AGREEMENT.—A decision not to enter into, modify, renew, or enter into negotiations toward an innovative environmental strategy agreement and decisions under section 6 regarding the stakeholder process shall not be subject to judicial review and shall not require record justification by the Administrator.

SEC. 12. LIMITATION ON NUMBER OF AGREEMENTS.

(a) IN GENERAL.—The Administrator shall not enter into more than 50 innovative environmental strategy agreements unless, in the Administrator's sole discretion, and taking into account the full range of the agency's obligations, the Administrator determines that adequate resources exist to enter into a greater number of agreements.

(b) LIMIT.—The Administrator, in the Administrator's sole discretion, may limit the number of agreements to less than 50.

(c) PRIORITY CONSIDERATION DIVERSITY.—The Administrator shall—

(1) give priority consideration to proposals from small businesses; and

(2) seek to ensure that the agreements entered into reflect proposals from a diversity of industrial sectors, particularly from sectors where there is significant potential for environmental improvement.

SEC. 13. SMALL BUSINESS PROPOSALS.

The Administrator shall establish a program to facilitate development of proposals for innovative environmental strategies from small businesses and groups of small businesses and to provide for expedited and tailored review of such proposals.

SEC. 14. SAVINGS CLAUSE.

(a) EFFECT OF DECISIONS BY THE ADMINISTRATOR.—A decision by the Administrator to enter into an agreement under this Act shall not affect the validity or applicability of any rule, requirement, policy, or practice, that is modified or waived in the agreement with respect to any facility other than the facility that is subject to the agreement.

(b) OTHER AGREEMENTS.—Nothing in this Act affects the authority of the Administrator in existence on the date of enactment of this Act to enter into or carry out agreements providing for innovative environmental strategies or affects any other existing authority under which the Administrator may undertake innovative initiatives.

(c) OTHER FEDERAL AGENCIES.—Nothing in this Act affects the regulatory or enforcement authority of any other Federal agency under the laws implemented by the Federal agency except to the extent provided in an agreement to which the other Federal agency is a party.

(d) LIMITS ON PURPOSES AND USES OF AGREEMENTS.—An agreement under this Act—

(1) may not be adopted for the purpose of curing or addressing past or ongoing violations or noncompliance at a participating facility;

(2) may not be used as a legal or equitable defense by any party or facility not party to the agreement, or by a party to the agreement as a defense in an action unrelated to any requirement imposed under the agreement;

(3) shall not limit or affect the Administrator's authority to issue new generally applicable regulations or to apply regulations to the facility that is the subject of the agreement;

(4) shall not give rise to any claim for damages or compensation in the event of a change in statutes or regulations applicable to such facility; and

(5) shall not be admissible for any purpose in any judicial proceeding other than a proceeding to challenge, defend, or enforce the agreement.

(e) APPLICABLE LAW.—

(1) CONTRACT LAW.—An innovative environmental strategy agreement—

(A) shall not be interpreted or applied according to contract law principles; and

(B) shall not be subject to contract or other common law defenses.

(2) OSHA.—For purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), the exercise by the Administrator of any authority under this Act shall not be deemed to constitute or exercise of authority to prescribe or enforce a standard or regulation affecting occupational safety or health.

SEC. 15. EVALUATION AND REPORT.

(a) EVALUATION.—The Administrator shall establish an ongoing process with public participation to—

(1) evaluate lessons learned from innovative environmental strategies; and

(2) determine whether the approaches embodied in an innovative environmental strategy should be proposed for incorporation in an agency rule.

(b) REPORTS.—

(1) INDIVIDUAL STRATEGIES.—Not later than 18 months after entering into an innovative environmental strategy agreement, the Administrator shall submit to Congress a report evaluating whether the approaches embodied in an innovative environmental strategy should be proposed for incorporation in a statute or a regulation.

(2) AGGREGATE EFFECT.—Not later than 3 years after the date of enactment of this Act, the Administrator shall submit to Congress a report on the aggregate effect of the innovative environmental strategy agreements entered into under this Act, including—

(A) the number and characteristics of the agreements;

(B) estimates of the environmental and public health benefits, including any reductions in quantities or types of emissions and wastes generated;

(C) estimates of the effect on compliance costs;

(D) the degree and nature of public participation and accountability;

(E) estimates of nonenvironmental benefits obtained;

(F) conclusions on the functioning of the stakeholder participation process; and

(G) a comparison of effectiveness of the program relative to comparable State programs, using comparable performance measures.

SEC. 16. IMPLEMENTATION AUTHORITY.

The Administrator may issue such regulations as are necessary to carry out the agency's functions under this Act.

SEC. 17. TECHNICAL ASSISTANCE GRANTS.

The Administrator may establish a program to provide grants for technical assistance to stakeholder groups.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the agency to carry out this Act $4,000,000 for each of fiscal years 1999 through 2003 (including such sums as are necessary to provide technical assistance to stakeholder groups).

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1349. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Prince Nova*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CROSS SOUND FERRY SERVICE ACT OF 1997

Mr. DODD. Mr. President, I rise today to introduce with Senator LIEBERMAN legislation to waive the 1920 Merchant Marine Act, commonly known as the Jones Act, to allow Cross Sound Ferry Services, Inc., to purchase, rebuild, and operate the 1964 Canadian-built vessel *Prince Nova*. Faced with an increased demand for its services and a shortage of suitable U.S.-built ferries, Cross Sound cannot purchase a domestically built vessel.

Cross Sound Ferry Services, a family owned, nonsubsidized operation, provides auto, truck, and high speed passenger service between Orient Point, NY, and New London, CT. According to the proposed waiver, Cross Sound will purchase the *Prince Nova*, and spend more than three times the purchase price, no less than $4.2 million, on the conversion, restoration, repair, rebuilding, or retrofitting of the ferry in a shipyard located in New London.

Cross Sound Ferry Service, a vital link between New England and eastern Long Island, provides an alternative mode of transportation that saves trucks and autos up to 200 miles in each direction, and reduces traffic, congestion, and wear on major roadways. From an environmental standpoint, ferry service reduces fuel consumption and pollution. Currently, the I–95 corridor throughout the Northeast is under a tremendous traffic burden. If the waiver is granted, it is expected that the new and expanded service the *Prince Nova* will provide will save 6 million miles and 360,000 travel hours.

Cross Sound's commitment to service the *Prince Nova* in a United States shipyard will create high-skilled, high-wage jobs. Additionally, this waiver will undoubtably better facilitate commerce and encourage economic development in the region by allowing consumers easier access to goods and services. Furthermore, it will provide businesses with an additional mode to transport their products.

An identical waiver was passed last week in the House of Representatives as part of the Coast Guard Authorization Act of 1997. It is our hope that it will receive the same favorable consideration in the Senate.

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. 1349

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

SECTION 1. DOCUMENTATION OF THE VESSEL PRINCE NOVA.

(a) DOCUMENTATION AUTHORIZED.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and section 12106 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade

for the vessel PRINCE NOVA (Canadian registration number 320804).

(b) EXPIRATION OF CERTIFICATE.—A certificate of documentation issued for the vessel under subsection (a) shall expire unless—

(1) the vessel undergoes conversion, reconstruction, repair, rebuilding, or retrofitting in a shipyard located in the United States;

(2) the cost of that conversion, reconstruction, repair, rebuilding, or retrofitting is not less than the greater of—

(A) 3 times the purchase value of the vessel before the conversion, reconstruction, repair, rebuilding, or retrofitting; or

(B) $4,200,000; and

(3) not less than an average of $1,000,000 is spent annually in a shipyard located in the United States for conversion, reconstruction, repair, rebuilding, or retrofitting of the vessel until the total amount of the cost required under paragraph (2) is spent.

By Mr. LEAHY (for himself and Mr. JEFFORDS):

S. 1350. A bill to amend section 332 of the Communications Act of 1934 to preserve State and local authority to regulate the placement, construction, and modification of certain telecommunications facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE TELECOMMUNICATIONS FACILITIES ACT OF 1997

Mr. LEAHY. Mr. President, I ask unanimous consent that a copy of my bill to preserve State and local authority to regulate the placement, construction, and modification of telecommunication facilities be printed in the RECORD.

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

S. 1350

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

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress make the following findings:

(1) The placement of commercial telecommunications, radio, or television towers near homes can greatly reduce the value of such homes, destroy the views from such homes, and reduce substantially the desire to live in such homes.

(2) States and localities should be able to exercise control over the construction and location of such towers through the use of zoning, planned growth, and other controls relating to the protection of the environment and public safety.

(3) There are alternatives to the construction of additional telecommunications towers to meet telecommunications needs, including the co-location of antennae on existing towers and the use of alternative technologies.

(4) On August 19, 1997, the Federal Communications Commission issued a proposed rule, MM Docket No. 97–182, which would preempt the application of State and local zoning and land use ordinances regarding the placement of telecommunications towers. It is in the interest of the Nation that the Commission not adopt this rule.

(5) It is in the interest of the Nation that the second memorandum opinion and order and notice of proposed rule making of the Commission with respect to application of such ordinances to the placement of such towers, WT Docket No. 97–192, ET Docket No. 93–62, and RM–8577, be modified in order to permit State and local governments to exercise their zoning and land use authorities, and their power to protect public health and safety, to regulate the placement of telecommunications towers and to place the burden of proof in civil actions relating to the placement of such towers on the person or entity that seeks to place, construct, or modify such towers.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To repeal the limitations on the exercise of State and local authorities regarding the placement, construction, and modification of personal wireless service facilities that arise under section 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)).

(2) To permit State and local governments to regulate the placement, construction, and modification of such facilities on the basis of the environmental effects of the operation of such facilities.

(3) To prohibit the Federal Communications Commission from adopting rules which would preempt State and local regulation of the placement of such facilities.

SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF CERTAIN TELECOMMUNICATIONS FACILITIES.

(a) REPEAL OF LIMITATIONS.—Section 332(c)(7)(B) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(B)) is amended—

(1) in clause (i), by striking ''thereof—'' and all that follows through the end and inserting ''thereof shall not unreasonably discriminate among providers of functionally equivalent services.'';

(2) by striking clause (iv);

(3) by redesignating clause (v) as clause (iv); and

(4) in clause (iv), as so redesignated, by striking the third sentence and inserting the following: ''In any such action in which a person seeking to place, construct, or modify a tower facility is a party, such person shall bear the burden of proof.''.

(b) PROHIBITION ON ADOPTION OF RULE.—Notwithstanding any other provision of law, the Federal Communications Commission may not adopt as a final rule the proposed rule set forth in ''Preemption of State and Local Zoning and Land Use Restrictions on Siting, Placement and Construction of Broadcast Station Transmission Facilities'', MM Docket No. 97–182, released August 19, 1997.

Mr. JEFFORDS. Mr. President, I rise today to continue a discussion that my colleague, Senator LEAHY, began earlier, with regard to the Federal Communications Commission proposed rulemaking on regulations for wireless and digital broadcast facilities.

University of Vermont instructor and landscape designer Jean Veissering recently stated ''We have a real spiritual connection with hilltops. They tend to be almost sacred ground. Building something jarringly out of character upon them seems almost like a sacrilege.'' Mr. President, I share Jean's sentiments completely. In addition, it is the beautiful views of the majestic mountain ranges that in many ways defines what Vermont is all about.

Vermonters take great pride in their heritage as a State committed to the ideals of freedom and unity. That heritage goes hand and hand with a unique quality of life and the desire to grow and develop while maintaining Vermont's beauty and character. Ethan Allan and his Green Mountain Boys and countless other independent minded Vermonters helped shape the Nation's 14th State while making outstanding contributions to the independence of this country. Today, that independence still persists in the hills and valleys of Vermont. Vermonters have worked hard over the years to maintain local control over issues that impact them directly.

Throughout my years in Congress, I fought hard to protect the ability of Vermonters to step out of their kitchen doors and see an unobstructed view. Thousands of Americans travel to Vermont each year to take in the splendid nature of the State.

However, Vermont could have looked quite different if it were not for some foresight on behalf of several Vermonters. In the 1960's, the State of Vermont was entering into a period of unchecked development. In response, Governor Dean C. Davis created the Commission on Environmental Control in May of 1969. The commission drafted a set of recommendations to help manage the precious resources of the State.

As the attorney general for the State at that time, I was one of the primary drafters of an environmental land use law which would later become known as Act 250. Act 250 was specifically written to control development, not to stop development, and in turn, this act has led Vermont to economic prosperity through balanced environmental protection.

After reviewing the Commission on Environmental Control's recommendation and the proposed legislation, Governor Davis made one very basic, but important change in the legislation. The proposed legislation had called for a State agency to administer the act. The Governor was adamant in his belief that the control should be as close to the people as possible. It is that control which the FCC's proposed rulemaking is looking to preempt.

Governor Davis' recommendation led to placing the permitting process in the hands of local environmental review boards with appeal rights to the Vermont Environmental Board. Thus, the act is administered by men and women who are directly involved in their communities and thoroughly familiar with local concerns.

When reviewing an application for new development, the local environmental review boards take into account the economic needs of the State along with regional concerns. The review board's underlying goal is to direct the impact of development toward the positive. The positive approach has led to a high priority on preserving the environment, protecting the natural resources, and maintaining the quality of life of all Vermonters.

On October 9, 1997, the State of Vermont Environmental Board filed comments with the Federal Communications Commission that stated: ''Far from being an impediment to personal wireless service deployment, Vermont's Act 250 demonstrates that the