comptroller General of the United States, for each accounting statement.

(2) TIMING.—The President shall propose the first accounting statement under this section no later than 1 year after the date of enactment of this Act. Such statement shall cover, at a minimum, each of the preceding fiscal years beginning with fiscal year 1997.

(d) CONTENTS OF ACCOUNTING STATEMENT.—

(1) ESTIMATES OF COSTS.—An accounting statement shall estimate the costs of all Federal regulatory programs and program elements, including paperwork costs, by setting forth, for each year covered by the statement—

(A) the annual expenditure of national economic resources for each regulatory program and program elements; and

(B) such other quantitative and qualitative measures of costs as the President considers appropriate.

(2) ESTIMATES OF BENEFITS.—An accounting statement shall estimate the corresponding benefits of Federal regulatory programs and program elements by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall be based on sound and objective scientific practices and shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(3) PRESENTATION OF RESULTS.—

(A) COSTS AND BENEFITS CATEGORIES.—To the extent feasible, the costs and benefits under this subsection shall be listed under the following categories:

(i) In the aggregate.

(ii) By agency, agency program, and program element.

(iii) By major rule.

(B) QUANTIFICATION.—To the extent feasible, the Director shall quantify the net benefits or net costs under subparagraph (A).

(C) COST ESTIMATES.—In presenting estimates of costs in the accounting statement, the Director shall provide estimates for the following sectors:

(i) Private sector costs.

(ii) Federal sector administrative costs.

(iii) Federal sector compliance costs.

(iv) State and local government administrative costs.

(v) State and local government compliance costs.

SEC. 5. ASSOCIATED REPORT TO CONGRESS.

(a) IN GENERAL.—

(1) SUBMISSION.—In each year following the year in which the President submits an accounting statement under section 4, the President, acting through the Director, shall, after notice and opportunity for comment, submit to Congress a report associated with the accounting statement (hereinafter referred to as an "associated report").

(2) CONTENT.—The associated report shall contain, in accordance with this section—

(A) analyses of impacts;

(B) identification and analysis of jurisdictional overlaps, duplications, and potential inconsistencies among Federal regulatory programs; and

(C) recommendations for reform.

(b) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(1) ANALYSES.—Analyses prepared by the president of the cumulative impact of Federal regulatory programs covered in the accounting statement. Factors to be considered in such report shall include impacts on the following:

(A) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(B) Small business.

(C) Productivity.

(D) Wages.

(E) Economic growth.

(F) Technological innovation.

(G) Employment and income distribution.

(H) Consumer prices for goods and services.

(I) Such other factors considered appropriate by the President.

(2) SUMMARY.—A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(c) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(1) PRESIDENTIAL RECOMMENDATIONS.—A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(2) RECOMMENDATIONS FROM COMMENTERS.—A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

SEC. 6. GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall, in consultation with the Council of Economic Advisers, issue guidelines to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to this Act, including guidance on estimating the costs and corresponding benefits of regulatory programs and program elements; and

(2) to standardize the format of the accounting statements.

(b) REVIEW.—The Director shall review submissions from agencies to assure consistency with the guidelines under this section.

SEC. 7. PEER REVIEW.

(a) IN GENERAL.—

(1) SCOPE.—The Director shall provide for independent and external peer review of—

(A) the guidelines issued under section 6; and

(B) each accounting statement and associated report.

(2) USE OF COMMENTS.—The Director shall use the peer review comments in preparing the final statement and report.

(b) REVIEW.—Peer review under subsection (a) shall—

(1) involve participants who—

(A) have expertise in the economic and technical issues germane to regulatory accounting and economic and scientific analysis; and

(B) are independent of the Government;

(2) be completed in a timely manner, consistent with applicable deadlines;

(3) provide written comments to the Director containing a balanced presentation of all considerations; and

(4) not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(c) RESPONSE.—The Director shall provide a written response to all significant peer review comments. Such comments and responses shall be made available to the public.

SEC. 8. RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.

After each accounting statement and associated report is submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving agency compliance with this Act and the guidelines under section 6; and

(2) for improving accounting statements and associated reports prepared under this Act, including recommendations on level of detail, accuracy, and quality of analysis.•

By Mr. MACK (for himself and Mr. GRAMS):

S. 2162. A bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment; to the Committee on Finance.

PRINTED CIRCUIT INVESTMENT ACT OF 1998

• Mr. MACK. Mr. President, today Senator GRAMS and I introduce the Printed Circuit Investment Act of 1998. This bill would allow manufacturers of printed wiring boards and assemblies, known as the electronic interconnection industry, to depreciate their production equipment in 3 years rather than the 5 year period under current law.

As we approach the 21st Century, our Nation's Tax Code should not stand in the way of technological progress. Printed wiring boards and assemblies are literally central to our economy, as they are the nerve centers of nearly every electronic device from camcorders and televisions to medical devices, computers and defense systems. But the Tax Code places U.S. manufacturers at a disadvantage relative to their Asian competitors, because of different depreciation treatment. This disadvantage is particularly difficult for U.S. firms to bear, as the interconnection industry consists overwhelmingly of small firms that cannot easily absorb the costs inflicted by an irrationally-long depreciation schedule.

As technology continues to advance at light speed, the exhilaration of competition in a dynamic market is dampened by the effects of a Tax Code that has not kept pace with these changes. Obsolete interconnection manufacturing equipment is kept on the books long after this equipment has gone out the door. Companies with the competitive fire to enter such a rapidly-evolving industry must constantly invest in

new state-of-the-art equipment, replacing obsolete equipment every 18 to 36 months just to remain competitive. U.S. investments in new printed wiring board and assembly manufacturing equipment have nearly tripled since 1991—growing from $847 million to an estimated $2.4 billion.

But this investment is taxed at an artificially-high rate, because deductions for the cost of the equipment are spread over a period that is several years longer than justified. The industry is at the mercy of tax laws passed in the 1980s, which were based on 1970s-era electronics technology. It is no wonder that the market share of U.S. interconnection companies has been cut in half over this period. Our Tax Code should not continue to undermine the competitiveness of American businesses. The opportunity is before us to correct the tax laws that dictate how rapidly board manufacturers and electronics assemblers can depreciate equipment needed to fabricate and assemble circuit boards.

The Printed Circuit Investment Act of 1998 will provide modest tax relief to the electronics interconnection industry and the 250,000 Americans, residing in every state of the Union, whose jobs rely on the success of this industry. This industry should get fair and accurate tax treatment.

Mr. President, 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. 2162

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 "Printed Circuit Investment Act of 1998".

SEC. 2. 3-YEAR DEPRECIBLE LIFE FOR PRINTED WIRING BOARD AND PRINTED WIRING ASSEMBLY EQUIPMENT.

(a) IN GENERAL.—Subparagraph (A) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to classification of property) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) any printed wiring board or printed wiring assembly equipment."

(b) 3-YEAR CLASS LIFE.—Subparagraph (B) of section 168(g)(3) of such Code is amended by inserting after the item relating to subparagraph (A)(iii) the following new item:

"(A)(iv) ..... 3".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to equipment placed in service after the date of the enactment of this Act.•

By Mr. HATCH (for himself, Mr. ASHCROFT, Mr. ABRAHAM, Mr. THURMOND, Mr. SESSIONS, and Mr. KYL):

S. 2163. A bill to modify the procedures of the Federal courts in certain matters, to reform prisoner litigation, and for other purposes; to the Committee on the Judiciary.

JUDICIAL IMPROVEMENT ACT OF 1998

Mr. HATCH. Mr. President, I rise today to introduce, along with Senators THURMOND, ABRAHAM, and ASHCROFT, the Judicial Improvement Act of 1998; legislation that will restore public confidence in our democratic process by strengthening the constitutional division of powers between the Federal government and the States and between Congress and the Courts. On the whole, our federal judges are respectful of their constitutional roles, yet a degree of overreaching by some dictates that Congress move to more clearly delineate the proper role of Federal judges in our constitutional system. Increasingly, judges forget that the Constitution has committed to them the power to interpret law, but reserved to Congress the power to legislate.

This careful balancing of legislative and judicial functions is vital to our constitutional system. Regardless of how much we, as individuals, may approve of the results of a certain judge's decision, we must look beyond short-term political interests and remember the importance of preserving our Constitution.

Attempts by certain jurists to encroach upon legislative authority deeply concern me. I have taken the floor in this chamber on numerous occasions to recite some of the more troubling examples of judicial overreaching. I will not revisit them today. Suffice it to say that activism, and by that I mean a judge who ignores the written text of the law, whether from the right or the left, threatens our constitutional structure.

As an elected official, my votes for legislation are subject to voter approval. Federal judges, however, are unelected, hence they are, as a practical matter, unaccountable to the public. While tenure during good behavior, which amounts to life tenure, is important in that it frees judges to make unpopular, but constitutionally sound, decisions, it can become a threat to liberty when placed in the wrong hands. Alexander Hamilton, in the 78th Federalist, warned of the problem when judges "substitute their own pleasures to the constitutional intentions of the legislature." [Federalist No. 78, A. Hamilton]. Hamilton declared that "The courts must declare the sense of the law; and if they should be disposed to exercise Will instead of Judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body." [Ibid.]. And substituting the will of life-tenured federal judges for the democratically elected representatives is not what our Constitution's framers had in mind.

In an effort to avoid this long-contemplated problem, the proposed reform legislation we are introducing today will assist in ensuring that all three branches of the federal government work together in a fashion contemplated by, and consistent with, the Constitution. In addition, this legislation will ensure that federal judges are more respectful of the States.

This bill is not, as some would claim, an assault on the Federal Judiciary. Indeed, the overwhelming majority of our Federal judges would find repugnant the idea of imposing their personal views on the people in lieu of Federal or State law. However, there are currently some activist Federal judges improperly expanding their roles to quash the will of the people. These individuals view themselves as so-called platonic guardians, and believe they know what is in the people's best interest. Judges, however, are simply not entitled to deviate from their roles as interpreters of the law to create new law from the bench. If they believe otherwise, they are derelict in their duties and should resign to run for public office—at least then they would be accountable for their actions. It is time that we pass legislation that precludes any Federal judge from blurring the lines separating the legislative and judicial functions.

It is important to note that the effort to reign in judicial activism should not be limited simply to opposing potential activist nominees. While the careful scrutiny of judicial nominees is one important step in the process, a step reserved to the Senate alone, Congress itself has an obligation to the public to ensure that judges fulfill their constitutionally assigned roles and do not encroach upon those powers delegated to the legislature. Hence, the Congress performs an important role in bringing activist decisions to light and, where appropriate, publicly criticizing those decisions. Some view this as an assault upon judicial independence. That is untrue. It is merely a means of engaging in debate about a decision's merits or the process by which the decision was reached. Such criticism is a healthy part of our democratic system. While life tenure insulates judges from the political process, it should not, and must not, isolate them from the people.

In addition, the Constitution grants Congress the authority, with a few notable limitations, to set federal courts' jurisdiction. This is an important tool that, while seldom used, sets forth the circumstances in which the judicial power may be exercised. A good example of this is the 104th Congress' effort to reform the statutory writ of habeas corpus in an attempt to curb the seemingly endless series of petitions filed by convicted criminals bent on thwarting the demands of justice. Legislation of this nature, actually called for by the Chief Justice and praised in his recent annual report, is an important means of curbing activism.

To this end, I have chosen to introduce the Federal Judicial Improvement

Act. It is a small, albeit meaningful, step in the right direction. Notably, this legislation will change the way federal courts review constitutional challenges to State and federal laws. The existing process allows a single federal judge to hear and grant applications regarding the constitutionality of State and federal laws as well as state ballot initiatives. In other words, a single federal judge can impede the will of a majority of the voters merely by issuing an order halting the implementation of a state referendum.

This proposed reform will accomplish the twin goals of fighting judicial activism and preserving the democratic process. This bill modestly proposes to respond to the problem of judicial activism by:

1. Requiring a three judge district court panel to hear appeals and grant interlocutory or permanent injunctions based on the constitutionality of the state law or referendum.
2. Placing time limitations on remedial authority in any civil action in which prospective relief or a consent judgment binds State or local officials.
3. Prohibiting a Federal court from having the authority to order State or local governments to increase taxes as part of a judicial remedy.
4. Preventing a Federal court from prohibiting State or local officials from reprosecuting a defendant.
5. Preventing a Federal court from ordering the release of violent offenders under unwarranted circumstances.

This reform bill is a long overdue effort to minimize the potential for judicial activism in the federal court system. Americans are understandably frustrated when they exercise their right to vote and the will of their elected representatives is thwarted by judges who enjoy life tenure. It's no wonder that millions of Americans don't think their vote matters when they enact a referendum only to have it enjoined by a single district court judge. By improving the way federal courts analyze constitutional challenges to laws and initiatives, Congress will protect the rights of parties to challenge unconstitutional laws while at the same time reduce the ability of activist judges to abuse their power and stifle the will of the people.

I want to take a few moments to describe how this legislation will curb the ability of federal judges to engage in judicial activism. The first reform would require a three judge panel to hear and issue interlocutory and permanent injunctions regarding challenged laws at the district court level. The current system allows a single federal judge to restrain the enforcement, operation and execution of challenged federal or state laws, including initiatives. There have been many instances where an activist judge has used this power to overturn a ballot initiative only to have his or her order overturned by a higher court years later.

For example, this change would have prevented U.S. District Court Judge Thelton Henderson from issuing an injunction barring enforcement of Proposition 209, a ballot initiative which prohibited affirmative action in California. Judge Henderson's order was subsequently overturned by the Ninth Circuit Court of Appeals, which ruled that the law was constitutional and that Judge Henderson thwarted the will of the people. A three judge panel would have prevented Henderson from acting on his own, and perhaps would have ruled correctly in the first place.

Now, I have no problem with a court declaring a law unconstitutional when it violates the written text of the Constitution. It is, however, inappropriate when a judge, like Judge Henderson, attempts to act like a super-legislator and imposes his own policy preference on the citizens of a State. Such an action weakens respect for the federal judiciary, creates cynicism in the voting public, and costs the government millions of dollars in legal fees. By requiring a three judge panel, the proposed law would eliminate the ability of one activist judge to unilaterally bar enforcement of a law or ballot initiative through an interlocutory or permanent injunction.

In addition, new time limits on injunctive relief would be imposed. A temporary restraining order would remain in force no more than 10 days, and an interlocutory injunction no more than 60 days. After the expiration of an interlocutory injunction, federal courts would lack the authority to grant any additional interlocutory relief but would still have the power to issue a permanent injunction. These limitations are designed to prevent the federal judiciary from indefinitely barring implementation of challenged laws by issuing endless injunctions, and facilitate the appeals process by motivating courts to speedily handle constitutional challenges.

We need only to look at the legal wrangling over Proposition 187 to see the need for these time constraints. The California initiative was overwhelmingly approved in 1994 with almost 60 percent of the vote and was designed to end all social services and other benefits to illegal aliens. The referendum was supported by voters who felt that they as taxpayers didn't have the ability to provide those who break immigration laws with free health, education and welfare. Opponents who lost at the ballot box went to federal court the next day and obtained an injunction prohibiting enforcement of 187, and to this day it has never been the law of the state of California.

U.S. District Judge Mariana Pfaelzer issued a preliminary injunction soon after the 1994 election and ruled way back in 1995 that part of 187 was unconstitutional. The injunction stayed in effect and she finally ruled on the rest of the initiative in March of this year, when she found that an additional portion of the initiative was unconstitutional. The proposed time limitation on injunctions would have been an incentive for the judge to rule promptly on the issues at hand, and precluded her from indefinitely delaying enforcement of the proposition without ruling. What this reform essentially does is encourage the federal judiciary to rule on the merits of a case, and not use injunctions to keep a challenged law from going into effect or being heard by an appeals court through the use of delaying tactics.

The bill also proposes to require that a notice of appeal must be filed not more than fourteen days after the date of an order granting an interlocutory injunction and the appeals court would lack jurisdiction over an untimely appeal of such an order. The court of appeals would apply a de novo standard of review before reconsidering the merits of granting relief, but not less than 100 days after the issuance of the original order granting interlocutory relief. If the interlocutory order is upheld on appeal, the order would remain in force no longer than 60 days after the date of the appellate decision or until replaced by a permanent injunction.

The bill also proposes limitations on the remedial authority of federal courts. In any civil action where prospective relief or a consent judgment binds state and local officials, relief would be terminated upon the motion of any party or intervener:

(a) five years after the date the court granted or approved the prospective relief;

(b) two years after the date the court has entered an order denying termination of prospective relief; or

(c) in the case of an order issued on or before the date of enactment of this act, two years after the date of enactment.

Parties could agree to terminate or modify an injunction before relief is available if it otherwise would be legally permissible. Courts would promptly rule on motions to modify or terminate this relief and in the event that a motion is not ruled on within 60 days, the order or consent judgment binding State and local officials would automatically terminate.

However, prospective relief would not terminate if the federal court makes written findings based on the record that relief remains necessary to correct an ongoing violation of a federal right, extends no further than necessary to correct the violation and is the least intrusive means available to correct the violation of a federal right.

This measure would also prohibit a federal court from having the authority to order a unit of state or local government to increase taxes as part of a judicial remedy. When an unelected Federal judge has the power to order

tax increases, this results in taxation without representation. Americans have fought against unfair taxation since the Revolutionary War, and this bill would prevent unfair judicial taxation and leave the power to tax to elected representatives of the people.

The bill would not limit the authority of a Federal court to order a remedy which may lead a unit of local or State government to decide to increase taxes. A Federal court would still have the power to issue a money judgment against a State because the court would not be attempting to restructure local government entities or mandating a particular method or structure of State or local financing. This bill also doesn't limit the remedial authority of State courts in any case, including cases raising issues of federal law. All the bill does is prevent Federal courts from having the power to order elected representatives to raise taxes. This is moderate reform which prevents judicial activism and unfair taxation while preserving the Federal courts power to order remedial measures.

Another important provision of the bill would prevent a federal court from prohibiting State or local officials from re-prosecuting a defendant. This legislation is designed to clarify that federal habeas courts lack the authority to bar retrial as a remedy.

This part of the legislation was cosponsored by Congressman PITTS and Senator SPECTER in response to a highly-publicized murder case in the Congressman's district. Sixteen year old Laurie Show was harassed, stalked and assaulted for six months by the defendant, who had a vendetta against Show for briefly dating the defendant's boyfriend. After luring Show's mother from their residence, the defendant and an accomplice forcefully entered the Show home, held the victim down, and slit her throat with a butcher knife, killing her. After the defendant was convicted in State court, she filed a habeas petition in which she alleged prosecutorial misconduct and averred her actual innocence. Federal district court judge Stewart Dalzell not only accepted this argument and released the defendant, but he also took the extraordinary step of barring state and local officials from reprosecuting the woman. Judge Dalzell stated that the defendant was the "first and foremost victim of this affair."

Congress has long supported the ability of a Federal court to fashion creative remedies to preserve constitutional protections, but the additional step of barring state or local officials from reprosecution is without precedent and an unacceptable intrusion on the rights of states. This bill, if enacted, will prevent this type of judicial activism from ever occurring again.

This bill also contains provisions for the termination of prospective relief when it is no longer warranted to cure a violation of a federal right. Once a violation that was the subject of a consent decree has been corrected, a consent decree must be terminated unless the court finds that an ongoing violation of a federal right exists, the specific relief is necessary to correct the violation of a Federal right, and no other relief will correct the violation of the Federal right. The party opposing the termination of relief has the burden of demonstrating why the relief should not be terminated, and the court is required to grant the motion to terminate if the opposing party fails to meet its burden. These provisions prevent consent decrees from remaining in effect once a proper remedy has been implemented, thereby preventing judges from imposing consent decrees that go beyond the requirements of law.

The proposed reform law also includes provisions designed to dissuade prisoners from filing frivolous and malicious motions by requiring that the complainant prisoner pay for the costs of the filings. These provisions will undoubtedly curb the number of frivolous motions filed by prisoners and thus, relieve the courts of the obligation to hear these vacuous motions designed to mock and frustrate the judicial system.

Finally, the bill proposes to prevent federal judges from entering or carrying out any prisoner release order that would result in the release from or nonadmission to a prison on the basis of prison conditions. This provision will effectively preclude activist judges from circumventing mandatory minimum sentencing laws by stripping the federal judges of jurisdiction to enter such orders. This will ensure that the tough sentencing laws approved by voters to keep murderers, rapists, and drug dealers behind bars for lengthy terms will not be ignored by activist judges who improperly use complaints of prison conditions filed by convicts as a vehicle to release violent offenders back on our streets.

For an example of this activism, I offer the rulings of a jurist whom I have mentioned before, Federal Judge Norma Shapiro, who sits on the Federal bench in Philadelphia. Judge Shapiro has a different view of what prison life should be: a view completely divergent from the view of the general public and, most importantly, the law.

Judge Shapiro used complaints filed by inmates to impose her activist views and wrestle control of the prison system by setting a cap on the number of prisoners that can be incarcerated in Pennsylvania. When faced with the opportunity to extend her judicial powers and seize control of the prison system, Judge Shapiro jumped at the chance and the results have been disastrous.

The cap imposed by Judge Shapiro forced the release of 500 prisoners a week. Because of this cap, in a time period of 18 months alone, 9,732 arrestees were released on Philadelphia. Of course, many were re-arrested on other charges, including 79 murders, 90 rapes, 701 burglaries, 959 robberies, 1,113 assaults, 2,215 drug offenses and 2,748 thefts. [Philadelphia Inquirer]. Releasing dangerous criminals on to the streets to reek havoc and violence is the ultimate slap in the faces of law enforcement and justice. How can we expect law enforcement to provide protection and safe streets if at every turn there is a Judge Shapiro waiting anxiously for the chance to release lawlessness on our communities? This reform bill will prevent Judge Shapiro and other like-minded judges from ever endangering families and children in our communities again by preventing these Judges from releasing prisoners based on prison conditions.

Prison life is not supposed to be pleasant or comfortable; rather, it is supposed to serve as a deterrent to future crime. I would be worried if no prisoners were filing complaints because they actually found prison life to be acceptable. But it seems that some activist judges are willing to believe any prisoner complaint equates or rises to the level of a constitutional violation. It seems that in some courtrooms, if a prisoner simply files a complaint alleging prison conditions aren't laudable or praiseworthy, chances are good that that prisoner, and many others, will be released from custody early, sometimes immediately, thanks to the misguided activism of the judge hearing the complaint. This is absolutely unacceptable and this proposed law will put a stop to the agendas of some activist judges who believe every argument that the ACLU and guilty, but bored, convicts offer up.

This overdue legislation is a measured effort to improve the way the federal judiciary works. It fights judicial activism and actually improves the way constitutional appeals are handled. This reform bill is a sensible, balanced attempt to promote judicial efficiency and to prevent egregious judicial activism. I encourage my colleagues to act swiftly on this needed reform.

Mr. President, I ask unanimous consent that a copy of this measure be printed in the RECORD.

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

S. 2163

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Judicial Improvement Act of 1998".

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

Sec. 1. Short title; table of contents.
Sec. 2. Procedures for certain injunctions.

Sec. 3. Limitations on remedial authority.
Sec. 4. Interlocutory appeals of court orders relating to class actions.
Sec. 5. Multiparty, multiforum jurisdiction of district courts.
Sec. 6. Appeals of Merit Systems Protection Board.
Sec. 7. Extension of Judiciary Information Technology Fund.
Sec. 8. Authorization for voluntary services.
Sec. 9. Offsetting receipts.
Sec. 10. Sunset of civil justice expense and delay reduction plans.
Sec. 11. Creation of certifying officers in the judicial branch.
Sec. 12. Limitation on collateral relief.
Sec. 13. Laurie Show victim protection.
Sec. 14. Rule of construction relating to retroactive application of statutes.
Sec. 15. Appropriate remedies for prison conditions.
Sec. 16. Limitation on fees.
Sec. 17. Notice of malicious filings.
Sec. 18. Limitation on prisoner release orders.
Sec. 19. Repeal of section 140.
Sec. 20. Severability.

SEC. 2. PROCEDURES FOR CERTAIN INJUNCTIONS.

(a) REQUIREMENT OF 3-JUDGE COURT.—

(1) IN GENERAL.—No interlocutory or permanent injunction restraining the enforcement, operation, or execution of a State law adopted by referendum or an Act of Congress shall be granted by a United States district court or judge thereof upon the ground that the State law conflicts with the United States Constitution, Federal law, or a treaty of the United States unless the application for the injunction is heard and determined by a court of 3 judges in accordance with section 2284 of title 28, United States Code.

(2) APPEALS.—Any appeal of a determination on such application shall be to the Circuit Court of Appeals.

(3) DESIGNATION OF JUDGES.—In any case to which this section applies, the additional judges who will serve on the 3-judge court shall be designated under section 2284(b)(1) of title 28, United States Code, as soon as practicable, and the court shall expedite the consideration of the application for an injunction.

(4) DENIAL OF REQUEST.—Nothing in this subsection shall prevent a district court judge from denying a request for interlocutory or permanent injunctive relief.

(b) TIME LIMITS ON INJUNCTIVE RELIEF.—

(1) TEMPORARY RESTRAINING ORDER.—Section 2284(b)(3) of title 28, United States Code, is amended in the second sentence by inserting before the period, the following: ", but in no event shall the order remain in force for longer than 10 days".

(2) INTERLOCUTORY INJUNCTION.—Any interlocutory injunction restraining the enforcement or operation of a State law adopted by referendum or an Act of Congress shall remain in force for not longer than 60 days. The Federal courts shall lack the authority to grant any additional interlocutory relief after the expiration of an interlocutory injunction. Nothing in this paragraph shall limit the court's authority to issue a permanent injunction after an interlocutory injunction has expired. If the order granting the interlocutory injunction is appealed, the time limits of paragraph (4) apply.

(3) FILING OF APPEAL.—A notice of appeal from an order granting an interlocutory injunction restraining the enforcement or operation, of a State law adopted by referendum or an Act of Congress shall be filed not later than 14 days after the date of the order. The Courts of Appeals lack jurisdiction over an untimely appeal of such an order.

(4) CONSIDERATION OF APPEAL.—If an appeal is filed from an order granting an interlocutory injunction restraining the enforcement or operation of a State law adopted by referendum or an Act of Congress, the Court of Appeals shall reconsider the merits of granting interlocutory relief applying a de novo standard of review. The Court of Appeals shall dispose of the appeal as expeditiously as possible, but in any event within 100 days after the issuance of the original order granting interlocutory relief. If the interlocutory order is upheld on appeal, the interlocutory order shall remain in force no longer than 60 days after the date of the appellate decision or until replaced by a permanent injunction.

(c) DEFINITIONS.—In this section—

(1) the term "State" means each of the several States and the District of Columbia;

(2) the term "State law" means the constitution of a State, or any statute, ordinance, rule, regulation, or other measure of a State that has the force of law, and any amendment thereto; and

(3) the term "referendum" means the submission to popular vote of a measure passed upon or proposed by a legislative body or by popular initiative.

(d) EFFECTIVE DATE.—This section applies to any injunction that is issued on or after the date of the enactment of this Act.

SEC. 3. LIMITATIONS ON REMEDIAL AUTHORITY.

(a) TERMINATION OF PROSPECTIVE RELIEF.—

(1) IN GENERAL.—In any civil action in which prospective relief is issued which binds State or local officials or in any civil action in which the parties entered a consent judgment binding State or local officials, such relief shall be terminable upon the motion of any party or intervener—

(A) 5 years after the date the court granted or approved the prospective relief;

(B) 2 years after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(C) in the case of an order issued on or before the date of enactment of this Act, 2 years after the date of enactment.

(2) LIMITATION.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief—

(A) remains necessary to correct current and ongoing violation of a Federal right;

(B) extends no further than necessary to correct the violation of a Federal right; and

(C) is the least intrusive means available to correct the violation of a Federal right.

(3) TERMINATION AND MODIFICATION AUTHORITY OTHERWISE UNAFFECTED.—Nothing in this section shall prevent any party or intervener from seeking modification or termination before relief is available under paragraph (1), to the extent that modification or termination would otherwise be legally permissible, and nothing in this section shall prevent the parties from agreeing to terminate or modify an injunction before such relief is available under paragraph (1).

(4) CONFORMITY WITH OTHER LAWS.—Nothing in this section shall affect the rules governing prospective relief in any civil action with respect to prison conditions.

(5) PROCEDURE FOR MOTION TO TERMINATE.—

(A) IN GENERAL.—The court shall rule promptly on any motion to modify or terminate relief.

(B) AUTOMATIC TERMINATION.—In the event a court does not rule on a motion to terminate filed under paragraph (1) within 60 days, the order or consent judgment binding State or local officials will automatically terminate and be of no further legal force.

(b) SPECIAL MASTERS.—

(1) IN GENERAL.—

(A) APPOINTMENT.—In any civil action in a Federal court, the Federal court may appoint a special master who shall be disinterested and objective.

(B) REMEDIAL PHASE.—The court shall appoint a special master under this subsection only during the remedial phase of the action and only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) APPOINTMENT.—

(A) SUBMISSION OF LIST.—If the court determines that appointment of a special master is necessary, the court shall request that the defendant (or group of defendants) and the plaintiff (or group of plaintiffs) each submit a list of not more than 5 persons to serve as a special master.

(B) REMOVAL.—Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) SELECTION.—The court shall select the special master from the remaining names on the lists after the operation of subparagraph (B).

(3) COMPENSATION.—The compensation to be paid to a special master shall be based on an hourly rate not greater than the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel, and costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(4) REGULAR REVIEW OF APPOINTMENT.—The court shall review the appointment of the special master every 6 months to determine whether the services of the special master continued to be justified under the standards of paragraph (1).

(5) LIMITATIONS ON POWERS AND DUTIES.—A special master appointed under this subsection—

(A) shall not make any finding or communication ex parte; and

(B) may be removed by the judge at any time, but shall be relieved of the appointment upon termination of relief.

(c) JUDICIAL TAXATION PROHIBITED.—

(1) IN GENERAL.—No Federal court shall have the authority to order a unit of Federal, State, or local government to increase taxes as part of a judicial remedy.

(2) REMEDIAL AUTHORITY OTHERWISE UNAFFECTED.—Nothing in paragraph (1) shall be construed to limit the authority of a Federal court to order a remedy that may lead a unit of local or State government to decide to increase taxes.

(d) STATE COURT REMEDIES UNAFFECTED.—Nothing in this section shall limit the remedial authority of State courts in any case, including cases raising issues of Federal law.

SEC. 4. INTERLOCUTORY APPEALS OF COURT ORDERS RELATING TO CLASS ACTIONS.

(a) INTERLOCUTORY APPEALS.—Section 1292(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following:

"(2) The court of appeals which would have jurisdiction over a final order in an action may, in its discretion, permit an appeal from an order of a district court granting or denying class action certification made to it within 10 days after the entry of the order. An appeal under this paragraph shall not stay proceedings in the district court unless

the district judge or the court of appeals or a judge thereof shall so order.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to any action commenced on or after the date of enactment of this Act.

SEC. 5. MULTIPARTY, MULTIFORUM JURISDICTION OF DISTRICT COURTS.

(a) BASIS OF JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"§ 1369. Multiparty, multiforum jurisdiction

"(a) The district courts shall have original jurisdiction of any civil action involving minimal diversity between adverse parties that arises from a single accident, where at least 25 natural persons have either died or incurred injury in the accident at a discrete location and, in the case of injury, the injury has resulted in damages which exceed $50,000 per person, exclusive of interest and costs, if—

"(1) a defendant resides in a State and a substantial part of the accident took place in another State or other location, regardless of whether that defendant is also a resident of the State where a substantial part of the accident took place;

"(2) any 2 defendants reside in different States, regardless of whether such defendants are also residents of the same State or States; or

"(3) substantial parts of the accident took place in different States.

"(b) For purposes of this section—

"(1) minimal diversity exists between adverse parties if any party is a citizen of a State and any adverse party is a citizen of another State, a citizen or subject of a foreign state, or a foreign state as defined in section 1603(a);

"(2) a corporation is deemed to be a citizen of any State, and a citizen or subject of any foreign state, in which it is incorporated or has its principal place of business, and is deemed to be a resident of any State in which it is incorporated or licensed to do business or is doing business;

"(3) the term 'injury' means—

"(A) physical harm to a natural person; and

"(B) physical damage to or destruction of tangible property, but only if physical harm described in subparagraph (A) exists;

"(4) the term 'accident' means a sudden accident, or a natural event culminating in an accident, that results in death or injury incurred at a discrete location by at least 25 natural persons; and

"(5) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) In any action in a district court which is or could have been brought, in whole or in part, under this section, any person with a claim arising from the accident described in subsection (a) shall be permitted to intervene as a party plaintiff in the action, even if that person could not have brought an action in a district court as an original matter.

"(d) A district court in which an action under this section is pending shall promptly notify the judicial panel on multidistrict litigation of the pendency of the action.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"1369. Multiparty, multiforum jurisdiction.".

(b) VENUE.—Section 1391 of title 28, United States Code, is amended by adding at the end the following:

"(g) A civil action in which jurisdiction of the district court is based upon section 1369 may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.".

(c) MULTIDISTRICT LITIGATION.—Section 1407 of title 28, United States Code, is amended by adding at the end the following:

"(i)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369, the transferee district court may retain actions so transferred for the determination of liability and punitive damages notwithstanding any other provision of this section. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

"(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

"(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

"(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

"(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum.".

(d) REMOVAL OF ACTIONS.—Section 1441 of title 28, United States Code, is amended—

(1) in subsection (e) by striking "(e) The court to which such civil action is removed" and inserting "(f) The court to which a civil action is removed under this section"; and

(2) by inserting after subsection (d) the following:

"(e)(1)(A) Notwithstanding the provisions of subsection (b), a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

"(i) the action could have been brought in a United States district court under section 1369; or

"(ii) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

"(B) The removal of an action under this subsection shall be made in accordance with section 1446, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

"(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(i) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

"(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the final disposition of the appeal. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

"(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

"(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1368 of this title for purposes of this section and sections 1407, 1660, 1697, and 1785.

"(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.".

(e) CHOICE OF LAW.—

(1) DETERMINATION BY THE COURT.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

"§ 1660. Choice of law in multiparty, multiforum actions

"(a)(1) In an action which is or could have been brought, in whole or in part, under section 1369, the district court in which the action is brought or to which it is removed shall determine the source of the applicable substantive law, except that if an action is transferred to another district court, the transferee court shall determine the source of the applicable substantive law. In making this determination, a district court shall not be bound by the choice of law rules of any State, and the factors that the court may consider in choosing the applicable law include—

"(A) the place of the injury;

"(B) the place of the conduct causing the injury;

"(C) the principal places of business or domiciles of the parties;

"(D) the danger of creating unnecessary incentives for forum shopping; and

"(E) whether the choice of law would be reasonably foreseeable to the parties.

"(2) The factors set forth in paragraph (1)(A) through (E) shall be evaluated according

to their relative importance with respect to the particular action. If good cause is shown in exceptional cases, including constitutional reasons, the court may allow the law of more than 1 State to be applied with respect to a party, claim, or other element of an action.

"(b) The district court making the determination under subsection (a) shall enter an order designating the single jurisdiction whose substantive law is to be applied in all other actions under section 1369 arising from the same accident as that giving rise to the action in which the determination is made. The substantive law of the designated jurisdiction shall be applied to the parties and claims in all such actions before the court, and to all other elements of each action, except where Federal law applies or the order specifically provides for the application of the law of another jurisdiction with respect to a party, claim, or other element of an action.

"(c) In an action remanded to another district court or a State court under section 1407(i)(1) or 1441(e)(2), the district court's choice of law under subsection (b) shall continue to apply.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end the following:

"1660. Choice of law in multiparty, multiforum actions.".

(f) SERVICE OF PROCESS.—

(1) OTHER THAN SUBPOENAS.—

(A) IN GENERAL.—Chapter 113 of title 28, United States Code, is amended by adding at the end the following:

"§ 1697. Service in multiparty, multiforum actions

"When the jurisdiction of the district court is based in whole or in part upon section 1369, process, other than subpoenas, may be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.".

(B) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 113 of title 28, United States Code, is amended by adding at the end the following:

"1697. Service in multiparty, multiforum actions.".

(2) SERVICE OF SUBPOENAS.—

(A) IN GENERAL.—Chapter 117 of title 28, United States Code, is amended by adding at the end the following:

"§ 1785. Subpoenas in multiparty, multiforum actions

"When the jurisdiction of the district court is based in whole or in part upon section 1369 of this title, a subpoena for attendance at a hearing or trial may, if authorized by the court upon motion for good cause shown, and upon such terms and conditions as the court may impose, be served at any place within the United States, or anywhere outside the United States if otherwise permitted by law.".

(B) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 117 of title 28, United States Code, is amended by adding at the end the following:

"1785. Subpoenas in multiparty, multiforum actions.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to a civil action if the accident giving rise to the cause of action occurred on or after the 90th day after the date of the enactment of this Act.

SEC. 6. APPEALS OF MERIT SYSTEMS PROTECTION BOARD.

(a) APPEALS.—Section 7703 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking "30" and inserting "60"; and

(2) in the first sentence of subsection (d), by inserting after "filing" the following: ", within 60 days after the date the Director received notice of the final order or decision of the Board,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of enactment of this Act and apply to any administrative or judicial proceeding pending on that date or commenced on or after that date.

SEC. 7. EXTENSION OF JUDICIARY INFORMATION TECHNOLOGY FUND.

Section 612 of title 28, United States Code, is amended—

(1) by striking "equipment" each place it appears and inserting "resources";

(2) by striking subsection (f) and redesignating subsequent subsections accordingly;

(3) in subsection (g), as so redesignated, by striking paragraph (3); and

(4) in subsection (i), as so redesignated—

(A) by striking "Judiciary" each place it appears and inserting "judiciary";

(B) by striking "subparagraph (c)(1)(B)" and inserting "subsection (c)(1)(B)"; and

(C) by striking "under (c)(1)(B)" and inserting "under subsection (c)(1)(B)".

SEC. 8. AUTHORIZATION FOR VOLUNTARY SERVICES.

Section 677 of title 28, United States Code, is amended by adding at the end the following:

"(c)(1) Notwithstanding section 1342 of title 31, the Administrative Assistant, with the approval of the Chief Justice, may accept voluntary personal services for the purpose of providing tours of the Supreme Court building.

"(2) No person may volunteer personal services under this subsection unless the person has first agreed, in writing, to waive any claim against the United States arising out of or in connection with such services, other than a claim under chapter 81 of title 5.

"(3) No person volunteering personal services under this subsection shall be considered an employee of the United States for any purpose other than for purposes of—

"(A) chapter 81 of title 5; or

"(B) chapter 171 of this title.

"(4) In the administration of this subsection, the Administrative Assistant shall ensure that the acceptance of personal services shall not result in the reduction of pay or displacement of any employee of the Supreme Court.".

SEC. 9. OFFSETTING RECEIPTS.

For fiscal year 1999 and thereafter, any portion of miscellaneous fees collected as prescribed by the Judicial Conference of the United States pursuant to sections 1913, 1914(b), 1926(a), 1930(b), and 1932 of title 28, United States Code, exceeding the amount of such fees in effect on September 30, 1998, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

SEC. 10. SUNSET OF CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.

Section 103(b)(2)(A) of the Civil Justice Reform Act of 1990 (Public Law 101-650; 104 Stat. 5096; 28 U.S.C. 471 note), as amended by Public Law 105-53 (111 Stat. 1173), is amended by inserting "471," after "sections".

SEC. 11. CREATION OF CERTIFYING OFFICERS IN THE JUDICIAL BRANCH.

(a) APPOINTMENT OF DISBURSING AND CERTIFYING OFFICERS.—Chapter 41 of title 28, United States Code, is amended by adding at the end the following:

"§ 613. Disbursing and certifying officers

"(a)(1) The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to be disbursing officers in such numbers and locations as the Director considers necessary.

"(2) Disbursing officers shall—

"(A) disburse moneys appropriated to the judicial branch and other funds only in strict accordance with payment requests certified by the Director or in accordance with subsection (b);

"(B) examine payment requests as necessary to ascertain whether such requests are in proper form, certified, and approved; and

"(C) be held accountable for their actions as provided by law, except that such a disbursing officer shall not be held accountable or responsible for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate for which a certifying officer is responsible under subsection (b).

"(b)(1)(A) The Director may designate in writing officers and employees of the judicial branch of the Government, including the courts as defined in section 610 other than the Supreme Court, to certify payment requests payable from appropriations and funds.

"(B) Certifying officers shall be responsible and accountable for—

"(i) the existence and correctness of the facts recited in the certificate or other request for payment or its supporting papers;

"(ii) the legality of the proposed payment under the appropriation or fund involved; and

"(iii) the correctness of the computations of certified payment requests.

"(2) The liability of a certifying officer shall be enforced in the same manner and to the same extent as provided by law with respect to the enforcement of the liability of disbursing and other accountable officers. A certifying officer shall be required to make restitution to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificates made by the certifying officer, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

"(c) A certifying or disbursing officer—

"(1) has the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment request presented for certification; and

"(2) is entitled to relief from liability arising under this section in accordance with title 31.

"(d) Nothing in this section affects the authority of the courts with respect to moneys deposited with the courts under chapter 129.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 28, United States Code, is amended by adding at the end the following:

"613. Disbursing and certifying officers.".

(c) DUTIES OF DIRECTOR.—Paragraph (8) of subsection (a) of section 604 of title 28, United States Code, is amended to read as follows:

"(8) Disburse appropriations and other funds for the maintenance and operation of the courts;".

SEC. 12. LIMITATION ON COLLATERAL RELIEF.

(a) IN GENERAL.—No writ of habeas corpus or other post-conviction remedy under section 2241, 2244, 2254, or 2255 of title 28, United

States Code, or any other provision of Federal law, shall lie to challenge the custody or sentence of a person on the ground that the custody or sentence of the person is the result in whole or in part of the voluntarily given confession of the person.

(b) DETERMINATIONS REGARDING POST-CONVICTION REMEDIES.—For purposes of subsection (a), in determining whether any post-conviction remedy lies under any provision of law described in subsection (a), as well as in determining whether any such remedy should be granted—

(1) the court shall apply the standards set forth in section 3501(b) of title 18, United States Code; and

(2) in applying the standards described in paragraph (1) in any case seeking a post-conviction remedy from a State court conviction, the court shall apply the standards set forth in section 2254(d) of title 28, United States Code.

(c) DEFINITION OF CONFESSION.—In this section, the term "confession" has the same meaning as in section 3501(e) of title 18, United States Code.

(d) NO EFFECT ON OTHER LAW.—Nothing in this section shall be construed to modify or otherwise affect any requirement under Federal law relating to the obtaining or granting of post-conviction relief.

SEC. 13. LAURIE SHOW VICTIM PROTECTION.

Section 2254 of title 28, United States Code, is amended by adding at the end the following:

"(j) No Federal court shall specifically bar the retrial in State court of a person filing the writ of habeas corpus.".

SEC. 14. RULE OF CONSTRUCTION RELATING TO RETROACTIVE APPLICATION OF STATUTES.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

"§ 8. Rules for determining the retroactive effect of legislation

"(a) Any Act of Congress enacted after the effective date of this section shall be prospective in application only unless a provision included in the Act expressly specifies otherwise.

"(b) In applying this section, a court shall determine the relevant retroactivity event in an Act of Congress (if such event is not specified in such Act) for purposes of determining if the Act—

"(1) is prospective in application only; or

"(2) affects conduct that occurred before the effective date of the Act.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 1, United States Code, is amended by adding after the item relating to section 7 the following:

"8. Rules for determining retroactive effect of legislation.".

SEC. 15. APPROPRIATE REMEDIES FOR PRISON CONDITIONS.

(a) TRANSFER AND REDESIGNATION.—Section 3626 of title 18, United States Code, is—

(1) transferred to the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997 et seq.);

(2) redesignated as section 13 of that Act; and

(3) inserted after section 12 of that Act (42 U.S.C. 1997j).

(b) AMENDMENTS.—Section 13 of the Civil Rights of Institutionalized Persons Act, as redesignated by subsection (a) of this section, is amended—

(1) in subsection (b)(3), by adding at the end the following: "Noncompliance with an order for prospective relief by any party, including the party seeking termination of that order, shall not constitute grounds for refusal to terminate the prospective relief, if the party's noncompliance does not constitute a current and ongoing violation of a Federal right.";

(2) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively;

(3) by inserting after subsection (d) the following:

"(e) PROCEDURE FOR ENTERING PROSPECTIVE RELIEF.—

"(1) IN GENERAL.—In any civil action with respect to prison conditions, a court entering an order for prospective relief shall enter written findings specifying—

"(A) the Federal right the court finds to have been violated;

"(B) the facts establishing that violation;

"(C) the particular plaintiff or plaintiffs who suffered actual injury caused by that violation;

"(D) the actions of each defendant that warrant and require the entry of prospective relief against that defendant;

"(E) the reasons for which, in the absence of prospective relief, each defendant as to whom the relief is being entered will not take adequate measures to correct the violation of the Federal right;

"(F) the reasons for which no more narrowly drawn or less intrusive prospective relief would correct the current and ongoing violation of the Federal right; and

"(G) the estimated impact of the prospective relief on public safety and the operation of any affected criminal justice system.

"(2) CONFLICT WITH STATE LAW.—If the prospective relief ordered in any civil action with respect to prison conditions requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State law, the court shall, in addition to the findings required under paragraph (1), enter findings regarding the reasons for which—

"(A) Federal law requires such relief to be ordered in violation of State or local law;

"(B) the specific relief is necessary to correct the violation of a Federal right; and

"(C) no other relief will correct the violation of the Federal right.";

(4) in subsection (f), as redesignated—

(A) in paragraph (3), in the first sentence, by inserting before the period at the end of the sentence the following: ", including that the case requires the determination of complex or novel questions of law, or that the court plans to order or has ordered a hearing under paragraph (5)(E) or discovery under paragraph (5)(F)"; and

(B) by adding at the end the following:

"(5) TERMINATION OF PROSPECTIVE RELIEF.—

"(A) CONTENTS OF ANSWER TO MOTION TO TERMINATE.—

"(i) IN GENERAL.—In the answer to the motion to terminate prospective relief, the plaintiff may oppose termination in accordance with this subparagraph, on the ground that the prospective relief remains necessary to correct a current and ongoing violation of a Federal right.

"(ii) RELIEF ENTERED BEFORE ENACTMENT OF PRISON LITIGATION REFORM ACT.—If the prospective relief sought to be terminated was entered before the date of enactment of the Prison Litigation Reform Act, the answer opposing termination under clause (i) shall allege—

"(I) the specific Federal right alleged to be the object of a current violation;

"(II) specific facts that, if true, would establish that current violation;

"(III) the particular plaintiff or plaintiffs who are currently suffering actual injury caused by that violation;

"(IV) the actions of each named defendant that constitute that violation of the particular plaintiff's or plaintiffs' right;

"(V)(aa) the portion of the complaint or amended complaint filed prior to the original entry of the prospective relief sought to be retained that alleged the violation of that Federal right;

"(bb) the portion of the court order originally ordering the prospective relief that found the violation of that Federal right; or

"(cc) both the materials specified in items (aa) and (bb), if the violation of right was both alleged and established;

"(VI) the manner in which the current and ongoing violation can be remedied by maintaining the existing prospective relief; and

"(VII) the reasons for which, in the absence of prospective relief, each defendant as to whom the relief would be maintained would not take adequate measures to correct the violation of the Federal right.

"(iii) RELIEF ENTERED AFTER ENACTMENT OF PRISON LITIGATION REFORM ACT.—If the prospective relief was entered after the date of enactment of the Prison Litigation Reform Act, the answer opposing termination under clause (i) shall allege—

"(I) the specific Federal right alleged to be the object of a current violation;

"(II) specific facts that, if true, would establish that current violation;

"(III) the particular plaintiff or plaintiffs who are currently suffering actual injury caused by that violation;

"(IV) the current actions of each named defendant that constitute that violation of the particular plaintiff's or plaintiffs' right;

"(V) the findings required by subsection (e) made by the court at the time of the original entry of the prospective relief that established that the right had been violated and that the prospective relief was necessary to correct the violation;

"(VI) the manner in which the current and ongoing violation can be remedied by maintaining the existing prospective relief; and

"(VII) the reasons for which, in the absence of prospective relief, each defendant as to whom the relief would be maintained would not take adequate measures to correct the violation of the Federal right.

"(iv) The answer shall be accompanied by affidavits, references to the record, and any other materials on which the plaintiff relies to support the allegations required to be contained in the answer under clause (ii) or (iii).

"(B) CONTENTS OF RESPONSE TO ANSWER.—

"(i) IN GENERAL.—If the defendant disputes plaintiff's factual allegations, defendant shall file a response to the answer setting forth the factual allegations the defendant challenges.

"(ii) ADDITIONAL REQUIREMENTS.—In any case where the defendant seeks termination of the relief on the ground that it is not narrowly tailored, overly intrusive, or poses too great a burden on public safety or the operation of a criminal justice system, or that it requires the defendant to violate State or local law without meeting the requirements of subsection (a)(1)(B)—

"(I) the defendant shall set forth the factual basis for these claims in its response; and

"(II) the defendant shall also set forth alternative relief that would correct the violation of the Federal right and that is more narrowly tailored, less intrusive, less burdensome to public safety or the operation of the affected criminal justice system, or does not require a violation of State or local law.

"(iii) SUPPORTING DOCUMENTATION.—The defendant's response shall be accompanied by affidavits, references to the record, and any other materials on which the defendant relies to support its challenge to the plaintiff's factual allegations or the factual basis for its claims regarding the propriety or scope of the relief.

"(C) BURDEN OF PERSUASION.—The plaintiff shall have the burden of persuasion with respect to each point required to be contained in the answer. The defendant shall have the burden of persuasion with respect to whether the relief extends further than necessary to correct the violation of the Federal right, is not narrowly drawn nor the least intrusive means to correct the violation of the Federal right, excessively burdens public safety or the operation of a prison system, or requires the defendant to violate State or local law without meeting the requirements of subsection (a)(1)(B).

"(D) SUMMARY DETERMINATION.—The court shall grant the motion to terminate if the plaintiff's answer fails to satisfy the requirements of subparagraph (A) or if the materials accompanying the plaintiff's answer together with the materials accompanying the defendant's response fail to carry the plaintiff's burden of persuasion or fail to create a genuine issue of material fact regarding whether the relief should be maintained.

"(E) EVIDENTIARY HEARING.—If the court determines that there is a genuine issue of material fact that precludes it from making a summary determination concerning the motion on the basis of the materials filed by the parties, the court may conduct a limited evidentiary hearing to resolve any disputed material facts identified by the court.

"(F) DISCOVERY.—If the court determines that the plaintiff's answer meets the requirements of paragraph (5)(A), that there are genuine issues of material fact that preclude it from making a summary determination concerning the motion based on the material filed by the parties, and that discovery would assist in resolving these issues, the court may permit limited, narrowly tailored, and expeditious discovery relating to the disputed material facts identified by the court.

"(G) FINDINGS.—

"(i) IN GENERAL.—If the court denies the motion to terminate prospective relief, the court shall enter written findings specifying—

"(I) the Federal right the court finds to be currently violated;

"(II) the facts establishing that the violation is continuing to occur;

"(III) the particular plaintiff or plaintiffs who are currently suffering actual injury caused by that violation;

"(IV) the actions of each defendant that warrant and require the continuation of the prospective relief against that defendant;

"(V) the reasons for which, in the absence of continued prospective relief, each defendant as to whom the relief is continued will not take adequate measures to correct the violation of the Federal right;

"(VI) the reasons for which no more narrowly drawn on less intrusive prospective relief would correct the current and ongoing violation of the Federal right;

"(VII) the impact of the prospective relief on public safety and the operation of any affected criminal justice system; and

"(VIII) if the prospective relief requires the defendant to violate State or local law, the reasons for which—

"(aa) Federal law requires the continuation of relief that violates State or local law;

"(bb) the specific relief is necessary to correct the violation of a Federal right; and

"(cc) no other relief will correct the violation of the Federal right.

"(ii) REQUIREMENTS FOR MOTIONS ORDERED BEFORE ENACTMENT OF PRISON LITIGATION REFORM ACT.—In the case of a motion to terminate prospective relief entered before the date of enactment of the Prison Litigation Reform Act, in addition to the requirements of clause (i), the court's written findings shall also specify—

"(I)(aa) the portion of the complaint or amended complaint that previously alleged that violation of Federal right;

"(bb) the findings the court made at the time it originally entered the prospective relief concerning that violation of Federal right; or

"(cc) both the findings specified in items (aa) and (bb), if the violation was originally both alleged and established; and

"(II) the prospective relief previously ordered to remedy that violation.

"(iii) REQUIREMENTS FOR MOTIONS ORDERED AFTER ENACTMENT OF PRISON LITIGATION REFORM ACT.—In the case of a motion to terminate prospective relief originally ordered after the date of enactment of the Prison Litigation Reform Act, in addition to the requirements of clause (i), the court shall also enter written findings specifying—

"(I) the findings required by subsection (e) made by the court at the time the relief was originally entered establishing that violation of Federal right; and

"(II) the prospective relief previously ordered to remedy that violation.";

(5) in subsection (g), as redesignated—

(A) by striking the subsection designation and heading and inserting the following:

"(g) SPECIAL MASTERS FOR CIVIL ACTIONS WITH RESPECT TO PRISON CONDITIONS.—";

(B) in paragraph (1)(B), by striking "under this subsection";

(C) in paragraph (2)—

(i) in subparagraph (A), by striking "institution"; and

(ii) by adding at the end the following:

"(D) APPLICABILITY.—

"(i) IN GENERAL.—This paragraph shall not apply to any special master appointed before the date of enactment of the Prison Litigation Reform Act, unless their original appointment expires on or after that date of enactment.

"(ii) SPECIAL MASTERS COVERED.—This paragraph applies to all special masters appointed or reappointed after the date of enactment of the Prison Litigation Reform Act, regardless of the cause of the expiration of any initial appointment.";

(D) in paragraph (3), by striking "under this subsection";

(E) in paragraph (4)—

(i) by striking "under this section";

(ii) by inserting "(A)" after "(4)";

(iii) in subparagraph (A), as so designated, by adding at the end the following: "In no event shall a court require a party to pay the compensation, expenses, or costs of the special master. Notwithstanding any other provision of law (including section 306 of the Act entitled 'An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997,' contained in section 101(a) of title I of division A of the Act entitled 'An Act making omnibus consolidated appropriations for the fiscal year ending September 30, 1997' (110 Stat. 3009201)) and except as provided in subparagraph (B), the requirement under the preceding sentence shall apply to the compensation and payment of expenses or costs of a special master for any action that is commenced before, on, or after the date of enactment of the Prison Litigation Reform Act."; and

(iv) by adding at the end the following:

"(B) The payment requirements under subparagraph (A) shall not apply to the payment of a special master who was appointed before the date of enactment of the Prison Litigation Reform Act (110 Stat. 1321165 et seq.) of compensation, expenses, or costs relating to activities of the special master under this subsection that were carried out during the period beginning on the date of enactment of the Prison Litigation Reform Act and ending on the date of enactment of this subparagraph.";

(F) in paragraph (5), by striking from "In any civil action" and all that follows through "subsection, the" and inserting "The"; and

(G) in paragraph (6)—

(i) by striking "appointed under this subsection";

(ii) by striking subparagraph (A) and inserting the following:

"(A) may be authorized by a court to conduct hearings on the record, and shall make any findings based on the record as a whole;";

(iii) in subparagraph (B), by striking "communications;" and inserting "engage in any communications ex parte; and"; and

(iv) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C); and

(6) in subsection (h), as redesignated—

(A) in paragraph (1), by striking "settlements" and inserting "settlement agreements";

(B) in paragraph (3)—

(i) by inserting "Federal, State, local, or other" before "facility";

(ii) by striking "violations" and inserting "a violation";

(iii) by striking "terms and conditions" and inserting "terms or conditions"; and

(iv) by inserting "or other post-conviction conditional or supervised release," after "probation,";

(C) in paragraph (5), by striking "or local facility" and inserting "local, or other facility";

(D) in paragraph (8) by striking "inherent";

(E) in paragraph (9), by striking the period at the end and inserting a semicolon;

(F) by adding at the end the following:

"(10) the term 'violation of a Federal right'—

"(A) means a violation of a Federal constitutional or Federal statutory right;

"(B) does not include a violation of a court order that is not independently a violation of a Federal statutory or Federal constitutional right; and

"(C) shall not be interpreted to expand the authority of any individual or class to enforce the legal rights that individual or class may have pursuant to existing law with regard to institutionalized persons, or to expand the authority of the United States to enforce those rights on behalf of any individual or class."; and

(G) by redesignating paragraphs (8) and (9) as paragraphs (9) and (8), respectively, and inserting paragraph (9), as redesignated, after paragraph (8), as redesignated.

(c) TECHNICAL AMENDMENT.—The table of sections at the beginning of subchapter C of chapter 229 of title 18, United States Code, is amended by striking the item relating to section 3626.

SEC. 16. LIMITATION ON FEES.

Section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) is amended—

(1) in subsection (d)—

(A) by striking subparagraphs (A) and (B) and inserting the following:

"(A) the fee was directly and reasonably incurred in—

"(i) proving an actual violation of the plaintiff's Federal rights that resulted in an order for relief;

"(ii) successfully obtaining contempt sanctions for a violation of previously ordered prospective relief that meets the standards set forth in section 13, if the plaintiff made a good faith effort to resolve the matter without court action; or

"(iii) successfully obtaining court ordered enforcement of previously ordered prospective relief that meets the standards set forth in section 13, if the enforcement order was necessary to prevent an imminent risk of serious bodily injury to the plaintiff and the plaintiff made a good faith attempt to resolve the matter without court action; and

"(B) the amount of the fee is proportionately related to the court ordered relief for the violation.";

(B) in paragraph (2), by striking the last sentence and inserting "If a monetary judgment is the sole or principal relief awarded, the award of attorney's fees shall not exceed 100 percent of the judgment.";

(C) in paragraph (3)—

(i) by striking "greater than 150 percent" and inserting "greater than the lesser of—

"(A) 100 percent"; and

(ii) by striking "counsel." and inserting "counsel; or

"(B) a rate of $100 per hour."; and

(D) in paragraph (4), by striking "prisoner" and inserting "plaintiff";

(2) in subsection (e), by striking "Federal civil action" and inserting "civil action arising under Federal law" and by striking "prisoner confined in a jail, prison, or other correctional facility" and inserting "prisoner who is or has been confined in any prison";

(3) in subsection (f)—

(A) in paragraph (1), by striking "action brought with respect to prison conditions" and inserting "civil action with respect to prison conditions brought" and by striking "jail, prison, or other correctional facility" and inserting "prison"; and

(B) in paragraph (2), by striking "facility" and inserting "prison"; and

(4) by striking subsections (g) and (h) and inserting the following:

"(g) WAIVER OF RESPONSE.—Any defendant may waive the right to respond to any complaint in any civil action arising under Federal law brought by a prisoner. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint or waive any affirmative defense available to the defendant. No relief shall be granted to the plaintiff unless a response has been filed. The court may direct any defendant to file a response to the cognizable claims identified by the court. The court shall specify as to each named defendant the applicable cognizable claims.

"(h) DEFINITIONS.—In this section, the terms 'civil action with respect to prison conditions', 'prison', and 'prisoner' have the meanings given the terms in section 13(h).".

SEC. 17. NOTICE OF MALICIOUS FILINGS.

(a) IN GENERAL.—Chapter 123 of title 28, United States Code, is amended—

(1) in section 1915A(c)—

(A) by striking "(c) DEFINITION.—As used in this section" and inserting the following:

"§ 1915C. Definition

"In sections 1915A and 1915B";

(B) by inserting "Federal, State, local, or other" before "facility";

(C) by striking "violations" and inserting "a violation";

(D) by striking "terms and conditions" and inserting "terms or conditions"; and

(E) by inserting "or other post-conviction conditional or supervised release," after "probation,"; and

(2) by inserting after section 1915A the following:

"§ 1915B. Notice to State authorities of finding of malicious filing by a prisoner

"(a) FINDING.—In any civil action brought in Federal court by a prisoner (other than a prisoner confined in a Federal correctional facility), the court may, on its own motion or the motion of any adverse party, make a finding whether—

"(1) the claim was filed for a malicious purpose;

"(2) the claim was filed to harass the party against which it was filed; or

"(3) the claimant testified falsely or otherwise knowingly presented false allegations, pleadings, evidence, or information to the court.

"(b) TRANSMISSION OF FINDING.—The court shall transmit to the State Department of Corrections or other appropriate authority any affirmative finding under subsection (a). If the court makes such a finding, the Department of Corrections or other appropriate authority may, pursuant to State or local law—

"(1) revoke such amount of good time credit or the institutional equivalent accrued to the prisoner as is deemed appropriate; or

"(2) consider such finding in determining whether the prisoner should be released from prison under any other State or local program governing the release of prisoners, including parole, probation, other post-conviction or supervised release, or diversionary program.".

(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 123 of title 28, United States Code, is amended by inserting after the item relating to section 1915A the following:

"1915B. Notice to State authorities of finding of malicious filing by prisoner.
"1915C. Definition.".

SEC. 18. LIMITATION ON PRISONER RELEASE ORDERS.

(a) IN GENERAL.—

(1) AMENDMENT TO TITLE 28.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

"§ 1632. Limitation on prisoner release orders

"(a) IN GENERAL.—Notwithstanding section 13 of the Civil Rights of Institutionalized Persons Act or any other provision of law, in a civil action with respect to prison conditions, no court of the United States or other court defined under section 610 shall have jurisdiction to enter or carry out any prisoner release order that would result in the release from or nonadmission to a prison, on the basis of prison conditions, of any person subject to incarceration, detention, or admission to a facility because of—

"(1) a conviction of a felony under the laws of the relevant jurisdiction; or

"(2) a violation of the terms or conditions of parole, probation, pretrial release, or a diversionary program, relating to the commission of a felony under the laws of the relevant jurisdiction.

"(b) DEFINITIONS.—In this section—

"(1) the terms 'civil action with respect to prison conditions', 'prisoner', 'prisoner release order', and 'prison' have the meanings given those terms in section 13(h) of the Civil Rights of Institutionalized Persons Act; and

"(2) the term 'prison conditions' means conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 99 of title 28, United States Code, is amended by adding at the end the following:

"1632. Limitation on prisoner release orders.".

(b) AMENDMENT TO TITLE 18.—Section 3624(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking the fifth sentence and inserting the following: "Credit that has not been earned may not later be granted, and credit that has been revoked pursuant to section 3624A may not later be reinstated."; and

(2) in paragraph (2), by inserting before the period at the end the following: ", and may be revoked by the Bureau of Prisons for noncompliance with institutional disciplinary regulations at any time before vesting".

SEC. 19. REPEAL OF SECTION 140.

Section 140 of the joint resolution entitled "A Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes", approved December 15, 1981 (Public Law 97-92; 95 Stat. 1200; 28 U.S.C. 461 note) is repealed.

SEC. 20. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. ASHCROFT. Mr. President, I rise today to join Senator HATCH in introducing the Judicial Improvement Act of 1998. Many of the provisions of this bill stem from a series of hearings I held in the Subcommittee on the Constitution, Federalism and Property Rights last summer addressing the problem of judicial activism. The hearings focused on the problem of judicial activism and its impact. The Subcommittee heard testimony from a variety of individuals, from constitutional scholars to victims of activist judicial orders. The final hearing of the series focused on potential solutions to the problem of activism.

That final hearing canvassed potential solutions ranging from proposed constitutional amendments, to increased public education efforts about the problem of judicial activism, to proposed statutory solutions. The hearings convinced me that, at a minimum, we needed to provide some procedural mechanisms to make it more difficult for any single judge to issue an activist order and to make it easier for litigants to force the reconsideration of activist orders.

Since the close of the hearings, I have been working with others on the Judiciary Committee to fashion legislation that would accomplish these

goals. Last fall, I circulated draft language concerning the three legislative proposals that remain my top priorities in this area—requiring a three-judge panel before a federal court can strike down a state initiative or an act of Congress as unconstitutional, expanding provisions of the Prison Litigation Reform Act to cover other local and state institutions, and codifying a flat prohibition on federal court orders directly increasing taxes. With the help of Chairman HATCH, Senator ABRAHAM and others on the Committee, we have added many additional provisions and drafted a comprehensive bill aimed at improving the federal judiciary. Although I would not have included every provision in the bill had I introduced my own bill, the bill reflects the collective work of the Committee and would substantially improve the workings of the federal judiciary.

Let me take a few moments to discuss the provisions that are critical to addressing the problem of judicial activism. First and foremost, the bill addresses the problem of having a single federal judge strike down a state referendum as unconstitutional. Nothing highlights the undemocratic power of a federal judge more strikingly than when a single unelected federal judge invalidates a law passed by the general public through the initiative process. Even the Ninth Circuit, the epicenter of judicial activism in America, has acknowledged the strain that a single judge's nullification of an initiative places on our political system. As the court recently noted in an opinion reversing such a single-judge nullification: "A system which permits one judge to block with the stroke of a pen what 4,736,180 state residents voted to enact as law tests the integrity of our constitutional democracy." *The Coalition for Economic Equality* v. *Wilson*, 122 F.3d 692, 699 (9th Cir.), (cert. denied, 118 S. Ct. 397 (1997).

The three-judge panel ameliorates this problem by requiring that a three-judge panel be convened, and a majority of the panel agree, before a state initiative can be enjoined. The provision then addresses the problem of the popular will being preliminarily enjoined for long periods of time before a final appealable decision is issued by providing for an expedited review of the injunction.

The three-judge panel provision recognizes that there may be situations in which state initiatives run afoul of the Constitution and courts may need to declare them unconstitutional. But the bill also recognized that when a federal court takes such an action, it can cause considerable frustration and friction. The bill attempts to minimize such friction by ensuring that a federal court complies with a number of safeguards before taking such a drastic action.

A second key provision in the bill extends some of the protections included in the Prison Litigation Reform Act to other state and local government institutions. During the hearings, I heard over and over about the frustration of state and local officials who are saddled with consent decrees entered into decades ago that allow unelected federal judges—rather than elected local officials—to run local institutions. The bill addresses this problem by requiring the periodic reconsideration of such consent decrees or structural injunctions to ensure that they remain necessary to remedy a constitutional violation. Once again, the bill recognizes that our federal Constitution and federal system of government may require federal courts to issue injunctions covering state and local institutions, but also acknowledges that such sweeping injunctions create friction with local officials. The best way to limit such friction is to provide a mechanism to ensure that the injunctions remain necessary to remedy a constitutional violation. This bill does that.

Another key provision of particular importance to my constituents back in Missouri is the flat prohibition on federal court orders directly raising or imposing taxes. The people of Kansas City have suffered through the activism of federal District Judge Russell Clark, including his order directly ordering local authorities to increase taxes. This provision directly attacks such judicial tyranny. Importantly, however, the bill leave the federal court's power to order remedies that may lead a local or state government to raise taxes. But the ultimate decision of whether to raise taxes, raise revenue through other means or cut spending remains that the local authorities.

A final point should be made about all three of these provisions: they apply only to federal courts. The procedures and remedial authority of state courts remain unaffected. During the Subcommittee hearings a number of people offered suggestions to make the federal courts more directly responsive to the people. In attempting to improve the federal courts, we cannot lose sight of the fact that under our federal system we have both federal courts and state courts of general jurisdiction which are fully capable of hearing federal claims. State courts, moreover, are much more responsible to the people—in the majority of States they are subject to direct elections or retention elections.

This bill recognizes the comparative advantages of these two court systems and tries to limit the availability of those remedies that are the most intrusive in the courts that are least responsible to the people. If people are really convinced that courts must levy taxes and run state and local institutions in perpetuity (and I, for one, am not convinced such measures are ever necessary), then at least the courts that do so should be relatively responsive state courts, rather than unelected, life-tenured federal judges.

Before I close, let me mention a few other provisions of the bill that are of particular importance to me. First, the bill contains a provision that makes it clear that the same standards for judging the admissibility of confessions that Congress created for federal criminal trials should also apply when federal courts engage in collateral review of state and federal convictions. This provision reinforces that the touchstone for admissibility should be the voluntariness of the confession and that a technical violation should not free a convicted prisoner on collateral review.

Second, the bill includes a provision similar to one in legislation introduced by Senator SPECTER, which I have cosponsored, which prevents a federal court from barring local authorities for ordering a retrial of a convicted authority. The traditional remedy in a habeas proceeding is release from custody. Taking the further step of barring retrial goes beyond the traditional office of the writ and is an affront to state courts and prosecutors.

Finally, the bill appropriately limits the practice of releasing prisoners early as a judicial remedy. Perhaps, the most poignant testimony in the Subcommittee hearings concerned family whose son, Danny Boyle, was killed by an arrested felon, who but for a prison release order would have been behind bars. Danny was a promising young police officer whose life and career were cut short—a victim of judicial activism. I am committed to working to ensure that another family does not have to come before a future Subcommittee hearing with similar testimony about a son or daughter.

I want to thank Chairman HATCH and Senator ABRAHAM for working with me to get these provisions included in the bill. I look forward to working with them to ensure that this bill moves forward and that we take these modest steps to improve the federal judiciary.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of the Judicial Improvement Act. This legislation contains various important reforms of the judicial branch that will help keep the powers of the courts in check with the other branches of government and with the will of the people.

This comprehensive bill contains provisions that are important to many senators, and I am especially pleased that two bills that I have introduced and advocated for years are included in this reform package. One would prohibit judges from imposing tax increases, and the other would clarify the retroactive application of legislation.

This Act states that a Federal judge does not have the authority to order the Federal government or units of state or local governments to raise

taxes as a legal remedy. In 1990, in Missouri v. Jenkins, the Supreme Court permitted a district court judge to order local authorities to impose a huge tax increase to pay for his plan to desegregate a school district.

One may wonder why a desegregation plan would be so expensive as to warrant a massive tax increase. The reason is this plan was not simply an attempt to bring schools up to basic standards. Rather, it was an elaborate social experiment in the name of education. Money was no object. Among other mandates, the plan called for 15 computers in every classroom, a 2,000 square-foot planetarium, a 25-acre farm, a model United Nations, an art gallery, movie editing and screening rooms, and swimming pools.

Money was no object because there was no control over the judge. There was no accountability. The only supervision was a higher court, and a slim majority of the Supreme Court gave the judge a free reign.

The dissent in that case clearly explained what should have been obvious: it violates the Constitutional separation of powers for a judge to order that taxes be increased. In the Constitution, Article I contains the legislative powers. Article I, Section 8 begins by stating, "The Congress shall have the power to lay and collect taxes." Article III provides for judicial power, and makes no mention of the power to tax. Therefore, a Federal judge does not have the power to tax under the Constitution.

This is more than a matter of proper Constitutional interpretation. It is an essential check on power. The ability to tax is an awesome power. It is true that, as Justice John Marshall once wrote, "the power to tax involves the power to destroy." This authority must be carefully checked, and the best source of control is the people. Thus, in the Constitution, the ability to tax was given to the legislative branch, which is directly accountable to the people through the ballot box.

By design, the Judicial Branch is different. It is not responsible to the people. The Framers intentionally did not provide for judges to be elected by the people and even gave judges life tenure. They wanted judges to be insulated from the political climate and have the freedom to interpret the law appropriately, rather than make decisions based on the will of the majority at any given moment. It is entirely reasonable and appropriate that judicial power does not include the power to tax. As Justice Kennedy stated in his thoughtful dissent in Missouri v. Jenkins, the Supreme Court's "casual embrace of taxation imposed by the unelected life-tenured Federal Judiciary disregards fundamental precepts for the democratic control of public institutions."

The Framers of the Constitution fully intended to separate power in this manner and did not mean for judges to be involved in taxation. As Alexander Hamilton stated in the Federalist No. 78, "The judiciary . . . has no influence over either the sword or the purse." In my view, judicial taxation is simply taxation without representation, no different from the complaints of the American colonists about taxation without representation during the days of the Stamp Act in 1765.

Mr. President, if a judge can order a tax increase for a school, why not a similar social experiment for a prison? It is hard to imagine any limits on a Federal judge's power as expressed in Missouri v. Jenkins. I believe it is imperative that the Congress act to control the power of the judicial branch in this regard.

Another provision of the bill that I have long advocated would clarify the retroactivity of legislation. Often the Congress will pass legislation but not state whether that legislation should be applied retroactively to conduct that occurred before the law was passed. An excellent example is the Civil Rights Act of 1991. It took years of litigation with decisions in over one hundred Federal courts throughout the country before the Supreme Court finally decided the question.

The provision simply states that legislation is not retroactive unless the bill expressly says it is. This simple rule will eliminate a great deal of uncertainty. As a result, it will reduce litigation costs and help our judicial system better focus to reserve its limited resources.

This clarification should not be controversial. The Judicial Conference of the Federal courts indicated in a report in 1995 that it did not oppose this legislative fix, and the Clinton Justice Department stated in a letter to me in 1996 that it did not object to this clarification. I hope both of these provisions are passed this year.

The Judicial Improvement Act contains many other needed reforms that I will not attempt to detail, such as a requirement for a three-judge panel to enjoin the enforcement of certain laws. I hope my colleagues will join me in supporting the judicial reforms contained in this important legislation.

I yield the floor.

By Mrs. HUTCHISON:

S. 2164. A bill to amend title 49, United States Code, to promote rail competition, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE STB AMENDMENTS OF 1998

• Mrs. HUTCHISON. Mr. President, today I am introducing the Surface Transportation Board Amendments of 1998. This legislation proposes to expand the Surface Transportation Board's existing authority to address circumstances affecting rail service transportation in today's environment.

First, I think most colleagues would agree that the STB has performed well since its inception in 1996. The industries it regulates have experienced a number of significant changes in the past few years. The STB has acted consistently with the authority Congress gave it, and clearly within the deregulatory intent with which it was created.

This year's reauthorization gives us the first chance since we created the Board to review its practices and performance. My bill is based upon the principle that Congress sets government policy and the Executive Branch, through regulators such as the STB, executes that policy. During hearings in my Surface Transportation and Merchant Marine Subcommittee, I have consistently sought to identify the limits of STB authority to act in certain circumstances, and to identify those areas beyond which STB action would require a policy decision by Congress.

It is very important that we pass a re-authorization bill this year. Doing that will require that we establish the middle ground between those who want to roll back the clock and begin to re-regulate the industry and those who think the board needs no additional authority to adequately address the many issues before it.

I believe my bill does just that. However, I stand ready to work with my colleagues to further refine my proposals to move this bill through the legislative process. I welcome input from any interested members.

My own personal view is that re-regulation is not called for. The Staggers Rail Act of 1980 has had very positive results for both industry and shippers. But we must ensure the board has sufficient tools to ensure that deregulation has its intended effect of greater competition and better value to the consumer. The experiences of the past few years, and this year in particular, give us much to consider.

Mr. President, our country has endured a critical rail service crisis for many, many months. My home State of Texas has felt this crisis as much as any other State, and more than most. Texas has sustained billions of dollars of economic losses as the goods bound to and from the State's ports, factories and refineries sit gridlocked on the rails. These service problems primarily have occurred in the West, but there has been a ripple effect throughout the entire rail system. Service problems continue today, and I know the railroads have been working night and day to alleviate service troubles.

Mr. President, I will explain my bill at greater length in a moment, but I want to stress that I have worked to craft a bill that maintains the basic deregulatory rules that the rail industry and shippers have played by since the 1980s. However, it is the shippers today who face a most challenging rail shipping environment.

Therefore, I am proposing we take action to ensure that the Board's procedures are more readily accessible to small shippers. I also am proposing to expand the Board's authority with regard to maintaining and promoting rail competition in appropriate circumstances. And, I believe strongly that we can do this without jeopardizing the integrity of deregulation.

The Committee on Commerce, Science, and Transportation has been working for many months on issues surrounding the rail service transportation. In that effort, the reauthorization of the Surface Transportation Board is a priority of our Committee.

To date we have held four rail service hearings during this Congress—three field hearings along with a Subcommittee hearing on the Board's reauthorization. In addition, at Senator MCCAIN's and my request, the STB held 2 days of hearings in April to address rail access and competition issues at which more than 60 witnesses testified.

In response to the information gathered during these many hearings both by our Committee and the Board, today I am proposing legislation to address a number of areas which I believe warrant serious attention and in some cases, reform. I expect some will have a strong reaction to my proposals, as some in the rail industry have tended to tar any legislative proposals affecting their industry as "re-regulation." At the same time, I suspect some shipper groups will report that these proposals do not go nearly as far as they believe we should go. If so, that sounds like we're at least within striking distance of the middle ground.

I want to briefly explain the major provisions of this legislation:

First, the bill establishes that promoting competition within the rail industry is one of the criteria the STB should use in performing its responsibilities.

Second, the bill would extend the time period covering the Board's emergency service orders. The current 270-day emergency order authority would be extended to cover a total period of 18 months. In the event an emergency remains in effect beyond this time frame, the Board would be permitted to request and receive two 6-month extensions of an emergency service order. The Congress could disapprove the Board's requests and also take affirmative action to grant any further extensions as may be necessary.

Third, the bill includes several features to simplify the regulatory process involving small rate cases. During every hearing before our Committee, shippers stressed their frustrations that for a small shipper, it is simply too time consuming and costly to ever bring a case to the Board. This bill seeks to acknowledge those concerns and proposes to foreclose discovery in small rate cases, absent a demonstration of compelling need. Further, it would direct the Board to establish an arbitration mechanism for small shipper cases. It would not require mandatory arbitration, but would allow for arbitration at one party's request.

Fourth, my bill seeks to address concerns raised about the Board's market dominance standard. Some have advocated Congress statutorily eliminate product and geographic competition from the Board's market dominance analysis as it is a very time consuming process. Yet others contend these considerations remain necessary. My bill recognizes the Board's April 17th decision announcing it would initiate a proceeding to consider whether to maintain, change, or eliminate product and geographic competition from consideration in rate cases. I believe the Board's action is the proper route to follow.

Fifth, my bill seeks to address another area of concern raised by shippers: revenue adequacy. At the Board's April hearings, rail and shipper representatives suggested referring this matter of considerable debate to one or more disinterested economists, which the Board initiated April 17th. My bill directs the Board to carry out its proposal in this area and direct rail and shipper representatives to select a panel of 3 disinterested economists to examine the Board's current standards for measuring revenue adequacy and to consider whether alternative measurements of a railroad's financial health are warranted.

Sixth, my bill seeks to address the issue of bottleneck rates. There is considerable debate as to the correct approach in this area, with some strongly opposed to any change and others equally adamant about total reform. My proposal seeks to take a balanced approach, ensuring some needed boundaries remain. It would require a carrier to provide a shipper with a rate for a "bottleneck" line segment when requested to accommodate a transportation contract. The railroad would be required to provide the shipper with a rate over the "bottleneck" line segment as long as the interchange would be operationally feasible and the through route would not significantly impair the railroad's ability to serve its other shippers.

Finally, my bill would remove the 3-year renewal requirement regarding antitrust immunity applicable to household goods carriers. While the continued propriety of collective actions by other types of motor carriers has been the subject of debate, no similar concerns have been voiced about the collective activities of household goods carriers. The repeal of the mandatory review requirement would relieve the carriers of an unnecessary regulatory burden, although it would have no effect on the STB's existing authority to modify or revoke collective actions when the STB determines such action is necessary to protect the public interest.

Mr. President, I ask unanimous consent a copy of my bill be printed in the RECORD. I encourage my colleagues to look at this legislation and begin working with me now so that we may reauthorize the Surface Transportation Board this year and provide important policy guidance in regard to rail service matters.

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

S. 2164

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 "Surface Transportation Board Amendments of 1998".

SEC. 2. PROMOTION OF COMPETITION WITHIN THE RAIL INDUSTRY.

Section 10101 of title 49, United States Code, is amended by—

(1) redesignating paragraphs (1) through (7) as paragraphs (2) through (8);

(2) inserting before paragraph (2), as redesignated, the following:

"(1) to encourage and promote effective competition within the rail industry;";

(3) redesignating paragraphs (9) through (16) as paragraphs (10) through (17); and

(4) inserting before paragraph (10), as redesignated, the following:

"(9) to discourage artificial barriers to interchange and car supply which can impede competition between shortline, regional, and Class I carriers and block effective rail service to shippers.

SEC. 3. EXTENSION OF TIME LIMIT ON EMERGENCY SERVICE ORDERS.

Section 11123 of title 49, United States Code, is amended by—

(1) striking "30" in subsection (a) and inserting "60";

(2) striking "30" in subsection (c)(1) and inserting "60";

(3) striking the second sentence of subsection (c)(1) and inserting the following: "An action taken by the Board under subsection (a) of this section may not remain in effect longer than 18 months (including the initial 60-day period), unless the Board requests an extension under paragraph (4).";

and

(4) adding at the end of subsection (c) the following:

"(4) The Board may request up to 2 extensions, of not more than 6 months each, of the 18-month period under subsection (a) by submitting to the Congress a request in writing for such an extension, together with an explanation of the reasons for the request. Such a requested extension goes into effect unless disapproved by the Congress by concurrent resolution. Any other extension requested by the Board will not go into effect unless the Congress approve it under the procedure established by section 4 of the Surface Transportation Amendments of 1998.".

SEC. 4. APPROVAL PROCEDURE.

(a) IN GENERAL.—Within 90 days (not counting any day on which either House is not in session) after a request for a third or subsequent extension is submitted to the House of Representatives and the Senate by the Surface Transportation Board under section 11123(c)(4) of title 49, United States Code, an approval resolution shall be introduced in the House by the Majority Leader of

the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader and Minority Leader of the House; and shall be introduced in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. The approval resolution shall be held at the desk at the request of the Presiding Officers of the respective Houses.

(b) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(1) CONSIDERATION OF APPROVAL RESOLUTION.—After an approval resolution is introduced, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the resolution. All points of order against the resolution and against consideration of the resolution are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the resolution in the Committee of the Whole, the first reading of the resolution shall be dispensed with. General debate shall proceed, shall be confined to the resolution, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the resolution. The resolution shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the resolution is in order. Consideration of the resolution shall not exceed one hour excluding time for recorded votes and quorum calls. At the conclusion of the consideration of the resolution, the Committee shall rise and report the resolution to the House. The previous question shall be considered as ordered on the resolution to final passage without intervening motion. A motion to reconsider the vote on passage of the resolution shall not be in order.

(2) APPEALS OF RULINGS.—Appeals from decision of the Chair regarding application of the rules of the House of Representatives to the procedure relating to an approval resolution shall be decided without debate.

(3) CONSIDERATION OF MORE THAN ONE APPROVAL RESOLUTION.—It shall not be in order to consider under this subsection more than one approval resolution under this section, except for consideration of a similar Senate resolution (unless the House has already rejected an approval resolution) or more than one motion to discharge described in paragraph (1) with respect to an approval resolution.

(c) CONSIDERATION IN THE SENATE.—

(1) REFERRAL AND REPORTING.—An approval resolution introduced in the Senate shall be shall be placed directly and immediately on the Calendar.

(2) IMPLEMENTING RESOLUTION FROM HOUSE.—When the Senate receives from the House of Representatives an approval resolution, the resolution shall not be referred to committee and shall be placed on the Calendar.

(3) CONSIDERATION OF SINGLE APPROVAL RESOLUTION.—After the Senate has proceeded to the consideration of an approval resolution under this subsection, then no other approval resolution originating in that same House shall be subject to the procedures set forth in this subsection.

(4) MOTION NONDEBATABLE.—A motion to proceed to consideration of an approval resolution under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

(5) LIMIT ON CONSIDERATION.—

(A) After no more than 2 hours of consideration of an approval resolution, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all motions, except a motion to reconsider or table.

(B) The time for debate on the approval resolution shall be equally divided between the Majority Leader and the Minority Leader or their designees.

(6) NO MOTION TO RECOMMIT.—A motion to recommit an approval resolution shall not be in order.

(7) DISPOSITION OF SENATE RESOLUTION.—If the Senate has read for the third time an approval resolution that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of an approval resolution for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate approval resolution, agree to the Senate amendment, and vote on final disposition of the House approval resolution, all without any intervening action or debate.

(8) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on an approval resolution shall be limited to not more than 1 hour. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 15 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.

(d) DEFINITIONS.—For purposes of this section—

(1) APPROVAL RESOLUTION.—The term "approval resolution" means only a concurrent resolution of either House of Congress which is introduced as provided in subsection (a) with respect to the approval of a request from the Surface Transportation Board under section 11123(a)(4) of title 49, United States Code.

(e) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of approval resolutions described in subsection (c); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 5. PROCEDURAL RELIEF FOR SMALL RATE CASES.

(a) DISCOVERY LIMITED.—Section 10701(d) of title 49, United States Code, is amended by—

(1) inserting "(A)" in paragraph (3) before "The Board"; and

(2) adding at the end thereof the following:

"(B) Unless the Board finds that there is a compelling need to permit discovery in a particular proceeding, discovery shall not be permitted in a proceeding handled under the guidelines established under subparagraph (A).".

(b) ADMINISTRATIVE RELIEF.—Not later than 180 days after the date of enactment of this Act, the Surface Transportation Board shall—

(1) review the rules and procedures applicable to rate complaints and other complaints filed with the Board by small shippers;

(2) identify any such rules or procedures that are unduly burdensome to small shippers; and

(3) take such action, including rulemaking, as is appropriate to reduce or eliminate the aspects of the rules and procedures that the Board determines under paragraph (2) to be unduly burdensome to small shippers.

(c) LEGISLATIVE RELIEF.—The Board shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives if the Board determines that additional changes in the rules and procedures described in subsection (b) are appropriate and require commensurate changes in statutory law. In making that notification, the Board shall make recommendations concerning those changes.

SEC. 6. MARKET DOMINANCE STANDARD.

The Surface Transportation Board shall complete a rulemaking, as outlined in STB Ex Parte No. 575, to determine whether and to what extent it should consider product and geographic competition in making market dominance determinations.

SEC. 7. REVENUE ADEQUACY.

The Surface Transportation Board shall reexamine, as outlined in STB Ex Parte No. 575, its standards and procedures for determining adequate railroad revenue levels under section 10704(a)(2) of title 49, United States Code. In carrying out it reexamination, the Board is directed to seek recommendations of a panel of three disinterested economists on the proper standards to apply. The panel shall submit its report and recommendations simultaneously to the Surface Transportation Board and to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure.

SEC. 8. BOTTLENECK RATES.

(a) THROUGH ROUTES.—Section 10703 of title 49, United States Code, is amended—

(1) inserting "(a) IN GENERAL.—" before "Rail carriers"; and

(2) adding at the end thereof the following:

"(b) CONNECTING CARRIERS.—When a shipper and rail carrier enter into a contract under section 10709 for transportation that would require a through route with a connecting carrier and there is no reasonable alternative route that could be constructed without participation of that connecting carrier, the connecting carrier shall, upon request, establish a through route and a rate that can be used in conjunction with transportation provided pursuant to the contract, unless the connecting carrier shows that—

"(1) the interchange requested is not operationally feasible; or

"(2) the through route would significantly impair the connecting carrier's ability to serve its other traffic.

The connecting carrier shall establish a rate and through route within 21 days unless the

Board has made a determination that the connecting carrier is likely to prevail in its claim under paragraph (1) or (2).".

(b) BOARD'S AUTHORITY TO PRESCRIBE DIVISION OF JOINT RATES.—Section 10705(b) of title 49, United States Code, is amended by striking "The Board shall" and inserting "Except as provided in section 10703(b), the Board shall".

(c) COMPLAINTS.—Section 11701 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) Where transportation over a portion of a through route is governed by a contract under section 10709, a rate complaint must be limited to the rates that apply to the portion of the through route not governed by such a contract.".

SEC. 9. SIMPLIFIED DISPUTE RESOLUTION.

Within 180 days after the date of enactment of this Act, the Surface Transportation Board shall promulgate regulations adopting a simplified dispute resolution mechanism with the following features:

(1) IN GENERAL.—The simplified dispute resolution mechanism will utilize expedited arbitration with a minimum of discovery and may be used to decide disputes between parties involving any matter subject to the jurisdiction of the Board, other than rate reasonableness cases that would be decided under constrained market pricing principles.

(2) APPLICABLE STANDARDS.—Arbitrators will apply existing legal standards.

(3) MANDATORY IF REQUESTED.—Use of the simplified dispute resolution mechanism is required whenever at least one party to the dispute requests.

(4) 90-DAY TURNAROUND.—Arbitrators will issue their decisions within 90 days after being appointed.

(5) PAYMENT OF COSTS.—Each party will pay its own costs, and the costs of the arbitrator and other administrative costs of arbitration will be shared equally between and among the parties.

(6) DECISIONS PRIVATE; NOT PRECEDENTIAL.—Except as otherwise provided by the Board, decisions will remain private and will not constitute binding precedent.

(7) DECISIONS BINDING AND ENFORCEABLE.—Except as otherwise provided in paragraph (8), decisions will be binding and enforceable by the Board.

(8) RIGHT TO APPEAL.—Any party will have an unqualified right to appeal any decision to the Board, in which case the Board will decide the matter de nova. In making its decision, the Board may consider the decision of the arbitrator and any evidence and other material developed during the arbitration.

(9) MUTUAL MODIFICATION.—Any procedure or regulation adopted by the Board with respect to the simplified dispute resolution may be modified or eliminated by mutual agreement of all parties to the dispute.

SEC. 10. PROMOTION OF COMPETITIVE RAIL SERVICE OPTIONS.

Section 11324 of title 49, United States Code, is amended—

(1) by striking "and" in paragraph (4) of subsection (b);

(2) by striking "system." in paragraph (5) of subsection (b) and inserting "system; and";

(3) by adding at the end of subsection (b) the following:

"(6) means and methods to encourage and expand competition between and among rail carriers in the affected region or the national rail system."; and

(4) by inserting after the second sentence in subsection (c) the following: "The Board may impose conditions to encourage and expand competition between and among rail carriers in the affected region or the national rail system, provided that such conditions do not cause substantial harm to the benefits of the transaction to the affected carriers or the public.".

SEC. 11. HOUSEHOLD GOODS COLLECTIVE ACTIVITIES.

Section 13703(d) of title 49, United States Code, is amended by inserting "(other than an agreement affecting only the transportation of household goods, as defined on December 31, 1995)" after "agreement" in the first sentence.●

By Mr. GRASSLEY:

S. 2165. A bill to amend title 31 of the United States Code to improve methods for preventing financial crimes, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MONEY LAUNDERING DETERRENCE ACT OF 1998

● Mr. GRASSLEY. Mr. President, recently, we have seen the culmination of one of the most successful undercover operations in history by the United States Customs Service. This effort, known as "Operation Casablanca," has infiltrated and dismantled a group of international bankers, mostly in Mexico, who have been laundering drug money. The threat of drug trafficking is serious enough. But to have their financial advisors leading their effort to facilitate the smuggling of illicit narcotics is much worse. Complicit bankers devising schemes can make it much easier to move and hide the ill-gotten gains of drug cartels.

As this latest law enforcement operation illustrates, we must be sure that we are taking the necessary steps to protect the citizens of our nation. We must prevent drug traffickers and organized crime groups from obtaining the profits of their illegal activities. Much has been done and said about the movement of illegal drugs into the United States. But the opposite side of the business does not always get the publicity, and is just as important. We need to go after the profits from drug sales and other illegal enterprises.

Last week, Representative LEACH, Chairman of the Committee on Banking and Financial Services introduced legislation to amend title 31, United States Code. The bill H.R. 4005, "the Money Laundering Deterrence Act of 1998," would improve methods for preventing financial crimes. And as Operation Casablanca shows this legislation, is timely and needed. We need to tighten up our financial control capabilities to prevent criminal enterprises from abusing our financial and banking systems. The bill is supported by the American Banking Association (ABA), the Department of the Treasury, the Department of Justice and the Federal Reserve. Today, Chairman LEACH's bill has already been marked up in the House.

I call for my colleagues to help support this companion legislation. I hope this would be a continuation of efforts by Congress to go after the growing threat of money laundering not only to our nation, but worldwide.●

By Mr. HARKIN (for himself, Mr. LEAHY AND Mr. JOHNSON):

S. 2166. A bill to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in such Acts through fiscal year 2002, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

CHILD NUTRITION AND WIC REAUTHORIZATION AMENDMENTS OF 1998

● Mr. HARKIN. Mr. President, I am introducing today, at the request of the Clinton Administration, the Child Nutrition and WIC Reauthorization Amendments of 1998. I am grateful to be joined in the introduction of this bill by Senator LEAHY, the Ranking Member of the Subcommittee on Research, Nutrition, and General Legislation, and by Senator JOHNSON. In my years serving on the Committee on Agriculture, Nutrition, and Forestry, and now as its Ranking Member, I have always placed a very high value on the child nutrition programs, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). These programs have been critical in helping to meet the nutritional needs of millions of our nation's children.

This bill is the first child nutrition reauthorization bill sent to Congress by an Administration in two decades. It is a very commendable effort, with many positive features, that we will be relying upon substantially as we fashion a child nutrition bill in the coming weeks in the Senate Committee on Agriculture, Nutrition, and Forestry and ultimately in conference. In addition to reauthorizing those programs that are expiring, the bill makes a number of improvements throughout the child nutrition programs. It is designed to be cost-neutral over the next five years, to simplify and streamline program operations, to reduce impediments to participation by eligible individuals, to reach certain children needing additional nutritional assistance, to strengthen program integrity and to enhance the nutrition provided by the programs.

Earlier this year, I joined Chairman LUGAR, Senator MCCONNELL and Senator LEAHY in introducing a measure, S. 1581, that would simply reauthorize the child nutrition programs for the next five years. That bill was recognized as a starting point for a careful review of the child nutrition programs leading to the development of a sound,

well-crafted and bipartisan reauthorization bill. I believe there is broad support for improving and modifying these programs to meet changing needs and demands within the overall spending limitations that we are committed to working within.

One of the more important features of the bill is new authority for nutrition assistance in after-school programs through the Child and Adult Care Food Program for at risk youths between the ages of 12 and 18. We know too well that the hours just after school are full of opportunities for teenagers to get into trouble, whether it involves crime, drug use or teen pregnancy. The availability of nutrition assistance can help to support organized after-school activities that are healthy and constructive alternatives to what might otherwise occur in those risky after-school hours.

There are also provisions in the bill designed to improve the nutrition provided by the programs, including an emphasis on establishing adequate time for kids to eat school lunches in an atmosphere conducive to good nutrition and an authorization of Nutrition Education and Training grants based on $0.50 a child each year with a minimum of $75,000 per state.

There are also provisions in the bill to improve access to the Summer Food Service Program by increasing the number of sites and the number of children that can be served by non-profit sponsors. Statistics continue to show that far fewer low income children are served in the Summer Food Service Program than during the school year in the National School Lunch Program, especially in rural areas. The provisions in this bill are designed to help address this gap.

The bill also reauthorizes the WIC Program. Under Secretary Shirley Watkins was absolutely correct when she said at a recent Agriculture Committee Hearing that, "WIC works." No other Federal-state program has the proven cost-effectiveness of WIC, which has been shown in study after study. This bill is designed to build upon the success of the current WIC program with improvements in program management and integrity.

While I support a very high proportion of the provisions of this bill, I do not necessarily support every detail of it. I will also mention some of the areas in which I hope the final bill will take more substantial steps than are included in this bill. In my view, more should be done to increase participation in the School Breakfast Program, especially among low-income children, and in the Summer Food Service Program. I would also prefer further strengthening of after-school and child care nutrition assistance. And additional steps should be taken to improve integrity and accountability in the WIC program while continuing the progress toward full participation.

I look forward to working with my Congressional colleagues, the Administration and the entire child nutrition community, to design a final bill having broad bipartisan support.

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

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

S. 2166

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Child Nutrition and WIC Reauthorization Amendments of 1998".

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

Sec. 1. Short title; table of contents.

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS

Sec. 101. Technical amendments to commodity provisions.
Sec. 102. Availability of recovered funds for management activity.
Sec. 103. Elimination of administration of programs by regional offices.
Sec. 104. Requirement for health and safety inspections.
Sec. 105. Elimination of food and nutrition projects and establishment of an adequate meal service period.
Sec. 106. Buy American.
Sec. 107. Summer food service program for children.
Sec. 108. Commodity distribution program.
Sec. 109. Child and adult care food program.
Sec. 110. Transfer of homeless assistance programs to the child and adult care food program.
Sec. 111. Elimination of pilot projects.
Sec. 112. Training and technical assistance.
Sec. 113. Food service management institute.
Sec. 114. Compliance and accountability.
Sec. 115. Information clearinghouse.
Sec. 116. Refocusing of effort to help accommodate the special dietary needs of individuals with disabilities.

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

Sec. 201. Elimination of administration of programs by regional offices.
Sec. 202. State administrative expenses.
Sec. 203. Special supplemental nutrition program for women, infants, and children.
Sec. 204. Nutrition education and training.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

Sec. 301. Commodity distribution program reforms.
Sec. 302. Food distribution.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS

SEC. 101. TECHNICAL AMENDMENTS TO COMMODITY PROVISIONS.

(a) IN GENERAL.—Section 6 of the National School Lunch Act (42 U.S.C. 1755) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively.

(b) CONFORMING AMENDMENTS.—The National School Lunch Act is amended by striking "section 6(e)" each place it appears in sections 14(f), 16(a), and 17(h)(1)(B) (42 U.S.C. 1762a(f), 1765(a), 1766(h)(1)(B)) and inserting "section 6(c)".

SEC. 102. AVAILABILITY OF RECOVERED FUNDS FOR MANAGEMENT ACTIVITY.

Section 8 of the National School Lunch Act (42 U.S.C. 1757) is amended by adding at the end the following:

"(h) RETENTION AND USE OF RECOVERED PROGRAM FUNDS.—

"(1) RETENTION.—A State agency may retain up to 50 percent of any program funds recovered as a result of an audit or review conducted by the State agency of school food authorities, institutions, and service institutions participating in food assistance programs authorized under this Act or section 3 or 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1772, 1773).

"(2) USE.—Funds retained by a State agency under this subsection shall be used by the State agency for allowable program costs to improve the management and operation of programs described in paragraph (1) within the State, including the cost of providing funds to school food authorities, institutions, and service institutions participating in the programs.".

SEC. 103. ELIMINATION OF ADMINISTRATION OF PROGRAMS BY REGIONAL OFFICES.

(a) MATCHING REQUIREMENT.—Section 7(b) of the National School Lunch Act (42 U.S.C. 1756(b)) is amended by striking the second sentence.

(b) DISBURSEMENT TO SCHOOLS BY THE SECRETARY.—Section 10 of the National School Lunch Act (42 U.S.C. 1759) is amended to read as follows:

"SEC. 10. DISBURSEMENT TO SCHOOLS BY THE SECRETARY.

"(a) AUTHORITY TO ADMINISTER PROGRAMS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), until September 30, 2000, the Secretary shall withhold funds payable to a State agency under this Act and disburse the funds directly to school food authorities, institutions, and service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed the funds continuously since October 1, 1980.

"(2) USE OF FUNDS.—Any funds withheld and disbursed by the Secretary under paragraph (1) shall be used for the same purposes and be subject to the same conditions as apply to disbursing funds made available to States under this Act.

"(3) STATE ADMINISTRATION.—If the Secretary is administering (in whole or in part) any program authorized under this Act in a State, the State may, on request to the Secretary, assume administrative responsibility for the program at any time before October 1, 2000.

"(b) PROVISION OF TRAINING AND TECHNICAL ASSISTANCE.—The Secretary shall provide a State agency that assumes administrative responsibility for a program from the Secretary on or before October 1, 2000, with training and technical assistance to allow for an efficient and effective transfer of the responsibility.".

(c) CONFORMING AMENDMENT.—Section 11(a)(1)(A) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)(A)) is amended by striking "Except as provided in section 10 of this Act, in" and inserting "In".

SEC. 104. REQUIREMENT FOR HEALTH AND SAFETY INSPECTIONS.

Section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end the following:

"(h) HEALTH AND SAFETY INSPECTIONS.—A school participating in the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in which meals are prepared on site shall, at least twice during each school year, obtain an inspection that indicates that food service operations of the school meet State and local health and safety standards.".

SEC. 105. ELIMINATION OF FOOD AND NUTRITION PROJECTS AND ESTABLISHMENT OF AN ADEQUATE MEAL SERVICE PERIOD.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (m) and inserting the following:

"(m) LENGTH OF MEAL SERVICE PERIOD AND FOOD SERVICE ENVIRONMENT.—A school participating in the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall, to the maximum extent practicable, establish meal service periods that provide children with adequate time to fully consume their meals in an environment that is conducive to eating the meals.".

SEC. 106. BUY AMERICAN.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 105) is amended by adding at the end the following:

"(n) BUY AMERICAN.—

"(1) IN GENERAL.—The Secretary shall require that a school purchase, to the maximum extent practicable, food products that are produced in the United States.

"(2) LIMITATIONS.—Paragraph (1) shall apply only to—

"(A) a school located in the contiguous United States; and

"(B) a purchase of a food product for the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).".

SEC. 107. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) ADJUSTMENTS TO REIMBURSEMENT RATES.—Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (f) and inserting the following:

"(f) ADJUSTMENTS TO REIMBURSEMENT RATES.—In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4, 11, 13 and 17 of this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to reflect the differences between the costs of providing meals in those States and the costs of providing meals in all other States.".

(b) ESTABLISHMENT OF SITE LIMITATION.—Section 13(a)(7)(B) of the National School Lunch Act (42 U.S.C. 1761(a)(7)(B)) is amended by striking clause (i) and inserting the following:

"(i) operate—

"(I) not more than 25 sites, with not more than 300 children being served at any 1 site; or

"(II) with a waiver granted by the State agency under standards developed by the Secretary, with not more than 500 children being served at any 1 site;".

(c) ELIMINATION OF INDICATION OF INTEREST REQUIREMENT, REMOVAL OF MEAL CONTRACTING RESTRICTIONS, AND VENDOR REGISTRATION REQUIREMENTS.—Section 13 of the National School Lunch Act (42 U.S.C. 1761) is amended—

(1) in subsection (a)(7)(B)—

(A) by striking clauses (ii) and (iii); and

(B) by redesignating clauses (iv) through (vii) as clauses (ii) through (v) respectively; and

(2) in subsection (l)—

(A) in paragraph (1)—

(i) in the first sentence—

(I) by striking "(other than private nonprofit organizations eligible under subsection (a)(7))"; and

(II) by striking "only with food service management companies registered with the State in which they operate" and inserting "with food service management companies"; and

(ii) by striking the last sentence;

(B) in paragraph (2)—

(i) in the first sentence, by striking "shall" and inserting "may"; and

(ii) by striking the second and third sentences;

(C) by striking paragraph (3); and

(D) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(d) REAUTHORIZATION OF SUMMER FOOD SERVICE PROGRAM.—Section 13(q) of the National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking "1998" and inserting "2002".

SEC. 108. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking "1998" and inserting "2002".

SEC. 109. CHILD AND ADULT CARE FOOD PROGRAM.

(a) REVISION TO LICENSING AND ALTERNATE APPROVAL FOR SCHOOLS AND OUTSIDE SCHOOL HOURS CHILD CARE CENTERS.—Section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended in the fifth sentence by striking paragraph (1) and inserting the following:

"(1) each institution (other than a school or family or group day care home sponsoring organization) and family or group day care home shall—

"(A)(i) have Federal, State, or local licensing or approval; or

"(ii) be complying with appropriate renewal procedures as prescribed by the Secretary and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

"(B) in any case in which Federal, State, or local licensing or approval is not available—

"(i) receive funds under title XX of the Social Security Act (42 U.S.C. 1397 et seq.);

"(ii) meet any alternate approval standards established by a State or local government; or

"(iii) meet any alternate approval standards established by the Secretary, after consultation with the Secretary of Health and Human Services; or

"(C) in any case in which the institution provides care to school children outside school hours and Federal, State, or local licensing or approval is not required, meet State or local health and safety standards; and".

(b) REINSTATEMENT OF CATEGORICAL ELIGIBILITY FOR EVEN START PROGRAM PARTICIPANTS.—Section 17(c)(6)(B) of the National School Lunch Act (42 U.S.C. 1766(c)(6)(B)) is amended by striking "1997" and inserting "2002".

(c) TAX EXEMPT STATUS AND REMOVAL OF NOTIFICATION REQUIREMENT FOR INCOMPLETE APPLICATIONS.—Section 17(d)(1) of the National School Lunch Act (42 U.S.C. 1766(d)(1)) is amended—

(1) by inserting after the third sentence the following: "An institution moving toward compliance with the requirement for tax exempt status shall be allowed to participate in the child and adult care food program for a period of not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax exempt status within the 180-day period is due to circumstances beyond the control of the institution."; and

(2) by striking the last sentence.

(d) DISTRIBUTION OF PROGRAM INFORMATION.—Section 17(k) of the National School Lunch Act (42 U.S.C. 1766(k)) is amended—

(1) by striking "A State" and inserting the following:

"(1) IN GENERAL.—A State"; and

(2) by adding at the end the following:

"(2) DISTRIBUTION OF PROGRAM INFORMATION.—

"(A) DEFINITION OF NEEDY AREA.—In this paragraph, the term 'needy area' means a geographic area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(B) INFORMATION.—At least once every 2 years, each State agency shall provide notification of the availability of the program, the requirements for program participation, and the application procedures to be followed under the program to each nonparticipating institution or family or group day care home that—

"(i) is located in a needy area within the State; and

"(ii)(I) has received Federal, State, or local licensing or approval; or

"(II) receives funds under title XX of the Social Security Act (42 U.S.C. 1397 et seq.).".

(e) ELIMINATION OF AUDIT FUNDS, ESTABLISHMENT OF MANAGEMENT SUPPORT FUNDING, PARTICIPATION BY AT-RISK CHILD CARE PROGRAMS, AND WIC OUTREACH.—Section 17 of the National School Lunch Act (42 U.S.C. 1766) is amended—

(1) by striking subsection (i);

(2) by redesignating subsections (j) through (p) as subsections (i) through (o), respectively; and

(3) by adding at the end the following:

"(p) MANAGEMENT FUNDING.—

"(1) TECHNICAL AND TRAINING ASSISTANCE.—In addition to the normal training and technical assistance provided to State agencies under this section, the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

"(2) FUNDING.—For fiscal year 1999 and each succeeding fiscal year, the Secretary shall reserve to carry out paragraph (1) ⅛ of 1 percent of the amount made available to carry out this section.

"(q) AT-RISK CHILD CARE.—

"(1) DEFINITION OF AT-RISK SCHOOL CHILD.—In this subsection, the term 'at-risk school child' means a child who—

"(A) is not less than 12 nor more than 18 years of age; and

"(B) lives in a geographical area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(2) PARTICIPATION IN CHILD AND ADULT CARE FOOD PROGRAM.—Subject to the other provisions of this subsection, an institution that provides care to at-risk school children during after-school hours, weekends, or holidays during the regular school year may participate in the program authorized under this section.

"(3) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

"(4) SUPPLEMENT REIMBURSEMENT.—

"(A) LIMITATIONS.—An institution may claim reimbursement under this subsection only for—

"(i) a supplement served to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

"(ii) 1 supplement per child per day.

"(B) RATE.—A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3).

"(C) NO CHARGE.—A supplement claimed for reimbursement under this subsection shall be served without charge.

"(r) INFORMATION CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—

"(1) IN GENERAL.—The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(2) REQUIREMENTS FOR STATE AGENCIES.—A State agency shall ensure that each participating child care center (other than an institution providing care to school children outside school hours)—

"(A) receives materials that include—

"(i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;

"(ii) the maximum State income eligibility standards, according to family size, for the program; and

"(iii) information concerning how benefits under the program may be obtained;

"(B) is provided updates of the information described in subparagraph (A) at least annually; and

"(C) provides the information described in subparagraph (A) to parents of enrolled children at least annually.".

(f) PERMANENT AUTHORIZATION OF DEMONSTRATION PROJECT.—Section 17(o) of the National School Lunch Act (42 U.S.C. 1766(o)) (as redesignated by subsection (e)) is amended by striking paragraphs (4) and (5).

SEC. 110. TRANSFER OF HOMELESS ASSISTANCE PROGRAMS TO THE CHILD AND ADULT CARE FOOD PROGRAM.

(a) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—Section 13(a)(3)(C) of the National School Lunch Act (42 U.S.C. 1761(a)(3)(C)) is amended—

(1) in clause (i), by inserting "or" after the semicolon;

(2) by striking clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

(b) CHILD AND ADULT CARE FOOD PROGRAM.—Section 17 of the National School Lunch Act (as amended by section 109(e)) is amended—

(1) in the third sentence of subsection (a)—

(A) by striking "and public" and inserting "public"; and

(B) by inserting before the period at the following: ", and emergency shelters described in subsection (s)"; and

(2) by adding at the end the following:

"(s) PARTICIPATION BY EMERGENCY SHELTERS.—

"(1) DEFINITION OF EMERGENCY SHELTER.—In this subsection, the term 'emergency shelter' means a public or private nonprofit emergency shelter (as defined in section 321 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11351)), or a site operated by the shelter, that provides food service to homeless children and their parents or guardians.

"(2) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section shall apply to an emergency shelter that is participating in the program authorized under this section.

"(3) INSTITUTION AND SITE LICENSING.—Subsection (a)(1) shall not apply to an emergency shelter.

"(4) HEALTH AND SAFETY STANDARDS.—To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State and local health and safety standards.

"(5) MEAL REIMBURSEMENT.—

"(A) LIMITATIONS.—An emergency shelter may claim reimbursement under this subsection only for—

"(i) a meal served to children who are not more than 12 years of age residing at the emergency shelter; and

"(ii) not more than 3 meals, or 2 meals and 1 supplement, per child per day.

"(B) RATE.—A meal shall be reimbursed under this subsection at the rate established for a free meal under subsection (c).

"(C) NO CHARGE.—A meal claimed for reimbursement under this subsection shall be served without charge.".

(c) HOMELESS CHILDREN NUTRITION PROGRAM.—Section 17B of the National School Lunch Act (42 U.S.C. 1766b) is repealed.

SEC. 111. ELIMINATION OF PILOT PROJECTS.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking subsections (e) through (i).

SEC. 112. TRAINING AND TECHNICAL ASSISTANCE.

Section 21(e)(1) of the National School Lunch Act (42 U.S.C. 1769b–1(e)(1)) is amended by striking "1998" and inserting "2002".

SEC. 113. FOOD SERVICE MANAGEMENT INSTITUTE.

Section 21(e)(2)(A) of the National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A)) is amended by striking "and $2,000,000 for fiscal year 1996" and inserting "$2,000,000 for each of fiscal years 1996 through 1998, and $3,000,000 for fiscal year 1999".

SEC. 114. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking "1996" and inserting "2002".

SEC. 115. INFORMATION CLEARINGHOUSE.

Section 26 of the National School Lunch Act (42 U.S.C. 1769g) is amended—

(1) in the first sentence of subsection (a), by striking "shall" and inserting "may";

(2) in subsection (b), by striking "The" and inserting "Except as provided in subsection (d), the"; and

(3) by striking subsection (d) and inserting the following:

"(d) NONCOMPETITIVE CONTRACTS.—Notwithstanding any other provision of law, the Secretary may, on a noncompetitive basis, enter into a contract for the services of any organization with which the Secretary has previously entered into a contract under this section, if the organization has performed satisfactorily under the contract and meets the requirements of this section.

"(e) FUNDING.—The Secretary may provide to the organization selected under this section an amount not to exceed $150,000 for each of fiscal years 1999 through 2002.".

SEC. 116. REFOCUSING OF EFFORT TO HELP ACCOMMODATE THE SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.

Section 27 of the National School Lunch Act (42 U.S.C. 1769h) is amended to read as follows:

"SEC. 27. ACCOMMODATION OF SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.

"(a) DEFINITIONS.—In this section:

"(1) COVERED PROGRAM.—The term 'covered program' means—

"(A) the school lunch program authorized under this Act;

"(B) the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

"(C) any other program authorized under this Act or the Child Nutrition Act of 1966 (except section 17 of that Act) that the Secretary determines is appropriate.

"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means a school food authority, institution, or service institution that participates in a covered program.

"(3) INDIVIDUALS WITH DISABILITIES.—The term 'individual with disabilities' has the meaning given the term in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) for purposes of title VII of that Act (29 U.S.C. 796 et seq.).

"(b) ACTIVITIES.—The Secretary may carry out activities to help accommodate the special dietary needs of individuals with disabilities who are participating in a covered program, including—

"(1) developing and disseminating to State agencies guidance and technical assistance materials;

"(2) conducting training of State agencies and eligible entities; and

"(3) issuing grants to State agencies and eligible entities.".

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

SEC. 201. ELIMINATION OF ADMINISTRATION OF PROGRAMS BY REGIONAL OFFICES.

Section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774) is amended to read as follows:

"SEC. 5. DISBURSEMENT TO SCHOOLS BY THE SECRETARY.

"(a) AUTHORITY TO ADMINISTER PROGRAMS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), until September 30, 2000, the Secretary shall withhold funds payable to a State agency under this Act and disburse the funds directly to school food authorities, institutions, and service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed the funds continuously since October 1, 1980.

"(2) USE OF FUNDS.—Any funds withheld and disbursed by the Secretary under paragraph (1) shall be used for the same purposes and be subject to the same conditions as apply to disbursing funds made available to States under this Act.

"(3) STATE ADMINISTRATION.—If the Secretary is administering (in whole or in part) any program authorized under this Act in a State, the State may, on request to the Secretary, assume administrative responsibility for the program at any time before October 1, 2000.

"(b) PROVISION OF TRAINING AND TECHNICAL ASSISTANCE.—The Secretary shall provide a State agency that assumes administrative responsibility for a program from the Secretary on or before October 1, 2000, with training and technical assistance to allow for an efficient and effective transfer of administrative responsibility.".

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) HOMELESS SHELTERS.—Section 7(a)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(5)) is amended by striking subparagraph (B) and inserting the following:

"(B) REALLOCATION OF FUNDS.—

"(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

"(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.".

(b) ELIMINATION OF TRANSFER LIMITATION.—Section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) is amended by striking paragraph (6) and inserting the following:

"(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under the National School Lunch Act (42 U.S.C. 1751 et seq.) or this Act (except for the programs authorized under sections 17 and 21 of this Act) without regard to the basis on which the funds were earned and allocated.".

(c) REAUTHORIZATION OF PROGRAM.—Section 7(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g)) is amended by striking "1998" and inserting "2002".

SEC. 203. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

(a) ADDITIONAL PROGRAM APPLICATION REQUIREMENTS.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended by adding at the end the following:

"(C) PHYSICAL PRESENCE.—An applicant shall be physically present at each certification visit to receive program benefits.

"(D) INCOME DOCUMENTATION.—An applicant shall provide documentation of household income, or of participation in a program described in clause (ii) or (iii) of paragraph (2)(A), at certification to be determined to meet income eligibility requirements for the program.

"(E) VERIFICATION.—The Secretary shall issue regulations under this subsection prescribing when and how verification of income shall be required.".

(b) DISTRIBUTION OF NUTRITION EDUCATION MATERIALS.—Section 17(e)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(e)(3)) is amended—

(1) by striking "(3) The" and inserting the following:

"(3) NUTRITION EDUCATION MATERIALS.—

"(A) IN GENERAL.—The"; and

(2) by adding at the end the following:

"(B) SHARING OF MATERIALS WITH CSFP.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86; 7 U.S.C. 612c note) at no cost to that program.".

(c) REAUTHORIZATION OF PROGRAM.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended in subsections (g)(1) and (h)(2)(A) by striking "1998" each place it appears and inserting "2002".

(d) INFANT FORMULA PROCUREMENT.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

"(iii) COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award a contract to the bidder offering the lowest net price unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.".

(e) INFRASTRUCTURE AND BREASTFEEDING SUPPORT AND PROMOTION.—Section 17(h)(10)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(10)(A)) is amended by striking "1998" and inserting "2002".

(f) SPEND-FORWARD AUTHORITY.—Section 17(i)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking "and" at the end;

(B) in clause (ii)—

(i) by inserting "nutrition services and administration" after "amount of"; and

(ii) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(iii) with the prior approval of the Secretary, not more than 4 percent of the amount of funds allocated to a State agency for nutrition services and administration for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year for the costs of developing electronic benefit transfer.";

(2) in subparagraph (B), by striking "subparagraph (A)(ii)" and inserting "clauses (ii) and (iii) of subparagraph (A)";

(3) by striking subparagraphs (D) through (G); and

(4) by redesignating subparagraph (H) as subparagraph (D).

(g) FARMERS MARKET NUTRITION PROGRAM.—

(1) MATCHING FUNDS REQUIREMENT.—Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) is amended by striking "total" each place it appears and inserting "administrative".

(2) RANKING CRITERIA FOR STATE PLANS.—Section 17(m)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(6)) is amended—

(A) by striking subparagraph (F); and

(B) by redesignating subparagraph (G) as subparagraph (F).

(3) FUNDING.—Section 17(m)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)(A)) is amended by striking "1998" and inserting "2002".

(h) DISQUALIFICATION OF CERTAIN VENDORS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786) is amended by adding at the end the following:

"(o) DISQUALIFICATION OF VENDORS CONVICTED OF TRAFFICKING OR ILLEGAL SALES.—

"(1) IN GENERAL.—Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

"(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

"(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments.

"(2) NOTICE OF DISQUALIFICATION.—The State agency shall—

"(A) provide the vendor with notification of the disqualification; and

"(B) make the disqualification effective on the date of receipt of the notice of disqualification.

"(3) PROHIBITION OF RECEIPT OF LOST REVENUES.—A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

"(4) HARDSHIP EXCEPTION IN LIEU OF DISQUALIFICATION.—

"(A) IN GENERAL.—A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to redeem food instruments or otherwise provide supplemental foods to participants if the State agency determines, in its sole discretion according to criteria established by the Secretary, that disqualification of the vendor would cause hardship to participants in the program authorized under this section.

"(B) CIVIL MONEY PENALTY.—If a State agency authorizes a vendor that, but for this paragraph, would be disqualified to redeem food instruments or provide supplemental foods under subparagraph (A), the State agency shall assess the vendor a civil money penalty in lieu of disqualification.

"(C) AMOUNT.—The State agency shall determine the amount of the civil penalty according to criteria established by the Secretary.".

(2) REGULATIONS.—The amendment made by paragraph (1) shall take effect on the date on which the Secretary of Agriculture issues a final regulation that includes the criteria for—

(A) making hardship determinations; and

(B) determining the amount of a civil money penalty in lieu of disqualification.

SEC. 204. NUTRITION EDUCATION AND TRAINING.

Section 19(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(i)) is amended—

(1) by striking the subsection heading and all that follows through paragraph (3)(A) and inserting the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—

"(A) FUNDING.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1997 through 2002."; and

(2) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

SEC. 301. COMMODITY DISTRIBUTION PROGRAM REFORMS.

(a) COMMODITY SPECIFICATIONS.—Section 3(a) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) is amended by striking paragraph (2) and inserting the following:

"(2) APPLICABILITY.—Paragraph (1) shall apply to—

"(A) the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86; 7 U.S.C. 612c note);

"(B) the food distribution program on Indian reservations authorized under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

"(C) the school lunch program authorized under the National School Lunch Act (42 U.S.C. 1751 et seq.).".

(b) CUSTOMER ACCEPTABILITY INFORMATION.—Section 3(f) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) is amended by striking paragraph (2) and inserting the following:

"(2) CUSTOMER ACCEPTABILITY INFORMATION.—

"(A) IN GENERAL.—The Secretary shall ensure that information with respect to the types and forms of commodities that are most useful is collected from recipient agencies participating in programs described in subsection (a)(2).

"(B) FREQUENCY.—The information shall be collected at least once every 2 years.

"(C) ADDITIONAL SUBMISSIONS.—The Secretary—

"(i) may require submission of information described in subparagraph (A) from recipient agencies participating in other domestic food assistance programs administered by the Secretary; and

"(ii) shall provide the recipient agencies a means for voluntarily submitting customer acceptability information.".

SEC. 302. FOOD DISTRIBUTION.

(a) IN GENERAL.—Sections 8 through 12 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) are amended to read as follows:

"SEC. 8. AUTHORITY TO TRANSFER COMMODITIES BETWEEN PROGRAMS.

"(a) TRANSFER.—Subject to subsection (b), the Secretary may transfer any commodities purchased for a domestic food assistance program administered by the Secretary to any other domestic food assistance program administered by the Secretary if the transfer is necessary to ensure that the commodities will be used while the commodities are still suitable for human consumption.

"(b) REIMBURSEMENT.—The Secretary shall, to the maximum extent practicable, provide reimbursement for the value of the commodities transferred under subsection (a) from accounts available for the purchase of commodities under the program receiving the commodities.

"(c) CREDITING.—Any reimbursement made under subsection (b) shall—

"(1) be credited to the accounts that incurred the costs when the transferred commodities were originally purchased; and

"(2) be available for the purchase of commodities with the same limitations as are provided for appropriated funds for the reimbursed accounts for the fiscal year in which the transfer takes place.

"SEC. 9. AUTHORITY TO RESOLVE CLAIMS.

"(a) IN GENERAL.—The Secretary may determine the amount of, settle, and adjust all or part of a claim arising under a domestic food assistance program administered by the Secretary.

"(b) WAIVERS.—The Secretary may waive a claim described in subsection (a) if the Secretary determines that a waiver would serve the purposes of the program.

"(c) AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section diminishes the authority of the Attorney General under section 516 of title 28, United States Code, or any other provision of law, to supervise and conduct litigation on behalf of the United States.

"SEC. 10. PAYMENT OF COSTS ASSOCIATED WITH MANAGEMENT OF COMMODITIES THAT POSE A HEALTH OR SAFETY HAZARD.

"(a) IN GENERAL.—The Secretary may use funds available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), that are not otherwise committed, for the purpose of reimbursing States for State and local costs associated with commodities distributed under any domestic food assistance program administered by the Secretary if the Secretary determines that the commodities pose a health or safety hazard.

"(b) ALLOWABLE COSTS.—The costs—

"(1) may include costs for storage, transportation, processing, and destruction of the hazardous commodities; and

"(2) shall be subject to the approval of the Secretary.

"(c) REPLACEMENT COMMODITIES.—

"(1) IN GENERAL.—The Secretary may use funds described in subsection (a) for the purpose of purchasing additional commodities if the purchase will expedite replacement of the hazardous commodities.

"(2) RECOVERY.—Use of funds under paragraph (1) shall not restrict the Secretary from recovering funds or services from a supplier or other entity regarding the hazardous commodities.

"(d) CREDITING OF RECOVERED FUNDS.—Funds recovered from a supplier or other entity regarding the hazardous commodities shall—

"(1) be credited to the account available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), to the extent the funds represent expenditures from that account under subsections (a) and (c); and

"(2) remain available to carry out the purposes of section 32 of that Act until expended.

"SEC. 11. AUTHORITY TO ACCEPT COMMODITIES DONATED BY FEDERAL SOURCES.

"(a) IN GENERAL.—The Secretary may accept donations of commodities from any Federal agency, including commodities of another Federal agency determined to be excess personal property pursuant to section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)).

"(b) USE.—The Secretary may donate the commodities received under subsection (a) to States for distribution through any domestic food assistance program administered by the Secretary.

"(c) PAYMENT.—Notwithstanding section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)), the Secretary shall not be required to make any payment in connection with the commodities received under subsection (a).".

(b) EFFECT ON PRIOR AMENDMENTS.—The amendment made by subsection (a) does not affect the amendments made by sections 8 through 12 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note), as in effect on September 30, 1998.

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

Except as provided in section 203(h)(2), this Act and the amendments made by this Act take effect on October 1, 1998.●

By Ms. COLLINS (for herself and Mr. GRASSLEY):

S. 2167. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to increase the efficiency and accountability of Offices of Inspector General within Federal departments, and for other purposes; to the Committee on Governmental Affairs.

INSPECTOR GENERAL ACT AMENDMENTS OF 1998

Ms. COLLINS. Mr. President, since coming to the Senate and assuming the Chairmanship of the Permanent Subcommittee on Investigations, one of my top priorities has been the seemingly never-ending fight to ferret out and eliminate waste, fraud and abuse in federal government programs. We've all heard the horror stories of $500 hammers and roads built to nowhere. The waste of scarce federal resources not only picks the pockets of the taxpayers but also places severe financial pressures on already overburdened programs, forcing cutbacks in the delivery of vital government services.

Over the past year, I have seen this waste first-hand as the Subcommittee put a spotlight on massive fraud in the Medicare program. To cite just one example, the Subcommittee's investigation revealed that the federal government had been sending Medicare checks to 14 health care companies whose address, if they had existed, was in the middle of the runway of the Miami International Airport. That fraud cost the taxpayers millions of dollars, diverting scarce resources from the elderly and legitimate health care providers.

This example and others like it were uncovered by my Subcommittee working hand-in-hand with the Inspector General's Office, whose mission is to identify the eliminate waste, fraud and abuse in federal programs. In many ways, the Inspectors General are the eyes and ears of the Permanent Subcommittee on Investigations, in particular, and the Congress, in general, as we strive to detect and prevent waste, fraud, abuse, and mismanagement in federal programs.

Mr. President, this year marks the 20th anniversary of the Inspector General Act, the law that the Congress passed to create these guardians of the public purse. As we recognize this anniversary, it is important for Congress to take a close look at the IG system.

During the past 20 years, the Inspector General community has grown from 12 in 1978 to 57 Inspectors General today. These offices receive more than $1 billion in annual funding and employ over 10,000 auditors, criminal investigators, and support personnel. The Office of Inspector General is charged with tremendous responsibilities and is given considerable authority to uncover waste and abuse within the government.

By and large, the IG community has done an outstanding job. They have made thousands of recommendations to Congress, ultimately saving taxpayers

literally billions of dollars. Investigations by Inspectors General have also resulted in the recovery of billions of dollars from companies and individuals who defrauded the federal government. These investigations have been the basis for thousands of criminal prosecutions, debarments, exclusions and suspensions.

The Inspectors General have a demonstrated record of success over the past 20 years, but as with any government program, we must be vigilant to ensure that the program is well managed, accountable, and effective. With this goal in mind and drawing on my work with the Inspectors General over the past year and a half, I am introducing the "Inspector General Act Amendments of 1998," a bill to improve the accountability and efficiency of the Inspectors General program. I am pleased to have my colleague from Iowa, Senator GRASSLEY, as a cosponsor.

The bill is designed to increase the accountability and independence of Inspectors General. It establishes a renewable nine-year term of office for each of the 26 Inspectors General who are appointed by the President and confirmed by the Senate. This provision will also encourage Inspectors General to serve for longer periods of time so that their experience and judgment can be used to fight waste, fraud and abuse.

This bill also takes steps to streamline the IG Offices themselves—making them more efficient and flexible—by consolidating existing offices and by reducing the volume of the inspectors general reporting requirements.

The number of OIGs has increased more than four-fold in twenty years, and many of these are small offices with just a handful of employees. These small OIGs can be made far more efficient and effective by transferring their functions to larger, department-wide IG offices. For example, my bill consolidates the current stand-alone office of the Peace Corps, with just 15 employees, into the State Department—eliminating unnecessary overhead and bureaucracy but continuing thorough audit and oversight of the Peace Corps. Under this proposal, seven existing small IG offices are consolidated into the IG offices of major departments.

Currently, Offices of Inspectors General are required by law to provide semi-annual reports to Congress. My bill would increase the value of the report process by reducing the requirement to a single annual report and streamlining the information required for each report. For example, the new reporting requirement would require the IGs to identify areas within their jurisdiction which are at highest risk for waste, fraud and abuse. In that way, the Congress can attack those weak areas before they get worse and before the problems become more difficult to solve.

The Inspectors General have made valuable contributions to the efficient operation of the federal government, but their record is not without blemish. For example, this successful record was recently tarnished by the activities of the Treasury Department's Office of Inspector General. After an extensive investigation, my Subcommittee found that this office violated federal laws in the award of two sole-source contracts, which wasted thousands of dollars. It was disturbing to find that this one Inspector General's Office was itself guilty of wasting resources—the very office charged with preventing fraud and abuse. At the conclusion of that investigation, the Subcommittee asked the question: who is watching the watchdogs?

Let me stress that, in my view, problems like the ones in the Treasury Inspector General's office are not widespread in the Inspector General community. However, an Inspector General is not like any other government manager. Inspectors General are the very officials in government responsible for combating waste, fraud and abuse in Federal programs. And as such, Inspectors General should be held to a higher standard. To do their job effectively, Inspectors General must be above reproach, must set an example for other government managers to follow, and must not create situations where there is even the appearance of impropriety. Credibility and effectiveness are lost when the office charged with combating waste and abuse engages in the kind of activity that the Inspector General is responsible for deterring.

To increase accountability, my bill requires independent external reviews of the Inspector General offices every three years. It gives each office the flexibility to choose the most efficient method of review, but it does require that the watchdogs themselves submit to oversight by a qualified third party. This provision will help ensure public confidence in the management and efficiency of the IG offices.

Finally, Mr. President, one provision that is not included in this bill, but that deserves careful consideration, is the grant of statutory law enforcement authority for the Inspector General of the Department of Health and Human Services. The Medicare fraud investigation conducted by my Subcommittee revealed the dangers faced by HHS-IG Special Agents when they work with the FBI and others to investigate some cases of health care fraud. These agents work side by side with other federal law enforcement professionals, and the Congress should carefully examine the best way to provide them with tools necessary for them to do their jobs effectively.

Mr. President, the bill I introduce today represents the first step in the process to improve the effectiveness, efficiency and accountability of the Inspector General program. These offices provide valuable assistance to the Congress so that we can exercise our duty to oversee the operation of the federal government and to make sure that the taxpayer's money is well spent and not wasted. I urge my colleagues to join me in this effort to strengthen and improve the Inspectors General program into the next century.

By Mr. INOUYE:

S.J. Res. 53. A joint resolution to express the sense of the Congress that the President should award a Presidential Unit Citation to the final crew of the U.S.S. *Indianapolis*, which was sunk on July 30, 1945; to the Committee on Armed Services.

• Mr. INOUYE. Mr. President, today I am introducing a joint resolution which calls upon the President to award a Presidential Unit Citation to the final crew of the U.S.S. *Indianapolis* (CA-35) that recognizes the courage, fortitude and heroism displayed by the crew in the face of tremendous hardship and adversity after their ship was torpedoed and sunk on July 30, 1945.•

ADDITIONAL COSPONSORS

S. 38

At the request of Mr. FEINGOLD, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 38, a bill to reduce the number of executive branch political appointees.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 644

At the request of Mr. D'AMATO, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 644, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to establish standards for relationships between group health plans and health insurance issuers with enrollees, health professionals, and providers.

S. 852

At the request of Mr. LOTT, the names of the Senator from Nebraska [Mr. KERREY] and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 1252

At the request of Mr. GRAHAM, the name of the Senator from Hawaii [Mr.

INOUYE] was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1413

At the request of Mr. LUGAR, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1413, a bill to provide a framework for consideration by the legislative and executive branches of unilateral economic sanctions.

S. 1464

At the request of Mr. HATCH, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1606

At the request of Mr. WELLSTONE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1606, a bill to fully implement the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and to provide a comprehensive program of support for victims of torture.

S. 1647

At the request of Mr. BAUCUS, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1647, a bill to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965.

S. 1924

At the request of Mr. MACK, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 1924, a bill to restore the standards used for determining whether technical workers are not employees as in effect before the Tax Reform Act of 1986.

S. 1981

At the request of Mr. HUTCHINSON, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1981, a bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act.

S. 2030

At the request of Mr. BUMPERS, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2030, a bill to amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes.

S. 2049

At the request of Mr. KERREY, the names of the Senator from Florida [Mr. GRAHAM] and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 2049, a bill to provide for payments to children's hospitals that operate graduate medical education programs.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2110

At the request of Mr. BIDEN, the names of the Senator from Nevada [Mr. REID] and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 2110, a bill to authorize the Federal programs to prevent violence against women, and for other purposes.

S. 2116

At the request of Mr. LUGAR, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 2116, a bill to clarify and enhance the authorities of the Chief Information Officer of the Department of Agriculture.

S. 2118

At the request of Mr. CHAFEE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2118, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on vaccines to 25 cents per dose.

S. 2128

At the request of Mr. STEVENS, the names of the Senator from Minnesota [Mr. GRAMS] and the Senator from Nebraska [Mr. HAGEL] were added as cosponsors of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

S. 2144

At the request of Mr. COVERDELL, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 2144, a bill to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees.

S. 2150

At the request of Mr. FRIST, the names of the Senator from Washington [Mrs. MURRAY], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 2150, a bill to amend the Public Health Service Act to revise and extend the bone marrow donor program, and for other purposes.

S. 2151

At the request of Mr. NICKLES, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 2151, a bill to clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

SENATE CONCURRENT RESOLUTION 82

At the request of Mr. WELLSTONE, the names of the Senator from New York [Mr. MOYNIHAN] and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of Senate Concurrent Resolution 82, a concurrent resolution expressing the sense of Congress concerning the worldwide trafficking of persons, that has a disproportionate impact on women and girls, and is condemned by the international community as a violation of fundamental human rights.

SENATE RESOLUTION 189

At the request of Mr. TORRICELLI, the names of the Senator from Minnesota [Mr. WELLSTONE] and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Resolution 189, a resolution honoring the 150th anniversary of the United States Women's Rights Movement that was initiated by the 1848 Women's Rights Convention held in Seneca Falls, New York, and calling for a national celebration of women's rights in 1998.

SENATE RESOLUTION 192

At the request of Mr. BIDEN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Resolution 192, a resolution expressing the sense of the Senate that institutions of higher education should carry out activities to change the culture of alcohol consumption on college campuses.

SENATE RESOLUTION 235

At the request of Mr. AKAKA, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Alabama [Mr. SESSIONS], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Resolution 235, a resolution commemorating 100 years of relations between the people of the United States and the people of the Philippines.

SENATE RESOLUTION 247—AUTHORIZING TESTIMONY, DOCUMENT PRODUCTION, AND REPRESENTATION OF MEMBER AND EMPLOYEES OF THE SENATE

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 247

Whereas, in the case of *United States v. Jack L. Williams, et al.*, Criminal Case No. 96-0314, pending in the United States District Court for the District of Columbia, a trial subpoena has been served upon Galen Fountain, an employee of the Senate on the staff of the Committee on Appropriations, and testimony may be requested from Senator Dale Bumpers.

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of

1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, by Rule XI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved That Senator Dale Bumpers, Galen Fountain, and any other employee from whom testimony or document production may be required, are authorized to testify and to produce documents in the case of *United States v. Jack L. Williams, et al.*, except when Senator Bumpers' attendance at the Senate is necessary for the performance of his legislative duties, and except concerning matters for which a privilege should be asserted

SEC. 2. That the Senate Legal Counsel is authorized to represent Senator Bumpers, Galen Fountain, and any other employee of the Senate, in connection with testimony and document production in *United States v. Jack L. Williams, et al.*

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

KERRY (AND OTHERS) AMENDMENT NO. 2689

Mr. KERRY (for himself, Mr. BOND, Mr. CHAFEE, Mr. KENNEDY, Mr. DODD, Mr. WELLSTONE, Mr. JOHNSON, Mrs. BOXER, Mr. SPECTER, Ms. LANDRIEU, Mr. DURBIN, Mr. GRAHAM, Mr. BINGAMAN, and Mr. KOHL) proposed an amendment to the bill (S. 1415) to reform and restructure the process by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the end, add the following:

( ) ASSISTANCE FOR CHILDREN.—A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.)

TORRICELLI (AND WELLSTONE) AMENDMENT NO. 2690

(Ordered to lie on the table.)

Mr. TORRICELLI (for himself and Mr. WELLSTONE) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

On page 201, between lines 19 and 20, insert the following:

(3) MEDICAID CHILDREN'S ENROLLMENT PERFORMANCE BONUS.—

(A) SET ASIDE OF FUNDS.—Notwithstanding the preceding paragraphs of this subsection, 15 percent of the amount received under this section in a fiscal year shall not be used by a State unless the State satisfies the requirements of subparagraphs (B) and (C).

(B) DEMONSTRATION OF IMPLEMENTATION OF OUTREACH STRATEGIES.—A State shall demonstrate to the satisfaction of the Secretary that the State has a commitment to reach and enroll children who are eligible for but not enrolled under the State plan through effective implementation of each of the following outreach activities:

(i) STREAMLINED ELIGIBILITY PROCEDURES.—

(I) IN GENERAL.—The State uses streamlined procedures described in subclause (II) for determining the eligibility for medical assistance of, and enrollment in the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) of—

(aa) children in families with incomes that do not exceed the effective income level (expressed as a percent of the poverty line) that has been specified under such State plan (including under a waiver authorized by the Secretary or under section 1902(r)(2) of such Act (42 U.S.C. 1396a(r)(2))) for the child to be eligible for medical assistance under section 1902(l)(2) or 1905(n)(2) (as selected by a State) of such Act (42 U.S.C. 1396a(l)(2), 1396d(n)(2)) for the age of such child; and

(bb) children determined eligible for such assistance, and enrolled in the State plan under title XIX of the Social Security Act, in accordance with the requirements of paragraphs (1) and (2) of section 1931(b) of such Act (42 U.S.C. 1396u-1(b)).

(II) PROCEDURES DESCRIBED.—The streamlined procedures described in this subclause include—

(aa) using shortened and simplified applications for the children described in subclause (I);

(bb) eliminating the assets test for determining the eligibility of such children; and

(cc) allowing applications for such children to be submitted by mail or telephone.

(ii) CONTINUOUS ELIGIBILITY FOR CHILDREN.—The State provides (or demonstrates to the satisfaction of the Secretary that, not later than fiscal year 2001, the State shall provide) for 12-months of continuous eligibility for children in accordance with section 1902(e)(12) of the Social Security Act (42 U.S.C. 1396a(e)(12)).

(iii) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State provides (or demonstrates to the satisfaction of the Secretary that, not later than fiscal year 2001, the State shall provide) for making medical assistance available to children during a presumptive eligibility period in accordance with section 1920A of the Social Security Act (42 U.S.C. 1396r-1a).

(iv) OUTSTATIONING AND ALTERNATIVE APPLICATIONS.—The State complies with the requirements of section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) (relating to outstationing of eligibility workers for the receipt and initial processing of applications for medical assistance and the use of alternative application forms).

(v) SIMPLIFIED VERIFICATION OF ELIGIBILITY REQUIREMENTS.—The State demonstrates to the satisfaction of the Secretary that the State uses only the minimum level of verification requirements as are necessary for the State to ensure accurate eligibility determinations under the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(C) REPORT ON NUMBER OF ENROLLMENTS RESULTING FROM OUTREACH.—A State shall annually report to the Secretary on the number of full year equivalent children that are determined to be eligible for medical assistance under the State plan under title XIX of the Social Security Act and are enrolled under the plan as a result of—

(i) having been provided presumptive eligibility in accordance with section 1920A of such Act (42 U.S.C. 1396r-1a);

(ii) having submitted an application for such assistance through an outstationed eligibility worker; and

(iii) having submitted an application for such assistance by mail or telephone.

(D) PROCEDURE FOR REDISTRIBUTION OF UNUSED SET ASIDES.—The Secretary shall determine an appropriate procedure for the redistribution of funds set aside under this paragraph for a State for a fiscal year that are not used by the State during that fiscal year because the State did not satisfy the requirements of subparagraphs (B) and (C) to States that have satisfied such requirements for such fiscal year and have fully expended the amount of State funds so set aside.

(E) APPLICATION OF RESTRICTION ON SUBSTITUTION OF SPENDING.—The provisions of subsection (c) of this section apply to this paragraph in the same manner and to the same extent as such provisions apply to the program described in paragraph (2)(G) of this subsection.

FORD (AND OTHERS) AMENDMENTS NOS. 2691–2692

(Ordered to lie on the table.)

Mr. FORD (for himself, Mr. HOLLINGS, and Mr. ROBB) submitted two amendments intended to be proposed by them to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2691

Beginning after line 14 on page 444, strike through the end of the bill.

AMENDMENT NO. 2692

In lieu of the matter proposed to be stricken, insert the following:

SEC. 1418. EFFECTIVE DATE.

The amendments made by this subtitle take effect on the date of enactment of this Act.

FORD AMENDMENT NO. 2693

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1,

1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such

time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco

farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority. .

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103-465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445-1, or 1445-2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act) who is a principal producer of tobacco on a farm; or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A); or

"(C) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

Subtitle E—Applicability

SEC. 1051. Notwithstanding any other provision of law, Title XV shall have no force and effect.

Subtitle F—Effective Date

SEC. 1061. The provisions of this title shall be effective one day after the enactment of this Act.

FORD (AND OTHERS) AMENDMENT NO. 2694

(Ordered to lie on the table.)

Mr. FORD (for himself, Mr. HOLLINGS, and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 2501 proposed by Mr. LUGAR to the bill, S. 1415, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota

lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured

tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder

shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103-465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445-1, or 1445-2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount

of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act) who is a principal producer of tobacco on a farm; or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the

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FORD (AND OTHERS) AMENDMENT NO. 2695

(Ordered to lie on the table.)

Mr. FORD (for himself, Mr. HOLLINGS, and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 2498 proposed by Mr. LUGAR to the bill, S. 1415, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost

revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act) who is a principal producer of tobacco on a farm; or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

Subtitle E—Miscellaneous

SEC. 1051. ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this title, from amounts made available to carry out this title, the Secretary of Agriculture shall use $250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

SEC. 1052. APPLICABILITY OF TITLE XV.

Notwithstanding any other provision of this Act, title XV of this Act shall have no force or effect.

FORD AMENDMENTS NOS. 2696–2697

(Ordered to lie on the table.)

Mr. FORD (for himself, Mr. HOLLINGS, and Mr. ROBB) submitted two amendments intended to be proposed by them to amendment No. 2493 proposed by Mr. LUGAR to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2696

In lieu of the matter proposed to be inserted, insert the following:

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction

market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm

acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(l)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and

the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and

is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess

of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national

marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser

assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and''.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured tobacco''; and

(B) in subparagraph (C), by striking ''Flue-cured and Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term ''contributed importantly'' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Farmer Opportunity Grants

''SEC. 420D. STATEMENT OF PURPOSE.

''It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

''SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

''(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

''(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

''(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

''(b) AMOUNT OF GRANTS.—

''(1) AMOUNTS.—

''(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

''(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

''(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

''(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

''(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act) who is a principal producer of tobacco on a farm; or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part

of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

Subtitle E—Miscellaneous

SEC. 1051. ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this title, from amounts made available to carry out this title, the Secretary of Agriculture shall use $250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

SEC. 1052. APPLICABILITY OF TITLE XV.

Notwithstanding any other provision of this Act, title XV of this Act shall have no force or effect.

AMENDMENT NO. 2697

Strike title X and insert the following:

Strike "Strike title X." and insert the following:

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for

any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any

amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and

quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103-465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445-1, or 1445-2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or

other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;[126 "(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act) who is a principal producer of tobacco on a farm; or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

Subtitle E—Resolution of Conflict with Title XV

SEC. 1051. TITLE XV NULL AND VOID.

Notwithstanding any other provision of this Act, title XV shall have no force or effect.

MINIDOKA PROJECT ACT OF 1998

CRAIG AMENDMENT NO. 2698

(Ordered to lie on the table.)

Mr. CRAIG submitted an amendment intended to be proposed by him to the bill (S. 538) to authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes; as follows:

(1) Paragraph 1(b)(1) of the Committee amendment is amended by deleting "transmission lines," and by deleting "(including the electric transmission lines used to transmit electric power for the operation of the pumping facilities of the Division and related purposes for which the allocable construction costs have been fully repaid by Burley)".

(2) Paragraph 1(c)(1) of the Committee amendment is modified to read as follows:

"(1) TRANSFER.—(A) Subject to subparagraphs (B) and (C), the Secretary shall transfer to Burley, through an agreement among Burley, the Minidoka Irrigation district, and the Secretary, in accordance with and subject to the law of the State of Idaho, all natural flow, waste, seepage, return flow, and groundwater rights held in the name of the United States——

(1) for the benefit of the Minidoka Project or specifically for the Burley Irrigation District; and

(2) that are for use on lands within the Burley Irrigation District; and

(3) which are set forth in contracts between the United States and Burley or in the decree of June 20, 1913 of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, in the case of *Twin Falls Canal Company* v. *Charles N. Foster, et al.*, and commonly referred to as the "Foster decree".

"(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner so as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

"(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or results in any adverse impact on any other project water user."

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

KERREY AMENDMENTS NOS. 2699–2700

(Ordered to lie on the table.)

Mr. KERREY submitted two amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2699

At the end of subtitle D of title XV, add the following:

SEC. 1563. TOBACCO PRODUCERS MARKETING CORPORATION.

(a) ESTABLISHMENT.—There is established a corporation to be known as the "Tobacco Producers Marketing Corporation", which shall be a federally chartered instrumentality of the United States.

(b) DUTIES.—The Corporation negotiate with buyers of tobacco produced in the United States on behalf of producers of the tobacco that elect to be represented by the Corporation (referred to in this section as "participating producers").

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The powers of the Corporation shall be vested in a Board of Directors.

(2) MEMBERS.—The Board of Directors shall composed of members elected by participating producers.

(3) MEMBERSHIP QUALIFICATIONS.—A member of the Board shall not hold any Federal, State, or local elected office or be a Federal officer or employee.

(4) CHAIRPERSONS.—The chairperson of the Board shall be elected by members of the Board.

(5) EXECUTIVE DIRECTOR.—

(A) APPOINTMENT.—The Board shall appoint an Executive Director.

(B) DUTIES.—The Executive Director shall be the chief executive officer of the Corporation, with such power and authority as may be conferred by the Board.

(C) COMPENSATION.—The Executive Director shall receive basic pay at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(6) OFFICERS.—The Board shall establish the offices and appoint the officers of the Corporation, including a Secretary, and define the duties of the officers in a manner consistent with this section.

(7) MEETINGS.—

(A) IN GENERAL.—The Board shall meet at least 3 times each fiscal year at the call of a Chairperson or at the request of the Executive Director.

(B) LOCATION.—The location of a meeting shall be subject to approval of the Executive Director.

(C) QUORUM.—A quorum of the Board shall consist of a majority of the members.

(8) TERM; VACANCIES.—

(A) TERM.—The term of office of a member of the Board elected under paragraph (2) shall be 4 years.

(B) VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment was made.

(9) COMPENSATION.—

(A) IN GENERAL.—A member of the Board shall receive, for each day (including travel time) that the member is engaged in the performance of the functions of the Board, compensation at a rate not to exceed the daily equivalent of the annual rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(B) EXPENSES.—A member of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by the member in the performance of the duties of the member.

(10) CONFLICT OF INTEREST; FINANCIAL DISCLOSURE.—

(A) CONFLICT OF INTEREST.—Except as provided in subparagraph (C), a member of the Board shall not vote on any matter concerning any application, contract, or claim, or other particular matter pending before the Corporation, in which, to the knowledge of the member, the member, spouse, or child of the member, partner of the member, or organization in which the member is serving as officer, director, trustee, partner, or employee, or any person or organization with which the member is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(B) VIOLATIONS.—Violation of subparagraph (A) by a member of the Board shall be cause for removal of the member, but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which the member participated.

(C) EXCEPTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), the prohibitions contained in subparagraph (A) shall not apply if—

(I) a member of the Board advises the Board of the nature of the particular matter in which the member proposes to participate, and if the member makes a full disclosure of the financial interest, prior to any participation; and

(II) the Board determines, by majority vote, that the financial interest is too remote or too inconsequential to affect the integrity of the member's services to the Corporation in that matter.

(ii) VOTE.—The member involved shall not vote on the determination under clause (i)(II).

(D) FINANCIAL DISCLOSURE.—A Board member shall be subject to the financial disclosure requirements of subchapter B of chapter XVI of title 5, Code of Federal Regulations (or any corresponding or similar regulation or ruling), applicable to a special Government employee (as defined in section 202(a) of title 18, United States Code).

(11) BYLAWS.—The Board shall adopt, and may from time to time amend, any bylaw

that is necessary for the proper management and functioning of the Corporation.

(12) PERSONNEL.—The Corporation may select and appoint officers, attorneys, employees, and agents, who shall be vested with such powers and duties as the Corporation may determine.

(d) GENERAL POWERS.—In addition to any other powers granted to the Corporation under this section, the Corporation—

(1) shall have succession in its corporate name;

(2) may adopt, alter, and rescind any bylaw and adopt and alter a corporate seal, which shall be judicially noticed;

(3) may enter into any agreement or contract with a person or private or governmental agency;

(4) may lease, purchase, accept a gift or donation of, or otherwise acquire, use, own, hold, improve, or otherwise deal in or with, and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property or interest in property, as the Corporation considers necessary in the transaction of the business of the Corporation;

(5) may sue and be sued in the corporate name of the Corporation, except that—

(A) no attachment, injunction, garnishment, or similar process shall be issued against the Corporation or property of the Corporation; and

(B) exclusive original jurisdiction shall reside in the district courts of the United States, and the Corporation may intervene in any court in any suit, action, or proceeding in which the Corporation has an interest;

(6) may independently retain legal representation;

(7) may provide for and designate such committees, and the functions of the committees, as the Board considers necessary or desirable;

(8) may indemnify officers of the Corporation, as the Board considers necessary and desirable, except that the officers shall not be indemnified for an act outside the scope of employment;

(9) may, with the consent of any board, commission, independent establishment, or executive department of the Federal Government, including any field service, use information, services, facilities, officials, and employees in carrying out this section, and pay for the use, which payments shall be transferred to the applicable appropriation account that incurred the expense;

(10) may obtain the services and fix the compensation of any consultant and otherwise procure temporary and intermittent services under section 3109(b) of title 5, United States Code;

(11) may use the United States mails on the same terms and conditions as the Executive agencies of the Federal Government;

(12) shall have the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from bankrupt, insolvent, or deceased creditors;

(13) may collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation;

(14) shall determine the character of, and necessity for, obligations and expenditures of the Corporation and the manner in which the obligations and expenditures shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations;

(15) may make final and conclusive settlement and adjustment of any claim by or against the Corporation or a fiscal officer of the Corporation;

(16) may sell assets, loans, and equity interests acquired in connection with the financing of projects funded by the Corporation; and

(17) may exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation to carry out this title and the powers, purposes, functions, duties, and authorized activities of the Corporation.

AMENDMENT NO. 2700

Strike title XV and insert the following:

TITLE XV—TOBACCO TRANSITION

SEC. 1501. DEFINITIONS.

In this title:

(1) GOVERNOR.—The term "Governor" means the chief executive officer of a State.

(2) LEASE.—The term "lease" means—

(A) the rental of quota on either a cash rent or crop share basis;

(B) the rental of farmland to produce tobacco under a farm marketing quota; or

(C) the lease and transfer of quota for the marketing of tobacco produced on the farm of a lessor.

(3) OWNER.—The term "owner" means a person that, on the date of enactment of this Act, owns quota provided by the Secretary.

(4) PRODUCER.—The term "producer" means a person that for each of the 1995 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota—

(A) leased quota or farmland;

(B) shared in the risk of producing a crop of tobacco; and

(C) marketed the tobacco subject to quota.

(5) QUOTA.—The term "quota" means the right to market tobacco under a basic marketing quota or acreage allotment allotted to a person under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(6) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(7) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(8) TOBACCO.—The term "tobacco" means any kind of tobacco for which—

(A) a marketing quota is in effect;

(B) a marketing quota is not disapproved by producers; or

(C) price support is available.

Subtitle A—Payments for Lost Value of Tobacco Crops

SEC. 1511. PAYMENTS FOR LOST VALUE OF TOBACCO CROPS.

(a) IN GENERAL.—For each of fiscal years 1999 through 2005, the Secretary shall make payments for the lost value of tobacco crops to owners and producers from funds made available from the National Tobacco Trust Fund established by section 401.

(b) AMOUNT.—

(1) OWNERS.—The amount of the payment made to an owner for a fiscal year under this section shall equal 30 percent of the value of the tobacco produced under a tobacco farm marketing quota or farm acreage allotment established owned by the owner under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for the 1997 crop year.

(2) PRODUCERS.—The amount of the payment made to a producer for a fiscal year under this section shall equal 15 percent of the value of the tobacco produced by the producer under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for the 1997 crop year.

Subtitle B—Rural Economic Assistance Block Grants

SEC. 1521. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) IN GENERAL.—From funds made available from the National Tobacco Trust Fund established by section 401, the Secretary shall use $200,000,000 for each of fiscal years 1999 through 2003 to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) PAYMENTS BY SECRETARY TO TOBACCO-GROWING STATES.—

(1) IN GENERAL.—The Secretary shall use the amount available for a fiscal year under subsection (a) to make block grant payments to the Governors of tobacco-growing States.

(2) AMOUNT.—The amount of a block grant paid to a tobacco-growing State shall be based on, as determined by the Secretary—

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the counties on tobacco production.

(c) GRANTS BY STATES TO ASSIST TOBACCO-GROWING AREAS.—

(1) IN GENERAL.—A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (b) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) AMOUNT.—The amount of a grant paid to a county or other entity to assist an area shall be based on—

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) USE OF GRANTS.—A county or other entity that receives a grant under this subsection may use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons that are economically dependent on the production of tobacco, including use for—

(A) on-farm diversification, alternatives to the production of tobacco, and risk management;

(B) off-farm activities such as education, retraining, and development of non-tobacco related jobs; and

(C) assistance to tobacco warehouse owners or operators.

(d) TERMINATION OF AUTHORITY.—The authority provided by this section terminates September 30, 2003.

Subtitle C—Tobacco Price Support and Production Adjustment Programs

SEC. 1531. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking "tobacco (except as otherwise provided herein), corn," and inserting "corn";

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking ", except tobacco,"; and

(B) by striking "and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;"; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445-1, 1445-2) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking "tobacco,".

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98-59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the poration Charter Act (15 U.S.C. 714c) is amended by inserting "(other than tobacco)" after "agricultural commodities" each place it appears.

(f) TRANSITION PROVISIONS.—

(1) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date of this section.

(2) TOBACCO STOCKS AND LOANS.—The Secretary shall issue regulations that require—

(A) the orderly disposition of tobacco stocks; and

(B) the repayment of all tobacco price support loans by not later than 1 year after the effective date of this section.

(g) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

SEC. 1532. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking "tobacco,".

(b) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking "tobacco,";

(3) in paragraph (7), by striking the following:

"tobacco (flue-cured), July 1—June 30;

"tobacco (other than flue-cured), October 1–September 30;";

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking "and tobacco";

(6) in paragraph (12), by striking "tobacco,";

(7) in paragraph (14)—

(A) in subparagraph (A), by striking "(A)"; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking "rice, or tobacco," and inserting "or rice,".

(d) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking "tobacco,".

(f) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking "peanuts, or tobacco" and inserting "or peanuts"; and

(2) in the first sentence of subsection (b), by striking "peanuts or tobacco" and inserting "or peanuts".

(g) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking "peanuts, or tobacco" each place it appears in subsections (a) and (b) and inserting "or peanuts"; and

(2) in subsection (a)—

(A) in the first sentence, by striking "all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,"; and

(B) in the last sentence, by striking "$500;" and all that follows through the period at the end of the sentence and inserting "$500.".

(h) REGULATIONS.—Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking "peanuts, or tobacco" and inserting "or peanuts".

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking "cotton, tobacco, and peanuts" and inserting "cotton and peanuts"; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking "(a)"; and

(B) in paragraph (6), by striking ", but this clause (6) shall not be applicable in the case of burley tobacco"; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act entitled "An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poundage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes", approved April 16, 1965 (Public Law 89-12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act entitled "An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended", approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c-1(a)(2)(B)) is amended by striking "tobacco and".

(o) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended by striking subsection (c).

(p) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

Subtitle D—Miscellaneous

SEC. 1541. SAVINGS.

Any savings derived as a result of this title shall be used for tobacco use prevention and cessation initiatives.

FAIRCLOTH (AND OTHERS) AMENDMENT NO. 2701

Mr. FAIRCLOTH (for himself, Mr. SESSIONS, Mr. MCCONNELL, and Mr. GRAMM) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, as follows:

At the appropriate place, insert the following:

SEC. . ATTORNEYS' FEES AND EXPENSES.

(a) FEE ARRANGEMENTS.—Subsection (c) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) APPLICATION.—This section shall apply to all fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth

in paragraphs (1) through (9) of this subsection.

(c) ATTORNEYS' FEES.

(1) JURISDICTION.—The determination of attorneys' fees for compensation subject to this section shall be within the jurisdiction of—

(A) the court in which the action for which the claimant attorney is making a claim is pending; or

(B) an arbitration panel selected by the parties or otherwise selected by law.

(2) CRITERIA.—In the determination of attorneys' fees subject to this section, the court or arbitration panel shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment, a substantial settlement, or a successful negotiation towards a global settlement agreement for submission to the Congress;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous and reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(*i*) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(*ii*) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation including—

(*i*) whether those expenses were reimbursable; and

(*ii*) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or substantial settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) Whether the original fee arrangement includes a fixed or a percentage fee;

(J) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on a chronological progression of relevant developments from the 1994 Williams document disclosures to the settlement negotiations and the subsequent Federal legislative process; and

(K) Whether this Act or related changes to State laws increase the likelihood of success in representations subject to this section.

(3) LIMITATION.—Notwithstanding any other provision of law, any attorney's fees or expenses paid to attorneys for matters subject to this section shall not exceed a per hour rate of $1,000 in addition to 200 percent of actual out-of-pocket expenses for which detailed documentation has been provided and which have been approved by the court or arbitration panel in such action.

(4) RECORDS REQUIREMENT.—All records submitted to a court or arbitration panel pursuant to this section shall be available for public inspection and reproduction for a period of one year from the date of adjudication of the attorneys' fees.

(d) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such section to any person or circumstance shall not be affected thereby.

REED (AND OTHERS) AMENDMENT NO. 2702

Mr. REED (for himself, Mrs. BOXER, Mr. WYDEN, Mr. KENNEDY, Mr. DASCHLE, Mr. DURBIN, Mr. WELLSTONE, Mrs. FEINSTEIN, and Mr. CONRAD) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

At the appropriate place, insert the following:

SEC. ___. DISALLOWANCE OF TAX DEDUCTIONS FOR ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following:

"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

"(a) IN GENERAL.—No deduction shall be allowed under this chapter for any taxable year for expenses relating to advertising, promoting, or marketing cigars, cigarettes, smokeless tobacco, pipe tobacco, roll-your-own tobacco, or any similar tobacco product unless the taxpayer maintains compliance during such year with the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996.

"(b) GENERAL DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702.".

(b) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following:

"Sec. 280I. Disallowance of deduction for tobacco advertising, promotional, and marketing expenses unless certain advertising requirements are met."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

VISION 2020 NATIONAL PARKS RESTORATION ACT

MURKOWSKI (AND BUMPERS) AMENDMENT NO. 2703

Mr. THOMAS (for Mr. MURKOWSKI, for himself and Mr. BUMPERS) proposed an amendment to the bill (S. 1693) to renew, reform, reinvigorate, and protect the National Park System; as follows:

On page 129, line 22 strike "without appropriation" and insert the following: "subject to appropriation".

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that an oversight hearing has been scheduled before the full Energy and Natural Resources Committee to consider the issue of independence of Puerto Rico.

The hearing will take place on Tuesday, June 23, 1998, at 9:30 A.M. in room SH–216 of the Hart Senate Office Building.

For further information, please contact James Beirne, counsel at (202) 224–2564 or Betty Nevitt, Staff Assistant at (202) 224–0765.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources.

The hearing will take place Thursday, June 25, 1998 at 2:00 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive testimony on S. 2146, a bill to provide for the exchange of certain lands within the State of Utah.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Amie Brown or Mike Menge (202) 224–6170.

SUBCOMMITTEE ON WATER AND POWER

Mr. KYL. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Water and Power of the full Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, July 14, 1998, at 2:30 P.M. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive testimony on S. 1515, "Dakota Water Resources Act of 1997"; S. 2111, to establish the conditions under which the Bonneville Power Administration and certain Federal agencies may enter into a memorandum of agreement concerning management of the Columbia/Snake River Basin, to direct the Secretary of the Interior to appoint an advisory committee to make recommendations regarding activities under the memorandum of understanding, and for other purposes; and S.

2117, "Perkins County Rural Water System Act of 1997".

Those wishing to testify or who wish to submit written statements should write to the Subcommittee on Water and Power, U.S. Senate, Washington, D.C. 20510. For further information, please call James Beirne, Counsel at (202) 224-2564, or Betty Nevitt, Staff Assistant at (202) 224-0765.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 11, for purposes of conducting a full committee hearing which is scheduled to begin at 2:00 p.m. The purpose of this oversight hearing is to receive testimony on the Recreational Fee Demonstration Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BOND. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Thursday, June 11, 1998 beginning at 10:00 a.m. in room 215 Dirksen.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BOND. 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 11, 1998 at 10:30 and 2:00 p.m. to hold hearings.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMPLOYMENT AND TRAINING

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources, Subcommittee on Employment and Training, be authorized to meet for a hearing on "Child Labor" during the session of the Senate on Thursday, June 11, 1998, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENERGY RESEARCH, DEVELOPMENT, PRODUCTION, AND REGULATION

Mr. BOND. Mr. President, I ask unanimous consent that the subcommittee on Energy Research, Development, Production, and Regulation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 11, for purposes of conducting a subcommittee hearing which is scheduled to begin at 10:00 a.m. The purposes of this oversight hearing is to receive testimony on the federal oil valuation regulations of the Minerals Management Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON IMMIGRATION

Mr. BOND. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Thursday, June 11, 1998 at 2:00 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: "Immigration and Naturalization Service reform: The Service side."

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

E-RATE

• Ms. MOSELEY-BRAUN. Mr. President, two years ago the Congress joined together in a bipartisan manner to help schools and libraries across the nation give students and children access to modern technology. The Telecommunications Reform Act of 1996 created a new partnership between the federal government, state governments, school systems, and the private sector to help bring all our classrooms into the 21st century. The bill expanded the universal service program—which has historically given people living in rural areas the chance to purchase affordable phone service—and created a new "e-rate" for schools and libraries. Creating that partnership was the most important act the 104th Congress took for elementary and secondary schools, and we have yet to match that achievement in this Congress. It was one of the most important steps we have taken toward ensuring that all our children will have the opportunity to learn the kinds of skills they will need to compete in the 21st century economy.

Our children need that kind of bipartisan support. When I was growing up, it was possible to graduate from high school and get a job as a police officer, a firefighter, or a clerk, and earn enough to raise and support a family. Mechanics used to train for their work on the job. The nursing profession used to consist of women who apprenticed in hospitals.

Times have changed. Now, if you want to be an airline mechanic, you need four years of college. Nursing is a degree program, and there are sub-specialties of nurses who are highly and scientifically educated. An ad for a "maintenance technician" states the job requires an understanding of "basic principles of electricity, mechanical systems, and fluid power."

Many of our schools, however, are not giving our children the kind of education they will need to compete in this kind of economy. An estimated 60 percent of all new jobs created in the year 2000 will require skills held by only 22 percent of new workers. According to the Wall Street Journal, "Thousands of people are being turned down for factory work by companies that are actively recruiting," because they lack the requisite math, communications, and computer skills.

Given these facts, one would think that on the eve of the implementation of the e-rate we created two years ago, policy makers would be rallying around the new discounts for schools and libraries and celebrating the program's inauguration. Instead, duplicity and political opportunism have combined to cast doubt on the future of the e-rate.

The duplicity began when certain telephone companies decided to add a new line item to customers' phone bills—a "national access charge," or a "universal connectivity fee." When customers call their phone companies asking about this new charge, it is my understanding they are often told it was the FCC who mandated that this new charge appear on their phone bills, or that it was the Congress who levied this new tax on them.

Mr. President, that is disingenuous at best. The FCC did order long distance phone companies to pay into the universal service fund, in part to pay for the new discounts for schools and libraries. The FCC also, however, ordered a reduction in the access charges long distance companies must pay for using local phone networks—fees that can account for 40 or 50 percent of the cost of every long distance call. The reductions in access charges were greater than the new universal service charges. One would think, therefore, that long distance bills would drop as a result. Have they? Have the phone companies passed the savings from the access charge reductions on to their customers?

No. The companies have not passed on all the savings from the access charge reductions, and have instead raised customers' bills in order to generate revenue for the universal service fund. They then blame the FCC or Congress, and customers are understandably confused, concerned, and upset.

The chorus of customer complaints now appears to be rattling the bipartisan coalition that came together two years ago to create the e-rate. Republican leaders have derided the new charge on phone bills as an "illegal FCC tax," or a "Gore tax," trying to pin the phone bill increases on the Vice President.

I am disappointed. We have gone from partnership to partisanship. We have gone from cooperation to confrontation. We have gone from thinking about our children and our future to trying to score political points.

We can do better than that. Thirty thousand applications have poured in to the FCC this year from schools and libraries seeking to tap into the new e-rate. Those applications represent millions of American children counting on

our help to gain the skills they need to remain competitive in the next century. What are we going to tell them if the e-rate crumbles under the weight of partisan politics? How are we going to explain to them why they do not know how to use a computer?

I hope we will not have to do that. I hope we can all come together, with the same bipartisanship and cooperation we shared two years ago, to fix this program, resolve legitimate concerns, and ensure that the e-rate becomes available to schools and libraries across the country.

Members of both parties have criticized the FCC for the way it has implemented the program, and I do not doubt that mistakes have been made. I only hope we can put aside the partisan sniping and figure out a constructive solution to the problem we face. We ought to be proud of what we accomplished two years ago when we created the e-rate. Let us not now trade that accomplishment for short-term political gain.

Mr. President, I ask that an editorial from yesterday's Washington Post on this subject be printed in the RECORD.

The editorial follows:

[Washington Post, Wed., June 10, 1998]

SHOULD WE WIRE SCHOOLS?

Sometime this week the Federal Communications Commission will vote on whether to suspend a small program, passed as part of the 1996 Telecommunications Act, that collects money from long-distance phone companies and uses it to offer discounts on the cost of hooking up schools and libraries to the Internet. The program, known as the "e-rate," has been contentious from the start, but lately, as it prepares to begin actually considering applications for the $650 million collected so far, it has become the focus of intense pressure.

Four senators with a say over the FCC's own budget sent a letter demanding that it refund the program entirely. Some have hinted that the commission risks having its own budget zeroed out unless it kills the schools and libraries program. Others threaten investigation of what they call a "stealth tax" imposed with questionable legality by an unelected agency or, alternatively, a "Gore tax" designed to advance the vice president's presidential prospects.

Why the sudden fuss over a $2 billion program that passed all the usual legislative hurdles in orthodox fashion two years ago? The flurry began when several long-distance telephone providers said they would begin adding a "universal connectivity fee" to individual monthly telephone bills to cover the schools and libraries program and other subsidies, such as the generations-old (and widely supported) subsidy for keeping phone service affordable in hard-to-serve rural areas. The appearance of what looks like a new tax on phone bills—even if it only spells out subsidies previously included in the overall bill—unnerves many legislators who support the subsidies in theory. Not everyone realizes that the schools and libraries fund constitutes only a third of the new fee. (The FCC and the companies are still sparring over whether the extra charges were even justified; the commission says the fees were specifically calibrated to balance year-by-year savings to the companies from another aspect of the 1996 bill, a drop in the access fees long-distance carriers must pay to local ones.)

Much of the debate over the complex telecommunications bill concerned the balance to be struck between deregulating the communications industry—thus opening up the chance for phone companies to make lots more money—and imposing some obligations on them in return. One such obligation was to safeguard equal access, including to new technologies. After endless maneuvering and a veto threat by President Clinton if the bill emerged without them, provisions mandating "access to advanced telecommunications services for schools, health care and libraries," explicitly including "classrooms," were made part of the subsidies for "universal service." Telephone companies understandably balk at any creeping enlargement of the universal service concept, which requires them to offer phone service at average rates even in high-cost, hard-to-wire rural areas—and, inevitably to absorb the cost by charging slightly higher phone rates across the board.

One thrust of deregulation was to make those subsidies more explicit—an advantage for companies, which could compete more openly on basic rates, and also for consumers, who could see where their money was going. But spelling out a long-hidden subsidy also exposes it to political debate. Such debate need not doom the e-rate, which pulls considerable support in opinion polls, any more than it is likely to doom the popular rural subsidies. Nor should it. Squelching it would be the real "stealth" move.●

SISTER MONICA KOSTIELNEY CELEBRATES 25 YEARS WITH MICHIGAN CATHOLIC CONFERENCE

● Mr. ABRAHAM. Mr. President, I rise today to recognize and honor a very important woman in the Michigan religious community. Sister Monica Kostielney, R.S.M. is celebrating 25 years with the Michigan Catholic Conference this year. Presently, she serves as President and Chief Executive Officer of the Conference, however, her list of accomplishments extends far beyond her work in this capacity.

Prior to joining the Catholic Conference, Sister Monica taught elementary and secondary school for thirteen years. She began her career with the Catholic Conference of Michigan as a staff member in 1972. She served as Executive Vice-President for public affairs from 1983 until 1994, and has served as President and CEO since then. For 25 years, in addition to her service to the Michigan Catholic Conference, Sister Monica has advised many on important issues affecting all facets of society. She has given selflessly of her time to many other organizations and charities including, the Midwest Hispanic Catholic Commission, the Michigan Department of Education Legislative Advisory Council, the Governor's Blue Ribbon Welfare Reform Committee and the Board of Directors of St. Lawrence Hospital and Healthcare Services Divisional Board. From 1980 to 1984, Sister Monica co-hosted "Reel to Reel," a weekly Sunday television show produced by the Diocese of Lansing. These are just a few examples of Sister Monica's unwavering devotion to her community and the entire State of Michigan.

I want to join with Sister Monica's friends and family in congratulating her on this very special occasion. She is a remarkable woman whom the state of Michigan is fortunate to benefit from. ●

TRIBUTE TO FRANKIE WELCH

● Mr. HOLLINGS. Mr. President, I wish to bring to the Senate's attention a milestone that has particular relevance to this body. Mrs. Frankie Welch, who is nationally recognized for her artistic and original scarf and tie designs, is celebrating 30 years of fashion design this month. Frankie was born in Georgia, but I am pleased to say she has strong ties to South Carolina, where she graduated with a degree from Furman University in Greenville. It was at Furman that she met her late husband, William Welch. One of their daughters chose to continue the family tradition and also received a Furman diploma.

Frankie Welch has designed many memorable scarves and ties. In the 1980s, she designed a patriotic scarf for the United States Senate. She has designed ties for Presidents Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, George Bush, and Bill Clinton. Mrs. Welch also designed a gown for First Lady Betty Ford, which Mrs. Ford donated to the Smithsonian Institution's First Ladies Collection in 1976. Frankie and Mrs. Ford remained good friends; last month, on the occasion of Betty Ford's 80th birthday, Frankie was one of the speakers at the Ford Museum in Grand Rapids.

Frankie Welch is no ordinary fashion designer. She often employs her talents to produce patriotic garments, and her designs demonstrate an exemplary love of our country. She has produced original and widely admired fabric designs for such revered institutions as the St. Paul's Cathedral in London, the Corcoran Gallery of Art, the White House, and the U.S. Capital. Frankie is also a philanthropist: she recently began the Frankie Welch Scholarship for outstanding students of fashion design.

Mr. President, I think it appropriate to honor a woman who has so often turned her talents to patriotic themes and who has attained national and international accolades. It is with great pride that I thank Frankie Welch for honoring our country and congratulate her on thirty years of success.●

THANKING GENERAL EUGENE E. HABIGER FOR CAREER SERVICE IN THE UNITED STATES AIR FORCE

• Mr. KEMPTHORNE. Mr. President, I rise to say thank you to a patriot and one of this nation's finest military leaders, General Eugene E. Habiger, who is retiring at the end of June, 1998. Since 1996, General Habiger has served as the Commander in Chief of United States Strategic Command, Offutt Air Force Base, Nebraska.

General Habiger's career in the military began in 1959 when he enlisted as an infantryman in the U.S. Army. After his tour in Fort Benning, Georgia, he attended the University of Georgia earning a Bachelor of Science degree in 1963. After college, Gene joined the Air Force and upon completion of Officer Training School in September 1963, he was selected as a distinguished graduate.

Soon after leaving Officer Training School, as a young Captain and B–52 Aircraft Commander, Gene flew 150 combat missions and participated in the B–52 Arc Light operations during the Vietnam War. In the early 1980s, he commanded the 325th Bombardment Squadron and later served as assistant deputy commander for operations, 92nd Bombardment Wing, Fairchild Air Force Base, Washington.

In the late 1980s, Gene commanded the 379th Bombardment Wing at Wurtsmith Air Force Base, Michigan, and the 2nd Bombardment Wing at Barksdale Air Force Base, Louisiana. In the 1990s, Gene's command experience served him well as vice commander, Headquarters Air Education and Training Command at Randolph Air Force Base, Texas; and as Deputy Chief of Staff for Personnel, Headquarters U.S. Air Force, Washington, D.C.

The apex of General Habiger's career came with his current assignment as Commander in Chief, United States Strategic Command, Offutt Air Force Base, Nebraska. The command has responsibility for all U.S. Air Force and U.S. Navy strategic nuclear forces. These powerful forces act as this Nation's strategic deterrent.

During his command at USSTRATCOM, General Habiger made major contributions to the national security of the United States by establishing the parameters for future strategic forces and possible arms control agreements. His leading role in managing a stable drawdown of nuclear forces helped foster mutual understanding and cooperation with Russia. In addition, his cooperative efforts with the Department of Energy shaped the process by which the United States will maintain the long term safety and reliability of its nuclear weapons stockpile. As the Department of Energy's customer, General Habiger insured the Stockpile Stewardship Program is programmed and funded to develop the new tools, technologies, and concepts to ensure our strategic forces remain safe, effective, ready, and responsive to changing needs.

In addition, Gene was a premier player in shaping our strategic force structure. His team completed a very detailed analysis of United States' Strategic Force Structure options reaching far beyond START II. This unprecedented target-by-target scrub of the Single Integrated Operational Plan (SIOP) helped shape the conceptual and practical character of post-Cold War US nuclear weapons policy that will be instrumental in decisions for years to come.

Convinced that the Nation's security is best served by a stable strategic relationship with Russia, General Habiger was a forceful spokesman for the START II Treaty and Defense Department Cooperative Threat Reduction activities. Twice, he accompanied the Secretary of Defense to Moscow to meet with the Russian Defense Minister and Commander-in-Chief of the Strategic Rocket Forces stressing the political, economic, and military importance of ratifying START II for both the United States and Russia. Gene's work on a post-START II nuclear arms control agenda was reflected in national policy, and helped form the basis for portions of the START III framework announced at the Presidential Summit in Helsinki, in March 1997.

Undoubtedly, General Habiger has been the unparalleled leader in expanding military-to-military contacts with Russian counterparts, particularly the Strategic Rocket Forces. These actions established a more stable relationship with Russian leadership. As evidence of the high regard and confidence in which General Habiger is viewed in Russia, he was the first non-Russian to enter a Russian nuclear weapons storage area. His ceaseless efforts in establishing good relations with Russia have significantly improved communication and understanding. For the first time in history, as Commander in Chief of the US nuclear arsenal, he can pick up the phone and talk directly to senior Russian military leadership.

General Habiger and his wife, Barbara, have two sons, Karl and Kurt. I am sure Gene and Barbara have ambitious plans for their life after military service and I hope they make the most of this time. From a private in the U.S. Army to a four star general in the U.S. Air Force, General Habiger has served our military and the Nation with great honor and distinction. I have the pleasure of calling Gene Habiger a friend and I want to thank him for his contribution to our nation's security.•

DOVER HIGH SCHOOL TEACHER AND NATIONAL FEDERATION OF PRESS WOMEN AWARD WINNER—PATTY RICHARDSON HINCHEY

• Mr. BIDEN. Mr. President, as we focus on improving our education system on the national, state and local levels, it is my pleasure to offer congratulations to an award-winning teacher from Dover, Delaware, who exemplifies excellence in education for her students, her community, my home state of Delaware, and indeed, this nation.

For the second consecutive year, Patty Richardson Hinchey received the second place award in the category of Achievement/Research—Faculty Adviser of Student Publications for Secondary Schools. This award is given by the prestigious National Federation of Press Women. The award recognizes the outstanding high school journalism advisers/teachers.

Patty also won first place in the State of Delaware competition for the past two years in the same category from the Delaware Press Women, which made her eligible for the national award.

What my colleagues might find most interesting and ironic—the name of the student newspaper at Dover High School for which Patty is the faculty adviser is "The Senator." The 24-page award-winning issue captivated the pulse of student activities, highlighted the history of soon-to-be graduates, spotlighted student leadership during their four years at Dover High School, congratulated Athletes of the Year, and featured articles about teachers who make a difference.

Patty's work on the student newspaper goes well beyond the final afternoon school bell. She and her students calculated spending more than 6,000 hours in the last four years putting editions of "The Senator" to bed. Even more remarkable, due to a school-related accident leaving Patty unable to walk, she worked from her home with the students to get the final issue to press on time.

I have spoken often about the need in this day and age to give young people an "excuse" to stay on the road to achievement, stay in school, stay away from alcohol, drugs and gangs, and stay off the streets. Student newspapers, like Dover High School's, and teachers like Patty Hinchey, are providing these students with that valuable "excuse." This is positive peer pressure, and our country needs more of it. The students know they have to keep their grades up, get their work done on strict deadlines, and keep out of trouble or else they will not experience the thrill and pride of seeing their byline on an article they researched and wrote.

So, I want to thank Patty for providing these award-winning students the opportunity to be their very best

and strive for excellence in their work. The lessons and values they have learned working on the school newspaper will serve them well throughout their lives—the lessons of deadlines, responsibility, accountability, how to communicate verbally and in writing, and most importantly how to get along with and respect other people.

I could go on about how impressed I am with Patty, but listen to what her students say about her. The Editor-in Chief of "The Senator" said: "Mrs. Hinchey is an inspirational, talented, creative, hard-working, and most importantly, loving teacher. I am currently a senior and have been in her class since my freshman year. Over this time, I have been able to observe how many students she has become close to and how many people both trust and respect her."

Another student, Kate Basone, Advertising Editor, said: "Mrs. Hinchey inspired the students to produce work that reflected their best effort. She would not accept articles that she felt were not up to the standards of "The Senator" which she established. Therefore, because of her constant pushing and sometime pulling, many students found themselves producing some of their best work."

Patty is not only a talented teacher, she is a terrific mother to her daughter Andrea, who is a student at the University of Delaware, and a career military wife to the now retired Lieutenant Colonel John Hinchey.

It is with great pleasure that I congratulate Patty Richardson Hinchey for her outstanding accomplishments as an awarding-winning teacher and faculty adviser for the Dover High School newspaper "The Senator."•

COMMEMORATION OF HARLEY-DAVIDSON'S 95TH ANNIVERSARY

• Mr. ASHCROFT. Mr. President, I am proud to have this opportunity to recognize a company that truly reflects the spirit, goals and achievements of a true "American success story" as hailed by President Ronald Reagan in 1987. Today, Harley-Davidson Motor Company is an even more outstanding example of American ingenuity and performance. They have seen record earnings 31 of the last 32 quarters—a prime example of their strength as a business. They have seen 32 consecutive quarters of record sales—clearly demonstrating the loyalty of their consumer base.

Harley-Davidson produces its entire line of the very popular Sportster motorcycle in Kansas City, Missouri. They opened the doors of this facility months ahead of schedule, and are already employing hundreds of Missourians. This is evidence of the positive path of growth and expansion of Harley-Davidson. The U.S. market share for Harley continues to grow; today it is 56 percent. Harley also has a great future in the international marketplace and the company is seeing increasing demand for its products in Europe, Japan, Australia, and other countries.

Harley has long been a leader in design and safety standards. As early as 1921, Harley-Davidson bikes incorporated advancements that are still in use today. Twenty years later, during World War II, Harley devoted its entire output of motorcycles to the war effort earned the coveted Army-Navy "E" award for excellence in wartime production.

In many ways, Harley-Davidson has freed generations of American riders to enjoy this country by motorcycle. As Harley-Davidson approaches its hallmark 95th anniversary as a producer of quality American goods, I want to be among the first of the long list of well wishers to say, "Happy Anniversary, Harley! You're still 'king of the road!'"

NAMING OF YEOMAN FIRST CLASS STEPHEN R. DYKEMA AS THE 1997 ENLISTED PERSON OF THE YEAR FOR THE U.S. COAST GUARD

• Mr. HOLLINGS. Mr. President, I rise today to recognize a fellow South Carolinian for outstanding service and dedication to this Nation. I take great pleasure in congratulating Yeoman First Class Stephen R. Dykema for his selection as the 1997 Enlisted Person of the Year for the U.S. Coast Guard.

Each day more than 25,000 enlisted men and women put their lives and safety on the line to carry out the Coast Guard's diverse missions. The Coast Guard plays a critical role as an armed service in defending our Nation and maintaining national security. In addition, the Coast Guard annually conducts thousands of fisheries enforcement boardings; prevents tons of cocaine and marijuana from reaching the streets; gives safety instruction to more than one-half million recreational boaters; and saves about 5,000 lives. The American public has learned to depend on the Coast Guard's service, both close to home and in trouble spots around the world.

That service is built on a tradition of dedication by Coast Guard enlisted personnel. Yeoman First Class Stephen R. Dykema is an individual who epitomizes that tradition. Petty Officer Dykema was selected as the 1997 Enlisted Person of the Year because of his exemplary military bearing, leadership ability and work performance. He currently is assigned to the Training Center in Cape May, New Jersey. However, he has spent much of his time assigned to the cutter *Madrona*, a buoy tender stationed in my hometown of Charleston.

Throughout his nine-year Coast Guard career, Petty Officer Dykema has received numerous medals and commendations. But I'd like to highlight just one incident that really shows why he has earned the honor of being named as Enlisted Person of 1997. During one of the *Madrona*'s longer deployments that year, a box of mail was lost. Among the box's content were bills, family letters, care packages, and Father's Day cards—all those routine types of correspondence upon which a sailor's morale depends. Petty Officer Dykema swung into action, launching a personal search for the missing box of mail. His documentation of the box's history was so thorough that the day after it was released, the unit that had received the mail called to make arrangements for getting the box to Charleston.

Petty Officer Dykema also is one of those rare individuals who finds time to contribute to his shipmates and community. I'm told that he has used his personal time to help fellow crewmembers repay overpayments and helped people with their travel claims and housing problems. He also has been involved in helping those less fortunate with clothing and food and plays the keyboard and sings every Sunday at his church.

In short, Yeoman First Class Stephen Dykema has earned the recognition he has received as Enlisted Person of 1997. This young man is a credit to the Coast Guard, to South Carolina, and to this Nation.•

SUPPORT OF S.J. RES. 50

• Mr. FRIST. Mr. President, I rise today in support of S.J. Res. 50, which I joined the Senator from Missouri, Mr. BOND, in introducing. This resolution expresses the Senate's disapproval of the rule submitted by the Health Care Financing Administration (HCFA) on June 1, 1998, which requires the acquisition of surety bonds for home health agencies under the Medicare and Medicaid programs. HCFA's rule endangers the existence of small and non-hospital based home health agencies because of the excessive expenses and requirements that are created by this rule. I am concerned that patients will lose access to agencies where they can attain home health services and that many employees will lose jobs because of the financial stress that is created by this rule.

Even the two Congressional leaders, PETE STARK and KAREN THURMAN, who introduced the surety bond regulations, realize that the requirements have gone beyond the original intent of Congress. The initial requirement system was based on the successful Medicaid program in Florida, yet the new requirements proposed by HCFA do not only penalize potentially harmful providers but also many of the health care agencies that deliver essential high-quality care. HCFA's proposal differs

from the successful Florida model in many ways. In Florida, bond requirements were required to be capped at $50,000, yet agencies under the HCFA proposal must purchase 15 percent of its Medicare reimbursement the previous year or $50,000 worth of bonds, whichever is greater.

A report done by the United States Small Business Administration in its April 15, 1998 letter asking HCFA to remove the 15 percent provision in the surety bond regulation recognizes that HCFA failed to comply with the Regulatory Flexibility Act, which requires agencies to account for the impact of a proposal on all small entities and to consider alternatives to reduce the burden on those agencies. This report states that HCFA did not conduct regulatory flexibility analysis of the proposal's impact on small entities. HCFA was not monitoring the impact of this regulation on all small home health providers but only those with "aberrant billing practices." Therefore, many of the high-quality small home health care agencies are being pushed out of the health care sector because of the outrageous bond requirements.

HCFA also requires all home health care agencies to buy surety bonds regardless of their credit history, whereas in Florida those agencies with at least one year in the Medicare program and no payment history problems were exempted. HCFA also requires these companies to secure bonds every year regardless of performance. These excessive requirements and costs will push many smaller, freestanding home health agencies out of business. If these companies are forced to shut down, the elderly and disabled will lose these essential services. For, this rule should prevent fraud, yet it should not penalize the law-abiding companies for the abuses of less than 1% of the agencies.

Since this rule submitted by HCFA seems to impose conditions that go beyond those bonding companies bear in the course of their normal business, many surety companies are not offering bonds to Medicare home health agencies. Even those offering bonds are creating a prohibitive cost or demanding collateral equal to the face value of the bond or personal guarantees that exceed the face value of the bond. Because of the effects of this rule, small and non-hospital based agencies now risk loss of their Medicare provider number, and their employees and Medicare patients can also be adversely effected.

The capitalization requirement in HCFA's proposal creates a barrier to market entry because entry is based on factors such as overhead costs, location, profit margins, and competition in the area.

With all of these expenses and requirements, one would assume that only health care agencies that have abused the system would be required to abide by this rule. Yet, this system penalizes small home health care agencies that have been serving the elderly and disabled with high-quality for years. This rule should prevent fraud, not limit the access to care for those serviced by the Medicare and Medicaid programs. Because this rule will hurt many small home health care agencies with these exorbitant expenses and requirements, and therefore cause many elderly and disabled people to lose access to health care, I strongly suggest that this rule submitted by HCFA be reworked with consideration given to these responsible, small health care providers that provide essential services for thousands of U.S. citizens.●

USS "BRUCE HEEZEN"

● Mr. CHAFEE. Mr. President, I would like to share with my colleagues the tremendous news of the success of a group of nine fifth grade students from Rhode Island. These students won the U.S. Navy's national competition to be the first group of civilians ever granted the privilege of naming a United States Navy ship. These diligent young people from Oak Lawn Elementary School in Cranston overcame extraordinary competition being selected as finalists from more than 2,000 entries from across the United States.

Last Friday, Secretary of the Navy John Dalton announced the Oak Lawn students' proposal to name the Navy's next oceanographic ship the U.S.S. *Bruce Heezen* was the winner of this competition. Heezen was a pioneer in mapping the ocean floor who died aboard a Navy submarine taking him to look for the first time at the ocean terrain.

I would like to extend my warmest congratulations to these bright students and their teacher for their great achievement. I share with their families and community in recognizing the fabulous work they did in terms of conducting extensive group research and a wide range of individual projects. I also commend them for enthusiastically sharing their discoveries and knowledge with other schools in the area to educate their fellow students.●

EXPANSION OF THE SEABORG CENTER AT NORTHERN MICHIGAN UNIVERSITY

● Mr. ABRAHAM. Mr. President, I rise today to recognize the expansion of the Glenn. T. Seaborg Center for Teaching, Learning Science and Mathematics at Northern Michigan University. On Thursday, June 11, 1998, a groundbreaking will take place for the new complex.

The Seaborg Center is named for Nobel Laureate Dr. Glenn T. Seaborg of the Upper Peninsula of Michigan. Dr. Seaborg is perhaps the most important scientist of his time. A native of Ishpeming, he was co-discoverer of Plutonium, ten elements and more than 100 isotopes. Dr. Seaborg's list of achievements extends far beyond these discoveries, therefore, it is quite appropriate for this educational facility to be named after him. The Center will provide educational institutions at all levels with materials, consultative services and training in math and science education. It serves the entire Upper Peninsula of Michigan, over 56 school districts from the Northern Michigan University campus and from three satellite centers.

I personally visited the original facility and recognized the importance of obtaining funding to upgrade the facility. It is for this reason that I submitted a request for funding. I am very pleased to see that this project is getting underway. It could not be happening at a more exciting time, in light of Northern Michigan University's upcoming centennial celebration. I extend my best wishes and congratulations to everyone involved with making the Seaborg Center project possible. I know it will be a great success.●

VISION 2020 NATIONAL PARKS RESTORATION ACT

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 397, S. 1693.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 1693) to renew, reform, reinvigorate, and protect the national parks.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 1693

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 "Vision 2020 National Parks System Restoration Act".

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(1) "Secretary" means the Secretary of the Interior, and

(2) "park" or "national park" means a unit of the National Park System.

TITLE I—NATIONAL PARK SERVICE CAREER DEVELOPMENT, TRAINING AND MANAGEMENT

SEC. 101. PROTECTION, INTERPRETATION AND RESEARCH IN THE NATIONAL PARK SYSTEM.

Recognizing the ever increasing societal pressures being placed upon America's unique natural and cultural resources contained in the National Park System, the Secretary shall continually improve the ability of the National Park

Service to provide state-of-the art management, protection, and interpretation of and research on the resources of the National Park System.

SEC. 102. NATIONAL PARK SERVICE EMPLOYEE TRAINING.

The Secretary shall develop a comprehensive training program for employees in all professional careers in the work force of the National Park Service for the purpose of assuring that the work force has available the best, up-to-date knowledge, skills and abilities with which to manage, interpret and protect the resources of the National Park System.

SEC. 103. MANAGEMENT DEVELOPMENT AND TRAINING.

The Secretary shall develop a clear plan for management training and development, whereby career, professional National Park Service employees from any appropriate academic field may obtain sufficient training, experience, and advancement opportunity to enable those qualified to move into park management positions, including explicitly the position of park superintendent.

SEC. 104. PARK BUDGETS AND ACCOUNTABILITY.

(a) STRATEGIC PLANS.—Each unit of the National Park System shall prepare and make available to the public a 5-year strategic plan and an annual performance plan. Such plans shall reflect the National Park Service policies, goals and outcomes represented in the Servicewide Strategic Plan, prepared pursuant to the provisions of the Government Performance and Results Act (Public Law 103-62).

(b) PARK BUDGET.—As a part of each park's annual performance plan prepared pursuant to subsection (a) of this section, following receipt of each park's appropriation from the Operations of the National Park System account (but no later than January 1 of each year), each park superintendent shall develop and make available to the public the budget for the current fiscal year for that park. The budget shall include, at a minimum, funding allocations for resource preservation (including resource management), visitor services (including maintenance, interpretation, law enforcement, and search and rescue) and administration. The budget shall also include allocations into each of the above categories of all funds retained from fees collected for that year, including but not limited to special use permits, concession franchise fees, and recreation use and entrance fees.

TITLE II—NATIONAL PARK SYSTEM RESOURCE INVENTORY AND MANAGEMENT

SEC. 201. PURPOSES.

The purposes of this title are—

(1) to more effectively achieve the mission of the National Park Service;

(2) to enhance management and protection of national park resources by providing clear authority and direction for the conduct of scientific study in the National Park System and to use the information gathered for management purposes;

(3) to ensure appropriate documentation of resource conditions in the National Park System;

(4) to encourage others to use the National Park System for study to the benefit of park management as well as broader scientific value, where such study is consistent with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4); and

(5) to encourage the publication and dissemination of information derived from studies in the National Park System.

SEC. 202. RESEARCH MANDATE.

The Secretary is authorized and directed to assure that management of units of the National Park System is enhanced by the availability and utilization of a broad program of the highest quality science and information.

SEC. 203. COOPERATIVE AGREEMENTS.

(a) COOPERATIVE STUDY UNITS.—The Secretary is authorized and directed to enter into cooperative agreements with colleges and universities, including but not limited to land grant schools, in partnership with other Federal and State agencies, to establish cooperative study units to conduct multi-disciplinary research and develop integrated information products on the resources of the National Park System, or the larger region of which parks are a part.

(b) REPORT.—Within one year of the date of enactment of this title, the Secretary shall report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives on progress in the establishment of a comprehensive network of such college and university based cooperative study units as will provide full geographic and topical coverage for research on the resources contained in units of the National Park System and their larger regions.

SEC. 204. INVENTORY AND MONITORING PROGRAM.

The Secretary shall undertake a program of inventory and monitoring of National Park System resources to establish baseline information and to provide information on the long-term trends in the condition of National Park System resources. The monitoring program shall be developed in cooperation with other Federal monitoring and information collection efforts to ensure a cost-effective approach.

SEC. 205. AVAILABILITY FOR SCIENTIFIC STUDY.

(a) IN GENERAL.—The Secretary may solicit, receive, and consider requests from Federal or non-Federal public or private agencies, organizations, individuals, or other entities for the use of any unit of the National Park System for purposes of scientific study.

(b) CRITERIA.—A request for use of a unit of the National Park System under subsection (a) may only be approved if the Secretary determines that the proposed study—

(1) is consistent with applicable laws and National Park Service management policies; and

(2) will be conducted in a manner as to pose no significant threat to or broad impairment of park resources or public enjoyment derived from those resources.

(c) FEE WAIVER.—The Secretary may waive any park admission or recreational use fee in order to facilitate the conduct of scientific study under this section.

SEC. 206. INTEGRATION OF STUDY RESULTS INTO MANAGEMENT DECISIONS.

The Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions. In each case in which a park resource may be adversely affected by an action undertaken by the National Park Service, the administrative record shall reflect the manner in which unit resource studies have been considered.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

Information concerning the nature and location of a park resource which is endangered, threatened, rare, or commercially valuable, or for an object of cultural patrimony within a unit of the National Park System, may be withheld from the public in response to a request under section 552 of title 5, United States Code, unless the Secretary determines that—

(1) disclosure of the information would further the purposes of the park unit in which the resource is located and would not create a substantial risk of harm, theft, or destruction of the resource, including individual specimens of any resource population; and

(2) disclosure is consistent with other applicable laws protecting the resource.

TITLE III—PROCEDURES FOR ESTABLISHMENT OF NEW UNITS OF THE NATIONAL PARK SYSTEM

SEC. 301. STUDIES OF AREAS FOR POTENTIAL INCLUSION IN THE NATIONAL PARK SYSTEM.

Section 8 of Public Law 91-383 (16 U.S.C. 1a-5) is amended—

(1) in subsection (a)—

(A) by inserting "GENERAL AUTHORITY.—" after "(a)";

(B) by striking the second through sixth sentences;

(C) by striking "For the purposes of carrying out" and inserting the following:

"(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out"; and

(2) by inserting after subsection (a) the following:

"(b) STUDIES OF AREAS FOR POTENTIAL INCLUSION IN THE NATIONAL PARK SYSTEM.—

"(1)(A) At the beginning of each calendar year, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives a list of areas recommended for study for potential inclusion as new units in the National Park System.

"(B) If the Secretary determines during a specific calendar year that no areas are recommended for study for potential inclusion in the National Park System, the Secretary is not required to submit the list referenced in subparagraph (A).

"(2) In developing the list submitted under this subsection, the Secretary shall consider—

"(A) areas that have the greatest potential for meeting the established criteria of national significance, suitability, and feasibility;

"(B) themes, sites, and resources not adequately represented in the National Park System; and

"(C) public proposals and Congressional requests.

"(3) Nothing in this subsection shall limit the authority of the Secretary to conduct preliminary planning activities, including—

"(A) the conduct of a preliminary resource assessment;

"(B) collection of data on a potential study area;

"(C) provision of technical and planning assistance;

"(D) preparation or processing of a nomination for an administrative designation;

"(E) updating of a previous study; or

"(F) completion of a reconnaissance survey of an area.

"(4) NATIONAL WILD AND SCENIC RIVERS SYSTEM; NATIONAL TRAILS SYSTEM.—Nothing in this section applies to, affects, or alters the study of—

"(A) any river segment for potential addition to the National Wild and Scenic Rivers System; or

"(B) any trail for potential addition to the National Trails System.

"(5) In conducting a study under this subsection, the Secretary shall—

"(A) provide adequate public notice and an opportunity for public involvement, including at least one public meeting in the vicinity of the area under study; and

"(B) make reasonable efforts to notify potentially affected landowners and State and local governments.

"(6) In conducting a study of an area under this subsection, the Secretary—

"(A) shall consider whether the area—

"(i) possesses nationally significant natural, historic or cultural resources, or outstanding recreational opportunities;

"(ii) represents one of the most important examples (singly or as part of a group) of a particular resource type in the United States; and

"(iii) is a suitable and feasible addition to the National Park System;

"(B) shall consider—

"(i) the rarity and integrity of the resources of the area;

"(ii) the threats to resources;

"(iii) whether similar resources are already protected in the National Park System or in other public or private ownership;

"(iv) benefits to the public;

"(v) the interpretive and educational potential of the area;

"(vi) costs associated with acquisition, development, and operation of the area and the source or revenue to pay for the cost;

"(vii) the socioeconomic impacts of inclusion of the area in the National Park System;

"(viii) the level of local and general public support for the inclusion;

"(ix) whether the area is of appropriate configuration to ensure long-term resource protection and appropriate visitor use; and

"(x) the potential impact on the inclusion of the area on existing units of the National Park System;

"(C) shall consider whether direct management by the Secretary or alternative protection by other public agencies or the private sector is most appropriate for the area;

"(D) shall identify what alternative, if any, or what combination of alternatives would, as determined by the Secretary, be most effective and efficient in protecting significant resources and providing for public enjoyment; and

"(E) may include any other information that the Secretary considers pertinent.

"(7) The letter transmitting a completed study to Congress shall contain a recommendation regarding the preferred management option of the Secretary for the area.

"(8) The Secretary shall complete a study of an area for potential inclusion in the National Park System within three years after the date funds are made available for the study.

"(c) LIST OF PREVIOUSLY STUDIED AREAS WITH HISTORICAL OR NATURAL RESOURCES.—

"(1) At the beginning of each calendar year, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Resources of the United States House of Representatives—

"(A) a list of areas that have been previously studied under this section that contain primarily historical or cultural resources, but have not been added to the National Park System; and

"(B) a list of areas that have been previously studied under this section that contain primarily natural resources, but have not been added to the National Park System.

"(2) In developing a list under paragraph (1), the Secretary shall consider the factors described in subsection (b)(2).

"(3) The Secretary shall include on a list under paragraph (1) only areas for which supporting data are current and accurate.".

TITLE IV—NATIONAL PARK SERVICE CONCESSION MANAGEMENT

SEC. 401. SHORT TITLE.

This title may be cited as the "National Park Service Concession Management Improvement Act of 1998".

SEC. 402. CONGRESSIONAL FINDINGS AND STATEMENT OF POLICY.

In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–4), which directs the Secretary of the Interior to administer areas of the National Park System in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the units.

SEC. 403. AWARD OF CONCESSION CONTRACTS.

In furtherance of the findings and policy stated in section 402, and, except as provided by this title or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize private entities to provide accommodations, facilities and services to visitors to areas of the National Park system. Such concession contracts shall be awarded as follows:

(a) COMPETITIVE SELECTION PROCESS.—Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal as determined by the Secretary through a competitive selection process. Such competitive process shall include simplified procedures for small, individually-owned, concession contracts.

(b) SOLICITATION OF PROPOSALS.—Except as otherwise provided in this section, prior to awarding a new concession contract (including renewals or extensions of existing concession contracts) the Secretary shall publicly solicit proposals for the concession contract and, in connection with such solicitation, the Secretary shall prepare a prospectus and shall publish notice of its availability at least once in local or national newspapers or trade publications, and/or the Commerce Business Daily, as appropriate, and shall make the prospectus available upon request to all interested parties.

(c) PROSPECTUS.—The prospectus shall include, but need not be limited to, the following information:

(1) the minimum requirements for such contract as set forth in subsection (d);

(2) the terms and conditions of any existing concession contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner;

(3) other authorized facilities or services which may be provided in a proposal;

(4) facilities and services to be provided by the Secretary to the concessioner, if any, including, but not limited to, public access, utilities, and buildings;

(5) an estimate of the amount of compensation, if any, due an existing concessioner from a new concessioner under the terms of a prior concession contract;

(6) a statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of such factors in the selection process;

(7) such other information related to the proposed concession operation as is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals; and

(8) where applicable, a description of a preferential right to the award of the proposed concession contract held by an existing concessioner as set forth in subsection (g).

(d) MINIMUM REQUIREMENTS.—

(1) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include, but need not be limited to—

(A) the minimum acceptable franchise fee or other forms of consideration to the government;

(B) any facilities, services, or capital investment required to be provided by the concessioner; and

(C) measures necessary to ensure the protection and preservation of park resources.

(2) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(3) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(4) The Secretary may not execute a concession contract which materially amends or does not incorporate the proposed terms and conditions of the concession contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concession contract incorporating such material amendments or changes.

(e) SELECTION OF THE BEST PROPOSAL.—

(1) In selecting the best proposal, the Secretary shall consider the following principal factors:

(A) The responsiveness of the proposal to the objectives of protecting and preserving park resources and values and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(B) The experience and related background of the person, corporation, or entity submitting the proposal, including but not limited to, the past performance and expertise of such person, corporation or entity in providing the same or similar facilities or services.

(C) The financial capability of the person, corporation or entity submitting the proposal.

(D) The proposed franchise fee: Provided, That consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities to the public at reasonable rates.

(2) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(3) In developing regulations to implement this title, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of business owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession contracts should be identified as a factor in the selection of a best proposal under this section.

(f) CONGRESSIONAL NOTIFICATION.—The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of $5,000,000 or a duration of ten years or more to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The Secretary shall not award any such proposed contract until at least 60 days subsequent to the notification of both committees.

(g) PREFERENTIAL RIGHT OF RENEWAL.—

(1) Except as provided in paragraph (2), the Secretary shall not grant a concessioner a preferential right to renew a concession contract, or any other form of preference to a concession contract.

(2) The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concession contracts described by subsection (h), subject to the requirements of that subsection.

(3) As used in this title, the term "preferential right of renewal" means that the Secretary, subject to a determination by the Secretary that the facilities or services authorized by a prior contract continue to be necessary and appropriate within the meaning of section 402 of this title, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concession contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract.

(4) A concessioner which successfully exercises a preferential right of renewal in accordance with the requirements of this title shall be entitled to award of the proposed new concession contract to which such preference applies.

(h) OUTFITTER AND GUIDE SERVICES AND SMALL CONTRACTS.—The provisions of subsection (g) shall apply only to concession contracts authorizing outfitter and guide services and concession contracts with anticipated annual gross receipts under $500,000 as further described below and which otherwise qualify as follows:

(1) OUTFITTING AND GUIDE CONTRACTS.—For the purposes of this title, an "outfitting and guide concession contract" means a concession contract which solely authorizes the provision of specialized backcountry outdoor recreation guide services which require the employment of specially trained and experienced guides to accompany park visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in such activity. Outfitting and guide concessioners, where otherwise qualified, include, but are not limited to, concessioners which provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences. An outfitting and guide concessioner is entitled to a preferential right of renewal under this title only if—

(A) the contract the outfitting and guide concessioner holds does not grant the concessioner any interest, including, but not limited to, any leasehold surrender interest or possessory interest, in capital improvements on lands owned by the United States within a unit of the National Park System: Provided, That this limitation shall not apply to capital improvements constructed by a concessioner pursuant to the terms of a concession contract prior to the effective date of this title; and

(B) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(C) the concessioner has submitted a responsive proposal for a proposed new contract which satisfies the minimum requirements established by the Secretary pursuant to subsection (d).

(2) CONTRACTS WITH ANTICIPATED ANNUAL GROSS RECEIPTS UNDER $500,000.—A concessioner which holds a concession contract where the Secretary has estimated that its renewal will result in gross annual receipts of less than $500,000 shall be entitled to a preferential right of renewal under this title if—

(A) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(B) the concessioner has submitted a responsive proposal for a proposed new concession contract which satisfies the minimum requirements established by the Secretary pursuant to subsection (d).

(i) NEW OR ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a park.

(j) SECRETARIAL AUTHORITY.—Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.

(k) EXCEPTIONS.—Notwithstanding the provisions of this section, the Secretary may award, without public solicitation—

(1) a temporary concession contract or extend an existing concession contract for a term not to exceed three years in order to avoid interruption of services to the public at a park, except that prior to making such an award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such interruption; and

(2) a concession contract in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest. Such award of a concession contract shall not be made by the Secretary until at least thirty days after publication in the "Federal Register" of notice of the Secretary's intention to do so and the reasons for such action, and notice to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

SEC. 404. TERM OF CONCESSION CONTRACTS.

A concession contract entered into pursuant to this title shall be awarded for a term not to exceed ten years: Provided, That the Secretary may award a contract for a term of up to twenty years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

SEC. 405. PROTECTION OF CONCESSIONER INVESTMENT.

(a) LEASEHOLD SURRENDER INTEREST UNDER NEW CONCESSION CONTRACTS.—

(1) On or after the date of enactment of this title, a concessioner which constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract, shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(A) A concessioner shall have a property right in each capital improvement constructed by a concessioner under a concession contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement.

(B) A leasehold surrender interest—

(i) may be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary pursuant to this title;

(ii) shall be transferred by the concessioner in connection with any transfer of the concession contract and may be relinquished or waived by the concessioner; and

(iii) shall not be extinguished by the expiration or other termination of a concession contract and may not be taken for public use except on payment of just compensation.

(C) The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) in the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(D) Where a concessioner, pursuant to the terms of a concession contract, makes a capital improvement to an existing capital improvement in which the concessioner has a leasehold surrender interest, the cost of such additional capital improvement shall be added to the then current value of the concessioner's leasehold surrender interest.

(E) For purposes of this section, the term—

(i) "Consumer Price Index" means the "Consumer Price Index—All Urban Consumers" published by the Bureau of Labor Statistics of the Department of Labor, unless such index is not published, in which case another regularly published cost-of-living index approximating the Consumer Price Index shall be utilized by the Secretary; and

(ii) "capital improvement" means a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a unit of the National Park System.

(b) SPECIAL RULE FOR EXISTING POSSESSORY INTEREST.—

(1) A concessioner which has obtained a possessory interest as defined in Public Law 89–249 under the terms of a concession contract entered into prior to the date of enactment of this title shall, upon the expiration or termination of such contract, be entitled to receive compensation for such possessory interest improvements in the amount and manner as described by such concession contract.

(2) In the event such prior concessioner is awarded a new concession contract after the effective date of this title replacing an existing concession contract, the existing concessioner shall, instead of directly receiving such possessory interest compensation, have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new contract and shall carry over as the initial value of such leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous contract. In the event of a dispute between the concessioner and the Secretary as to the value of such possessory interest, the matter shall be resolved through binding arbitration.

(3) In the event that a new concessioner is awarded a concession contract and is required to pay a prior concessioner for possessory interest in prior improvements, the new concessioner shall have a leasehold surrender interest in such prior improvements and the initial value in such leasehold surrender interest (instead of construction cost), shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous contract.

(c) TRANSITION TO SUCCESSOR CONCESSIONER.—Upon expiration or termination of a concession contract entered into after the effective date of this title, a concessioner shall be entitled under the terms of the concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of such expiration or termination. A successor concessioner shall have a leasehold surrender interest in such capital improvement under the terms of a new contract and the initial value of the leasehold surrender interest in such capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concession contract.

(d) TITLE TO IMPROVEMENTS.—Title to any capital improvement constructed by a concessioner on lands owned by the United States in a unit of the National Park System shall be in the United States.

SEC. 406. REASONABLENESS OF RATES.

The reasonableness of a concessioner's rates and charges to the public, unless otherwise provided in the contract, shall be judged primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary. A concessioner's rates and charges to the public shall be subject to approval by the Secretary pursuant to the terms of the concesssion contract. The approval process utilized by the Secretary shall be as prompt and unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable.

SEC. 407. FRANCHISE FEES.

(a) IN GENERAL.—A concession contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value is a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing adequate and appropriate services for visitors at reasonable rates.

(b) AMOUNT OF FRANCHISE FEE.—The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may only be modified to reflect substantial, unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in concession contracts with a term of more than five years a provision which allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such substantial, unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

(c) SPECIAL ACCOUNT.—All franchise fees (and other monetary consideration) paid to the United States pursuant to a concession contract shall be covered into a special account established in the Treasury of the United States. The funds contained in such special account shall be available for expenditure by the Secretary, subject to appropriation, until expended for use in accordance with subsection (d).

(d) USE OF FRANCHISE FEES.—Funds contained in the special account shall be transferred to a subaccount and shall be allocated to each applicable unit of the National Park System, based on the proportion that the amount of concession contract fees collected from the unit during the fiscal year bears to the total amount of concession contract fees collected from all units of the National Park System during the fiscal year, to fund high-priority resource management and visitor services programs and operations.

SEC. 408. TRANSFER OF CONCESSION CONTRACTS.

(a) APPROVAL OF THE SECRETARY.—No concession contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval of the Secretary.

(b) CONDITIONS.—The Secretary shall not unreasonably withhold approval of such a conveyance or pledge, and shall approve such conveyance or pledge if the Secretary in his discretion determines that—

(1) the individual, corporation or entity seeking to acquire a concession contract is qualified to be able to satisfy the terms and conditions of the concession contract;

(2) such conveyance or pledge is consistent with the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of such conveyance or pledge are not likely, directly or indirectly, to: reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract; adversely affect the quality of facilities and services provided by the concessioner; or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

SEC. 409. NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT ADVISORY BOARD.

(a) ESTABLISHMENT.—There is hereby established a National Park Service Concessions Management Advisory Board (hereinafter in this title referred to as the "Advisory Board") whose purpose shall be to advise the Secretary and National Park Service on matters relating to management of concessions in areas of the National Park System. Among other matters, the Advisory Board shall advise on policies and procedures intended to assure that services and facilities provided by concessioners meet acceptable standards at reasonable rates with a minimum of impact on park resources and values, and provide the concessioners with a reasonable opportunity to make a profit. The Advisory Board shall also advise on ways to make National Park Service concession programs and procedures more cost effective, efficient, and less burdensome, including, but not limited to, providing recommendations regarding National Park Service contracting with the private sector to conduct appropriate elements of concessions management and providing recommendations to make more efficient and less burdensome the approval of concessioner rates and charges to the public. In addition, the Advisory Board shall make recommendations to the Secretary regarding the nature and scope of products which qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within this meaning of this title. The Advisory Board, commencing with the first anniversary of its initial meeting, shall provide an annual report on its activities to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

(b) ADVISORY BOARD MEMBERSHIP.—Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed four years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than seven individuals appointed from among citizens of the United States not in the employment of the Federal government and not in the employment of or having an interest in a National Park Service concession. Of the seven members of the Advisory Board—

(1) one shall be privately employed in the hospitality industry,

(2) one shall be privately employed in the tourism industry,

(3) one shall be privately employed in the accounting industry,

(4) one shall be privately employed in the outfitting and guide industry,

(5) one shall be a State government employee with expertise in park concession management,

(6) one shall be active in promotion of traditional arts and crafts, and

(7) one shall be active in a non-profit conservation organization involved in the programs of the National Park Service.

(c) TERMINATION.—The Advisory Board shall continue to exist until December 31, 2008. In all other respects, it shall be subject to the provisions of the Federal Advisory Committee Act.

(d) SERVICE ON ADVISORY BOARD.—Service of an individual as a member of the Advisory Board shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of Title 5 of the United States Code, or other comparable provisions of Federal law.

SEC. 410. CONTRACTING FOR SERVICES.

To the maximum extent practicable, the Secretary shall contract with private entities to conduct the following elements of the management of the National Park Service concession program suitable for non-federal fulfillment: health and safety inspections, quality control of concession operations and facilities, analysis of rates and charges to the public, and financial analysis: Provided, That nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concession contracts and activities pursuant to this title and the Act of August 25, 1916 (39 Stat. 535), as amended, (16 U.S.C. 1, 2–4). The Secretary shall also consider, taking into account the recommendations of the National Park Service Concessions Management Advisory Board, contracting out other elements of the concession management program, as appropriate.

SEC. 411. USE OF NON-MONETARY CONSIDERATION IN CONCESSION CONTRACTS.

The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this title.

SEC. 412. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all terms and conditions thereof.

(b) ACCESS TO RECORDS.—The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five calendar years after the close of the business year of each concessioner or subconcessioner have access to and the right to examine any pertinent books, papers, documents and records of the concessioner or subconcessioner related to the contract or contracts involved.

SEC. 413. REPEAL OF CONCESSION POLICY ACT OF 1965.

(a) REPEAL.—The Act of October 9, 1965, Public Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), is hereby repealed. The repeal of such Act shall not affect the validity of any concession contract or permit entered into under such Act, but the provisions of this title shall apply to any

such contract or permit except to the extent such provisions are inconsistent with the express terms and conditions of any such contract or permit. References in this title to concession contracts awarded under authority of Public Law 89–249 also apply to concession permits awarded under such authority.

(b) EXCEPTION FOR PENDING CONTRACT SOLICITATIONS.—Notwithstanding such repeal, the Secretary may award concession contracts under the terms of Public Law 89–249 for concession contract solicitations for which, as of August 1, 1998, a formal prospectus was issued by the Secretary pursuant to the requirements of 36 C.F.R. Part 51.

(c) CONFORMING AMENDMENT.—The fourth sentence of section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 3) is amended by striking all through "no natural" and inserting in lieu thereof, "No natural," and, the last proviso of such sentence is stricken in its entirety.

(d) ANILCA.—Nothing in this title amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

SEC. 414. PROMOTION OF THE SALE OF INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HANDICRAFTS.

(a) IN GENERAL.—Promoting the sale of United States authentic Indian, Alaskan Native and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of units of the National Park System is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade where it currently does not exist.

(b) EXEMPTION FROM FRANCHISE FEE.—In furtherance of these purposes, the revenue derived from the sale of United States Indian, Alaska Native, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this title.

SEC. 415. REGULATIONS.

As soon as practicable after the effective date of this title, the Secretary shall promulgate regulations appropriate for its implementation. Among other matters, such regulations shall include appropriate provisions to ensure that concession services and facilities to be provided in an area of the National Park System are not segmented or otherwise split into separate concession contracts for the purposes of seeking to reduce anticipated annual gross receipts of a concession contract below $500,000. The Secretary shall also promulgate regulations which further define the term "United States Indian, Alaskan Native, and Native Hawaiian handicrafts" for the purposes of this title.

SEC. 416. COMMERCIAL USE AUTHORIZATIONS.

(a) IN GENERAL.—To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to visitors to units of the National Park System through a commercial use authorization. Such authorizations shall not be considered as concession contracts pursuant to this title nor shall other sections of this title be applicable to such authorizations except where expressly so stated.

(b) CRITERIA FOR ISSUANCE OF AUTHORIZATIONS.—

(1) The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on park resources and values and which are consistent with the purposes for which the park unit was established and with all applicable management plans and park policies and regulations.

(2) The Secretary shall—

(A) require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values;

(C) take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization; and

(D) have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

(c) LIMITATIONS.—Any authorization issued under this section shall be limited to:

(1) commercial operations with annual gross receipts of not more than $25,000 resulting from services originating and provided solely within a park pursuant to such authorization;

(2) the incidental use of park resources by commercial operations which provide services originating and terminating outside of the park's boundaries: provided that such authorization shall not provide for the construction of any structure, fixture, or improvement on federally-owned lands within the boundaries of the park.

(d) DURATION.—The term of any authorization issued under this section shall not exceed two years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(e) OTHER CONTRACTS.—A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concession contracts.

TITLE V—FEE AUTHORITIES

SEC. 501. EXTENSION OF THE RECREATIONAL FEE DEMONSTRATION PROGRAM.

(a) AUTHORITY.—The authority provided to the National Park Service under the Recreational Fee Demonstration Program authorized by section 315 of Public Law 104–134 (16 U.S.C. 460l–6a note)—

(1) is extended through September 30, 2005; and

(2) shall be available for all units of the National Park System, and for system-wide fee programs.

(b) REPORT.—(1) Not later than September 30, 2000, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives a report detailing the status of the recreational fee demonstration program conducted in units of the National Park System under section 315 of Public Law 104–134 (16 U.S.C. 460l–6a note).

(2) The report under paragraph (1) shall contain—

(A) an evaluation of the fee demonstration program conducted at each unit of the National Park System;

(B) with respect to each unit of the National Park System where a fee is charged under the authority of the Recreational Fee Demonstration Program (16 U.S.C. 460l–6a note), a description of the criteria that were used to determine whether a recreational fee should or should not be charged at such park; and

(C) a description of the manner in which the amount of the fee at each national park was established.

(c) NOTICE.—At least twelve months notice shall be given to the public prior to the increase or establishment of any fee in units of the National Park System.

SEC. 502. COMMERCIAL FILMING ACTIVITIES.

(a) COMMERCIAL FILMING.—The Secretary shall require a permit and shall establish a reasonable fee for commercial filming activities in units of the National Park System. Such fee shall provide a fair return to the United States and shall be based upon the following criteria, in addition to such other factors as the Secretary deems necessary: the number of days the filming takes place within a park unit, the size of the film crew, the amount and type of equipment present, and any potential impact on park resources. The Secretary is also directed to recover any costs incurred as a result of filming activities, including but not limited to administration and personnel costs. All costs recovered are in addition to the assessed fee.

(b) STILL PHOTOGRAPHY.—(1) Except as provided in paragraph (2), the Secretary shall not require a permit or assess a fee for commercial or non-commercial still photography of sites or resources in units of the National Park System in any part of a park where members of the public are generally allowed. In other locations, the Secretary may require a permit, fee, or both, if the Secretary determines that there is a likelihood of resource impact, disruption of the public's use and enjoyment of the park, or if the activity poses health or safety risks.

(2) The Secretary shall require the issuance of a permit and the payment of a reasonable fee for still photography that utilizes models or props which are not a part of a park's natural or cultural features or administrative facilities.

(c) PROCEEDS.—(1) Fees collected within units of the National Park System under this section shall be deposited in a special account in the Treasury of the United States and shall be available to the Secretary, without further appropriation for high-priority visitor service or resource management projects and programs for the unit of the National Park System in which the fee is collected.

(2) All costs recovered under this section shall be retained by the Secretary and shall remain available for expenditure in the park where collected, without further appropriation.

SEC. 503. DISTRIBUTION OF GOLDEN EAGLE PASSPORT SALES.

Not later than six months after the date of enactment of this title, the Secretary and the Secretary of Agriculture shall enter into an agreement providing for an apportionment among each agency of all proceeds derived from the sale of Golden Eagle Passports by private vendors. Such proceeds shall be apportioned to each agency on the basis of the ratio of each agency's total revenue from admission fees collected during the previous fiscal year to the sum of all revenue from admission fees collected during the previous fiscal year for all agencies participating in the Golden Eagle Passport Program.

TITLE VI—NATIONAL PARK PASSPORT PROGRAM

SEC. 601. PURPOSES.

The purposes of this title are—

(1) to develop a national park passport that includes a collectible stamp to be used for admission to units of the National Park System; and

(2) to generate revenue for support of the National Park System.

SEC. 602. NATIONAL PARK PASSPORT PROGRAM.

(a) PROGRAM.—The Secretary shall establish a national park passport program. A national park passport shall include a collectible stamp providing the holder admission to all units of the National Park System.

(b) EFFECTIVE PERIOD.—A national park passport stamp shall be effective for a period of 12 months from the date of purchase.

(c) TRANSFERABILITY.—A national park passport and stamp shall not be transferable.

SEC. 603. ADMINISTRATION.

(a) STAMP DESIGN COMPETITION.—(1) The Secretary shall hold an annual competition for the design of the collectible stamp to be affixed to the national park passport.

(2) Each competition shall be open to the public and shall be a means to educate the American people about the National Park System.

(b) SALE OF PASSPORTS AND STAMPS.—(1) National park passports and stamps shall be sold through the National Park Service and may be sold by private vendors on consignment in accordance with guidelines established by the Secretary.

(B) A private vendor may be allowed to collect a commission on each national park passport (including stamp) sold, as determined by the Secretary.

(C) The Secretary may limit the number of private vendors of national park passports (including stamps).

(c) USE OF PROCEEDS.—

(1) The Secretary may use not more than ten percent of the revenues derived from the sale of national park passports (including stamps) to administer and promote the national park passport program and the National Park System.

(2) Amounts collected from the sale of national park passports shall be deposited in a special account in the Treasury of the United States and shall remain available until expended, without further appropriation, for high priority visitor service or resource management projects throughout the National Park System.

(d) AGREEMENTS.—The Secretary may enter into cooperative agreements with the National Park Foundation and other interested parties to provide for the development and implementation of the national park passport program and the Secretary shall take such actions as are appropriate to actively market national park passports and stamps.

(e) FEE.—The fee for a national park passport and stamp shall be $50.

SEC. 604. INTERNATIONAL PARK PASSPORT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish an international park passport program in accordance with the other provisions of this title except as provided in this section.

(b) AVAILABILITY.—An international park passport and stamp shall be made available exclusively to foreign visitors to the United States.

(c) SALE.—International park passports and stamps shall be available for sale exclusively outside the United States through commercial tourism channels and consulates or other offices of the United States.

(d) FEE.—International park passports and stamps shall be sold for a fee that is $10.00 less than the fee for a national park passport and stamp, but not less than $40.00.

(e) FORM.—An international park passport and stamp shall be produced in a form that provides useful information to the international visitor and serves as a souvenir of the visit.

(f) EFFECTIVE PERIOD.—An international park passport and stamp shall be valid for a period of 45 days from the date of purchase.

(g) USE OF PROCEEDS.—Amounts collected from the sale of international park passports and stamps shall be deposited in the special account under section 603(c) and shall be available as provided in section 603(c).

(h) TERMINATION OF PROGRAM.—The Secretary shall terminate the international park passport program at the end of calendar year 2003 unless at least 200,000 international park passports and stamps are sold during that calendar year.

SEC. 605. EFFECT ON OTHER LAWS AND PROGRAMS.

(a) PARK PASSPORT NOT REQUIRED.—A national park passport or international park passport shall not be required for—

(1) a single visit to a national park that charges a single visit admission fee under section 4(a)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(a)(2)) or the Recreational Fee Demonstration Program (16 U.S.C. 460l–6a note); or

(2) an individual who has obtained a Golden Age or Golden Access Passport under paragraph (4) or (5) of section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(a)).

(b) GOLDEN EAGLE PASSPORTS.—A Golden Eagle Passport issued under section 4(a)(1)(A) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(a)(1)(A)) or the Recreational Fee Demonstration Program (16 U.S.C. 460l–6a note) shall be honored for admission to each unit of the National Park System.

(c) ACCESS.—A national park passport and an international park passport shall provide access to each unit of the National Park System under the same conditions, rules, and regulations as apply to access with a Golden Eagle Passport as of the date of enactment of this title.

(d) LIMITATIONS.—A national park passport or international park passport may not be used to obtain access to other Federal recreation fee areas outside of the National Park System.

(e) EXEMPTIONS AND FEES.—A national park passport or international park passport does not exempt the holder from or provide the holder any discount on any recreation use fee imposed under section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(b)) or the Recreational Fee Demonstration Program (16 U.S.C. 460l–6a note).

TITLE VII—NATIONAL PARK FOUNDATION SUPPORT

SEC. 701. PROMOTION OF LOCAL FUNDRAISING SUPPORT.

The Act entitled "An Act to establish the National Park Foundation", approved December 18, 1967 (16 U.S.C. 19 et seq.) is amended by adding at the end thereof the following:

"SEC. 12. PROMOTION OF LOCAL FUNDRAISING SUPPORT.

"(a) ESTABLISHMENT.—The Foundation shall design and implement a comprehensive program to assist and promote philanthropic programs of support at the individual national park unit level.

"(b) IMPLEMENTATION.—The program under subsection (a) shall be implemented to—

"(1) assist in the creation of local nonprofit support organizations; and

"(2) provide support, national consistency, and management-improving suggestions for local nonprofit support organizations.

"(c) PROGRAM.—The program under subsection (a) shall include the greatest number of national park units as is practicable.

"(d) REQUIREMENTS.—The program under subsection (a) shall include, at a minimum—

"(1) a standard adaptable organizational design format to establish and sustain responsible management of a local nonprofit support organization for support of a national park unit;

"(2) standard and legally tenable bylaws and recommended money-handling procedures that can easily be adapted as applied to individual national park units; and

"(3) a standard training curriculum to orient and expand the operating expertise of personnel employed by local nonprofit support organizations.

"(e) ANNUAL REPORT.—The Foundation shall report the progress of the program under subsection (a) in the annual report of the Foundation.

"(f) AFFILIATIONS.—

"(1) CHARTER OR CORPORATE BYLAWS.—Nothing in this section requires—

"(A) a nonprofit support organization or friends group in existence on the date of enactment of this title to modify current practices or to affiliate with the Foundation; or

"(B) a local nonprofit support organization, established as a result of this section, to be bound through its charter or corporate bylaws to be permanently affiliated with the Foundation.

"(2) ESTABLISHMENT.—An affiliation with the Foundation shall be established only at the discretion of the governing board of a nonprofit organization.".

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. UNITED STATES PARK POLICE.

(a) APPOINTMENT OF TASK FORCE.—Not later than 60 days after the date of enactment of this title, the Secretary shall appoint a multidisciplinary task force to fully evaluate the shortfalls, needs, and requirements of law enforcement programs in the National Park Service, including a separate analysis for the United States Park Police, which shall include a review of facility repair, rehabilitation, equipment, and communication needs.

(b) SUBMISSION OF REPORT.—Not later than one year after the date of enactment of this title, the Secretary shall submit to the Committees on Energy and Natural Resources and Appropriations of the United States Senate and the Committees on Resources and Appropriations of the United States House of Representatives a report that includes—

(1) the findings and recommendations of the task force;

(2) complete justifications for any recommendations made; and

(3) a complete description of any adverse impacts that would occur if any need identified in the report is not met.

SEC. 802. LEASES AND COOPERATIVE MANAGEMENT AGREEMENTS.

(a) IN GENERAL.—Section 3 of Public Law 91–383 (16 U.S.C. 1a–2) is amended by adding at the end the following:

"(k) LEASES.—

"(1) IN GENERAL.—The Secretary may enter into a lease with any person or governmental entity for the use of buildings and associated property administered by the Secretary as part of the National Park System.

"(2) USE.—Buildings and associated property leased under paragraph (1)—

"(A) shall be used for an activity that is consistent with the purposes established by law for the unit in which the building is located;

"(B) shall not result in degradation of the purposes and values of the unit; and

"(C) shall be compatible with National Park Service programs.

"(3) RENTAL AMOUNTS.—

"(A) IN GENERAL.—With respect to a lease under paragraph (1)—

"(i) payment of fair market value rental shall be required; and

"(ii) section 321 of the Act of June 30, 1932 (47 Stat. 412, chapter 314; 40 U.S.C. 303b) shall not apply.

"(B) ADJUSTMENT.—The Secretary may adjust the rental amount as appropriate to take into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, or repair and related expenses.

"(C) REGULATION.—The Secretary shall promulgate regulations implementing this subsection that includes provisions to encourage and facilitate competition in the leasing process and provide for timely and adequate public comment.

"(4) SPECIAL ACCOUNT.—

"(A) DEPOSITS.—Rental payments under a lease under paragraph (1) shall be deposited in

a special account in the Treasury of the United States.

"(B) AVAILABILITY.—Amounts in the special account shall be available until expended, without further appropriation, for infrastructure needs at units of the National Park System, including—

"(i) facility refurbishment;

"(ii) repair and replacement;

"(iii) infrastructure projects associated with park resource protection; and

"(iv) direct maintenance of the leased buildings and associated properties.

"(C) ACCOUNTABILITY AND RESULTS.—The Secretary shall develop procedures for the use of the special account that ensure accountability and demonstrated results consistent with this Act.

"(l) COOPERATIVE MANAGEMENT AGREEMENTS.—

"(1) IN GENERAL.—Where a unit of the National Park System is located adjacent to or near a State or local park area, and cooperative management between the National Park Service and a State or local government agency of a portion of either park will allow for more effective and efficient management of the parks, the Secretary is authorized to enter into an agreement with a State or local government agency to provide for the cooperative management of the Federal and State or local park areas: Provided, That the Secretary may not transfer administration responsibilities for any unit of the National Park System.

"(2) PROVISION OF GOODS AND SERVICES.—Under a cooperative management agreement, the Secretary may acquire from and provide to a State or local government agency goods and services to be used by the Secretary and the State or local governmental agency in the cooperative management of land.

"(3) ASSIGNMENT.—An assignment arranged by the Secretary under section 3372 of title 5, United States Code, of a Federal, State, or local employee for work in any Federal, State, or local land or an extension of such an assignment may be for any period of time determined by the Secretary and the State or local agency to be mutually beneficial.".

(b) HISTORIC LEASE PROCESS SIMPLIFICATION.—The Secretary is directed to simplify, to the maximum extent possible, the leasing process for historic properties with the goal of leasing available structures in a timely manner.

AMENDMENT NO. 2703

(Purpose: A technical amendment to the Committee amendment to comply with requirements of the Budget Act)

Mr. THOMAS. Mr. President, I send an amendment to the desk on behalf of Senators MURKOWSKI and BUMPERS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS], for Mr. MURKOWSKI and Mr. BUMPERS, proposes an amendment numbered 2703.

Mr. THOMAS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 129 line 22 strike "without appropriation" and insert the following: "subject to appropriation."

Mr. BUMPERS. Mr. President, I rise today in strong support of S. 1693, the "Vision 2020 National Parks System Restoration Act." I want to commend Senator THOMAS, the bill's author, for his efforts in bringing this bill to the floor. As the Chairman of the Subcommittee on National Parks, Historic Preservation and Recreation, he has been willing to compromise and work with all involved parties, including Secretary Babbitt, Senator BENNETT, and me in an effort to enact a meaningful and comprehensive bill for our national parks. It has been a pleasure to work with him on this important legislation and I look forward to its passage before I leave the Senate this year. I would also like to particularly thank Senator BENNETT, who has once again been very helpful and constructive in developing a bill that can garner such broad bipartisan support, as I believe this bill has.

Although this is a comprehensive bill that makes a number of positive changes in the way national parks are managed, for me, the most significant provisions are found in title IV—the National Park Service Concessions Management Improvement Act.

Mr. President, for almost 19 years I have worked to reform the concessions policies of the National Park Service to increase competition, provide better services, and to ensure a better return for the American public. Over the past two decades, we have held dozens of hearings, and we've debated this issue in mark-ups and on the Senate floor.

As you know, during the 103rd Congress Senator BENNETT and I sponsored a bill which passed the Senate by a vote of 90–9, and passed in the House of Representatives with only minor changes by a vote of 368–30. Despite the overwhelming vote margins, we were unable to pass a final bill before the Congress adjourned. Given the magnitude of those votes, it is very frustrating to be here once again debating park concession reform.

While I support passage of this bill and believe it will enhance the Park Service's ability to better manage our National Park System, the bill before us today is a real compromise between Senator THOMAS and myself. The bill—particularly the concession title—does not contain all of the policy changes that I would like to see made. However, passage of this bill will finally allow the Park Service to have meaningful competition for park concession contracts.

Most importantly, the bill will repeal the 1965 Concession Policy Act—a 30-year old anachronism—including its most anti-competitive provision, the granting to incumbent concessioners of a preferential right to renew their contract by simply matching the terms and conditions of a superior offer.

Other important provisions in the concession reform title include: maintaining existing statutory protections for outfitter and guide contracts and small contracts with less than $500,000 in annual gross revenue; a prohibition against giving any concessioner a preferential right to provide new or additional services; and language linking the value of facilities built by a concessioner to actual construction costs, adjusted for inflation, rather than the "sound value" possessory interest allowed under current law.

While the concession title has been of particular interest to me, the bill before us today includes several other titles which I believe will greatly enhance the Park Service's management authorities. The bill includes directives for the Park Service to improve career development and training for its employees and to establish a strong scientific research program in national parks. It codifies criteria for the Park Service to use in evaluating areas proposed for addition to the National Park System. It gives the Park Service much needed authority to collect and retain fees for commercial filming activities in national park units, and it extends the Recreational Fee Demonstration Program for park fees for another six years. The bill also will allow the Park Service to develop and market annual park admission passports to increase public awareness about parks and to raise new revenues. There are a few other titles included in the bill, but those are the most significant provisions.

Mr. President, the concession reform provisions in this bill are a great step forward for the National Park Service and the taxpayers. I strongly support these and the other provisions in this legislation, and I hope my colleagues will join me in helping to pass this bill.

Mr. THOMAS. Mr. President, I ask unanimous consent that the amendment be considered read and agreed to, the committee substitute be agreed to, the bill be considered read the third time and passed, the amendment to the title be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2703) was agreed to.

The committee amendment, as amended, was agreed to.

The bill (S. 1693), as amended, was considered read the third time, and passed.

The title was amended so as to read: "A bill to provide for improved management and increased accountability for certain National Park Service programs, and for other purposes."

Mr. MURKOWSKI. Mr. President, today the Senate has just passed landmark legislation which will serve to restore, reinvigorate and rebuild our National Park System. S. 1693 addresses a wide variety of Park Service operations from failing infrastructure to improve management and accountability for park programs.

The Administration reports that it will take over $8 billion to bring our park facilities, historic structures, roads and trails up to an acceptable standard. Over the years while we have expanded the National Park System with new units and new responsibilities we have deferred maintenance and reduced funding in many important park programs. As a result we now have what can be best described as a National Park System that is worn-out and broken—a System in need of attention. Quite frankly, Congress does not have the available monies to address or devote to the problems currently encountered by park managers, however meritorious they may be.

During this Congress, Senator THOMAS, Chairman of the Subcommittee on National Parks, Historic Preservation and Recreation, has taken a pro-active approach to National Park Service reform. While conducting over fifteen oversight and legislative hearings on the problems confronting the National Park System. He found that despite reports of $300,000 outhouses, the National Park Service and Congress have failed to deal with the lack of personnel and fiscal resources desperately needed in our parks. Unfortunately, the needs are not limited to a certain number of parks or areas of the United States. The units of the National Park System require a major face-lift from coast to coast, in my State of Alaska, and parks on the islands of Hawaii and in American Samoa.

While the lack of fiscal resources can be addressed. Throwing money to any government agency without accountability is in no one's interest. In this regard the legislation requires the Secretary to develop a comphensive training program for employees in all professional careers, for the purpose of assuring that the work force has available the best, up-to-date knowledge, skills and abilities with which to manage, interpret and protect the resources of the National Park system.

The Secretary is also directed to implement a clear plan for management training and development to enable only those qualified to move into positions of park superintendents and regional managers.

The legislation also addresses park budgets and accountability. Today individual park budgets, if you can find one, are a haze of smoke and mirrors. When this legislation is enacted into law each unit of the System will prepare a budget and make it available to the public.

Mr. President, let me repeat, "make available to the public" a five year strategic plan and an annual performance plan pursuant to a published park budget on an individual park-by-park basis. There will be accountability for the expenditure of all appropriated funds as well as monies collected from enhanced fee collection programs. There will no longer be management in the darkness. Light will be shed where no light has shown before.

During the 105th Congress we found that decisions by park service management are often not based on sound science, in fact, in many parks throughout the country the Service knows very little about the natural resources they are supposed to protect. This legislation directs the Secretary to undertake a program in inventory and monitoring of National Park System resources to establish baseline information and to provide information on the long-term trends in the condition of resources under his jurisdiction. In addition, the Secretary is directed to establish a comprehensive network of college and university based cooperative study units in order to complete the baseline information inventory.

Mr. President, I mentioned earlier that one of the problems with the Park System is that over the last 20 years we have more than doubled the number of units in the System. There has never been a formal procedure to consider new areas which might be eligible for inclusion in the System, nor has any criteria been established by which a potential park area would be evaluated. I direct your attention to Title III of S. 1693 in which the legislation establishes procedures and criteria for Congress and the National Park Service to consider when studying potential new areas that may be added to the System.

Mr. President, Title IV of this legislation deals with concession reform. After eight years of debate this very contentious issue has been resolved. Both Senator BUMPERS and Senator THOMAS deserve a great deal of credit to have turned this issue into a bi-partisan one. Senator BENNETT as well as Secretary Babbitt also deserve recognition for their work and positive approach to working on the finer points of the concessions legislation.

I have long been an advocate of granting an interest in property to those in the private sector who invest in our park facilities such as hotels, lodges, and restaurants. The private sector requires this incentive or interest to borrow from a bank—collateral—to invest in needed capital improvements. The advantage is that we can improve visitor facilities with private sector dollars as opposed to taxpayer dollars. However meritorious, possessory interest has been a large sticking point in ever reaching resolution on concession reform.

As in any great bi-partisan compromise, no one got everything they wanted. The concession folks lost their right of preference in renewal but are allowed to maintain a form of possessory interest. We were able to place private sector expertise into the concession management program with an advisory committee made up of individuals in the hospitality industry and the Secretary is directed to contract-out certain concession management functions.

I firmly believe that this legislation will enhance concession program management, increase competition among prospective concession operators, improve the delivery of goods and services to park visitors, improve facilities and increase revenues from concession franchise fees.

Mr. President, the legislation extends the popular Recreational Fee Demonstration Program from the year ending in 1999 to 2005 and extends the fee collection authority to all 376 park areas. This should be a valuable shot in the arm for increasing park operating funds.

For the first time since 1948 commercial film producers will pay a fee for using these unique backdrops; our parks, for major motion pictures and advertisement in addition to allowing the parks to recover their direct costs such as security activities and permit processing. In return the parks will do a better job in processing permits. As time is money it is much easier on the film industry to hear the word "no" early on in the process rather than wait weeks to receive a decision.

Mr. President, the Park Service is directed by this legislation to establish a National Passport Program based on the familiar and popular Duck Stamp used by the Fish and Wildlife Service. The collectable stamp and related competition and posters etc. should produce additional revenues for major park projects. In addition to the National Passport Program which will provide the user entrance into any one of the fee areas an international passport will be sold overseas for use by foreign visitors.

On another note we ask the National Park Foundation to share their expertise with many of the park's friends groups to encourage expansion of the volunteer ranks as well as to develop entrepreneurial programs at the local level.

We have looked at the National Park System and found that many of our parks are adjacent to state and county parks. There is no reason why the NPS cannot share their personnel and resources with these local agencies and vice-versa. In other words you don't need two snowploughs when one could be shared. This legislation changes the law and provides the Park Service with the authorization to enter into agreements with other local agencies.

Our own United States Park Police are often the forgotten step-child of the National Park Service. Their particular needs and requirements are unknown even though we have asked for reports from the Administration on a number of occasions. Within a year we have that report so that Congress can

act in an appropriate manner while addressing the critical needs of the Park Police.

Mr. President, I thank the Members of the Committee on Energy and Natural Resources who came together in a bi-partisan fashion and reported the bill to the full Senate 20 to 0. The Senate can be proud, for this legislation represents a new beginning for the National Park System which will carry it into the next century, alive, vibrant and serving the hundreds and millions of park visitors yet to come.

Perhaps, most important, our natural, cultural and historic resources for which these parks have been set aside will be better protected and managed for future generations.

I thank the Chair, and I thank my colleagues for their support on this important legislation.

Mr. THOMAS. Mr. President, I want to thank the Senate for approving S. 1693, the "Vision 2020 National Parks Restoration Act." This is the culmination of over two years of work and reflects a lifetime of concern I have had about protecting our nation's parks. America's park system needs attention and it needs our help soon. I believe this bill will provide it.

When we began this effort more then a year ago I came to the floor and challenged Senators to imagine for a moment an America without national parks. How would we feel without Yosemite, Independence Hall, or Grand Canyon protected for public enjoyment? How much of our national identity reflected in these icons—the Statue of Liberty, Yellowstone, or the National Capital Mall—would be lost? How much would be missing without the rugged, adventurous American spirit embodied in Glacier Park or Denali? That was the challenge. The U.S. Senate has risen to answer that challenge by passing this bill today.

I'm profoundly proud of what we have accomplished. This effort has been on behalf of the millions of park visitor that flock to the wide open spaces or the rich historic sites. It's for taxpayers who expect the very best return for their money. And it's for the future generations of people, for whom we've worked hard, to preserve the very best of our public land heritage.

I want to express my deep appreciate to the chairman of the Senate Energy Committee, Chairman MURKOWSKI, as well as Senator BUMPERS and Senator BENNETT, who have labored long in this area of parks support, and I thank them for all of their hard work in this legislation. The compromise we developed in order to pass this measure is in the finest tradition of the Senate. The negotiations were tough, and nobody got everything they wanted in the bill. However, we have put together a good piece of legislation that will make a positive and proactive change to help our national parks.

I also want to recognize the hard work of the staff, particularly Dan Naatz of my staff, and Jim O'Toole of the committee staff.

Over the last two years, we have spoken to dozens of groups interested in preserving our parks. We have traveled across the country and listened to the concerns of folks ranging from the motion picture industry to natural resource experts. We have heard the suggestions as well as the criticisms of our colleagues and worked to evaluate areas where we could make positive improvements for our parks. Throughout all of these meetings and hearings, one message came through loud and clear—the value of national parks is one of the cultural constants for Americans.

The Vision 2020 bill provides a systematic approach to addressing the needs of the National Park Service. The restoration bill takes a broad approach, with eight titles covering the compromise bill.

Mr. President, the Senate can be proud of passing this landmark piece of legislation. As Americans, one of the finest legacies that we can leave our children and grandchildren is the National Park System that is healthy, vibrant and alive. We have an obligation to strengthen our outstanding system of parks, the system that over 100 other nations have modeled after ours.

Finally, I want to recognize the important contribution of the Secretary of the Interior, Bruce Babbitt, in developing this compromise bill. As folks know, the Secretary and I don't agree on all issues. However, to his credit, the Secretary recognized the important work we are doing and dedicated time and manpower of his agency to help. I thank the Secretary for his help.

Today is a good day for our parks. It's a good day for the U.S. Senate. Our commitment is to leave our children and grandchildren these wild and historic places healthy and whole. Today we are one big step forward toward achieving that worthwhile aspiration. I once again want to thank the Senate for passing S. 1693 and urge the House of Representatives to take up this bill as soon as possible.

SENSE OF THE SENATE REGARDING THE UNITED STATES AND KOREA

Mr. THOMAS. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 245, and further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 245) expressing the sense of the Senate that the United States and the Republic of Korea should continue to advance already close bilateral security, economic and political ties for the mutual benefit of both countries.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. THOMAS. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and a statement of explanation appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 245) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 245

Whereas, the United States maintains a close, critical and robust bilateral partnership with the Republic of Korea, and has a profound interest in furthering that relationship;

Whereas, the U.S. security relationship with the ROK, based on the 1953 Mutual Defense Treaty, bilateral consultations and combined is one of our most important, and it is in both countries' interest, as well as in the interest of the countries of the Asia Pacific region for that relationship to be maintained;

Whereas, the ROK is the United States' seventh largest trading partner, fifth largest export market and fourth largest market for U.S. agricultural products;

Whereas, the recent presidential election of Kim Dae Jung, formerly one of his country's most prominent dissidents, further demonstrates the strength and vibrancy of democracy in the ROK;

Whereas, the ROK has already made significant strides in reforming, restructuring and opening its economy in response to the Asian financial crisis;

Whereas, President Kim has committed his administration to making an array of further structural reforms that over the medium- to long-term, will produce a more open, competitive and dynamic Korea, benefiting the Korean people, U.S.-ROK relations and the global economy;

Resolved, That it is the sense of the Senate that:

(1) The United States and the Republic of Korea should continue to advance already close bilateral security, economic and political ties for the mutual benefit of both countries, and for the maintenance of peace, stability and prosperity in the Asia Pacific region; and

(2) Commends President Kim Dae Jung and the Republic of Korea for the measures already implemented and those measures it has committed to implement to resolve the country's economic and financial problems.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 105–50 AND TREATY DOCUMENT NO. 105–51

Mr. THOMAS. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaties

transmitted to the Senate on June 11, 1998, by the President of the United States:

1. Extradition treaty with Austria (Treaty Document No. 105–50.

2. Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Treaty Document No. 105–51).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Austria, signed at Washington on January 8, 1998.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty. As the report explains, the Treaty will not require implementing legislation.

This Treaty will, upon entry into force, enhance cooperation between the law enforcement communities of both countries. It will thereby make a significant contribution to international law enforcement efforts. This Treaty will supersede and significantly improve upon the Treaty between the Government of the United States and the Government of Austria for the extradition of fugitives from justice, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention signed at Vienna on May 19, 1934.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 11, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, adopted and opened for signature at the conclusion of the Seventeenth Session of the Hague Conference on Private International Law on May 29, 1993. Thirty-two countries, including the United States, have signed the Convention, 17 countries have ratified it, and one country has acceded to it. The provisions of the Convention are fully explained in the report of the Department of State that accompanies this message.

The Convention sets out norms and procedures to safeguard children involved in intercountry adoptions and to protect the interests of their birth and adoptive parents. These safeguards are designed to discourage trafficking in children and to ensure that intercountry adoptions are made in the best interest of the children involved. Cooperation between Contracting States will be facilitated by the establishment in each Contracting State of a central authority with programmatic and case-specific functions. The Convention also provides for the recognition of adoptions that fall within its scope in all other Contracting States.

The Convention leaves the details of its implementation up to each Contracting State. Implementing legislation prepared by the Administration will soon be transmitted for introduction in the Senate and the House of Representatives. Once implementing legislation is enacted, some further time would be required to put the necessary regulations and institutional mechanisms in place. We would expect to deposit the U.S. instrument of ratification and bring the Convention into force for the United States as soon as we are able to carry out all of the obligations of the Convention.

It is estimated that U.S. citizens annually adopt as many children from abroad as all other countries combined (13,621 children in Fiscal Year 1997). The Convention is intended to ensure that intercountry adoptions take place in the best interests of the children and parents involved, and to establish a system of cooperation among Contracting States to prevent abduction of, and trafficking in children. We have worked closely with U.S. adoption interests and the legal community in negotiating the provisions of the Convention and in preparing the necessary implementing legislation.

I recommend that the Senate give its advice and consent to ratification of this Convention, subject to the declaration described in the accompanying report of the Department of State.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 11, 1998.*

AUTHORIZING TESTIMONY, DOCUMENT PRODUCTION, AND REPRESENTATION OF MEMBERS AND EMPLOYEES OF THE SENATE

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate resolution 247 submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 247) to authorize testimony, document production, and representation of Members and employees of the Senate in U.S. Senate v. Jack L. Williams, et al.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. LOTT. Mr. President, this resolution concerns a criminal prosecution brought against Jack L. Williams and Archibald R. Schaffer, III, representatives of Tyson Foods, Inc., alleging illegal gratuities to officials of the Department of Agriculture, including former Secretary Espy, and related charges. The Independent Counsel, who is bringing this prosecution, seeks evidence from an employee of the Senate on the professional staff of the Appropriations Committee about communications with meat and poultry processing industry representatives and Executive Branch officials about a labeling rule promulgated by the Agriculture Department in 1993. The defense may also call Senator BUMPERS to testify.

This resolution would authorize testimony and document production by Senator BUMPERS and employees of the Senate, except where a privilege should be asserted, with representation by the Senate Legal Counsel.

Mr. THOMAS. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and a statement of explanation appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 247) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 247

Whereas, in the case of United States v. Jack L. Williams, et al., Criminal Case No. 96–0314, pending in the United States District Court for the District of Columbia, a trial subpoena has been served upon Galen Fountain, an employee of the Senate on the staff of the Committee on Appropriations, and testimony may be requested from Senator Dale Bumpers;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That Senator Dale Bumpers, Galen Fountain, and any other employee from whom testimony or document production may be required, are authorized to testify and to produce documents in the case of United States v. Jacke L. Williams, et al., except when Senator Bumpers' attendance at the Senate is necessary for the performance of his legislative duties, and except concerning matters for which a privilege should be asserted

SEC. 2. That the Senate Legal Counsel is authorized to represent Senator Bumpers, Galen Fountain, and any other employee of the Senate, in connection with testimony and document production in United States v. Jack L. Williams, et al.

NATIONAL TOBACCO AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2689, AS FURTHER MODIFIED

Mr. THOMAS. Mr. President, I ask unanimous consent that the Kerry amendment No. 2689 be further modified with the changes at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2689), as further modified, is as follows:

On page 200, line 20, strike from the comma through line 21, and insert ";" after "Act."

On page 202, line 7, strike from the comma and all that follows through line 14, and insert a period after (b)(2) on line 7.

At the appropriate place insert the following:

(h) ASSISTANCE FOR CHILDREN.—A State shall use not less than 50 percent of the amount described in subsection (b)(2) for each fiscal year to carry out activities under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

ORDERS FOR FRIDAY, JUNE 12, 1998

Mr. THOMAS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, June 12. I further ask that on Friday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 10:30 a.m., with Senators permitted to speak for up to 5 minutes each with the following exception: Senator BAUCUS for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Further, I ask unanimous consent that following morning business, the Senate resume consideration of S. 1415, the tobacco bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. THOMAS. For the information of all Senators, the Senate will reconvene tomorrow at 9:30 a.m. and begin a period of morning business until 10:30 a.m. Following morning business, we will resume consideration of the tobacco bill. It is hoped that Members will come to the floor to offer and debate remaining amendments throughout Friday's session.

The Senate may also consider the vocational education bill, the Higher Education Act, the NASA authorization bill, the drug czar office reauthorization bill, and any other legislation or executive items that may be cleared for action.

As a reminder to all Members, the majority leader has announced there will be no rollcall votes during Friday's session. Therefore, any votes ordered during Friday's session will be postponed, to occur on Monday at a time to be determined by the two leaders, but not before 5 o'clock.

ORDER FOR ADJOURNMENT

Mr. THOMAS. Mr. President, there being no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order, following the remarks of Senator COLLINS.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. The Senator is on her way. 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.

Ms. COLLINS. 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 Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2167 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Ms. COLLINS. I thank the Chair. I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate is now adjourned.

Thereupon, the Senate, at 6:45 p.m., adjourned until Friday, June 12, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 11, 1998:

DEPARTMENT OF TRANSPORTATION

KELLEY S. COYNER, OF VIRGINIA, TO BE ADMINISTRATOR OF THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, VICE DHARMENDRA K. SHARMA, RESIGNED.

FEDERAL ENERGY REGULATORY COMMISSION

WILLIAM LLOYD MASSEY, OF ARKANSAS, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE TERM EXPIRING JUNE 30, 2003. (REAPPOINTMENT)

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

CARLOS PASCUAL, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE THOMAS A. DINE, RESIGNED.

IN THE NAVY

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

REAR ADM. DANIEL J. MURPHY, JR., [redacted]

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 admiral

VICE ADM. JAMES O. ELLIS, JR., [redacted]