By Mr. HEFLIN (for himself, Mr. SPEER, Mr. FORD, Mr. THURMOND, Mr. BUMPERS, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):

S. 487. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the business taxable income of corporations, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. INOUE):

S. 489. A bill to authorize the Secretary of the Treasury to consider a Balanced Budget Amendment to the Constitution; to the Committee on the Judiciary.

By Mr. S. 491. A bill to authorize the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. MACK:

S. Res. 84. A resolution saluting Florida on the 150th anniversary of Florida statehood, and for other purposes; considered and agreed to.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 492. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and waiving the duties of customs and excise taxes on the vessel Emerald Ayes; to the Committee on Commerce, Science, and Transportation.

"EMERALD AYES" CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel Emerald Ayes, official number 986099, be accorded coastwise trade privileges and be issued a certificate of documentation under section 12103 of title 46, United States Code.

The Emerald Ayes was constructed in Canada in 1992, and is a sailing catamaran for use as a recreational vessel. It is 36.4 feet in length, 18.2 feet in breadth, has a depth of 9.4 feet, and is self-propelled.

The vessel was purchased by Dr. Stephen D. Michel of Mount Pleasant, SC, who purchased it with the intention of chartering the vessel for short sailing tours. However, because the vessel was built in Canada, it did not meet the requirements for coastwise license endorsement in the United States. Such documentation is mandatory to enable the owner to use the vessel for its intended purpose. He first sought to purchase a U.S.-built vessel, but this type of sailboat is not built by any U.S. shipbuilders. He has invested a considerable amount of money in this vessel, and without a Jones Act waiver for the vessel, he will be forced to sell it.

The owner of the Emerald Ayes is seeking a waiver of the existing law because he wishes to use the vessel for charters. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the Emerald Ayes to engage in the coastwise trade and the fisheries of the United States.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON):

S. 493. A bill to amend title XVIII of the Social Security Act to provide coverage of certain permitting requirements, and for other purposes; to the Committee on Labor and Human Resources.

S. 494. A bill to amend the Clean Air Act to maintain permanently a cemetery in the Lake, Colorado, authorizing the town to enter into an appropriate agreement with the Interior to enter into an appropriate agreement with the 

Every work created after the effective date of the Copyright Term Extension Act will be prospectively protected for the remainder of the author's life and for 70 years thereafter. Works in existence on that date will receive the identical protection, if their author is still living. As for the works of authors deceased prior to that date, the bill provides an additional 20 years of protection; provided, that the works have not, on the effective date of the bill, already gone into the public domain.

Those works whose term of protection under the Berne Convention has not been increased will not be tied to the life of an author but is a fixed term of years, such as works made for hire, will also receive an additional 20 years of protection. Where they are protected for 75 years under present law, they will be protected for 95 years under the provisions of the Copyright Term Extension Act.

By providing this across-the-board extension of copyright for an additional 20 years, I believe that authors will receive the benefits to which they are entitled from the exploitation of their creative works. In addition, there are significant trade benefits to be obtained by extending copyright in the United States to bring our law into conformity with the longer copyright term enjoyed by authors in other nations.

As I noted above, our current basic copyright term of life plus 50 years is prevailing international standard, one now required by the convention to the members of the World Trade Organization through the implementation of the Agreement on the Trade Related Aspects of Intellectual Property Protection [TRIPS]. Despite the nearly universal adoption of the life-plus-50-year term of copyright, many have observed that the term itself, particularly the decision to give significance to 50 years, has achieved dominance perhaps more through imitation and acceptance than through the logical belief that the life-plus-50-year term represents the ideal period of protection needed to appropriately reward and inspire creative activity. See, that is, Rickston, "The Berne Convention for the protection of literary and artistic works: 1886-1995," p. 321.

While the [Berne Convention's] prescriptions as to duration are quite precise, there has never been any real effort made to justify why, or to explain how, these terms have come to be adopted.

Even though the United States adopted the life-plus-50-year term of copyright only 19 years ago, and even though that term of protection has a nearly identical counterpart in many national and international agreements, I do not believe that it should be accepted uncritically as an ideal or even sufficient measurement of the most appropriate duration for copyright term. Instead, we should be aware that the basis of the original copyright right has historically provided longer terms of copyright as well as the recent developments to extend copyright in Europe. Also, we need to examine the real-life experience of creators, their reasonable expectations for exploiting their works, and the concerns and views of the descendants, heirs, and others whom the postmortem protection of copyright was designed to benefit.

Among the European nations, Germany and Spain have for some time recognized respectively terms of life plus 70 years and life plus 80 years, and Portugal has had a perpetual term of protection. In addition, it is common for bilateral agreements relating to copyright protection among particular nations to provide for terms of protection in excess of the life-plus-50-year standard.

As far as a general reconsideration of the life-plus-50-year term, it should be noted that as long ago as 1961, the permanent committee of the Berne Union began the process of reexamining the sufficiency of that term of protection. At the Stockholm Conference of 1967, a proposal to increase the copyright term to life plus 80 years was debated though not adopted. It is, however, easy to speculate that the failure to increase the term at that time may have been disproportionately influenced by the contemporaneous efforts in the United States to adopt a copyright act compatible with the existing minimum requirements of the Berne Convention. An extension of the minimum term at that time would, however meritorious, surely have made more difficult the eventual adoption of the Copyright Act of 1976 in the United States.

In the intervening years, the inadequacy of the life-plus-50-year term has become more apparent, and nations have acted to increase the duration of copyright. Most significantly, the nations of the European Union, pursuant to an October 1993, directive of the Council of the European Communities, are committed to reaching a life-plus-70 minimum term of protection by 1997. It is thus fair to say that for a significant portion of the developed world—for the nations, moreover, that have traditionally been in the forefront of protecting authors' rights—the term of life-plus-70 has gained a broad acceptance.

I am pleased to be the author of the bill that I hope will bring American copyright law into accord with this developing international understanding as to the appropriate duration of copyright.

The benefits of extending copyright by 20 years will be felt in many areas. The vast majority of our European and other trading partners have obligated themselves to extend to our authors the full protection of their copyright laws—at least to the extent that America recognizes complementary rights. Of course, I should add that with respect to the requirements for national copyright protection for U.S. authors is mandated by the Berne Convention as well as by the TRIPS agreement. But copyright protection in excess of the Berne minima will not be freely granted to U.S. authors on the basis of national treatment. Instead, the Berne Convention's "role of the shorter term" will no doubt be often employed by foreign states with the result that American works will be protected in those nations only to the extent that the works of their authors are protected in the United States. Article 7(1) of the EC directive explicitly mandates rule of the shorter term treatment for the works of foreign authors.

After the European law goes into effect, American authors will be theoretically protected for an additional 20 years, but will in reality be unprotected for that entire period of time—unless American law is strengthened in the manner proposed by the bill I am filing today.

America exports more copyrighted intellectual property than any country in the world, a huge percentage of it to the nations of the European Union. Intellectual property is, in fact, our second largest export; it is an area in which we possess a large trade surplus. At a time when we face trade deficits in many other areas, we cannot afford to abandon 20 years' worth of valuable compensation for the American creators whose efforts fuel this important intellectual property sector of our economy by extending our copyright term to allow American copyright owners to benefit from foreign uses. By so doing, we guarantee that our trading partners do not get a free ride for the use of our intellectual property.

While we may be accustomed to a substantial American balance-of-trade surplus with respect to trade in works of intellectual property, we cannot afford to take this condition for granted. In a world economy where copyrighted works flow through a fiber optic global information infrastructure, American competitiveness demands that we adapt our laws—and adapt them quickly—to provide the maximum advantage for our creators.

Anonymous and pseudonymous works: I noted above that the copyright term extension provided by the bill I file today is not mandated by our treaty obligations. But it may be well to note parenthetically that at least in one respect the 20-year term extension does advance our ongoing efforts to fulfill our obligations under the Berne Convention. I am speaking of the term of protection applicable to anonymous and pseudonymous works. Article 7(3) of the Berne Convention mandates that such works be protected for at least 50 years after they are first made lawfully available to the public. Our current law protects those works for 75 years, yet §302(c) of the Copyright Act also establishes a maximum term of protection—
100 years from the date of their creation—beyond which no anonymous or pseudonymous work will be protected, regardless of the date on which it may ultimately be made available to the public. My bill increases each of these terms by 20 years.

Since the Stockholm Convention of July 14, 1967, the Berne Convention has recognized the need for an outer limit on the protection of anonymous and pseudonymous works by providing that, “The countries of the Union shall not be required to protect anonymous or pseudonymous works fixed by any means whatsoever and regardless of the date on which they may have been made available to the public. This for the reason that it is reasonable to presume that their author has been dead for fifty years.” Art. 7(3). It has been argued that the American provision setting an outer limit of 100 years of protection for anonymous and pseudonymous works is in violation of the Berne Convention, see Nimmer, “Copyright” §9.01[D], at least with respect to works whose country of origin is not the United States. By increasing the maximum protection from its current 100 years to a period of 120 years, the Copyright Term Extension Act will at least serve to reduce greatly the number of potential situations in which our law may operate in violation of the Berne Convention. This for the reason that it is far more reasonable to presume that an author who created a work 120 years ago may have been deceased for 50 years, than it is to presume that the author of a work created only 100 years ago may have been deceased for at least 50 years.

Mr. President, that is the theoretical, one might say jurisprudential, background of the copyright issue before us today. But it may be well to consider this legal question in its practical aspect as well. What works are we talking about? Who is affected by this legislation?

Mr. President, this legislation matters and it matters to some of the most distinguished members of America's cultural and artistic community. If we examine the significance of this legislation just in the area of popular music alone, I believe we will see its importance.

Consider the following songs that fell into the public domain just 2 months ago at the end of 1994—works still widely performed in theaters and through media around the world: “Swanee” by George Gershwin and Irving Caesar; “A Pretty Girl Is Like a Melody” by Irving Berlin; “Alice Blue Gown” by Joseph McCarthy and Harry Tierney.

In the preceding 2 years, the following songs lost copyright protection, despite their continued popularity: “After You've Gone” by Henry Creamer and turner Layton; “Till the Clouds Roll By” by Jerome Kern and bud DeSylva; “Avalon” by Al Jolson, Bud DeSylva, and Vincent Rose.

Within the next few years, if Congress does not act to adopt legislation such as mine, it is argued today, the following musical works will also fall into the public domain: “Rhapsody in Blue” by George Gershwin; “My Buddy” by Walter Donaldson and Gus Kahn; “What'll I Do” by Irving Berlin; “Take Me Out to the Ball Game” by Harry Von Tilzer and Jack Norworth, and Howard Johnson; “It Had To Be You” by Isham Jones and Gus Kahn; “Showboat” by Jerome Kern and Oscar Hammerstein II.

All of these songwriters and composers are household names still, after 75 years. Indeed “Showboat” is back on Broadway, eight performances a week, nearly 70 years after its premiere.

But I would like to draw particular attention to the career of Walter Donaldson, who first alerted me to the importance of this legislation. In the lyrics cited above when he was in his twenties, and he died in 1947 when he was in his midfifties. He composed innumerable standards and will forever be linked to the extraordinary success of the 1927 film “The Jazz Singer” in which his songs were sung by Al Jolson. The historical significance of that motion picture, the first sound film to be commercially released, can hardly be overstated.

If the present copyright law had been in effect in the 1920's, all of Walter Donaldson's compositions would fall into the public domain within the next 2 years. Yet these historical facts should not mislead us into thinking that the copyright status of his works is an academic issue. For it was Ellen Donaldson, the composer's daughter, who first alerted me to the importance of this issue only 2 years ago. I do not think she will mind my pointing out that our law now only in her early fifties. She remains extremely active in publishing and exploiting her father's music and in protecting his copyrights. Like the children of composers such as Richard Rogers, Irving Berlin, Richard Whiting, Hoagy Carmichael, and many, many others, her legitimate interest in her father's copyrights can be expected to continue for decades, certainly for another 20 years.

If the President, from interviews I have had with writers, authors, and artists of all kinds, and from the hearings we have held on issues of concern to authors in the Judicial Committee over the past 18 years, I have come to the conclusion that a majority of authors expect their copyrights to be a potentially valuable resource to be passed on to their children and through them into the succeeding generation. I believe that they are reasonable in this expectation and that such a generation may well be the Framers of the Constitution had in mind when they constrained the power of Congress to grant patents and copyrights only with the very broad and flexible requirement that such rights be granted “for limited times.” Article I, section 8. When, however, we so often see copyrights expiring before even the first generation of an author's heirs have fully benefited from them, then I believe that is accurate to say that our term of copyright is too short and for a too limited time.

We could also cite demographic factors that point to the need for a longer term if copyright is truly to reflect the natural desire of authors to provide for their heirs. Principal among these would be the increasing lifespan of the average American, as well as the increasing fact of children being born far later, in a marriage than in past decades. Whatever the reason, the inescapable conclusion must be drawn that copyrights in valuable works are too often expiring before they have served their purpose of allowing an author to pass their benefits on to his or her children. Hence, I urge my colleagues to pass the Copyright Term Extension Act of 1995 to remedy this situation.
this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

Mrs. FEINSTEIN. Mr. President, as always when it comes to matters of copyright law, the distinguished chairman of the Judiciary Committee has spoken well and to the point as to why extending the basic term of copyright protection by 20 years is both the right and the economically desirable thing to do, and to do without delay. As the chairman has said, it is just a few thoughts about our proposal to extend the length of copyright protection for only the fourth time since the Founding Fathers established such rights more than 200 years ago.

First principles come first. The fundamental animating principle of copyright protection was—and remains—assuring that the Nation's most creative individuals have and retain a sufficient economic incentive to continue to create, work by copyrightable work, the incomparable mosaic of our Nation's cultural life. For many years now, such incentive has been considered to be the right to profit from licensing one's work during one's lifetime and to take advantage of one's children—and perhaps their children—might also benefit from one's posthumous popularity. Indeed, it was to preserve that incentive that Congress adopted the current life plus 50 years term in 1976.

Human longevity, however, is increasingly undermining this fundamental precept of copyright law. Mr. President, and with it the economic incentive deemed essential by the authors of the Constitution. We all had the great good fortune, for example, to have the incomparable Irving Berlin among us until 1989, when he died at the age of 101. By that time, however, Mr. Berlin had outlived the period in which he was entitled to the inordinate interest in "Alexander's Ragtime Band." Although not every American copyright owner will reach the century mark, Mr. President, it's clear that we as a Nation are living longer and more active lives.

Copyright law has in the past—and should now again—reflect that central fact of life. Accordingly, the Copyright Term Extension Act of 1995 uniformly extends the life of copyright protection in this country by 20 years, a modest extension relative to past adjustments, as Chairman HATCH points out. Writers, artists, filmmakers, composers, photographers, sculptors, and cartographers who are not themselves their children, all will benefit from this overdue adjustment. Perhaps more importantly, as the ultimate beneficiaries of the creativity that copyright protection is intended to assure, so will we all.

Second, no less important as America's cultural enrichment is, the United States also stands to benefit dramatically on the world economic stage from extension of the current copyright term. As the tense and protracted negotiations with China just concluded underscored, intellectual property—the collective copyrightable output of America's creators of movies, music, art, and other incorporeal assets to the Nation's balance of trade.

Indeed, in a recent Billboard magazine commentary, Prof. Arthur Miller of the Harvard Law School noted that, ""...it is no wonder, Mr. President, that the Chinese preferred to appropriate American film and music for resale—two great exports from my State of California—rather than license American works."

By extending to life plus 70 years the basic copyright protection afforded in the United States for new works, Congress will assure comparable protection for American authors in the countries of the European Union, which will formally adopt the life-plus-70 standard this summer. If we do not act, Mr. President, those nations quite simply will not be required to provide American authors, artists, and other copyright holders with more than the protection we afford their intellectual property here at home. Simply put, Mr. President, conforming our intellectual property laws with those of our trading partners in the service of American competitiveness is critical.

As Professor Miller aptly put it: "Unless Congress matches the copyright extension adopted by the European Union, we will lose 20 years of valuable protection against rip-off artists around the world." I'm certain that the tired, but successful team from the United States Trade Representative's office just returned from China will testify if asked, Mr. President, that the stronger our copyright laws here at home, the better the deal they can negotiate for American copyright holders abroad. Since America is—and is likely to remain—the world's principal exporter of popular culture, extension of the basic copyright term makes international dollars and sense.

Third, and finally, Mr. President, I want to note for the record the extraordinary support for this legislation within the intellectual property community. Not only do movie and music companies strongly back this bill as written, as one would expect, but book and music publishers, performing rights societies representing America's premier songwriters and composers, and major software producing firms all concur that Congress can and must pass this important legislation.

I want to thank Chairman HATCH and his staff once again, Mr. President, for another—to my mind—successful collaboration to protect and encourage America's most valuable intellec	tual property. Just as was the case with the digital performance rights legislation which we first introduced in the last Congress and jointly offered again recently, it is equity and economics which make the Copyright
Term Extension Act of 1995 an important and worthwhile bill. I commend it to my colleagues, and look forward to working with them and the copyright community at large to put it—as well as digital performance rights legislation—before the President by the end of this session of Congress.

Mr. GRAHAM. I ask unanimous consent that additional material be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From Billboard magazine, January 14, 1995]

**Extending Copyrights Preserves U.S. Culture**

(As quoted by Arthur R. Miller)

Beginning this summer, all member nations of the European Union will extend the length of copyright protection to the life of the author plus 70 years. Should we in America provide the same protection for our own writers, musicians, artists, computer programmers, and other creators of copyrighted items?

Some feel that we should not tamper with existing U.S. law, which provides copyright protection for 50 years. But Morton denies that ignores some fundamental changes that have occurred in the 20th century.

One of the major reasons Congress originally adopted life-plus-50 years was to offer protection not only to the creator of the copyrighted work, but to his or her children and grandchildren—that is, to three generations in all. With people living longer today, an extension of the copyright term by 20 years would roughly correspond to the increase in longevity that has occurred during the 20th century.

In addition, Congress has already recognized the wisdom of extending copyright protection to match the terms guaranteed by other nations. That is exactly what Congress did in 1976 when it extended the copyright term to life-plus-50 years, in order to bring American law into line with the term then commonly recognized by other nations.

But beyond this, the main arguments for term extension are equity and economics. If Congress does not extend to Americans the same copyright protection afforded Europeans, American creators will have 20 years less protection than their European counterparts—and will therefore be reproducing their products. This situation would not only be unfair to creators of copyrighted works, but would also be economically harmful to the country as a whole.

The export of intellectual property is growing at a tremendous rate because America dominates music, movies, and software production around the world. In 1990, America’s “copyright industries” recorded $34 billion in foreign sales of records, CDs, computer software, motion pictures, music, magazines, scientific journals, periodicals, photographs, design, and pictorial and sculptural works. Because the world is so eager for the products of America’s copyright law, we are one of the few bright spots in our balance-of-trade picture.

The question of copyright extension should be viewed in the larger context of bilateral and multilateral trade talks—including the Trade Related Intellectual Property Rights (TRIPS) negotiations under GATT. U.S. trade representatives have found that shortening the copyright law is used against us when we call for stronger protection for American works overseas. One can just hear the Europeans objecting in future negotiations: “How can you ask for better protection in Europe when you do not even grant the same term of protection we do?”

The need for strong copyright protection becomes more important every year as a weapon with which to fight the piracy of intellectual property. American copyrighted material has grown dramatically in recent years due to the availability of equipment that can make copies of books, records, sound recordings, and computer programs. As more and more digital technology arrives on the scene, the problem will only become worse.

Indeed, China’s government tried to sell an estimated $2 billion worth of counterfeit recordings and computer disks last year. According to the International Federation of the Phonographic Industry, China now has as many as 26 factories capable of producing 62 million compact discs. China’s domestic compact disc market accounts for only about 3 million discs, so the dimension of the loss to copyright owners is obvious. Unless Congress matches the copyright extension adopted by the European Union, we will lose 20 years of valuable protection against rip-off artists around the world.

It would not take long to see what harm can come from not changing our laws to match those of Europeans. America may be a young nation, but we have the world’s oldest popular culture. Many wonderful motion picture classics, such as Berlin’s “Alexander’s Rag Time Band”—already have lost their copyright protection. Dozens, if not hundreds, of other valuable songs and motion pictures—each an important part of American culture—also will lose their protection in the next few years. For example, if Congress does not act soon, such classics as “After You’ve Gone,” “I’m Always Chasing Rainbows,” “A Pretty Girl Is Like A Melody,” “Swanee,” and “The World Is Waiting For The Sunrise” will fall into the public domain, and that is only the beginning.

Commentary writer Professor Lewis Kurlantzick (Billboard, Oct. 29, 1994) asserted that when copyrighted works lose their protection, they become more widely available. At first blush, this appears logical. But, paradoxically, works of art become less available to the public when they enter the public domain—at least in a form that does credit to the original. This is because few businesses will invest in the money necessary to reproduce copyrighted products that have lost their copyright protection and can therefore be reproduced by anyone. The only products that do tend to be made available for the next 75 years after a copyright expires are “down and dirty” reproductions of such poor quality that they degrade the original copyrighted work. And there is very little evidence that consumers will benefit economically from works falling into the public domain.

Kurlantzick also denigrates the importance of long-term copyright protection by stating that “a dollar to be received 75 years from now is worth a small fraction of one cent.” But, he fails to see that the dollar value placed on future copyright advantages will rise in proportion with the inflation rate. That is to say, if the dollar loses 90% of its value over the next 75 years, then the cost of goods and services will be highly 90% higher in 75 years than it is today.

For all these reasons, it’s clear why Congress should act. America can reap valuable benefits from this legislation. We can encourage economic investment, strengthen our hand in dealing with intellectual piracy, and see to it that America’s authors, composers, artists, and computer programmers receive the same level of protection afforded the creative people of other nations. Thus, copyright term extension makes economic sense, and it’s equitable.

By Mr. GRAHAM: S. 484 A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a national clearinghouse to assist in background checks of applicants for law enforcement positions, and for other purposes; to the Committee on the Judiciary.

**The Law Enforcement and Correctional Officers Employment Registration Act of 1995**

• Mr. GRAHAM, Mr. President, I introduce the Law Enforcement and Correctional Officers Employment Registration Act of 1995, which will establish a national clearinghouse to assist in background checks on law enforcement applicants.

This legislation would establish a national data bank to provide quick, accurate and prior officer employment history on all applicants for law enforcement agencies. This clearinghouse would have been called a Pointer File and simply maintains basic information of all certified officers, including names, dates of birth, social security numbers, dates of employment, and any decertifications. The Department of Justice would maintain and offer computer access to all criminal agencies.

The intent of my legislation is to help prevent what “Dateline NBC” has referred to as gypsy cops. These are police officers who have been dismissed or have been forced to resign from previous positions but conceal prior employment histories in future job applications.

In the case of the beating death of Bobby J. Jewett on November 24, 1990, in West Palm Beach, FL, “Dateline NBC” was able to subsequently trace the prior employment histories of the two officers involved in the case through four States and eight different law enforcement agencies. Much of this has been concealed in their job application.

As noted in a Tampa Tribune editorial in support of a clearinghouse, few agencies, particularly those in rural areas and small towns, have the personnel and resources to conduct thorough background checks on police applicants. Not even the largest agencies always succeed in finding an officer’s past if he or she is determined to hide it.

Florida Department of Law Enforcement Commissioner James T. Moore adds, “Experience has shown that, after being found guilty of misconduct, many problem officers resign or are fired, only to seek police jobs elsewhere. The clearinghouse system would help prevent what “Dateline NBC” has referred to as gypsy cops. These are police officers who have been dismissed or have been forced to resign from previous positions but conceal prior employment histories in future job applications.”

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The safety of the citizens of this Commonwealth and this Nation is either weakened or solidified by the character of the individuals that we entrust with the responsibility to protect. This legislation provides society with the tools to ensure that individuals who have violated this trust do not simply relocate and once again commit grievous offenses against the public good, and it ensures that an adequate and thorough background investigation will be completed prior to an individual assuming the public's trust to be a protector of society.

This legislation is essential to maintaining public confidence in the police. Further, the financial impact of law enforcement as well as the public's safety. The misdeeds of a few place others in an unfavorable light and also at risk. It is in fact a historical duty to protect the public from other police agencies for their efforts to protect effectiveness and professionalism in law enforcement as well as the public's safety.

I urge my colleagues to join me in support of this important legislation.

By Mrs. HUTCHISON:
S. 485. A bill to amend the Solid Waste Disposal Act to provide for the reorganization of the federal law enforcement before Carbone. It ensures flow control authority for the life of the affected facilities. However, my legislation would not permit new flow control arrangements, thereby assuring free competition and unfettered interstate commerce in the future.

Mr. President, we should protect the local governments and local taxpayers who are threatened financially by invalidation of their flow control ordinances. We can do so, as my bill does, in a straightforward way and, at the same time, assure that businesses and homeowners will have the benefits of a free market in the future.

By Mr. HEFLIN (for himself, Mr. SPECKER, Mr. FORD, Mr. THURMOND, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):
S. 486. A bill to reorganize the Federal administrative law judiciary, and for other purposes; to the Committee on the Judiciary.

By Mr. HEFLIN (for himself, Mr. SPECKER, Mr. FORD, Mr. THURMOND, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):
eral administrative law judges into a
savings the American people expect
few as 5 years. These are the types of
save as much as $22 million a year in as
which estimates the legislation can
Office [CBO] has prepared a report
tive manner. The Congressional Budget
government in an efficient and effec-
operation.
mandate and I greatly appreciate his co-
impartiality. This legislation is better
its panels—to ensure objectivity and
the complaint resolution board—and
continue to be assigned cases within
presently decide. Further, ALJ's would
continue to be assigned cases within
their division on a rotating basis, tak-
ing into account the quality of their
education. In addition, ALJ's would be
given explicit authority to continue to
act as special masters pursuant to Fed-
eral Rule of Civil Procedure 53(a).
This bill also contains provisions for the
removal and discipline of administrative
law judges.

In the committee report (103-154) to
this legislation, my colleague, Senator COHEN, expressed support for the con-
cept of establishing an independent corps of administrative law judges within the executive branch of Govern-
ment and for the concept which would
reform and streamline the Federal bu-
eaucracy in order to serve the Ameri-
can public. Senator COHEN did have le-
gitimate concerns and offered excellent
suggestions to improve and strengthen
section 599(e) of the bill relating to re-
moval and discipline of judges.

I have worked with Senator COHEN to
strengthen and improve the removal and
discipline provisions of the bill, and I believe these provisions are a bal-
anced effort to make the provisions fairer to all interest parties concerned
by insuring public members serve on the
complaint resolution board—and its panels—to ensure objectivity and
impartiality. This legislation is better
because of Senator COHEN's participa-
tion and I greatly appreciate his co-
operation.

This legislation will promote good
government in an efficient and effec-
tive manner. The Congressional Budget
Office [CBO] has prepared a report which estimates the legislation can
save as much as $22 million a year in as
few as 5 years. These are the types of
savings the American people expect and
deserve.

Since the reorganization of the Fed-
eral administrative law judges into a
unified corps is expected to save the U.S. taxpayers millions of dollars, in
consultation with Senator HANK Brown of Colorado, a provision offered by Senator Brown is included in this
legislation ensuring that agencies will
reduce their budgets to reflect the pro-
moves the final decisions for the agen-

ty.

I look forward to working for passage of this reform legislation here in the
Senate, and I hope my colleagues in the House of Representatives will like-
wise favorably consider and act on it,
so that President Clinton can sign it into law before the end of the year.

Mr. President, I ask unanimous con-
sent that the bill in its entirety be
printed in the RECORD.

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

S. 486

Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "Reorganiza-
tion of the Federal Administrative J udiciary Act".

SEC. 2. FINDINGS.
The Congress finds that—
(1) the dispersal of administrative law
judges appointed under section 3105 of title 5, United States Code, in every Federal
agency that requires hearings to be conducted by administrative law judges, underutilizes
the potential of administrative law judges to serve the public and assist the Federal
courts as special masters and finders of fact in specific instances to help reduce the back-
log of cases in Federal courts;
(2) the reorganization of the Federal administrative law judges in a corps will best promote their as-
signment to Federal agency needs as demand
requires;
(3) a unified administrative law judge corps will
better promote the use of information technolo-
gy in serving the public; and
(4) a unified administrative law judge corps will
better promote the use of information technolo-
gy in serving the public; and

SEC. 3. ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS.

(a) IN GENERAL.—Chapter 5 of title 5, Unit-
ed States Code, is amended by adding at the
end thereof the following new subchapter:

"SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS"

§ 597. Definitions

"For the purposes of this subchapter—
(1) 'agency' means an authority referred to
in section 551(1);
(2) 'Corps' means the Administrative Law
Judge Corps of the United States established
under section 599;
(3) 'administrative law judge' means an
administrative law judge appointed under
section 3105 on or before the effective date of
the Reorganization of the Federal Adminis-
trative Judiciary Act or under section 599;
(4) 'chief judge' means the chief adminis-
trator who is the head of the Administrative
Law Judge Corps of the United States established
under section 599;
(b) BOARD.—There is established the Com-
plaints Resolution Board, which shall consist of

(1) the Administrator who is the head of the
Administrative Law Judge Corps established
under section 599;
(2) one member appointed by the President,
with the advice and consent of the Senate;
(3) one member appointed by the Senate;
(4) one member appointed by the House of
Representatives; and
(5) such other personnel as the Board may
require in order to perform its functions
under this section.
March 2, 1995

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"(7) 'division chief judge' means the chief administrative officer of a division appointed and serving under section 599a."

§ 598. Establishment; membership

"(a) ESTABLISHMENT.—There is established an Administrative Law Judge Corps consisting of all administrative law judges, in accordance with the provisions of subsection (b). Such Corps shall be administered in Washington, D.C.

"(b) MEETINGS.—An administrative law judge serving as such on the date of the commencement of the operation of the Corps shall be transferred to the Corps as of that date. An administrative law judge appointed or reappointed on or after the date of the commencement of the operation of the Corps shall be a member of the Corps as of the date of such appointment.

§ 599. Chief administrative law judge

"(a) APPOINTMENT; TERM.—The chief administrative law judge shall be the chief administrative officer of the Corps and shall be the presiding judge of the Corps. The chief judge shall be appointed by the President, by and with the advice and consent of the Senate. The chief judge shall be learned in the law. The chief judge shall serve for a term of five years or until a successor is appointed and qualifies to serve. A chief judge may be reappointed upon the expiration of the term of such judge, by and with the advice and consent of the Senate.

"(b) VACANCIES.—(1) If the office of chief judge is vacant, the division chief judge who is senior in length of service as an administrative law judge shall serve as acting chief judge until such vacancy is filled.

"(2) If 2 or more division chief judges have the same seniority in length of service as members of the Council, the division chief judge who is senior in length of service as an administrative law judge shall serve as such acting chief judge.

"(c) SPECIAL FUNCTIONS OF CHIEF JUDGE.—(1) In addition to other duties conferred on the chief judge, the chief judge shall be responsible for developing programs and practices, in coordination with agencies using administrative law judges, which foster economy and efficiency in the processing of cases heard by administrative law judges. These programs and practices shall include—

"(A) training of judges in more than one subject area;

"(B) the deployment of computers and software and other information technology for automated decision preparation, case docketing, and research;

"(C) consolidating hearing facilities and law libraries; and

"(D) programs and practices to foster overall efficient use of staff, personnel, equipment, and judges, including the consideration of the specialization in which the judge has served. Each division shall be headed by a division chief judge who shall exercise administrative supervision over such division.

"(b) DIVISIONS.—The divisions of the Corps shall be as follows:

"(1) Division of Communications, Public Utility, and Transportation Regulation.

"(2) Division of Safety and Environmental Regulation.

"(3) Division of Labor.

"(4) Division of Health and Human Services Programs.

"(5) Division of Security, Commodities, and Trade Regulation.

"(6) Division of General Programs.

"(7) Division of Financial Services Institutions.

"(c) APPOINTMENT OF DIVISION CHIEF JUDGES.—(1) The division chief judge of each division set forth in subsection (b) shall be appointed by the President, by and with the advice and consent of the Senate, and shall be learned in the law.

"(2) Division chief judges shall be appointed for 5-year terms, except that any division chief judge first appointed by the President shall designate 2 such individuals to be appointed for 5-year terms, 3 for 4-year terms, and 2 for 3-year terms.

"(3) Any division chief judge may be reappointed upon the expiration of the term of such judge, by and with the advice and consent of the Senate.

"(4) Any division chief judge may be reappointed upon the expiration of his or her term.

"(5) Any judge, after serving as division chief judge, may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599.

§ 599b. Council of the Corps

"(a) IN GENERAL.—The policymaking body of the Corps shall be the Council of the Corps. The chief judge and the division chief judges shall constitute the Council. The chief judge shall preside over the Council. If the chief judge is unable to be present at a meeting of the Council, the division chief judge who is senior in length of service as a member of such Council shall preside at the meeting.

"(b) QUORUM; VOTING.—One half of all of the members of the Council shall constitute a quorum for the purpose of transacting business. The affirmative vote by a majority of all the members of the Council shall be required to approve a matter on behalf of the Council. Each member of the Council shall have one vote.

"(c) MEETINGS.—Meetings of the Council shall be held at least once a month at the call of the chief judge or by the call of one third or more of the members of the Council.

"(d) POWERS.—The Council is authorized—

"(1) to establish, abolish, alter, consolidate, and maintain such regional, district, and field offices as necessary to carry out the functions, powers, and duties of the Corps and to appoint and reassign employees to such field offices; and

"(2) to prescribe temporary and intermittent services under section 3109.

"(e) SCHEDULE OF MEETINGS.—The Council shall meet at least once a month.

"(f) SUBJECT MATTER.—The Council shall establish a docket of matters which shall be subject to its consideration.

"(g) REGULATIONS.—The Council shall from time to time adopt such regulations as may be necessary to carry out the provisions of this subchapter.

"(h) RULES OF PROCEDURE.—The Council shall establish rules of procedure, which shall not affect or be applied to any pending action; such rules shall not be subject to the approval of the Corps, or any other agency; and such rules shall not be affected by any pending action.

"(i) APPOINTMENT.—The Council shall appoint persons as administrative law judges under section 599c.

"(j) CERTIFICATION OF OFFICERS.—The Council shall annually certify the names of the members of the Council.

"(k) REPORTS.—The Council shall, with the advice and consent of the Senate, make reports of its proceedings previous to the end of each fiscal year.

"(l) APPOINTMENT.—The chief judge may appoint persons as administrative law judges under section 599c.

§ 599c. Appointment and transfer of administrative law judges

"(a) APPOINTMENT.—After the initial establishment of the Corps, the Council shall appoint new or additional judges as may be necessary to conduct the business of the Corps. Appointments shall be made from a register maintained by the Office of Personnel Management under subchapter 1 of chapter 33 of this title. Upon request by the chief judge, the Office of Personnel Management shall certify enough names from the top of such
register to ensure the Council to certain five names in each vacancy, not to exceed one-half of the appointments made under subsection (e)(1)(A), to the Board, the Council shall designate two from the highest five eligible individuals for each vacancy. Notwithstanding the provisions of Rule 53(a) of the Federal Rules of Civil Procedure which shall continue to have exclusive and undiminished jurisdiction over such cases as to reduce dilatory practices and unnecessary costs.

(c) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

(d) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

(e) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (f).

(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may include up to 30 attorneys who shall be given notice of receipt of the complaint. The Council shall refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(3) The chief judge shall be given an opportunity to appear at the Proceeding.

(4) No individual may serve 2 successive terms on the Board.

(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

(5)(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of pay prescribed for a position at the level of AL-3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for services as officers or employees of the United States.

(7) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(f) FILING AND REFERRAL OF COMPLAINT.—(1) A complaint concerning the official conduct of an administrative law judge shall be filed with the chief judge of the court, which shall continue to have exclusive jurisdiction of the matters of the Board. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a 5-member panel designated for a position at the level of AL-3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for services as officers or employees of the United States.

(2) Any individual chosen to serve on the panel has a personal or substantial conflict of interest involving the administrative law judge who is the subject of the complaint and shall be disqualified by the Council from serving on the panel, or the Board, before the division to which the administrative law judge, who is the subject of the complaint is assigned.

(3) The chief judge may be removed if a complaint is no longer necessary because of the disposition of the complaint.

(4) The complaint shall be made by written order stating his reason, may—

(A) dismiss the complaint if the chief judge finds the complaint to be—

(i) directly related to the merits of a decision or procedural ruling; or

(ii) frivolous; or

(iii) for cause, disqualify any person serving on the panel. The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may include up to 30 attorneys who shall be given notice of receipt of the complaint. The Council shall refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(5) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

(g) CHIEF JUDGE ACTION.—(1) After expediting the filing of a complaint, the chief judge, by written order stating his reason, may—

(A) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(2) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

(h) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

(i) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

(j) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (f).

(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may include up to 30 attorneys who shall be given notice of receipt of the complaint. The Council shall refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(3) The chief judge shall be given an opportunity to appear at the Proceeding.

(4) No individual may serve 2 successive terms on the Board.

(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

(5)(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of pay prescribed for a position at the level of AL-3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for services as officers or employees of the United States.

(7) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(8) The chief judge may be removed if a complaint is no longer necessary because of the disposition of the complaint.

(9) The complaint shall be made by written order stating his reason, may—

(A) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(10) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

(h) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

(i) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

(j) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (f).

(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may include up to 30 attorneys who shall be given notice of receipt of the complaint. The Council shall refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

(3) The chief judge shall be given an opportunity to appear at the Proceeding.

(4) No individual may serve 2 successive terms on the Board.

(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

(5)(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of pay prescribed for a position at the level of AL-3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for services as officers or employees of the United States.

(7) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.
"In determining whether misconduct has occurred, the panel shall apply a preponderance of evidence standard of proof to its proceedings.

(3) Within 90 days after the referral of the complaint, the panel shall report to the Council on its findings of fact and recommendations as to whether discipline shall be imposed, the kind of disciplinary action, and the record of the proceedings.

(4) The recommendations of the panel shall include one of the following:

(A) Dismissal of all or part of the complaint.

(B) Direct informal reprimand.

(C) Direct formal reprimand.

(D) Automatic referral to the Merit Systems Protection Board for removal or other personnel action.

(E) Automatic referral to the Merit Systems Protection Board on recommendations of removal.

"If the recommendations of the panel are binding on the Council, unless the administrative law judge appeals to the Merit Systems Protection Board.

(i) DISCIPLINARY ACTION.—Except as provided in subsection (a)(2), the Council shall take appropriate disciplinary action against an administrative law judge based upon the report of the panel within 30 days after receiving the report of the panel. Such disciplinary actions shall be enforced by the Council and shall be final unless the administrative law judge files an appeal with the Merit Systems Protection Board within 30 days after receiving notice of such disciplinary action.

(k) RECOMMENDATION FOR RELIEF TO AGENCY, DEPARTMENT, OR COMMISSION.—Based upon a finding of judicial misconduct by an administrative law judge, the Council shall have authority to recommend to the head of the department or commission that action be taken to provide relief to aggrieved individuals due to the judicial misconduct by an administrative law judge.

(l) APPOINTMENTS OF DIVISION CHIEF JUDGES.—It is the sense of the Congress that the President should appoint as division chief judges, under subchapter VI of chapter 5 of title 5, United States Code (as added by subsection (a) of this section), individuals who have served as an administrative law judge for at least 5 years.

(m) ADMINISTRATIVE PROVISION.—Except as provided under subchapter VI of chapter 5 of title 5, United States Code, the chief administrative law judge and the division chief judges appointed under such subchapter shall be deemed administrative law judges appointed under section 3105.

Sec. 5. TRANSITION AND SAVINGS PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the administrative law judges of the Administrative Law Judge Corps established by section 598 of title 5, United States Code (as added by section 3 of this Act), all functions authorized to be performed on the day before the effective date of this Act by the administrative law judges appointed under section 3105 of such title before the effective date of this Act.

(b) USE OF AGENCY FACILITIES AND PERSONNEL.—With the consent of the agencies concerned, administrative law judges of the United States may use the facilities and the services of officers, employees, and other personnel of agencies from which functions are transferred to the Corps for so long as may be necessary to facilitate the orderly transfer of those functions and duties under this Act.

(c) INCENTIVE TRANSFERS.—The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the administrative law judges of the United States may use the services of officers, employees, and other personnel of agencies from which functions are transferred to the Corps for so long as may be necessary to facilitate the orderly transfer of those functions and duties and the record of the proceedings.

(d) PAY OF TRANSFERRED PERSONNEL.—The transfer of personnel pursuant to subsection (b) or (c) shall be without reduction in pay or classification for 5 years after such transfer.

(e) AUTHORITY OF DIRECTOR OF OMB.—The Director of the Office of Management and Budget, and the various agencies and components of the United States, may use the facilities and the services of officers, employees, and other personnel of agencies from which functions are transferred to the administrative law judges of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued pending such proceeding.

(f) CONTINUED EFFECTIVENESS OF PRIOR ACTIONS.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognition of labor organizations, certification of labor organizations, and privileges which have been issued, made, granted, or allowed to become effective in the exercise of any duties, powers, or functions which are transferred under this Act and are in effect at the time this Act becomes effective shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator of the Administrative Law Judge Corps of the United States or a judge thereof in the exercise of authority vested in the Corps or its members by this Act, by a court of competent jurisdiction, or by operation of law.

(g) PENDING PROCEEDINGS.—(1) Except as provided in subsection (d)(5) and (5)c of section 598b of title 5, United States Code, this Act shall not affect any proceeding before any department or agency or component thereof which is pending at the time this Act takes effect. Such a proceeding shall be continued pending before the Administrative Law Judge Corps of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued pending such proceeding.

(2) No suit, action, or other proceeding commenced before the effective date of this Act shall be abated by reason of the enactment of this Act.

(h) REPORTS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall make a report to the Congress on the following:

(1) 60 days after the effective date of this Act, on the amount of all funds expended in fiscal year 1995 by each agency on the functions transferred under this Act and the amendments made by this Act;

(2) no later than October 1, 1995, on the amount of unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the Administrative Law Judge Corps under this Act and the amendments made by this Act; and

(3) 1 year after the effective date of this Act, and each of the next 2 years thereafter on:

(A) whether the expenditure of each agency that transfers functions and duties under this Act and the amendments made by this Act are reduced by the amount of savings resulting from the transfer of such functions and duties; and

(B) the Government savings resulting from transfer of such functions to the Administrative Law Judge Corps and recommendations to the Congress on how to achieve additional savings.

Sec. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act) such amounts as may be necessary, not to exceed in any fiscal year the amount of funds expended by all agencies in fiscal year 1995 in performing all functions transferred under this Act and the amendments made by this Act.

Sec. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended as follows:

(1) Section 593(b) is amended—
(15) Section 13(d) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 910(d)) is amended by amending the second sentence to read as follows: “Any such hearing shall be conducted by an administrative law judge appointed under subchapter VI of chapter 5 of that title.”

(16) Section 21(b)(5) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 921(b)(5)) is amended by striking the first sentence.

(17) Section 7101(b)(2)(B) of title 38, United States Code, is amended by striking “7521” and inserting “599e”.

(18) Section 308(c) of the Contract Disputes Act of 1978 (41 U.S.C. 607(b)(1)) is amended in the first sentence by striking “hearing examiner” and inserting “administrative law judge appointed under section 3105 of title 5, United States Code” and inserting “administrative law judges appointed under section 3105 of title 5, United States Code (as in effect on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act)”.

(19) Section 708(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(a)) is amended—

(A) by striking “administrative law judges;” and

(B) by striking “: Provided” and all that follows through the end of the subsection and inserting a period.

(20) Section 904(c) of the Act of April 11, 1968 (42 U.S.C. 3604(c)), is amended—

(A) in the first sentence by striking “subject to section 599d of title 5, United States Code,” and inserting “subject to section 599d of title 5, United States Code,” after “The Secretary may”;

(B) by striking the second sentence; and

(C) by striking “his hearing examiners or” and inserting “administrative law judges carrying out functions under this title.”

(21) Section 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3787) is amended—

(A) in the first sentence by striking “appoint such hearing examiners and all that follows through “United States Code,” and inserting “subject to section 599d of title 5, United States Code, request the use of such administrative law judges;” and

(B) in the second sentence by striking “hearing examiner or administrative law judge assigned to or employed thereby” and inserting “such administrative law judge”.

(22) Section 401(c) of the Department of Energy Organization Act (42 U.S.C. 7131(c)) is amended by striking “appointed and employment of hearing examiners in accordance with the provisions of title S,” and inserting “referral of cases to the Administrative Law Judge Corps in accordance with subsection (b)(1) of this section.”

(23) Section 303(c)(3) of the Independent Safety Board Act of 1974 (40 U.S.C. App. 1902(c)(3)) is amended by striking “attorney, and administrative law judges” and inserting “attorneys and administrative law judges.”

(24) Section 304(b) of the Independent Safety Board Act of 1974 (40 U.S.C. App. 1903(b)(1)) is amended in the first sentence by striking “employed by or”.

(c) REFERENCES IN OTHER LAWS.—Reference in any other Federal law to an administrative law judge or hearing examiner or to an administrative law judge, hearing examiner, or employee appointed under section 599d of title 5, United States Code, shall be deemed to refer to an administrative law judge of the Administrative Law Judge Corps established by section 596 of title 5, United States Code.

SEC. 9. OPERATION OF THE CORPS.

Operation of the Corps shall commence on the date the first chief administrative law judge of the Corps takes office.

SEC. 9A. CONTRACT DISPUTES ACT.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall be deemed to affect

SEC. 10. DUTIES OF THE ATTORNEY GENERAL.

The Attorney General is designated by the Attorney General as having

SEC. 11. ADMINISTRATIVE LAW JUDGE CORPS.

The Administrative Law Judge Corps is designated by the Administrative Law Judge Corps in accordance with

SEC. 12. SUMMARY FOR CONGRESS.

SEC. 13. IMPLEMENTATION.

SEC. 14. EFFECTIVE DATE.

SEC. 15. CONSTRUCTION.

SEC. 16. IN GENERAL.

SEC. 17. PROVISIONS TO WHICH THIS ACT APPLIES.

SEC. 18. EFFECTIVE DATE.

SEC. 19. CONSTRUCTION.

SEC. 20. IN GENERAL.

SEC. 21. REFERENCES IN OTHER LAWS.

SEC. 22. OPERATION OF THE CORPS.

SEC. 23. DUTIES OF THE ATTORNEY GENERAL.

SEC. 24. CONTRACT DISPUTES ACT.

SEC. 25. DUTIES OF THE ADMINISTRATIVE LAW JUDGE.

SEC. 26. SUMMARY FOR CONGRESS.

SEC. 27. IMPLEMENTATION.

SEC. 28. EFFECTIVE DATE.

SEC. 29. CONSTRUCTION.

SEC. 30. IN GENERAL.

SEC. 31. REFERENCES IN OTHER LAWS.

SEC. 32. OPERATION OF THE CORPS.

SEC. 33. DUTIES OF THE ATTORNEY GENERAL.

SEC. 34. CONTRACT DISPUTES ACT.

SEC. 35. DUTIES OF THE ADMINISTRATIVE LAW JUDGE.

SEC. 36. SUMMARY FOR CONGRESS.

SEC. 37. IMPLEMENTATION.

SEC. 38. EFFECTIVE DATE.

SEC. 39. CONSTRUCTION.

SEC. 40. IN GENERAL.

SEC. 41. REFERENCES IN OTHER LAWS.

SEC. 42. OPERATION OF THE CORPS.

SEC. 43. DUTIES OF THE ATTORNEY GENERAL.

SEC. 44. CONTRACT DISPUTES ACT.

SEC. 45. DUTIES OF THE ADMINISTRATIVE LAW JUDGE.

SEC. 46. SUMMARY FOR CONGRESS.

SEC. 47. IMPLEMENTATION.

SEC. 48. EFFECTIVE DATE.

SEC. 49. CONSTRUCTION.

SEC. 50. IN GENERAL.

SEC. 51. REFERENCES IN OTHER LAWS.
any agency board established pursuant to the Contract Disputes Act (41 U.S.C. 601 and following), or any other person designated to resolve claims or disputes pursuant to such Act.

SEC. 10. PAYMENT BY CERTAIN AGENCIES FOR ADMINISTRATIVE LAW JUDGE SALARIES AND EXPENSES.

Any agency which before the effective date of this Act pays the salaries and expenses of administrative law judges from fees charged by such agency shall on and after the effective date of this Act pay from such fees to the chief judge of the Administrative Law Judge Corps, or the designee of the chief judge, an amount necessary to reimburse the salaries and expenses of the Corps for services provided by the Corps to such agency.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

By Mr. McCaIN (for himself and Mr. INOUYE):
S. 497—A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

Mr. McCaIn. Mr. President, I am pleased to stand today with the chairman of the Committee on Indian Affairs, Senator INOUYE, as the sponsor of the Indian Gaming Regulatory Act Amendments Act of 1995. I want to associate myself with Senator INOUYE’s remarks regarding this legislation and the Indian Gaming Regulatory Authority, and Senator INOUYE for his outstanding leadership over the years on this complex issue.

The bill we are introducing today would provide for a major overhaul of the Indian Gaming Regulatory Act of 1988. It will provide for minimum Federal standards in the regulation and licensing of class II and class III gaming as well as all of the contractors, suppliers, and industries associated with such gaming. This will be accomplished through the Federal Indian Gaming Regulatory Commission which will be funded through assessments on Indian gaming revenues and fees imposed on license applicants. The bill also provides a new process for the negotiation of class III compacts which authorizes the Secretary of the Department of the Interior to negotiate compacts with Indian tribes. Only a few members of an Indian tribe under a plan which has been approved by the Secretary of the Interior. Only a few members of an Indian tribe under a plan which has been approved by the Secretary of the Interior. Only a few members of an Indian tribe under a plan which has been approved by the Secretary of the Interior.

In the years before the enactment of the Indian Gaming Regulatory Act and in the years since its enactment we have heard concerns about the possibility for organized criminal elements to penetrate Indian gaming. Both the Department of Justice and the FBI have repeatedly testified before the Committee on Indian Affairs and have indicated that there is not any substantial criminal activity of any kind associated with Indian gaming. Some of our colleagues have suggested that no one would know if there is criminal activity because not enough people are looking for it. I believe that this point of view overlooks the fact that the act provides for a very substantial regulatory and law enforcement role by the States and Indian tribes in class III gaming and by the Federal Government in class II gaming. The record clearly shows that in the few instances of known criminal activity in class III gaming, the Indian tribes have discovered the activity and have sought Federal assistance in law enforcement.

Nevertheless, the record before the Committee on Indian Affairs also shows that the absence of minimum Federal standards for the regulation and licensing of Indian gaming has allowed a void to develop which will become more and more attractive to criminal elements as Indian gaming continues to generate increased revenues. The legislation we are introducing today provides for the development of strict minimum Federal standards based on the recommendations of Federal, State, and tribal officials. While Indian tribes or States, or both, will continue to exercise primary regulatory authority, their regulatory standards must meet or exceed the minimum Federal standards. In the event that the Federal Indian Gaming Regulatory Authority determines that the minimum Federal standards are not being met, then the Commission may directly regulate the gaming activity until such time as the Federal standards are met. In addition, the Commission is vested with authority to issue and revoke licenses as well as to impose civil fines, to examine gaming facilities or seek enforcement of the act through the Federal courts.

As many of our colleagues know, one of the areas which has caused the greatest controversy under the current law relates to what has come to be known as the scope of gaming. A related issue is the refusal of some States to enter into negotiations for a class III compact and their assertion of sovereign immunity under the 11th amendment to the Constitution when the tribe seeks such a compact. Virtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of the Indian tribes. Schools, health facilities, roads, and other vital infrastructure is being built by the Indian tribes with the proceeds from Indian gaming.

In addition, the bill is consistent with the 1967 decision of the U.S. Supreme Court in the case of California versus Cabazon Band of Mission Indians in that it neither expands for further restricts the scope of Indian Gaming. The laws of each State would continue to be the basis for determining what gaming activities may be available to an Indian tribe located in that State.

Since the enactment of the Indian Gaming Regulatory Act in 1988, there has been a dramatic increase in the amount of gaming activity among the Indian tribes. In 1993, Indian gaming was estimated to yield gross revenues of about $4 billion per year and net revenues were estimated at $750 million. Today, class II and class III gaming is estimated to generate revenues from bingo and card games in operation and there are now over 110 tribal/State compacts governing class III gaming in 21 States. Indian gaming comprises about 3 percent of all gaming in the United States. Gaming activities operated by State governments comprise about 36 percent of all gaming and the private sector accounts for the balance of the gaming activity in the Nation.

Indian gaming has become the single largest source of economic activity for Indian tribes. Annual revenues derived from Indian agricultural resources have been estimated at $550 million and have historically been the leading source of income for Indian tribes and individuals. Revenues from oil, gas, and minerals are about $230 million and Indian forestry resources revenues are estimated at $61 million. The estimated annual earnings on gaming now equal or exceed all of the revenues derived from natural resources. In addition, Indian gaming has generated tens of thousands of new jobs for Indians and non-Indians. On many reservations, gaming has meant the end of unemployment rates of 90 or 100 percent and the beginning of an era of full employment.

Under the Indian Gaming Regulatory Act of 1988, Indian tribes are required to expend the profits from gaming activities to fund tribal government operations or programs and to promote tribal economic development. Profits may only be distributed directly to the members of an Indian tribe under a plan which has been approved by the Secretary of the Interior. Only a few tribes have been successful in their efforts. Virtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of the Indian tribes. Schools, health facilities, roads, and other vital infrastructure is being built by the Indian tribes with the proceeds from Indian gaming.

In the course of our work on the gaming issue in the 103rd Congress, Senator INOUYE and I advanced various formal and informal proposals for Federal legislation to resolve the scope of gaming issue. In addition, proposals were developed by State and tribal officials. We were never able to develop a consensus on any one proposal. While the Committee on Indian Affairs remains committed to solving this issue, it is apparent that obtaining a consensus may not be possible. This
may be an area of the law best left to resolution through the courts.

With respect to the issue of the refusal of some States to negotiate and their assertion that the 1988 act violates the 11th amendment, the U.S. Supreme Court recently agreed to hear a case which raises that issue. As I noted earlier, the bill we are introducing today seeks to resolve this issue on terms that are consistent with recent decisions of the Federal courts.

Mr. President, I am sure that we will find many things to change in this legislation as it moves through the Senate. I do believe that it provides a good foundation for our further consideration of this important issue. I want to emphasize that this bill is intended to stimulate discussion. I am looking forward to hearing from all interested parties with regard to their constructive suggestions for ways to improve the bill and move it forward.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

SEC. 2. CONGRESSIONAL FINDINGS.
The Congress finds that—

(1) the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with the decision of the Supreme Court in California et al. v. Cabazon Band of Mission Indians; (480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)), involving the Cabazon and Morongo Bands of Mission Indians;

(2) there being no objection, the material was ordered to be printed in the RECORD;

(3) the Constitution vests the Congress with the powers to regulate commerce with foreign nations, among the several States, and with the Indian Tribes, and this Act is enacted in the exercise of those powers.

SEC. 3. PURPOSES.
The purposes of this Act are—

(1) to ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with the decision of the Supreme Court in California et al. v. Cabazon Band of Mission Indians;

(2) to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development, self-sufficiency, and strong Indian tribal governments;

(3) to provide a statutory basis for the regulation of gaming activities on Indian lands by an Indian tribe adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

(4) to declare that the establishment of independent Federal regulatory authority for the conduct of gaming activities on Indian lands and the establishment of Federal minimum regulatory requirements for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

SEC. 4. DEFINITIONS.
"For purposes of this Act, the following definitions shall apply:

(1) the term `Indian tribe' means any tribe or band of Indians, whether a legal entity or not, recognized by the United States as such, or any recognized group or part thereof;

(2) the term `Indian gaming' means all forms of gaming that are conducted on Indian lands;

(3) the term `class I gaming' means gaming that is explicitly authorized by the laws of a State and are played at any location in the State, but only if such card games or limitations on wagers are similarly numbered or designated, are drawn or electronically determined; and

(4) the term `class II gaming' means gaming that is explicitly authorized by the laws of a State or on Indian lands by an Indian tribe adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

(5) the term `class III gaming' means social games played for prizes and not class I gaming or class II gaming.

(6) the term `Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

(7) the term `class III gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(8) the term `class II gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(9) the term `compacts' means an agreement relating to the operation of class III gaming on Indian lands entered into by an Indian tribe and a State, that is approved by the Secretary, or an agreement relating to the operation of class III gaming that is negotiated by the tribal government with any State or before such date, as determined by the Commission (as defined in paragraph (8)).

(10) the term `class III gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(11) the term `class II gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(12) the term `class I gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(13) the term `license' means any permit or approval that is required by this Act.

(14) the term `Indian tribe' means any tribe or band of Indians, whether a legal entity or not, recognized by the United States as such, or any recognized group or part thereof.

(15) the term `Indian gaming' means all forms of gaming that are conducted on Indian lands.

(16) the term `Secretary' means the Secretary of the Treasury.

(17) the term `commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

(18) the term `class II gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(19) the term `class III gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

(20) the term `class I gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

SEC. 5. CONDUCT OF GAMING ACTIVITIES ON INDIAN LANDS.

(a) The term `class I gaming' means gaming that is explicitly authorized by the laws of a State and are played at any location in the State, but only if such card games or limitations on wagers are similarly numbered or designated, are drawn or electronically determined; and

(b) the term `class II gaming' means gaming that is explicitly authorized by the laws of a State or on Indian lands by an Indian tribe adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

(c) the term `class III gaming' means all forms of gaming that are conducted on Indian lands and are necessary to protect such gaming.

SEC. 6. POWERS OF THE CHAIRPERSON.

(a) The term `Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

(b) The term `commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

(c) The term `Secretary' means the Secretary of the Treasury.

(d) The term `Indian tribe' means any tribe or band of Indians, whether a legal entity or not, recognized by the United States as such, or any recognized group or part thereof.

(e) The term `Indian gaming' means all forms of gaming that are conducted on Indian lands.

SEC. 7. POWERS AND AUTHORITY OF THE CHAIRPERSON.

(a) The term `Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

(b) The term `commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

(c) The term `Secretary' means the Secretary of the Treasury.

(d) The term `Indian tribe' means any tribe or band of Indians, whether a legal entity or not, recognized by the United States as such, or any recognized group or part thereof.

(e) The term `Indian gaming' means all forms of gaming that are conducted on Indian lands.

SEC. 8. REGULATORY REQUIREMENTS AND REGULATORY ACT.

(a) The term `Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

(b) The term `commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

(c) The term `Secretary' means the Secretary of the Treasury.

(d) The term `Indian tribe' means any tribe or band of Indians, whether a legal entity or not, recognized by the United States as such, or any recognized group or part thereof.

(e) The term `Indian gaming' means all forms of gaming that are conducted on Indian lands.
any facility in which a gaming activity is to

"(B) merely assists a player or the playing of a game; and

"(C) is operated according to applicable Federal communications law.

"(15) GAMING SERVICE INDUSTRY.—The term 'gaming service industry' means any enterprise that provides goods or services that are used in conjunction with any class II or class III gaming activity, in any case in which

"(A) the proposed agreement between the enterprise and a class II or class III gaming operation, or the aggregate of such agreements, (A) or (B) an amount of not less than $50,000 per year; or

"(B) the amount of business conducted by such enterprise with any gaming operation in the 1-year period preceding the effective date of such agreement was not less than $250,000.

"(16) INDIAN LANDS.—The term 'Indian lands' means—

"(A) all lands within the limits of any Indian reservation; and

"(B) any lands—

"(i) the title to which is held in trust by the United States for the benefit of any Indian tribe; or

"(ii) held by an Indian tribe subject to a restriction by the United States against alienation;

"(iii) held by the United States for the benefit of an individual Indian; or

"(iv) held by an individual subject to a restriction by the United States against alienation,

"(v) over which an Indian tribe exercises governmental power.

"(17) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians that

"(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and

"(B) is recognized as possessing powers of self-government.

"(18) KEY EMPLOYEE.—The term 'key employee' means any individual employed in a gaming operation licensed pursuant to this Act in a supervisory capacity or empowered to make any discretionary decision with regard to the gaming operation, including any pit boss, shift boss, credit executive, cashier supervisor, game facility manager, assistant manager, or supervisor of security employees.

"(19) MANAGEMENT CONTRACT.—The term 'management contract' means any contract or collateral agreement between an Indian tribe and a contractor, if such contract or agreement provides for the management of all or part of a gaming operation.

"(20) MANAGEMENT CONTRACTOR.—The term 'management contractor' means any person entering into a management contract with an Indian tribe or an agent of the Indian tribe for the management of a gaming operation, including any person with a financial interest in such contract.

"(21) MATERIAL CONTROL.—The term 'material control' means the exercise of authority or supervision or the power to make or cause to be made any discretionary decision with regard to matters which have a substantial effect on the financial or management aspects of a gaming operation.

"(22) NET REVENUES.—The term 'net revenues' means the net revenues of an Indian gaming activity reduced by the sum of—

"(A) any amounts paid out or paid for as prizes; and

"(B) the total operating expenses associated with the gaming activity, excluding management fees.

"(23) PERSON.—The term 'person' means an individual, firm, corporation, association, partnership, trust, consortium, joint venture, entity, or gaming operation.

"(24) SECRETARY.—The term 'Secretary' shall select, by majority vote, one of the members of the Commission as Secretary.

"(2) CITIZENSHIP OF MEMBERS.—Each member of the Commission shall be a citizen of the United States.

"(3) REQUIREMENTS FOR MEMBERS.—No member of the Commission may—

"(A) pursue any other business or occupation; (B) be actively engaged in, or, other than through distribution of gaming revenues as a member of an Indian tribe, have any direct pecuniary interest in gaming activities;

"(C) have through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in any business or organization that holds a gaming license or that does business with any person or organization licensed under this Act;

"(D) have been convicted of a felony or other serious crime;

"(E) have any financial interest, in management responsibility for, any gaming-related contract or any other contract approved pursuant to this subsection; or

"(F) have been determined by the Secretary to lack the qualifications set forth in section 3403.

"(4) ADDITIONAL REQUIREMENTS.—The Commission shall be composed of the most qualified individuals available, subject to the following conditions:

"(A) CERTIFIED PUBLIC ACCOUNTANT REPRESENTATION.—One member of the Commission shall be a certified public accountant with not less than 5 years of progressively responsible experience in accounting and auditing and a comprehensive knowledge of the principles and practices of corporate finance.

"(B) LAW ENFORCEMENT REPRESENTATION.—One member of the Commission shall be selected with special reference to training and experience in the fields of investigation or law enforcement.

"(d) VICE CHAIRPERSON.—The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairperson. The Vice Chairperson shall—

"(1) serve as Chairperson of the Commission in the absence of the Chairperson; and

"(2) exercise such other powers as may be delegated by the Chairperson.

"(e) TERMS OF OFFICE.—

"(1) IN GENERAL.—Each member of the Commission shall hold office for a term of 5 years.

"(2) INITIAL APPOINTMENTS.—Initial appointments shall be made for the following terms:

"(A) The Chairperson shall be appointed for a term of 5 years.

"(B) One member shall be appointed for a term of 4 years.

"(C) One member shall be appointed for a term of 3 years.

"(3) LIMITATION.—No member shall serve for more than 2 terms of 5 years each.

"(f) VACANCIES.—

"(1) IN GENERAL.—Each individual appointed by the President to serve as Chairperson and each member of the Commission shall be removed from office by the President by and with the advice and consent of the Senate in the following circumstances:

"(A) Pursue any other business or occupation; or

"(B) Be actively engaged in, or, other than through distribution of gaming revenues as a member of an Indian tribe, have any direct pecuniary interest in gaming activities; or

"(C) Have through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in any business or organization that holds a gaming license or that does business with any person or organization licensed under this Act; or

"(D) Have been convicted of a felony or other serious crime; or

"(E) Have any financial interest, in management responsibility for, any gaming-related contract or any other contract approved pursuant to this subsection; or

"(F) Have been determined by the Secretary to lack the qualifications set forth in section 3403.

"(g) QUORUM.—Two members of the Commission shall constitute a quorum.

"(h) MEETINGS.—

"(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority of the members of the Commission.
(2) MAJORITY OF MEMBERS DETERMINE ACTION.—A majority of the members of the Commission shall determine any action of the Commission.

(ii) COMPENSATION.—

(iii) CHIEF EXECUTIVE OFFICER.—The Chairperson shall serve as the chief executive officer of the Commission.

(iv) ADMINISTRATION OF THE COMMISSION.—

(v) IN GENERAL.—Subject to subsection (c), the Chairperson—

(A) shall appoint General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for ES-6 of the Senior Executive Service Schedule under section 5302 of title 5, United States Code; and

(B) shall appoint and supervise other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;

(D) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for ES-6 of the Senior Executive Service Schedule;

(E) may request the head of any Federal agency to detail any personnel of such agency to the Commission to assist the Commission in carrying out the duties of the Commission under this Act, unless otherwise prohibited by law;

(F) may receive and expend Federal funds and funds collected pursuant to section 17; and

(G) may contract for the services of such other professional, technical, and operational personnel and consultants as may be necessary to the performance of the Commission's responsibilities under this Act.

(2) FISCAL MANAGEMENT OF STAFF.—The staff referred to in paragraph (1)(C) shall be paid without regard to the provisions of chapter 51 and subchapters III and VIII of chapter 55 of title 5, United States Code, relating to classification and General Schedule and Senior Executive Service Schedule pay rates, except that no individual so appointed may receive from the United States a rate of basic pay payable for ES-5 of the Senior Executive Service Schedule under section 5302 of title 5, United States Code.

(3) TRAVEL.—All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(i) ADMINISTRATIVE SUPPORT SERVICES.—

The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 7. POWERS AND AUTHORITY OF THE COMMISSION.

(a) GENERAL POWERS.—

(1) IN GENERAL.—The Commission shall have the power to—

(A) approve the annual budget of the Commission;

(B) promulgate regulations to carry out this Act;

(C) establish a rate of fees and assessments, as provided in section 17;

(D) conduct investigations, including background investigations;

(E) issue temporary orders closing the operation of gaming activities;

(F) after a hearing, make permanent a temporary order closing the operation of gaming activities in accordance with section 17;

(G) grant, deny, limit, condition, restrict, revoke, or suspend any license issued under any licensing authority conferred upon the Commission pursuant to this Act or fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act;

(H) inspect and examine all premises in which class II or class III gaming is conducted on Indian lands;

(I) demand access to and inspect, examine, review, copy, and audit all records of class II and class III gaming activities conducted on Indian lands and any other matters necessary to carry out the duties of the Commission;

(J) use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(K) procure supplies, services, and property by contract in accordance with applicable Federal laws;

(L) enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of the duties of the Commission;

(M) serve or cause to be served process or notices of the Commission in a manner provided for by the Commission or in a manner provided for the service of process and notice in civil actions in accordance with the applicable rules of a tribal, State, or Federal court;

(N) propose written interrogatories and appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, and require testimony under oath of any party;

(O) conduct all administrative hearings pertaining to civil violations of this Act (including any civil violation of a regulation promulgated under this Act) and regulations promulgated under this Act; and

(P) collect all fees and assessments authorized by this Act and the regulations promulgated pursuant to this Act;

(Q) assess penalties for violations of the provisions of this Act and the regulations promulgated pursuant to this Act;

(R) provide training and technical assistance to the States and tribal governments with respect to all aspects of the conduct and regulation of gaming activities;

(S) monitor and, as specifically authorized by this Act, regulate class II and class III gaming.

(2) APPROVE MANAGEMENT-RELATED AND GAMING-RELATED CONTRACTS.—

(U) In addition to the authorities otherwise specified in this Act, delegate, by published order or rule, any of the functions of the Commission (including functions with respect to background investigating, certifying, reporting, or otherwise acting on the part of the Commission concerning any worker, pending a determination by a division of the Commission, an individual member of the Commission, an administrative law judge, or an employee of the Commission.

(2) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the delegation of the function of rulemaking, as described in subsection (b) of section 5 of title 5, United States Code, with respect to gaming activities (as distinguished from rules of particular applicability).
Federal, State, tribal, or international law enforcement or gaming regulatory agencies.

(4) V I O L A T I O N S O F M I N I M U M F E D E R A L STANDARDS. ÐFor any violation of any Federal standards established pursuant to subsection (d), the Commission may institute the necessary criminal proceedings and take actions that it considers necessary to determine the existence of and all the relevant facts and circumstances regarding the matter under investigation by the Commission pursuant to this subsection.

(5) W R I T S , I N J U N C T I O N S , A N D O R D E R S . ÐUpon application of the Commission, each district court of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of this Act (including any rules and regulations promulgated under this Act).

(6) R E G U L A T O R Y R E Q U I R E M E N T S A N D S A N C T I O N S . ÐThe Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems of the Indian tribe or a State, or both, meet or exceed minimum Federal standards for internal control requirements established by the Commission.

(7) D E F E N D A N T S . ÐAny Indian tribe or State, or both, that violates any rule or regulation promulgated under this Act shall be liable to the United States for any criminal or civil remedy provided by law.

(8) L I C E N S E S . ÐAny person, Indian tribe, or State that violates any rule or regulation promulgated under this Act shall be liable to the United States for any criminal or civil remedy provided by law.

(9) R E C O M M E N D A T I O N S . ÐThe Advisory Committee shall submit its recommendations to the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives.

(10) R E C O M M E N D A T I O N S . ÐThe Advisory Committee shall submit its recommendations to the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives.

(11) R E C O M M E N D A T I O N S . ÐThe Advisory Committee shall submit its recommendations to the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives.

(12) R E C O M M E N D A T I O N S . ÐThe Advisory Committee shall submit its recommendations to the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives.


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"(d) REGULATIONS.—Upon receipt of the recommendations of the Advisory Committee, the Commission shall hold public hearings on the recommendations. After the conclusion of the hearings, the Commission shall issue regulations, establishing minimum regulatory requirements and licensing standards.

(e) TRAVEL.—Members of the Advisory Committee shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Advisory Committee while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) Term.—The Advisory Committee shall cease to exist on the date that is 60 days after the date on which the Advisory Committee submits the recommendations under subsection (c).

(g) Exemption From Federal Advisory Committee Act.—All activities of the Advisory Committee shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 10. LICENSING.

(a) IN GENERAL.—A license issued under this Act shall be in writing and shall be in the form of a certificate, device, or sticker, which shall be attached to a gaming facility or activity, each manageable by a licensed gaming operation.

(b) Certain Licenses for Management Contractors and Gaming Operations.—Notwithstanding any other provision of law relating to licenses issued by an Indian tribe or a State (or both) pursuant to this Act, the Commission may require licenses of—

(1) management contractors; and

(2) gaming operations.

(c) STATEMENT OF COMPLIANCE.—

(1) IN GENERAL.—The Commission may issue a statement of compliance to an applicant for any license or for qualification status under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license have been satisfied by an applicant.

(2) CONTENTS OF STATEMENT.—A statement issued under subparagraph (A) shall specify the eligibility criterion satisfied, the date on which it was satisfied, and a reservation by the Commission permitting the Commission to revoke the statement of compliance at any time on the basis of a change in circumstances, such as compliance.

(d) Gaming Operation License.—

(1) IN GENERAL.—No gaming operation shall operate unless all required licenses and approvals for the gaming operation have been obtained in accordance with this Act.

(2) Written Agreements.—

(A) Filing.—Prior to the operation of any gaming facility or activity, each management contract for the gaming operation shall be in writing and filed with the Commission pursuant to section 13.

(B) Approvals Required.—No such agreement shall be effective unless the Commission expressly approves the agreement.

(3) REQUIREMENT OF ADDITIONAL PROVIDERS.—The Commission may require that an agreement referred to in subparagraph (A) includes any provisions that are reasonably necessary to meet the requirements of this Act.

(D) INELIGIBILITY OR EXEMPTION.—Any applicant who does not have the ability to exercise control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or may exempt such applicant from being required to hold a license.

(e) Denial of License.—The Commission, in the exercise of the specific powers and duties prescribed by this Act, shall deny a license to any applicant who is disqualified on the basis of a failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

(f) Filing of Materials.—The Commission shall carry out paragraph (1) upon the filing of—

(1) an application for a license that the Commission is specifically authorized to issue pursuant to this Act; and

(2) sufficient information as the Commission may require.

(3) Timelines.—After an application is submitted to the Commission, the Commission shall take final action not later than 90 days after—

(A) completing all hearings and investigations concerning the application; and

(B) receiving all information required to be submitted to the Commission.

(4) Deadline for Hearings and Investigations.—Not later than 90 days after receiving the information described in paragraph (2), the Commission shall complete the hearings and investigations described in paragraph (3)(A).

(5) ACTION BY COMMISSION.—Following the completion of an investigation and hearing, the Commission shall either deny or grant a license to an applicant.

(6) Denials.—

(A) IN GENERAL.—The Commission may deny any application pursuant to this Act.

(B) ORDER OF DENIAL.—If the Commission denies an application submitted under this section, the Commission shall prepare an order denying such application. In addition, if an applicant requests a statement of the reasons for the denial, the Commission shall provide the applicant with a statement of the reasons for the denial, which statement shall include specific findings of fact.

(7) Issuance of Licenses.—If the Commission is satisfied that an applicant is qualified to receive a license under this Act, the Commission shall issue a license to the applicant upon tender of—

(A) all licenses, fees, and assessments as required by this Act (including regulations promulgated by the Commission under this Act); and

(B) such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act (including regulations promulgated under this Act).

(8) BONDS.—

(A) AMOUNTS.—The Commission shall, by rules of uniform application, fix the amount of each bond that the Commission requires under this section in such amount as the Commission determines is necessary to assure the faithful performance of all requirements imposed by this Act.

(B) USE OF BONDS.—The bonds furnished to the Commission under this paragraph may be applied by the Commission to the payment of expenses and any other liability of the licensee under this Act.

(C) TERMS.—Each bond required in accordance with this section shall be applicable—

(i) in cash or negotiable securities;
"(i) advanced by the party that makes the motion; or
(ii) raised by the Commission on a motion made by the Commission.

(B) ACTION AFTER HEARING.—Following a rehearing conducted by the Commission, the Commission shall—

(i) rescind a decision of the Commission;

(ii) issue an order; and

(iii) serve such decision and order upon the affected parties.

(C) FINAL AGENCY ACTION.—A decision and order made by the Commission under paragraph (2) (if no motion for a rehearing is made), or a decision and order made by the Commission upon rehearing shall constitute final agency action for purposes of judicial review.

(4) JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the licensing decisions and orders of the Commission.

(I) LICENSE REGISTRY.—The Commission shall—

(1) maintain a registry of all licenses that are granted or denied pursuant to this Act; and

(2) make the information contained in the registry available to Indian tribes to assist the licensure and regulatory activities of Indian tribes.

SEC. 11. REQUIREMENTS FOR THE CONDUCT OF CLASS I AND CLASS II GAMING ON INDIAN LANDS.

(a) CLASS I GAMING.—(1) Class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(bb) the Commission shall—

(A) maintain a list of each individually owned class II gaming operation; and

(b) the class II gaming operation meets or exceeds the requirements of sections 7(c) and 10.

(ii) Class II Gaming.—During the period in which a certificate of self-regulation is in effect with respect to a gaming activity conducted by an Indian tribe—

(A) the tribe shall—

(i) conducted its gaming activity in a manner which has—

(ii) resulted in an effective and honest accounting of all revenues;

(iii) resulted in a reputation that is safe, fair, and honest operation of the activity; and

(iv) been generally free of evidence of criminal or dishonest activity;

(B) adopted and implemented adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;

(C) conducted the operation on a fiscally and economically sound basis; and

(D) paid all fees and assessments that the tribe is required to pay to the Commission under this Act.

(3) EFFECT OF CERTIFICATE OF SELF-REGULATION.—During the period in which a certificate of self-regulation is issued under this paragraph, the tribe is authorized to convert from a State gaming facility to a tribal gaming facility and to operate such gaming activity conducted within the jurisdiction of the State, as well as to convert from a class II gaming activity conducted on Indian lands to a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct such activity within the jurisdiction of the State.

(I) IN GENERAL.—Clauses (ii), (iii), and (ix) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(ii) such gaming operation is licensed and regulated by an Indian tribe;

(iii) income to the Indian tribe from such gaming operation is being used only for the purposes described in subparagraph (A)(iii); and

(iv) the owner of such gaming operation pays an appropriate assessment to the Commission pursuant to section 17 for the regulation of such gaming.

(II) LIMITATIONS ON EXEMPTION.—The exemption from application provided under clause (i) may not be transferred to any person or entity and shall remain in effect only during such period as the gaming operation remains within the same nature and scope as such gaming operation was actually operated on October 17, 1988.

(C) LIST.—The Commission shall—

(i) maintain a list of each individually owned gaming operation that is subject to subparagraph (A)(x); and

(ii) publish such list in the Federal Register.

(P) PETITION FOR CERTIFICATE OF SELF-REGULATION.—

(2) ISSUANCE OF CERTIFICATE OF SELF-REGULATION.—The Commission shall issue a certificate of self-regulation if the Commission determines that the Indian tribe has—

(A) conducted its gaming activity in a manner which has—

(i) resulted in an effective and honest accounting of all revenues;

(ii) resulted in a reputation that is safe, fair, and honest operation of the activity; and

(iii) been generally free of evidence of criminal or dishonest activity;

(B) adopted and implemented adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;

(C) conducted the operation on a fiscally and economically sound basis; and

(D) paid all fees and assessments that the tribe is required to pay to the Commission under this Act.

(3) EFFECT OF CERTIFICATE OF SELF-REGULATION.—During the period in which a certificate of self-regulation is issued under this paragraph, the Tribe—

(A) the Tribe shall—

(i) continue to submit an annual independent audit as required by subsection (b)(3)(A)(iii); and
(d) LICENSING REVOCATION.—If, after the issuance of any license by an Indian tribe under this section, the Indian tribe receives reliable information from the Commission indicating that a licensee does not meet any standards established under section 7(c) or 10, or any other applicable regulation promulgated by the Commission, the Indian tribe—

(1) shall suspend such license;

(2) after notice and hearing under procedures established pursuant to applicable tribal law, may revoke such license.

SEC. 12. CLASS III GAMING ON INDIAN LANDS.

(a) REQUIREMENTS FOR THE CONDUCT OF CLASS III GAMING ON INDIAN LANDS.

(1) In general.—Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by a compact that—

(i) is approved pursuant to tribal law by the governing body of the Indian tribe having jurisdiction over such lands;

(ii) meets the requirements of section 11(b)(3) for the conduct of class II gaming;

(iii) is approved by the Secretary; and

(B) located in a State that permits such gaming for any purpose by any person, and—

(C) conducted in conformance with a tribal-State compact that—

(i) is in effect; and

(ii) entered into by an Indian tribe and a State and approved by the Secretary under paragraph (2);

(2) COMPACT NEGOTIATIONS.—

(A) IN GENERAL.—Any Indian tribe having jurisdiction over the lands upon which a class III gaming activity is to be conducted, except for the State with respect to which such lands are located to enter into negotiations for the purpose of entering into a tribal-State compact governing the conduct of class III gaming on such lands.

(B) REQUIREMENTS FOR REQUEST FOR NEGOTIATIONS.—A request for negotiations under clause (i) shall be in writing and shall specify each class III gaming activity that the Indian tribe proposes for inclusion in the compact. Not later than 30 days after receipt of such written request, the State shall respond to the Indian tribe.

(C) COMMENCEMENT OF COMPACT NEGOTIATIONS.—Compact negotiations conducted under this paragraph shall commence not later than 30 days after the date on which a response by a State is due to the Indian tribe, and shall be completed not later than 120 days after the initiation of compact negotiations, unless the State and the Indian tribe agree to a different period of time for the completion of compact negotiations.

(D) INABILITY TO MEET DEADLINES FOR NEGOTIATIONS.—

(I) NOTIFICATION.—If the State and the Indian tribe find that the State and Indian tribe are unable to commence or complete compact negotiations within the period of time provided in this subsection, the Indian tribe shall notify the Secretary.

(II) PROVISIONS OF COMPACTS.—

(A) IN GENERAL.—A compact negotiated under this subsection may include provisions relating to—

(i) the application of the criminal and civil laws (including regulations) of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity in a manner consistent with sections 7(c), 8, and 10; and

(ii) the allocation of the proceeds of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(B) remedies for breach of compact provisions;

(C) standards for the operation of such activity and maintenance of the gaming facility, including licensing, in a manner consistent with sections 7(c), 8, and 10;

(D) any other subject that is directly related to the operation of gaming activities on Indian lands.

(iii) the tax assessment on the value generated by the gaming operation, or any person or entity authorized by an Indian tribe to engage in a class III gaming activity in conformance with this Act.

(3) EFFECT OF FAILURE TO ACT ON COMPACT.—If the Secretary fails to approve or disapprove a compact entered into under subsection (a) only if such compact violates any—

(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

(B) other provision of Federal law; or

(C) trust obligation of the United States to Indians.

(4) STATUTORY CONSTRUCTION WITH RESPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.—

Except for an appeal conducted under subsection (c), this Act or any laws (including regulations) made applicable by any compact entered into by an Indian tribe under this section that is in effect on March 2, 1995 shall not apply to any class II gaming activity or any gaming activity conducted pursuant to a compact entered into by an Indian tribe under this Act, but in no event shall this paragraph be construed as invalidating any exemption from the provisions of such section 2 for any compact entered into prior to the date of enactment of this Act.

(5) SENTRY.—The provisions of section 2 of the Act of January 2, 1961 (commonly referred to as the "Gambling Devices Transportation Act") (64 Stat. 1324, chapter 1134, 15 U.S.C. 1175) shall not apply to any class II gaming activity or any gaming activity conducted pursuant to a compact entered into by an Indian tribe under this Act, but in no event shall this paragraph be construed as invalidating any exemption from the provisions of such section 2 for any compact entered into prior to the date of enactment of this Act.

(6) JURISDICTION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action initiated by the Secretary, the Commission, a State, or an Indian tribe to enforce any provision of a compact entered into under this Act or to enjoin a class III gaming activity located on Indian lands in violation of any compact that is in effect and that was entered into under subsection (a).

(7) APPROVAL OF COMPACTS.—

(I) IN GENERAL.—The Secretary is authorized to approve any compact entered into between an Indian tribe and a State governing the conduct of class III gaming on Indian lands of such Indian tribe entered into under subsection (a).

(II) REASONS FOR DISAPPROVAL BY SECRETARY.—The Secretary may disapprove a compact entered into under subsection (a) only if such compact violates any—

(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

(B) other provision of Federal law; or

(C) trust obligation of the United States to Indians.

(8) EFFECT OF FAILURE TO ACT ON COMPACT.—If the Secretary fails to approve or disapprove a compact entered into under subsection (a) only if such compact violates any—

(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

(B) other provision of Federal law; or

(C) trust obligation of the United States to Indians.
The compact shall be considered to have been approved, but only to the extent the compact is consistent with the provisions of this Act and the regulations promulgated by the Commission pursuant to this Act.

(4) Notification.—The Secretary shall publish in the Federal Register notice of any compact that is approved, or considered to have been approved under this subsection.

(5) Revocation of Ordinance.—

(1) In General.—The governing body of an Indian tribe, in its sole discretion, may adopt or rescind or resolve revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall (A) be on the lands of such Indian tribe.

(2) Publication of Revocation.—An Indian tribe shall submit any revocation ordinance or resolution described in paragraph (1) to the Commission. The Commission shall publish such ordinance or resolution in the Federal Register. The revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(3) Conditional Operation.—Notwithstanding any other provision of this subsection—

(A) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in paragraph (1) is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance, or resolution is published under paragraph (2), continue to operate such activity in conformance with an applicable compact entered into under subsection (a) that is in effect; and

(B) any civil action that arises before, and any crime that is committed before, the termination of such 1-year period shall not be affected by such revocation ordinance, or resolution.

(4) Certain Class III Gaming Activities.—

(1) Comports entered into before the date of enactment of the Indian Gaming Regulatory Act—Any compact entered into before the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 shall be considered to be in effect, remain lawful for the purposes of this Act, and be subject to any changes in State law enacted after the approval or issuance of the compact.

(2) Compact entered into after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995—Any compact entered into after the date specified in paragraph (1) shall remain lawful for the purposes of this Act, notwithstanding any change in State law enacted after the approval or issuance of the compact.

SEC. 13. REVIEW OF CONTRACTS.

(a) Contracts Included.—The Commission shall approve or disapprove any management contract between an Indian tribe and a person licensed by an Indian tribe or the Commission that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

(1) procedures that are maintained, and verifiable financial reports that are prepared by or for, the governing body of the Indian tribe on a monthly basis;

(2) access to the daily gaming operations by appropriate officials of the Indian tribe who shall have the right to verify the daily gross revenues and income derived from any gaming activity;

(3) a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs;

(4) an agreed upon ceiling for the repayment of any development and construction costs;

(5) a contract term of not to exceed 5 years, except that, upon the request of an Indian tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years, if the Commission is satisfied that the capital investment required, and the income projections for the particular gaming activity, require the additional time; and

(6) grounds and mechanisms for the termination of the contract, but any such termination shall not require the approval of the Commission.

(b) Management Fee Based on Percentage of Net Revenues.—

(1) Percentage Fee.—The Commission shall approve or disapprove the contract.

(2) Fee Amount.—Except as provided in paragraph (3), a fee described in paragraph (1) shall not exceed an amount equal to 30 percent of the net revenues described in such paragraph.

(3) Exception.—Upon the request of an Indian tribe, the Commission may authorize a management contract that provides for a fee that is based on a percentage of the net revenues of a tribal gaming activity if the Commission determines that such percentage fee is reasonable, taking into consideration surrounding circumstances.

(4) Contract Modifications and Voiding Contracts.—The Commission shall approve or disapprove any contract that the Commission determines that—

(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(2) has been convicted of any felony or gaming offense;

(3) has knowingly and willfully provided materially false statements or information to the Commission; or

(4) has otherwise failed to respond to questions propounded by the Commission.

(c) Time Period for Review.—

(1) General.—Except as provided in paragraph (2), not later than 90 days after the date that a management contract or other gaming-related contract is submitted to the Commission for approval, the Commission shall approve or disapprove such contract.

(2) Extension of Period.—The Commission may extend the 90-day period for an additional period of not more than 45 days if the Commission notifies the Indian tribe of the extension of the period. The Indian tribe may bring an action in the United States District Court for the District of Columbia to compel the Commission if a contract has not been approved or disapproved by the termination date of an applicable period under this subsection.

(d) Failure of Commission to Act on Certain Gaming-Related Contract.—Any gaming-related contract for an amount less than or equal to $100,000 that is submitted to the Commission pursuant to paragraph (1) by a person who holds a valid license that is in effect under this Act shall be deemed to be approved, if by the date that is 90 days after the contract is submitted to the Commission, the Commission fails to approve or disapprove the contract.

(e) Contract Modifications and Void Contracts.—The Commission, after providing notice and hearing—

(1) shall have the authority to require appropriate contract modifications to ensure compliance with the provisions of this Act; or

(2) may void any contract regulated by the Commission under this Act if the Commission determines that any of the provisions of this Act have been violated by the terms of the contract.

(f) Interests in Real Property.—No contract regulated by this Act may transfer or convey any interest in land or other real property, unless specific statutory authority exists, all necessary approvals for such transfer or conveyance have been obtained, and such transfer or conveyance is clearly specified in the contract.

(g) Authority of the Secretary.—The Secretary of the Treasury shall have the authority under section 2103 of the United States Statutes (25 U.S.C. 3409) to acquire, acquire any interest in, or manage any interest in, any real property, to sell or transfer any interest in such property, and to create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(h) Authority of the Secretary. —

(1) The Secretary may not approve any contract if the Commission determines that—

(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(2) has been convicted of any felony or gaming offense;

(3) has knowingly and willfully provided materially false statements or information to the Commission; or

(4) has otherwise failed to respond to questions propounded by the Commission.

(i) Disapproval of Contracts.—The Commission may not approve any contract if the Commission determines that—

(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(2) has been convicted of any felony or gaming offense;

(3) has knowingly and willfully provided materially false statements or information to the Commission; or

(4) has otherwise failed to respond to questions propounded by the Commission.
SEC. 14. REVIEW OF EXISTING CONTRACTS; INTERIM AUTHORITY.

(a) Review of Existing Contracts.—

"(1) In General.—At any time after the Commission is sworn in and has promulgated regulations and other implementing guidelines under this Act, the Commission shall notify each Indian tribe and management contractor who, prior to the enactment of the Indian Gaming Regulatory Act of 1995, entered into a management contract that was approved by the Secretary, that the Indian tribe and management contractor, in accordance with the procedures under this section, may request a review of such section.

(b) Submissions of Management Contract.—If the Commission determines that such section contains necessary modifications and the parties shall be made permanent or dissolved.

(c) Review Process.—Notwithstanding any other provision of law, any fee imposed under this Act shall be increased or decreased by an amount equal to not more than $50,000 per day for each such violation.

(d) Adjustment of Fees.—The fees paid by a gaming operation shall be adjusted by the Commission to reflect any changes in the conditions under which the contract is entered into.

(e) Filing of Petition.—Any fee imposed under this Act shall be adjusted by the Commission to reflect any changes in the conditions under which the contract is entered into.

(f) Fee Adjustment.—The fees paid by a gaming operation shall be adjusted by the Commission to reflect any changes in the conditions under which the contract is entered into.

(g) Reimbursement of Costs.—The Commission is authorized to assess any applicable costs, except the governing body of an Indian tribe, for any license required pursuant to this Act. Such assessment shall be an amount equal to the actual costs of conducting such reviews and investigations necessary for the Commission to determine whether a license should be granted or denied to the applicant.

(h) Annual Budget.—

"(1) Amendment.—The budget of the Commission may include a request for appropriations authorized under section 18.

"(2) Submission to Congress.—Notwithstanding any other provision of law, a request for appropriations made pursuant to this paragraph (2) shall be submitted by the Commission not later than 30 days after the request for the first full fiscal year beginning after the date of enactment of this Act, and shall include the proposed annual budget of the Commission and the estimated revenues to be derived from fees.

SEC. 15. CIVIL PENALTIES.

(a) Amount.—Any person who commits a violation of any provision of this Act or the rules or regulations promulgated under this Act, or who fails to carry out any act required by any provision of this Act or the rules or regulations promulgated under this Act, shall be subject to a civil penalty in an amount equal to not more than $50,000 per day for each such violation.

(b) Assessment and Collection.—

"(1) In General.—Each civil penalty assessed under this section shall be assessed by the Commission and paid to the Treasury of the United States.

"(2) Failure to Pay.—If any such civil penalty is not paid within 30 days of the date of assessment, the Commission shall refer such civil penalty to the Attorney General for enforcement.

"(3) Enforcement.—The Commission may file an action in a court of competent jurisdiction to enforce the payment of any civil penalty assessed under this section.

"(4) Failure to Pay.—If any such civil penalty is not paid within 30 days of the date of assessment, the Commission shall refer such civil penalty to the Attorney General for enforcement.

"(5) Enforcement.—The Commission may file an action in a court of competent jurisdiction to enforce the payment of any civil penalty assessed under this section.

"(6) Surplus Funds.—To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) exceeds the amount required for the operation of gaming activities, any such surplus funds shall be credited to the account of the Commission and may be used to offset such fees imposed for the succeeding year.

"(7) Reimbursement of Costs.—The Commission is authorized to assess any applicable costs, except the governing body of an Indian tribe, for any license required pursuant to this Act. Such assessment shall be an amount equal to the actual costs of conducting such reviews and investigations necessary for the Commission to determine whether a license should be granted or denied to the applicant.

"(8) Annual Budget.—

"(1) Amendment.—The budget of the Commission may include a request for appropriations authorized under section 18.

"(2) Submission to Congress.—Notwithstanding any other provision of law, a request for appropriations made pursuant to this paragraph (2) shall be submitted by the Commission not later than 30 days after the request for the first full fiscal year beginning after the date of enactment of this Act, and shall include the proposed annual budget of the Commission and the estimated revenues to be derived from fees.
of officials of other nearby Indian tribes, determines that the gaming establishment on newly acquired land—

"(i) would be in the best interest of the Indian tribe and the members of the Indian tribe;

"(ii) would not be detrimental to the surrounding community;

"(B) lands are taken into trust as a part of a settlement or other provision of law.

"(C) the initial reservation of an Indian tribe is acknowledged by the Secretary under the Federal acknowledgment process or by a compact entered into under section 16 of the Indian Gaming Regulatory Act; and

"(D) lands are restored for an Indian tribe that is restored to Federal recognition.

"(3) EXEMPTION.—Paragraph (1) shall not apply if—

"(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278; or

"(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within 1 mile of the intersection of State road numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

"(4) AUTHORITY OF THE SECRETARY.—Nothing in this section may affect or diminish the authority of the Secretary to take land into trust.

"(b) APPLICATION OF THE INTERNAL REVENUE CODE OF 1986.—

"(1) GENERAL.—The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(a), 6041, and chapter 35 of that Code) concerning the reporting and withholding tax requirements with respect to winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a compact entered into under section 12 that is in effect, in the same manner as if such provisions apply to State gaming and wagering operations. Any exemptions to States with respect to taxation of such gaming or wagering operations shall be allowed to Indian tribes.

"(2) EXEMPTION.—The provisions of section 6221 of the Internal Revenue Code of 1986 shall apply to an Indian gaming establishment that is not designated by the Secretary of the Treasury as a financial institution pursuant to chapter 53 of title 31, United States Code.

"(3) STATUTORY CONSTRUCTION.—This subsection shall apply notwithstanding any other provision of law and shall not preclude the date of enactment of this Act unless such other provision of law specifically cites this subsection.

"(c) ACCESS TO INFORMATION BY STATE AND TRIBAL GOVERNMENTS.—Subject to section 7(d), upon the request of a State or the governing body of an Indian tribe, the Commissioner shall make available any law enforcement information which it has obtained pursuant to such request, unless otherwise prohibited by law, in order to enable the State or the Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

"(d) by redesignating subparagraphs (X) and (Y) as subparagraphs (Y) and (Z), respectively; and

"(2) by inserting after subparagraph (W) the following new subparagraph:

"(X) activities as a means of generating tribal government revenue and standards and regulations for the conduct of Indian gaming will assist tribal governments in assuring the integrity of gaming activities; a principal goal of Federal Indian policy is to promote tribal economic development, self-sufficiency and strong tribal government; Indian tribes have the right to regulate gaming activities and such activities are not prohibited by Federal law and are conducted within a state that permits such gaming activities and the Congress has the authority to regulate Indian gaming activities; the State and Federal governments have the authority to regulate Indian gaming activities consistent with the U.S. Constitution vests the Congress with the authority to regulate commerce with foreign nations, among the several states and with the Indian tribes; and the Constitution vests the Congress with the power to regulate commerce with foreign nations, among the several states and with the Indian tribes and this Act is enacted in the exercise of those powers.

"(3) Purposes. This section sets forth four purposes of the Act, including the following: to ensure the right of Indian tribes to conduct gaming operations on Indian lands consistent with the U.S. Supreme Court decision in the case of California v. Cabazon Band of Mission Indians and to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development and strong tribal government; to provide an adequate statutory basis for the regulation of Indian gaming by tribal governments to shield the gaming from organized crime; ensure the Indian Tribe is the primary beneficiary of the gaming activities and to ensure that the gaming activities are conducted fairly by both the operator and the participants; and to declare that the establishment of independent Federal regulatory authority and minimum regulatory standards for the conduct of gaming activities on Indian lands are necessary to protect such gaming.


"(5) Establishment of the Federal Indian Gaming Regulatory Commission. Subsection (a) of this subsection provides for the establishment of the Federal Indian Gaming Regulatory Commission as an independent agency of the United States.

"(b) Subsection b. provides that the Commissioners shall be composed of 8 full-time Members who are appointed by the President and confirmed by the Senate. Commission members are prohibited from pursuing any other business or occupation or holding any other office. Other than through distribution of gaming revenues as a member of an Indian tribe, Commission members are prohibited from entering in or having any financial or other interest in a gaming activity or in any business or organization that has a license under this Act or that does business with any person who has been convicted of a felony or a gaming offense cannot serve as Commissioners. In addition, persons who have any financial or other interest in a gaming activity or other
contract approved pursuant to this Act are also ineligible to serve as Commissioners.

Subsection (b) also provides that not more than 2 members of the Commission shall be members of the same political party and at least 3 shall be members of federally recognized Indian tribes. One member of the Commission must be a certified public accountant with at least 5 years of experience in accounting as well as a comprehensive knowledge of the principles and practices of corporate finance. One member of the Commission must have experience in training and experience in the fields of investigation or law enforcement. Any person under consideration for appointment to the Commission shall be the subject of a background investigation conducted by the Attorney General with particular emphasis on the person’s financial stability, integrity, reliability, and reputation for good character and honesty.

Subparagraph (c) provides that the President shall select a Chairperson by majority vote. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson and shall exercise such other powers as may be delegated by the Chairperson.

Subparagraph (d) provides that the Chairperson shall select a Vice Chairperson by majority vote. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson and shall exercise such other powers as may be delegated by the Chairperson.

Subparagraph (e) provides that each member of the Commission shall hold office for a term of 5 years and no member can serve more than 2 terms of 5 years each. The initial appointments to the Commission shall be made for staggered terms, with the Chairperson serving a full 5 year term.

Subparagraph (f) provides that Commis-
sions shall serve until the expiration of their term or until their successor is duly appointed and qualified, unless a Commission deems in the public interest for the welfare of the United States Code relating to classi-

Subparagraph (g) provides that two mem-

Subparagraph (h) provides that the Com-

Subparagraph (i) provides that the Chair-

Subparagraph (j) requires the Adminis-

Section 3. Powers and Authority of the Com-

Subsection (a) provides that the Chair-

Subsection (b) provides that the Chair-

Subsection (c) provides that the Commis-

Subsection (d) provides that the Commis-

Subsection (e) authorizes the Commission to conduct such investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subparagraph (b) provides that for Class III gaming which is conducted pursuant to a tribal/state compact, an Indian tribe or a state or both shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Section 4. Definitions.

Subsection (a) defines "Indian tribe" as a tribe registered under the Indian Gaming Regulatory Act, or a tribe that has been recognized as a tribe by the Secretary of the Interior, or a tribe of Indians who are members of federally recognized Indian tribes. One member of the Commission must be a member of an Indian tribe. One member of the Commission must be a member of a tribe whose gaming is conducted within the boundaries of a reservation of the United States.
then the Commission shall have the authority to conduct investigations, issue licenses and establish and regulate internal control systems after providing notice and an opportunity to cure problems and be heard. The authority of the Commission shall be exclusive and may continue until such time as the regulatory and internal control systems of the Indian tribe are approved by the Commission. The Commission may issue licenses to any Class II gaming operation, the inherent sovereign right of the Indian tribe, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be continued for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (c) provides that the activities of the Advisory Committee are exempt from the Freedom of Information Act.

Section 10. Licensing. Subsection (a) provides that licenses shall be required of gaming operations, management- and gaming-related contractors, any gaming service industry, and any person who has material control over a licensed gaming operation. Subsection (b) provides that the Commission may require licenses of management contractors and gaming operations notwith- standing any decision relating to the issuance of licenses by an Indian tribe or a state, or both. Subsection (c) provides that the Commission may deny an application for a license under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license has been satisfied.

Subsection (d) provides that no gaming operation shall operate unless all required licenses and approvals have been obtained in accordance with this Act. Any management contract for a gaming operation must be in writing and filed with and approved by the Commission. The Commission may require that a management contract include any provisions that are reasonably necessary to meet the requirements of this Act. Any applicant for a license who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or to be exempt from being required to hold a license.

Subsection (e) provides that the Commission shall deny a license to any applicant who is delayed in meeting any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c). Subsection (f) provides that the Commission shall conduct an investigation into the qualifications of the applicant and may conduct a non-public hearing concerning the application’s qualifications. After an application is filed and submitted to the Commission, the Commission shall issue a statement of compliance to the affected parties. The Commission may issue a decision and serve an order on the affected parties. The Commission may order a rehearing on a decision on a motion made by a party or the Commission not later than 90 days prior to the expiration of the license. The order and order may be appealed to the United States Court of Appeals for the District of Columbia with regard to any Class II gaming operation meets or exceeds the requirements of section 7(c) and 10. With regard to any Class II gaming operation, the Commission shall require that the Indian tribe has issued a separate license for each place, facility or location at which Class II gaming is conducted and the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any Class II gaming activity, except as provided elsewhere in the Act with regard to gaming operations by Indian individuals; and the net revenues from Class II gaming may only be used to fund tribal government operations or programs, to provide for the general welfare of the Indian tribe, to promote tribal economic development, to donate to charitable organizations, to help fund operations of local government agencies or to comply with Federal, State or local laws, and to the extent the net revenues from Class II gaming are required to provide the Commission with annual outside audits of its Class II gaming operation. Such audits shall include a review of all contracts for services equal to or more than $50,000 annually, except for contracts for legal and accounting services.

Subsection (g) further provides that the Commission shall ensure that the construction and maintenance of a Class I gaming facility and the operation of the gaming shall be conducted in a manner that adequately protects the environment and public health and safety. The Commission must also ensure that there is an adequate system for background investigations on all persons who are required to be licensed in accordance with sections 7(c) and 10 and notice to the Indian tribe if: the gaming is conducted by an Indian tribe and any person who has material control over a licensed gaming operation. The Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards. The Commission may issue licenses to any Class II gaming operation, the inherent sovereign right of the Indian tribe, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be continued for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (i) provides that the Commission shall maintain a registry of all licenses issued by the Commission and any person who has material control over a licensed gaming operation. The registry shall be separate and distinct from any existing industry standards. The unique nature of tribal gaming, the broad variations in the scope and size of tribal gaming activity, the inherent sovereign right of the Indian tribe to regulate such affairs and the findings and purposes are set forth in sections 2 and 3 of this Act.

Subsection (j) provides that the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards. The Commission may issue licenses to any Class II gaming operation, the inherent sovereign right of the Indian tribe, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be continued for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (k) provides that the Commission shall establish procedures for the conduct of hearings associated with licensing including procedures for denying, limiting, conditioning, revoking or suspending any such license. After the completion of a licensing hearing the Commission shall render a decision, issue an order and serve it on the affected parties. The Commission may order a rehearing on a decision on a motion made by a party or the Commission not later than 90 days prior to the expiration of the license. The order and order may be appealed to the United States Court of Appeals for the District of Columbia with regard to any Class II gaming operation meets or exceeds the requirements of section 7(c) and 10. With regard to any Class II gaming operation, the Commission shall require that the Indian tribe has issued a separate license for each place, facility or location at which Class II gaming is conducted and the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any Class II gaming activity, except as provided elsewhere in the Act with regard to gaming operations by Indian individuals; and the net revenues from Class II gaming may only be used to fund tribal government operations or programs, to provide for the general welfare of the Indian tribe, to promote tribal economic development, to donate to charitable organizations, to help fund operations of local government agencies or to comply with Federal, State or local laws, and to the extent the net revenues from Class II gaming are required to provide the Commission with annual outside audits of its Class II gaming operation. Such audits shall include a review of all contracts for services equal to or more than $50,000 annually, except for contracts for legal and accounting services.

Subsection (l) further provides that the Commission shall ensure that the construction and maintenance of a Class I gaming facility and the operation of the gaming shall be conducted in a manner that adequately protects the environment and public health and safety. The Commission must also ensure that there is an adequate system for background investigations on all persons who are required to be licensed in accordance with sections 7(c) and 10 and notice to the Indian tribe if: the gaming is conducted by an Indian tribe and any person who has material control over a licensed gaming operation.
only be made if the Indian tribe has prepared a plan to allocate revenues to the tribally owned governmental, economic development and social welfare purposes prescribed by this Act and the Secretary determines that the plan is consistent with the interest of all other Indian tribes, or other legally incompetent persons are protected and preserved and the payments for such individuals are disbursed to their parents, legal guardians, or other persons approved by the Secretary and the governing body of the Indian tribe; and the per capita payments are subject to Federal income tax and Indian tribes withhold such tax.

Within 30 days after a State has promulgated regulations on Indian lands which are owned by a person or entity other than the Indian tribe, subsection (b) requires the issuance of a separate statement of the Secretary concerning the promulgation of the regulations. Such a statement is required to be in conformity with the minimum Federal standards consistent with or less stringent than this Act.

Subsection (d) provides that if the Commission notifies the Indian tribe that any license which has been issued by the tribe under this section does not accept any standards established under sections 7(c) or 301. Such a notification may suspend the license and after notice and hearing to the licensee in conformity with the laws of the Indian tribe may revoke such license. If the license is suspended, the license is conclusive evidence that the act is done in conformity with the tribal/state compact that is in effect. Any Indian tribe which has jurisdiction over the lands upon which a Class III gaming activity is to be conducted may request the state in which such lands are located to enter into negotiations for the purpose of entering into a compact to govern the conduct of Class III gaming activities. A request for negotiations shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. The state shall respond within 30 days of receipt. Compact negotiations shall commence not later than 30 days after the date on which a response by a state is due to the Indian tribe. The negotiations shall cease not later than 120 days after the initiation of negotiations unless the state and the Indian tribe agree to a different time period. If the state and the Indian tribe cannot commence or complete compact negotiations within the time periods provided in this Act, the Indian tribe may request the Secretary to enter into the negotiations. The Secretary receives the notice from the Indian tribe, the Secretary shall provide the state and the Indian tribe 60 days to present their positions on the gaming activities that are permissible, the framework for the regulation of the gaming, and such other matters as the Secretary may consider appropriate. Not later than 90 days after the date of the expiration of the 60 day period for the submission of the positions of the state and the Indian tribe, the Secretary shall approve a compact if the state and the Indian tribe cannot commence or complete compact negotiations within the time periods provided in this Act. The Secretary shall publish the compact. Publication in the Federal Register and it shall take effect on the date of publication. Indian tribes may request the Secretary to publish notice in the Federal Register of any compact that is approved or considered to have been approved.

Subsection (e) provides that if the governing body of an Indian tribe may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized Class III gaming. The ordinance or resolution revoking any prior ordinance or resolution that authorized Class III gaming shall be conclusive evidence that the act is done in conformity with this Act. The Commission to enforce a compact or to enter into a Class III gaming activity in conformity with this Act.

Nothing in subsection (a) impairs the right of an Indian tribe to regulate Class III gaming on the lands of the Indian tribe. The Secretary may approve a compact entered into by an Indian tribe, a state, the Secretary or the Commission to enforce a compact or to enter into a Class III gaming activity on Indian lands. Subsection (f) provides that if the Indian tribe may enter into a Class III gaming activity in conformity with this Act.

The Secretary is authorized to approve any compact that is entered into by any Indian tribe, an Indian gaming operation or the Indian lands on which a response by a state is due to the Indian tribe. The Secretary shall provide the state and the Indian tribe. The Secretary shall provide the state and the Indian tribe 60 days to present their positions on the gaming activities that are permissible, the framework for the regulation of the gaming, and such other matters as the Secretary may consider appropriate.
Subsection (b) provides that the Commission shall not approve a contract if it determines that the contract provides for: adequate accounting procedures that are maintained in a timely manner; prepayment prepared by or for the governing body of the Indian tribe; access to the gaming operations by tribal officials who shall have the right to verify the daily gross revenue and income derived from the gaming activity; a minimum guaranteed payment to the Indian tribe that has preference over any development costs; and the contract meets all other requirements of this Act. Subsection (c) provides that the Commission may not approve a contract if it determines that the contract is not in the best interest of the Indian tribe and would not be fair and reasonable. The Commission may provide that any person having a direct or indirect financial interest in, or management responsibility for, such contract, and in the case of any individual the executive, president, board of directors, or any stockholders who hold more than 10% of its issued stock is an elected member of the governing body of the Indian tribe which is a party to the contract, has been convicted of any felony or any gaming-related or management offense, or has provided materially false statements to the Commission or the Indian tribe or has refused to respond to questions propounded by the Commission. Subsection (d) provides that, in the event of failure to comply with the terms of the contract, the Commission may also disapprove the contract if it determines that: the contractor has unilaterally interfered or failed in its dealings with the Commission; the person submitting the contract has not shown good faith and diligence that a trustee is commonly held to; or the contract meets any other requirements of this Act. Subsection (e) provides that the Commission shall provide written notice to the Secretary under 25 U.S.C. 81 that the contract has been approved or disapproved. Not later than 180 days after the submission of a contract for review, the Commission shall hold a hearing. Subsection (f) provides that the Commission shall have the authority to require appropriate modifications for the termination of the contract. Subsection (g) provides that the contract shall be valid under this Act unless the Commission determines that based on the capital investment required and the income projections a higher fee is justified. In the event of a contract, and the contract shall be rejected by the Secretary under 25 U.S.C. 81 as part of a settlement of a land claim; or the Secretary acknowledges by the Secretary under the Federal acknowledgement process.
Lastly, subsection (a) provides that nothing in the Act shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

Subsection (b) provides that the provisions of the Act with respect to reporting and withholding taxes on winnings and the provisions of the Bank Secrecy Act relating to the reporting requirements for cash transactions of $10,000 or greater will apply to Indian gaming operations which are regulated by this Act.

Subsection (c) provides that the Commission shall make available to a state or the governor of an Indian tribe any law enforcement information it has obtained pursuant to section 7(d), unless otherwise prohibited in order to assist the state or Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

Section 24. Definition of Financial Institutions. This section amends section 5312(a)(2) of title 31, United States Code to include Indian gaming establishments.

Section 3. Conforming Amendments. This section provides for several amendments to titles 10, 18, 26 and 28 of the United States Code to conform them to the provisions of this Act.

Mr. INOUYE. Mr. President, I am pleased to join the esteemed chairman of the Committee on Indian Affairs today, in the introduction, for purposes of discussion, of a bill to amend the Indian Gaming Regulatory Act of 1988.

Mr. President, the impetus for the amendment of the Indian Gaming Regulatory Act arose a little under 3 years ago when a number of Governors of the several States called upon the President and the Congress to address the rulings of Federal district courts interpreting various State laws. In response, Chairman MCCAIN and I initiated a dialog involving Governors, attorneys general, and tribal leaders that we hoped would lead to a consensus with regard to the manner in which the Act would be amended. Although the dialog did not yield that consensus, it did provide us with considerable guidance in formulating the amendments that we advance today for the consideration of all affected parties.

In the interim, there have been a number of rulings from the circuit courts of appeal that have clarified the scope-of-gaming issue, and the Supreme Court has granted certiorari in litigation raising the issues associated with the 11th amendment and the doctrine of Ex parte Young. Nonetheless, the Indian Gaming Regulatory Act Amendments Act sets forth a process that does not entail litigation between State and tribal governments. In an effort to address the 10th amendment concerns of the States, the bill we introduce today removes any requirement for good-faith negotiations and provides for tribal-State compacting only as a State agrees to engage in negotiations leading to a compact.

As Chairman MCCAIN has indicated, the 1995 Amendments Act provides authority for the establishment of minimum Federal standards for the regulation of Indian gaming, including background investigations, internal control and licensing standards. The States are invited to participate in the development of recommendations of these standards through an advisory committee, and the Federal Indian Gaming Regulatory Commission would hold hearings on those recommendations. It is in the capacity of assuring compliance with minimum Federal standards that the Commission will have a greater role to play in the area of class III gaming.

This is a matter that I believe bears some emphasis. Under existing law, the National Indian Gaming Commission’s responsibilities lie primarily in the area of class II gaming. Class III gambling is regulated by the State and tribal governments. Thus, when comparisons are made by some between the regulatory capacity of Nevada or Atlantic City to the regulatory authority of the National Indian Gaming Commission, they are comparing two regulatory systems that are typically associated with large casino operations and a regulatory system that is designed to monitor tribal regulation of bingo halls. I would hope that as the debate in the Congress on these matters begins, the commission proceed, this stark disparity in the type of operation being regulated will not be lost.

Finally, in an effort to address the constitutional concerns associated with the Interior Secretary’s authority to take land in trust for gaming purposes, the bill authorizes the Secretary to consult with the Governor of the State in which the land is located.

Chairman MCCAIN and I wrote to all parties in December of last year to advise them of our intent to introduce a bill to amend the Indian Gaming Regulatory Act early in the 104th session of the Congress, and to request their comments on the substitute amendment to S. 2250, a bill we introduced in the 103d Congress. The National Governors Association [NGA] requested that we delay introduction of a new measure, and we indicated that we would delay introduction until March. Unfortunately, at the scheduled time of introduction, the committee has not had the benefit of the Governors’ views on these matters—and so the bill we introduce today is substantially lacking in that respect. However, as Chairman MCCAIN and I indicated in our actions, we look forward to working with all of the affected governments—Federal, State, and tribal—in the further refinement of this measure.

In conclusion, I want to thank the chairman of the Committee on Indian Affairs for his kind comments, and to commend him on his leadership of the committee in the 104th session of the Congress.

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the earned income of individuals and the business taxable income of corporations, and for other purposes; to the Committee on Finance.

THE FLAT TAX ACT OF 1995

Mr. President, I now turn to the introduction of the modified flat tax bill entitled the Flat Tax Act of 1995. This bill, which would simplify the filing of Federal tax returns, would provide for fairness among all taxpayers, and would stimulate economic growth in the United States. As these proceedings of the U.S. Senate are being watched on C-SPAN2, I am confident that thousands of Americans are sitting at their desks with an ear to television but an eye to their tax returns and they are poring over the complexities of the Federal tax laws.

This bill would permit the American taxpayer to file his or her return on a small, 10-line postcard. It would do so because it retains the principles of a flat tax, which have long been discussed but not really considered in sufficient depth and not acted upon by the American Congress. A tax rate would be a 20-percent rate, with deductions limited to interest on home mortgages up to $100,000 in borrowing and charitable deductions up to $2,500.

The entire return could be filled out on a simple 10-line postcard. This postcard would identify the taxpayer, specify the total amount of wages, salaries, pensions, and retirement benefits, list the deductions and exemptions, and allow taxpayers to compute their taxes on this simple postcard form.

Beyond simplicity, and the simplicity is of great importance, we now have reliable estimates that Americans spend some $5.4 billion a year on their tax returns. The Internal Revenue Service regulations have grown from 744,000 words in 1955 to some 5,600,000 words at the present time. The Internal Revenue Service is a mammoth bureaucracy, with annual spending of $13 billion on the IRS bureaucracy alone, $100,000 employed in IRS offices nationwide. The compliance costs to the American people are almost $200 billion a year.

We all know that the greatest impediment in confidence between the American Government and the American citizen is concern with the Internal Revenue Service. How often have you and I received those automatic requests, requests, requests, and finally had a conference to work out each problem with the Internal Revenue Service. How often have you and I received those automatic computer printouts from the IRS, written on a letter, written them a second letter or multiple letters, and finally had a conference to work out some bureaucratic computer error? And most of the time, no additional tax is needed.

This legislation would liberate the American people to devote their time and energy to productive pursuits.

A second major advantage to my flat tax bill is that there would be an enormous increase in growth. This growth would occur because this flat tax would not impose any tax burden on interest, on dividends, or capital gains because
all of those items of income would have been taxed at the source; that is, at the business level.

Another benefit of the flat tax is the projected growth in the economy. From the point of view of growth, reliable estimates are that we would have an increase in the gross national product of over $2 trillion during the course of a 7-year period—an increase of some 28 percent. We would also benefit from increased savings, which would mean that the United States of America would be less dependent on borrowing from foreign sources. Increased savings would substantially change the great imbalance we have now, where we have massive interest payments on foreign debt flowing abroad.

Additionally, in terms of fairness, there would be a lesser tax on those in the lower brackets by having an increase in the personal allowance for $16,500 for married couples filing jointly, $9,500 for single taxpayers, $14,000 for single head of households, and an exemption of $4,500 for each dependent. That tax would be substantially lower under the present code and would enable a family of four earning $25,500 to pay no taxes at all. A family of four earning up to $30,000 a year would pay very minimal or no taxes at all. The effective rate would be as low as 12.7 percent for an average projection of a family earning $100,000 a year.

This proposal is revenue neutral based upon the computations made by Professor Hall and Professor Rabushka of Stanford's Hoover Institute. They have elaborately projected a national flat tax with no deductions and are calling for a rate of some 19 percent to have tax neutrality. This bill deviates from what Professors Hall and Rabushka have proposed by having the allowance of charitable contributions of up to $2,500 a year and the deduction for interest on home mortgages with a maximum borrowing of up to $100,000 a year.

The computations provided by the Joint Tax Committee show that the cost will be $35 billion a year to the Government for the interest deduction on borrowings up to $100,000 a year, and $13 billion for the charitable contributions up to $2,500 a year. The computation is that the additional 1 percent in my flat tax above Hall and Rabushka would cover those deductions.

I might say the computation is necessarily inexact because the model used by the Joint Tax Committee was on a national flat tax on individuals alone while this proposal is a national flat tax on both individuals and businesses. The Hall-Rabushka proposal is very similar to the proposal made by Congressman Armey last year with the differences being in the allowance here for charitable contributions. Also, a difference between this plan and the flat tax plan of Congressman Armey is that Congressman Armey did not provide for automatic witholding.

Mr. President, my interest in tax policy is longstanding, originating during my law school days. Some of my early practice of law included some tax work. And years ago, I published an article on the subject in the Villanova Law Review raising an issue of fairness as to the pension and profit sharing deductions for professional associations contrasted with the flat tax.

This is a subject where I debated my fellow congressman, Senator John Heinz, almost 20 years ago in our contest for the Republican nomination to the U.S. Senate in 1976 based upon legislation that he introduced in the House as Representative where he had suggested very substantial cuts in a good many deductions.

Mr. President, in offering this legislation, it is not cast in stone, but I think it is high time that the U.S. Senate consider in some detail the benefits of this national flat tax proposal or the modified Flat Tax Act which I am suggesting today.

The benefits are very, very substantial in terms of simplicity, growth, and fairness. And, finally, it would probably be the most equitable of any tax system ever considered or implemented.

Mr. President, I ask unanimous consent that the full text of my statement be printed in the Record, as well as the text of the legislative proposal itself.

Mr. President, as April 15 rapidly approaches this year, this floor statement—millions of Americans are spending their evenings poring over page after page of IRS instructions, going through their records looking for information and struggling to find and fill out all the appropriate forms on their Federal tax returns. At the same time, a patchwork quilt of deductions, credits, and special exceptions lets some Americans pay less than their fair share of taxes. Year after year, we continue to ask the same question— isn't there a better way?

Today I am introducing legislation that provides that better way. I am introducing legislation which will fundamentally revise the present Tax Code, with its myriad rates, deductions, and exceptions, thereby introducing a simple, flat 20 percent tax rate for all business and individual income. Based on those discussions, and on the revenue estimates supplied to us, I have concluded that a simple flat tax at a rate of 20 percent on all business and personal income can be enacted without reducing Federal revenues, and I offer such a bill today.

The flat tax will help reduce the size of Government and allow ordinary citizens to have more influence over how their money is spent and not the Government. With a simple 20-percent flat tax rate in effect, the average person can easily see the impact of any additional Federal spending proposal on his or her own paycheck. By creating strong incentives for savings and investment, the flat tax will have the beneficial result of making available larger pools of capital for expansion of the private sector for the economy—rather than more tax money for big Government. This will mean more jobs and, just as important, more better paying jobs.

As a matter of Federal tax policy, there has been considerable controversy over whether tax breaks should be used to stimulate particular kinds of economic activity. Whether a tax policy should be neutral, leaving people to do what they consider best for a purely economic point of view. Our current Tax Code attempts to use tax policy to direct economic activity,
but experience under that Code has demonstrated that so-called tax breaks are inevitably used as the basis for tax shelters which have no real relation to solid economic purposes, or to the activities which the tax laws were meant to promote. Even when the Government responds to particular tax shelters with more complicated definitions of the regulations, clever tax experts are able to stay one or two steps ahead of the IRS bureaucrats by changing the structure of their business transactions and then claiming some legal basis between the tax code and the taxpayer's new approach and the revised IRS regulations and precedents.

Under the massive complexity of the current IRS Code, the battle between $500-an-hour tax lawyers and IRS bureaucrats to open and close loopholes is a battle the Government can never win. Under the flat tax bill I offer today, there are no loopholes, and tax avoidance through manipulations will become a thing of the past.

The basic model for this legislation comes from a plan created by Professors Robert Hall and Alvin Rabushka of the Hoover Institute at Stanford University. Their plan envisioned a flat tax with no deductions whatever. After considerable reflection, I have decided to incorporate deductions and modifications of the mortgage interest deduction. The deductions were meant to promote homebuying and charitable contributions by retaining those deductions, I believe that those two deductions are so deeply ingrained in the financial planning of American families that they should be retained as a matter of fairness and public policy—and also political practicality. With those two deductions maintained, passage of a modified flat tax will be difficult; but without them, probably impossible.

In my judgment, an indispensable prerequisite to enactment of a modified flat tax is revenue neutrality. Professor Hall advised that the revenue neutrality of the Hall-Rabushka proposal, which uses a 19-percent rate, is based on a well documented model founded on reliable governmental statistics. The bill offered today raises the rate from 19 to 20 percent to accommodate retaining limited home mortgage interest and charitable deductions. A preliminary estimate by the Committee on Joint Taxation on the modifications proposed in this bill are threefold: First, it will dramatically simplify the payment of taxes. Second, it will remove much of the IRS regulatory morass now imposed on individual and corporate taxpayers, providing them with all the attendant opportunities for error, and tax lawyers with the biggest incentive and the best opportunities to use special tricks to exploit tax-rate differentials, applying the same tax rate to these taxpayers for all of their income in all years is the most important goal of flat-rate taxation.

We believe that the simplicity of our system is a central feature. Complex tax forms and laws do more harm than just deforesting America. Complicated taxes require expensive advisers for taxpayers and equally expensive reviews and audits by the Government. A complex tax system invites all taxpayers to search for a special feature to exploit to the disadvantage of the rest of us. And complex taxes diminish confidence in government, inviting a breakdown in cooperation with the tax system and the spread of outright evasion.

My plan, which like Representative ARMEEY's is based on the Hall-Rabushka analysis, differs from the legislation proposed by Representative ARMEEY in four key respects: First, my bill contains a 20-percent flat tax rate. Second, this bill will retain modified deductions for mortgage interest and charitable contributions, which will require a 1 percent higher tax rate than otherwise. Third, my bill would maintain the automatic withholding of taxes from an individual's paycheck. Lastly, my bill is designed to be revenue neutral, and thus will not undermine our vital efforts to balance the Nation's budget. The estimate of revenue neutrality is based on the Hall-Rabushka analysis together with preliminary projections supplied by the Joint Committee on Taxation on the modifications proposed in this bill.

The key advantages of this flat tax plan are threefold: First, it will dramatically simplify the payment of taxes. Second, it will remove much of the IRS regulatory morass now imposed on individual and corporate taxpayers, providing them with all the attendant opportunities for error, and tax lawyers with the biggest incentive and the best opportunities to use special tricks to exploit tax-rate differentials, applying the same tax rate to these taxpayers for all of their income in all years is the most important goal of flat-rate taxation. The third advantage of this plan is a battle the Government can never win. Our system rests on a basic administrative principle: income should be taxed exactly once, as close to its source. Today's tax system violates this principle in all kinds of ways. Some kinds of income—like fringe benefits—are never taxed at all. Other kinds, like dividends and capital gains, are taxed twice. And interest income, which is supposed to be taxed once, escapes taxation completely in all too many cases, where clever taxpayers arrange to receive interest beyond the reach of the IRS.

Under our plan, all income is taxed at the same rate. Equality of tax rates is a basic principle of tax reform. Its logic is much more profound than just the simplicity of calculation with a single tax rate. Whenever different forms of income are taxed at different rates or different taxpayers face different rates, the public figures out how to tax advantage of the system. Limiting the burden of taxes on the poor is a central principle of tax reform. Some ideas for tax simplification and reform flout this principle. Neither a state value-added tax nor a flat-rate tax is progressive. Instead, all citizens, rich and poor alike, pay essentially the same fraction of their spending in taxes. But the work of downsizing Government, and tax laws do more harm than just deforesting America. Complicated taxes require expensive advisers for taxpayers and equally expensive reviews and audits by the Government. A complex tax system invites all taxpayers to search for a special feature to exploit to the disadvantage of the rest of us. And complex taxes diminish confidence in government, inviting a breakdown in cooperation with the tax system and the spread of outright evasion.

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In 1994, the IRS employed over 110,000 people, spread out over 650 offices across the United States. Its budget was in excess of $13 billion, with some $7.1 billion spent annually just to administer the tax laws, and another $4 billion for enforcement. By simplifying the Tax Code and eliminating most of the IRS' vast array of rules and regulations, the flat tax would enable us to cut a significant portion of the IRS budget, including the bulk of the funding now needed for enforcement and administration.

Along with the advantage of simplicity, enactment of this flat tax bill will help to remove the burden of costly and unnecessary government regulation, bureaucracy and redtape from our everyday lives. The heavy hand of government bureaucracy is particularly onerous in the case of the Internal Revenue Service, which has been able to extend its influence into so many aspects of our lives.

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The plan offered today would eliminate the intricate scheme of complicated depreciation schedules, deductions, credits, and other complexities that go into business taxation in favor of a much-simplified system that taxes all business revenue less only wages, direct expenses, and purchases—a system with much less potential for fraud, "creative accounting," and tax avoidance.

Businesses would be allowed to expense 100 percent of the cost of capital formation, including purchases of capital structures and land, subject to an overall flat tax rate of 20 percent, and to do so in the year in which the investments are made. The business tax would apply to all money not reinvested in the company in the form of employment or capital formation—in other words, the flat tax would require businesses to engage in productive business activity, or for more time with their families, instead of poring over tax tables, schedules and regulations.

The flat tax I have proposed can be calculated just by filling out a small postcard, which would require a taxpayer only to answer a few easy questions. The postcard would ask for the following information:

**FORM 1—INDIVIDUAL WAGE TAX, 1996**

Your first name and initial (if joint return, also give spouse's name and initial):

Your social security number:

Home address (number and street including apartment number or rural route):

Your social security number: City, town, or post office, state, and ZIP code:

1. Wages, salary, pension and retirement benefits:

2. Personal allowance (enter only one):

3. Mortgage interest on debt up to $100,000 for owner-occupied home:

4. Cash or equivalent charitable contributions (up to $2,500):

5. Total allowances and deductions (lines 2, 3, 4, 5):

6. Taxable compensation (line 1 less line 6, if positive; otherwise zero):

7. Tax (20% of line 7):

8. Tax (20% of line 7):

9. Tax witheld by employer:

10. Tax or refund due (difference between lines 8 and 9):

Filling a tax return would become a manageable chore, not a seemingly endless nightmare, for most taxpayers.

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In addition, a flat tax would allow taxpayers to redirect their time, energies, and investments from the morass of tax compliance. According to the Tax Foundation, in 1994, businesses spent approximately $27 billion in compliance with the Federal tax laws, and individuals spent an additional $65 billion. Some of this money, $192 billion annually, is spent by businesses and investors in creating tax shelters and finding loopholes that would be eliminated under a flat tax, allowing the Government to collect, according to some estimates, over $120 billion annually.

**ECONOMIC GROWTH**

The third major advantage to a flat tax is that it will be a tremendous spur to economic growth. Harvard economist Dale Jorgenson estimates adoption of a flat tax like the one offered today would increase future national wealth by over $2 trillion, in present value terms, over a 7-year period. The economic benefits are fairly straightforward. Our current tax system is inefficient; it is biased toward too little savings and too much consumption. The flat tax creates substantial incentives for savings and investment by eliminating taxation on interest, dividends, and capital gains—and tax policies which promote capital formation and investment are the best vehicle for creation of new and high paying jobs, and for a greater prosperity for all Americans.

It is well recognized that to promote future economic growth, we need not only to eliminate the Federal Government’s reliance on deficits and borrowed money, but to restore and expand the base of private savings and investment. That has been the twin engine driving American prosperity throughout our history. These concepts are interrelated, for the Federal budget deficit soaks up much of what we have saved, leaving less for businesses to borrow.

It is the sum total of savings by all aspects of the U.S. economy that represented the pool of all capital available for investment—in training, education, research, machinery, physical plant, and cetera—and that constitutes the real seed of future prosperity. The statistics are daunting. In the 1960’s the net U.S. national savings rate was 8.2 percent, but it has fallen to a dismal 3.5 percent. In recent international comparisons, the United States has the lowest savings rate of any of the G-7 countries. We save at only one-tenth the rate of the Japanese, and only one-fifth the rate of the Germans, which is clearly reflected in the comparative growth rates of our economies.

An analysis of the components of U.S. savings patterns shows that though the Federal budget deficit is the largest cause of dissavings, both personal and business savings rates have declined significantly over the past three decades. Thus, to recreate the pool of capital stock that is critical to future prosperity, we have to do more than just get rid of the deficit. We have to very materially raise our levels of private savings and investment. And we have to do so in a way that will not cause additional deficits.

The less money people save, the less money is available for business investment and growth. The current tax system discourages savings and investment, because it taxes the interest we earn on our investments, the dividends we make from investing in the stock market, and the capital gains we make from successful investments in our homes and the financial markets. Indeed, under the current law these rewards for saving and investment are not only taxed, they are overtaxed—since gains due solely to inflation, which represent no real increase in value, are taxed as if they were really profit.

With the limited exceptions of retirement plans and tax-free municipal bonds, our current Tax Code does virtually nothing to encourage personal savings and investment, or to reward it over consumption. As William Schreyer wrote recently in the Harvard Business Review, “the budget deficit is only one part of a larger national problem: the U.S. saving deficit.”

This bill will change this system, and address this problem. The proposed legislation reverses the current skewed incentives by promoting savings and investment by individuals and by businesses. Individuals would be able to invest and save their money tax-free and reap the benefits of the accumulated value of those investments without paying a capital gains tax upon the sale of these investments. Businesses would also invest more as the flat tax allowed them to expense fully all sums invested in new equipment and technology in the year the expense was incurred, rather than dragging out the massive interest payments over years through complicated depreciation schedules. With greater investment and a larger pool of savings available, interest rates and the cost of investment would also drop, spurring even further economic growth.

Critics of the flat tax have argued that we cannot afford the revenue losses associated with the tremendous savings and investment incentives the bill affords to businesses and individuals. Those critics are wrong. Not only is this bill carefully crafted to be revenue neutral, but historically we have seen that when taxes are cut, revenues actually increase, as more taxpayers work harder for a larger share of their take-home pay, and investors are more confident in their expectations of rewards that will not get eaten up in taxes. As one example, under President Kennedy individual tax rates were lowered, investment incentives including the investment tax credit were created and then expanded, depreciation rates were accelerated, and yet between 1962 and 1969, gross private investment grew from $99.7 billion to $148 billion, an increase of nearly 50 percent. More recently under President Reagan, after his tax cuts in the early 1980’s, Government tax revenues rose from just under $600 billion in 1981 to nearly $1 trillion in 1989. In fact, the Reagan program helped to bring about the longest peacetime expansion of the U.S. economy in history. There is every reason to believe that the flat tax proposed here can do the same—and by maintaining tax revenue net of flat tax proposal, as we have, we can avoid any increases in annual deficits and the national debt.

In addition to increasing Federal revenues by fostering economic growth, the flat tax can also add to Federal revenues without increasing taxes by closing tax loopholes. The Congressional Research Service estimates that for fiscal year 1995, individuals will shelter more than $39 billion in tax revenue in legal loopholes, and corporations will shelter an additional $60 billion. There may well be additional moneys hidden in quasi-legal or even illegal tax shelters. Under a flat tax system, all tax shelters will disappear and all income will be subject to taxation.

The larger pool of savings created by a flat tax will also help to reduce our dependence on foreign investors to finance both our Federal budget deficits and our private sector economic activity. Current, of the publicly held Federal debt, that is, the portion was not held by various Federal trust funds like Social Security, nearly 20 percent is held by foreigners—the highest level in our history. By contrast, in 1965 less than 5 percent of publicly held national debt was foreign-owned. We are paying over $40 billion in annual interest to foreign governments and individuals, and this by itself accounts for roughly one-third of our whole international balance of payments deficit. These payments are one of the principal sources of American capital flowing abroad, a factor which then enables foreign investors to buy up American business. During the period 1980-89, the gross value of U.S. assets owned by foreign businesses and individuals rose 457 percent from $543 billion to $2.3 trillion.

The substantial level of foreign ownership of our national debt creates both political and economic problems. On the political level, there is at least the potential that some foreign nation may assume a position where its level of investment in U.S. debt gives it disproportionate leverage over American policy. Economically, increasing foreign investment in Treasury debt further reduces our national shift from a creditor to a debtor nation, weakening the dollar and undercutting our international trade position. A recent Congressional Research Service report put it succinctly: “To pay for today’s capital
Under Current Law:

Today's absurd system taxes entrepreneurial success at 60 percent while it actually subsidizes leveraged investment. Our simple tax would put the same low rate on both activities. A huge redirection of national effort would follow. And the redirection could be for national income. There is nothing wrong with shopping centers, apartment buildings, airplanes, boxcars, medical equipment, and cattle, but tax advantages have made us invest far too much in them, and their contribution to income is correspondingly low. Real growth will come when effort and capital flow into income producing development of new business, the areas where confiscatory taxation has discouraged investment. The contribution to income from new resources will be correspondingly high.

We project a 3 percent increase in output from increased total work in the U.S. economy and an additional increment to total output of 3 percent from added capital formation and dramatically improved entrepreneurial incentives. The sum of 6 percent is our best estimate of the improvement in real incomes after the economy has had seven years to assimilate the changed economic condition brought about by the simple flat tax. Both the amount and the timing are conservative.

Even this limited claim for economic improvement represents enormous progress. By 2002, it would mean each American will have an income about $1,900 higher, in 1995 dollars, as a consequence of tax reform.

As Professors Hall and Rabushka state it, the growth case for a flat tax is compelling. It is even more compelling to state it, the growth case for a flat tax is an international creditor nation rather than a debtor.

Professors Hall and Rabushka describe the pro-growth aspects of the flat tax in this way:

- Simplicity: A 10-line postcard filing replaces the myriad forms and attachments currently required, thus saving Americans up to 5.4 billion hours they currently spend every year in tax compliance.
- Fairness: The flat tax legislation that I am offering will retain the element of progressively that Americans view as essential to fairness in an income tax system. Because of the lower end income exclusions, and the capped deductions for home mortgage interest and charitable contributions, the effective tax rates under my bill will range from 0 percent for families with incomes under about $30,000 to roughly 20 percent for the highest income groups.

ANNUAL TAXES UNDER 20 PERCENT FLAT TAX FOR MARRIED COUPLE WITH TWO CHILDREN FILING JOINTLY

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Note: Assumes home mortgage of twice annual income at a rate of 9 percent and charitable contributions up to 2 percent of annual income.

My proposed legislation demonstrates the fairness that must be an essential component of the American tax system.

CONCLUSION

The proposal that I make today is dramatic, but so are its advantages: a taxation system that is simple, fair and designed to maximize prosperity for all Americans. A summary of the key advantages:

- Simplicity: A 10-line postcard filing would replace the myriad forms and attachments currently required, thus saving Americans up to 5.4 billion hours they currently spend every year in tax compliance.
- Fairness: The flat tax would eliminate the lion's share of IRS rules, regulations, and requirements, which have grown from 744,000 words in 1955 to 5.6 million words in 1994. It would also allow us to slash the mammoth IRS bureaucracy of 110,000 employees spread out over 690 offices nationwide.
- Promotes economic growth: Economists estimate a growth of over $2 trillion in national wealth over 7 years, representing an increase of $1,900 in personal income for every man, woman, and child in America.
- Increases efficiency: Investment decisions would be made on the basis of productivity rather than simply for tax avoidance, thus leading to even greater economic expansion.
Reduces interest rates: Economic forecasts indicate that interest rates would fall substantially, by as much as two points, as the flat tax removes many of the current disincentives to savings.

Lowers compliance costs: Americans would be able to save up to $32 billion they are presently spending every year in tax compliance.

Decreases fraud: As tax loopholes are eliminated and the Tax Code is simplified, there will be far less opportunity for tax avoidance and fraud, which now amounts to over $120 billion in uncollected revenue annually.

Reduces IRS costs: Simplification of the Tax Code will allow us to save significantly on the $13 billion annual budget currently allocated to the Internal Revenue Service.

Professors Hall and Rabushka have projected that within 7 years of enactment, this type of a flat tax would produce a 6-percent increase in output from increased total work in the U.S. economy and capital formation. The economic growth would mean a $1,900 increase in the personal income of all Americans.

No one likes to pay taxes. But Americans will be much more willing to pay their taxes under a system that they believe is fair, a system that they can understand, and a system that they recognize promotes rather than prevents growth and prosperity. The legislation I introduce today will afford Americans such a tax system.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 489. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with the town of Grand Lake, CO, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

THE ROCKY MOUNTAIN NATIONAL PARK GRAND LAKE CEMETARY ACT OF 1995

Mr. CAMPBELL. Mr. President, on January 26, 1915, Congress passed legislation creating a 265,726-acre Rocky Mountain National Park. In 1982, long before the park was created, the town of Grand Lake established a small, less than 5-acre community cemetery that lies barely 1,000 feet inside the western edge of the park. Apparently, in the early 1950’s, the National Park Service took notice of the cemetery and its strong ties with the history of the Grand Lake area, which includes the story of Rocky Mountain National Park.

This legislation would negate the need for repeated negotiations between the community and the National Park Service, and the chance for misunderstandings. The National Park Service and Grand Lake representatives have worked long and hard on developing this proposal. Enactment of this legislation would go a long way in maintaining and enhancing the spirit of cooperation and goodwill between park and community that has been achieved during the development of this resolution.

By Mr. GRASSLEY:

S. 490. A bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes; to the Committee on Environment and Public Works.

THE CLEAN AIR ACT AMENDMENT ACT OF 1995

• Mr. GRASSLEY. 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. 490

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

SECTION 1. DEFINITION OF POTENTIAL TO EMIT.

Section 302(j) of the Clean Air Act (42 U.S.C. 7602(j)) is amended—

(1) by striking '(j) Except as otherwise' and inserting the following:

'(j) MAJOR STATIONARY SOURCE AND MAJOR EMITTING FACILITY.—In this subsection, with respect to an agriculture-related facility, such as a grain elevator, a grain feed, or rice mill, or a grain processing facility:

(A) AIR POLLUTANT.—With respect to particulate emissions, the term `air pollutant' shall include only particulate matter less than or equal to 10 microns in size.

(B) POTENTIAL TO EMIT.—

(i) IN GENERAL.—The term 'potential to emit' means the potential of a facility to emit, during a 1-year period, at a maximum realistic operation of the facility:

(ii) MAXIMUM REALISTIC OPERATION.—In determining the maximum realistic operation of an agriculture-related facility, the Administrator shall consider—

(I) the cyclical or seasonal nature of the facility; and

(ii) with respect to an agriculture-related facility, all of the following:

(1) the cyclical or seasonal nature of the facility; and

(2) subject to section 111 or 112.''

SEC. 2. EXEMPTION FROM PERMITTING REQUIREMENTS.

Section 502 of the Clean Air Act (42 U.S.C. 7602a) is amended—

(1) in the first sentence of subsection (a), by striking "any other source (including an area source) subject to standards or regulations under section 112.";

(2) by adding at the end the following:

"(i) EXEMPTION.—A source shall not be subject to any regulation or requirement under this section if the source is—

(1) not a major source; and

(ii) subject to section 111 or 112.".

Mr. BREAUX (for himself, Mr. HOLLINGS, Mr. COCHRAN, and Mr. CHAFEE):

S. 491. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the Medicare Program for individuals with diabetes; to the Committee on Finance.

THE MEDICARE DIABETES OUTPATIENTS SELF - MANAGEMENT TRAINING ACT OF 1995

Mr. BREAUX. Mr. President, diabetes is the third leading cause of death from disease in the United States. It is the leading cause of blindness in people aged 25 to 74 and the most frequent cause of non-traumatic lower limb amputations. Diabetes also greatly increases an individual's chances of succumbing to stroke or heart disease.

What is such a shame, Mr. President, is that diabetes is a condition that can usually be treated so that major complications do not occur. In some cases it can even be prevented. While there is no known cure for diabetes, individuals with the disease can lead completely normal lives—even extraordinarily productive lives—if they know how to balance their diet, get enough exercise, and manage their disease.
People with diabetes learn to take care of themselves through self-maintenance and education programs. Generally, classes are taken when an individual is diagnosed with the disease and periodically thereafter in order to keep up with the changes in their condition and to get the most up-to-date treatments available.

Appropriate preventive education services for those with diabetes have the potential to save a great deal of money that would otherwise go for hospitalizations and other acute care costs. Education also saves these individuals from a great deal of unnecessary pain and suffering. Studies by the American Diabetes Association and others have shown that the Medicare program could save $2 to $3 for every $1 spent on diabetes education.

Medicare currently covers these services in inpatient or hospital-based settings and in limited outpatient settings—specifically hospital outpatient departments or rural health clinics. Unfortunately, Medicare does not currently cover services if they are given in any other outpatient setting, such as a doctor’s office. Even the limited coverage of outpatient settings that is currently permitted under Medicare is subject to State-by-State variation according to interpretation to the program’s fiscal intermediaries.

The Medicare Diabetes Outpatient Self-Management Training Act of 1995, which I am reintroducing today along with Senators CHAFEE, COCHRAN, INOUYE, and HOLLINGS, would provide for Medicare coverage for outpatient diabetes education on a consistent basis throughout the country. The bill would extend Medicare coverage of outpatient programs beyond hospital-based programs and rural health clinics. It would direct the Secretary of Health and Human Services to guarantee that coverage be available only for those services delivered through programs that meet stringent quality standards. Uniform payment would be achieved through implementation of new working guidelines.

This legislation is all about preventive medicine and is a sensible approach that should show savings for the Medicare program in the long run. I hope that my colleagues will join me as cosponsors.

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. 491

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 "Medicare Diabetes Outpatient Self-Management Training Act of 1995".

SEC. 2. MEDICARE COVERAGE OF DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O) (as redesignated by section 148(f)(6)(o)(iii)) of such Act Amendments of 1994 (Pub. Law 103-432); and

(2) by inserting after subparagraph (O) the following new subparagraph:

"(P) diabetes outpatient self-management training services (as defined in subsection (oo)); and".

(b) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x(s)) is amended by adding at the end the following new subsection:

"Diabetes Outpatient Self-Management Training Services

"(1) The term `diabetes outpatient self-management training services' means educational and training services furnished to an individual with diabetes by or under arrangements with a certified provider (as described in paragraph (2)(A)) if—

"(A) the services are furnished in an outpatient setting by an individual or entity meeting the quality standards described in paragraph (2)(B); and

"(B) the physician who is managing the individual's care certifies that the services are needed under a comprehensive plan of care related to the individual's diabetic condition to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

"(2) In paragraph (1)—

"(A) a `certified provider' is an individual or entity that, in addition to furnishing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this title; and

"(B) an individual or entity meets the quality standards described in this paragraph if the individual or entity—

"(i) meets quality standards established by the Secretary,

"(ii) meets applicable standards developed by the National Diabetes Advisory Board, including any revision of such standards by the organizations that participated in the original development of the applicable standards; or

"(iii) is recognized by the American Diabetes Association as being qualified to furnish the services.

"(c) CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS.—In establishing payment amounts under section 1848(a) of the Social Security Act for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including the American Diabetes Association, to determine the relative value for such services under section 1848(b)(2) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on or after January 1, 1996.

By Mr. CHAFEE:

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel Intrepid under title 46, United States Code.

The Intrepid has a long and proud history in sailing, including representing the United States in the America's Cup and winning in 1967 and 1971. It is currently U.S.-owned and is the Flagship of the America's Cup Hall of Fame.

The Intrepid is a 12 meter yacht, 65 feet in length that was built at the Minneford Boat Yard in City Island, NY in 1967. At the time of its construction, the vessel employed the breakthrough technology of noted boat designer, Lin Stephen. In a departure from the past, its design separated the keel and rudder, and added a trim tab on the trailing edge of the keel.

Variations of this technology are still being used today.

Because the Intrepid was at one point sold to non-U.S. owners and thus became ineligible to participate in U.S. coastwise trade, the owners seek a waiver of the Jones Act. They plan to use the vessel only in limited commercial ventures, and the vessel’s use will not include any coastwise trade in U.S. waters. If granted this waiver, Intrepid’s owners intend to fully comply with U.S. documentation and safety requirements.

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. 492

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

SECTION 1. AUTHORIZATION OF CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12005, 12007, and 12008 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel INTREPID, United States official number 50185.

By Mr. CHAFEE:

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel Consortium; to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

Mr. CHAFEE. Mr. President, today I am introducing legislation to issue a certificate of documentation for the vessel Consortium under title 46, United States Code.

A recently formed Rhode Island corporation, Marine Consortium, Inc., has purchased the 102-foot Camper and Nicholson motoryacht, Consortium. It is a U.S. documented vessel homeported in Newport, RI, and is ideally suited for charter operations.

Because Consortium has a foreign built—British—hull, it cannot undertake charters in U.S. waters. Its owners seek a waiver of this Jones Act prohibition so that they may engage in
Mr. President, the dairy compact represents a cooperative federalism. This Compact is a bipartisan, state-sponsored, regional response to the chronic problem of low dairy farm prices. If successfully implemented, the Compact will stabilize our region’s dairy industry and reinvigorate this crucial segment of our rural economy, without cost to the federal government or adverse impact on the national industry.

Thank you for your consideration of this matter.

Very truly yours,

William A. Gildea,
Executive Director.
Whereas, the Northeast Interstate Dairy Compact has been submitted to Congress for approval as required by the Constitution;

Now therefore be it resolved That the New England Governors' Conference, Inc. requests that Congress approve the Northeast Interstate Dairy Compact; and

Be it further resolved that, a copy of this resolution be sent to the leadership of the Senate and Representatives, the Chairs of the appropriate legislative committees, and the Secretary of the United States Department of Agriculture.


STEPHEN MERRILL,
Governor of New Hampshire Chairman.

THe NORTHEast IStAte DIaRY COnpACT

Was adopted with near-unanimous support by the six New England state legislatures. It is backed by the New England Governors Conference, the region's consumer groups, dairy farmers and processors. Established as an interstate commission authorized to regulate New England dairy farm prices. The commission would help stabilize fluid milk prices for both consumers and farmers by establishing a pricing structure which would remove the price fluctuations that currently exist.

Assures control by the region's consumer states. Four of the six compact states, Massachusetts, Connecticut, Rhode Island and New Hampshire, are milk importing states. They joined the compact because it compliments as well as protects the consumer interest.

Complements the federal milk marketing program. It would not supplant or replace federal law.

Does not discriminate against out-of-region farmers or processors. Milk will flow into and out of the compact region in exactly the same manner as occurs under federal law. Any farmer or processor, regardless of their location, may market milk in the compact region without competitive disadvantage.

Benefits out-of-region farmers equally with New England farmers. This means that New England's milk supply is produced by New York farmers. These farmers will receive the same compact benefits as New England farmers.

Is strictly local in effect. The Compact regulates only fluid milk. Processors purchasing milk for manufacturing purposes such as cheese and ice cream would be absolutely exempt from the Compact.

Protects against the production of surplus milk. Provisions in the Compact and the Congressional enabling legislation ensure this result.

Was given a zero score by the Congressional Budget Office. It will operate without cost to the federal government.

Mr. LEATHY. Mr. President, I rise along with my good friend from Vermont, Senator JEFFORDS, and in fact the entire New England delegation. We rise to introduce a resolution to approve the Northeast Interstate Dairy Compact.

The compact is an agreement among the six New England States that has been approved by each of our States' legislatures. It needs approval, under the Constitution of the Congress to take effect. Its intent is simple. It would rationalize the pricing of fluid milk in the New England States so our farmers can receive a fair price and so the consumers themselves can play a role in stabilizing these milk prices.

In fact, the roots of this compact are in the country's strong tradition of federalism. On January 27, 1995, this body overwhelmingly approved the unfunded mandates bill, which is currently in the House-Senate conference committee.

Now, throughout that debate, I heard Senator after Senator talk about giving more power back to our States. They said the Federal Government should not dictate to the States what they are supposed to do without providing the money. They said the States should have lifted so those States could take care of their own concerns.

The New England States are concerned about the dairy farmers in our area. They want to take more control of pricing fluid milk as a minimum price that is now set by a very complicated system of Federal milk marketing orders.

So, here is a chance for the Senate to show its support of the federalist principles it espoused in the unfunded mandates bill. This measure was approved last year by the Senate Appropriations Committee with the strong support of Senator KENNEDY, and Senator COHEN, but it ended in a filibuster at the end of last year.

Mr. President, I am pleased to join my colleagues from New England in introducing this resolution to grant the consent of Congress to the Northeast Interstate Dairy Compact. The survival of many family dairy farms in Maine and the other New England States depends on prompt passage of this legislation.

As in many other rural regions of the country, agriculture is a cornerstone of Maine's economy. Within the agricultural sector, dairy farming usually ranks second or third in cash receipts every year. The dairy industry provides not only jobs for the farmers themselves, but for the people who sell farm machinery, service the machinery, sell fuel and feed, and provide other goods and services. Dairy farms also account for large shares of the municipal tax base throughout rural Maine, making them critical contributors to local schools and essential town services.

Unfortunately, all is not well in the Maine dairy industry. In 1978, Maine had 1,133 dairy farms. By 1988, that number had declined to 800. In 1991, there were 680. And by 1994, the number dwindled further to only 546.

This precipitous decline in the number of dairy farms can be attributed to several factors, most notably to the fact that dairy prices are very low while costs remain high, and these same circumstances are driving farmers out of business as well. In Maine, the average cost of producing milk is $17 per 100 pounds. The June 1994 Federal order price in the Northeast was $16.23 per hundred. For August of 1994, the market order price declined to $14.49. In 1993, the average milk price in the Northeast declined by 54 cents per hundred.

Milk prices simply have not increased in concert with production. Whereas the retail price for a gallon of milk in 1991 was $2.20 a gallon, that same gallon still retailed for $2.20 a
the participating States, the cosponsoring the Constitution’s interstate commerce clause.

The State of Maine attempted to address this serious problem by establishing a dairy vendor’s fee that stabilized the price that farmers in Maine received for their milk. The vendor’s fee enjoyed the strong support of both farmers and consumers in Maine, but a Federal court struck it down in 1994 as a violation of interstate commerce. According to the Maine Department of Agriculture, the inevitable result of the court’s action will be an accelerating decline in family dairy farms.

Faced with similar problems throughout the region, the six New England States banded together to develop a joint regional solution. They negotiated an interstate dairy compact that will ensure a more reasonable and stable price for dairy farmers in the region. But it is a pricing program that also protects the interests of consumers in the region. As evidence of the balance achieved by the compact, both the net-producing and net-consuming States in the region all approved it with strong support.

The compact creates a regional commission which has the authority to set minimum prices paid to farmers for fluid milk, or class I milk. Delegations from each State comprise the voting membership of the commission, and these delegations in turn will include both farmer and consumer representatives. The minimum price established by the commission is the Federal market order price plus a small over-order differential that would be paid by milk processing plants. This over-order price is capped in the compact, and a two-thirds voting majority of the commission is required before any over-order price can be instituted.

Mr. President, until the court struck down the Maine dairy vendor’s fee, milk in my State was priced by a mechanism that is similar to that which could be utilized by the compact commission. Maine’s experience was uniformly positive. Farm prices were stable, and they were higher, but only modestly higher. No farmers got rich on the minimal adjustment provided by the over-order price under the vendor’s fee program. It helped them keep their heads above water. Dairy processors and vendors maintained their business, and consumers did not see any significant increases in the price of milk. It was a win-win proposition for everyone in Maine. Confidence that the compact will achieve the same success throughout New England without violating the Constitution’s interstate commerce clause.

Although the compact affects only the participating States, the cosponsors decided to remove any doubt by including language in the resolution that provides explicit assurances to farmers and processors in States outside the region. These assurances further specify that the over-order price can only be established for class I fluid milk, that no new States can join the compact without the formal approval of both Houses of Congress, that out-of-region farmers who sell milk in the compact region will get the same price as farmers in the region, that the commission’s pricing authority is strictly limited, and that the commission must develop a plan to ensure that over-order prices do not lead to increases in production.

In the debates held so far in this Congress, and surely in the debates to come, we have heard and will hear many Members argue that the States are often best-positioned to solve their own problems, and that they should be allowed to do so without interference from Washington. I couldn’t agree more.

With the Northeast Interstate Dairy Compact bill being introduced today, Senators will have an opportunity to match words on this concept with deeds. The compact represents a regional response to a regional problem. It affects only those States that belong to the compact. Why should the Federal Government deny the States an opportunity to solve their own problems? The answer is that we shouldn’t. We should praise the States for their self-reliance and ingenuity. I hope that Senators will recognize the value in this kind of State-based problem-solving, and support the compact when it comes to the floor for a vote.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. DOLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 22, a bill to require Federal agencies to prepare private property taking impact analyses.

S. 96

At the request of Mr. HATCH, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 96, a bill to amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes.

S. 198

At the request of Mr. CHAFFEE, the names of the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 198, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

S. 241

At the request of Mr. D’AMATO, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 241, a bill to increase the penalties for sexual exploitation of children, and for other purposes.

S. 250

At the request of Mr. McCONNELL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 250, a bill to amend chapter 41 of title 28, United States Code, to provide for a uniform analysis of certain bills and resolutions pending before the Congress by the Director of the Administrative Office of the United States Courts, and for other purposes.

S. 256

At the request of Mr. DOLE, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 258

At the request of Mrs. KASSEBAUM, the name of the Senator from Texas [Mrs. Hutchison] was added as a cosponsor of S. 258, a bill to permit labor management cooperative efforts that improve America’s economic competitiveness to continue to thrive, and for other purposes.

S. 302

At the request of Mrs. Hutchison, the name of the Senator from Kansas [Mrs. Kassebaum] was added as a cosponsor of S. 302, a bill to make a technical correction to section 1501(h)(2) of title 49, United States Code.

S. 332

At the request of Mr. CONRAD, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 388

At the request of Ms. Snowe, the names of the Senator from Tennessee [Mr. THOMPSON] and the Senator from Oklahoma [Mr. Nickles] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 390

At the request of Mr. KYL, his name was added as a cosponsor of S. 390, a bill to improve the ability of the United States to respond to the international terrorist threat.

S. 391

At the request of Mr. CRAIG, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from Utah [Mr. BENNETT], the Senator from Alaska [Mr. STEVENS], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 391, a bill to authorize and direct the