real estate taxes; to the Committee on Finance.

By Mr. FORD (for himself and Mr. BOND):

S. 1912. A bill to amend title 10, United States Code, to exclude additional reserve component general and flag officers from the limitation on the number of general or flag officers who may serve on active duty; to the Committee on Armed Services.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1913. A bill to require the Secretary of the Interior to sell leaseholds at the Canyon Ferry Reservoir in the State of Montana and to establish a trust fund for the conservation of fish and wildlife and enhancement of public hunting and fishing opportunities in the State; to the Committee on Environment and Public Works.

By Mr. GRASSLEY:

S. 1914. A bill to amend title 11, United States Code, to provide for business bankruptcy reform, and for other purposes; to the Committee on the Judiciary.

By Mr. LEAHY:

S. 1915. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DURBIN:

S. 1916. A bill for the relief of Marin Turcinovic, and his fiancee, Corina Dechalup; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. CHAFEE, Mr. REED, and Mrs. BOXER):

S. 1917. A bill to prevent children from injuring themselves and others with firearms; to the Committee on the Judiciary.

By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. WELLSTONE, Mr. JOHNSON, Mr. CONRAD, Mr. HARKIN, and Mr. BAUCUS):

S. 1918. A bill to require the Secretary of Agriculture to make available to producers of the 1998 and subsequent crops of wheat and feed grains nonrecourse loans that provide a fair return to the producers in relation to the cost of production; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MURKOWSKI (for himself, Mr. NICKLES, Mrs. HUTCHISON, and Mr. DOMENICI):

S. 1919. A bill to provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources from stripper wells on federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. NICKLES, and Mrs. HUTCHISON):

S. 1920. A bill to improve the administration of oil and gas leases on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

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

S. 1921. A bill to ensure confidentiality with respect to medical records and health care-related information, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CAMPBELL:

S. 1922. A bill to amend chapter 61 of title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as ''Freedom and Democracy Day''; to the Committee on the Judiciary.

By Mr. COVERDELL (for himself, Mr. BREAUX, and Mr. DEWINE):

S. 1923. A bill to amend the Federal Water Pollution Control Act to ensure compliance by Federal facilities with pollution control requirements; to the Committee on Environment and Public Works.

By Mr. MACK (for himself, Mr. KERRY, Mr. D'AMATO, Mrs. FEINSTEIN, Mr. BOND, Ms. MOSELEY-BRAUN, Mr. COVERDELL, Mrs. BOXER, Mr. GREGG, Mr. KENNEDY, Mr. THURMOND, Mr. ROBB, Mr. GRAMS, Mr. BUMPERS, Mr. COATS, Mr. DODD, Mr. INHOFE, Mr. INOUYE, Mr. SANTORUM, Mr. DURBIN, Ms. SNOWE, Mr. WYDEN, and Mr. HOLLINGS):

S. 1924. A bill to restore the standards used for determing whether technical workers are not employees as in effect before the Tax Reform Act of 1986; to the Committee on Finance.

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

S. 1925. A bill to make certain technical corrections in laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

By Mr. GRASSLEY:

S. 1926. A bill for the relief of Regine Beatie Edwards; to the Committee on the Judiciary.

By Ms. MOSELEY-BRAUN:

S. 1927. A bill to amend section 2007 of the Social Security Act to provide grant funding for 20 additional Empowerment Zones, and for other purposes; to the Committee on Finance.

By Mr. LEAHY:

S. 1928. A bill to protect consumers from overcollections for the use of pay telephones, to provide consumers with information to make informed decisions about the use of pay telephones, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. HUTCHISON (for herself, Mr. MURKOWSKI, Mr. NICKLES, and Mr. DOMENICI):

S. 1929. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes; to the Committee on Finance.

By Mr. NICKLES (for himself, Mr. DOMENICI, Mr. MURKOWSKI, Mrs. HUTCHISON, Mr. BREAUX, and Mr. CRAIG):

S. 1930. A bill to provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. CONRAD, Mr. DASCHLE, Mr. JOHNSON, and Mr. MCCAIN):

S. Res. 206. A resolution to recognize 50 years of efforts with respect to the creation of the Crazy Horse Memorial, honoring the great Oglala Sioux leader, Tasunke Witko, popularly known as ''Crazy Horse'', and to express the Sense of the Senate with respect to the Crazy Horse Memorial; to the Committee on Indian Affairs.

By Mr. JEFFORDS (for himself, Mr. SPECTER, Mr. AKAKA, and Mr. LEAHY):

S. Res. 207. A resolution commemorating the 20th anniversary of the founding of the Vietnam Veterans of America; to the Committee on the Judiciary.

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 208. A resolution to establish a special committee of the Senate to address the year 2000 technology problem; considered and agreed to.

By Ms. COLLINS:

S. Res. 209. A resolution providing section 302 allocations to the Committee on Appropriations; considered and agreed to.

By Mr. D'AMATO (for himself, Mr. MOYNIHAN, Mr. ASHCROFT, and Mr. BINGAMAN):

S. Con. Res. 88. A concurrent resolution calling on Japan to establish and maintain an open, competitive market for consumer photographic film and paper and other sectors facing market access barriers in Japan; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE:

S. 1905. A bill to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes; to the Committee on Indian Affairs.

THE CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT

Mr. DASCHLE. Mr. President, today I am introducing legislation to compensate the Cheyenne River Sioux Tribe for losses the tribe suffered when the Oahe dam was constructed in central South Dakota and over 100,000 acres of tribal land was flooded. Its passage will help the tribe rebuild their infrastructure and their economy, which was seriously crippled by the Oahe project during the 1950s. It is extraordinary that it has taken four decades to reach this point. The importance of passing this long-overdue legislation as soon as possible cannot be stated too strongly.

This legislation was developed with the assistance of Chairman Gregg Bourland and Council Member Louis Dubray of the Cheyenne River Sioux Tribe. Both men have worked tirelessly to bring us to this point and I am grateful for their assistance. This legislation represents one element of their progressive vision for providing the members of the Cheyenne River Sioux Tribe with greater opportunities for economic development and to fulfill the debts owed to the tribe by the federal government.

The Cheyenne River Sioux Infrastructure Development Trust Fund Act is the companion bill to the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, which passed by unanimous consent in November of 1997, and the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, which passed the Congress unanimously in 1996.

The bill is based on an extensive analysis of the impact of the Pick-Sloan Dam Projects on the Cheyenne River Sioux Tribe, which was performed by the Robert McLaughlin Company. The McLaughlin report was reviewed by the General Accounting Office, which found that the losses suffered by the tribe justify the establishment of a $290 million trust fund,

which is the amount called for in this legislation.

It represents an important step in our continuing effort to fairly compensate the tribes of South Dakota for the sacrifices they made decades ago for the construction of the dams along the Missouri River and will further the goal of improving the lives of Native Americans living on those reservations.

To fully appreciate the need for this legislation, it is important for the committee to understand the historic events that are prologue to its development. The Oahe dam was constructed in South Dakota pursuant to the Flood Control Act (58 Stat. 887) of 1944. That legislation authorized implementation of the Missouri River Basin Pick-Sloan Plan for water development and flood control for downstream states.

The Oahe dam flooded 104,000 acres of tribal land, forcing the relocation of roughly 30 percent of the tribe's population, including four entire communities. Equally as important, the tribe lost 80 percent of its fertile river bottom lands—lands that represented the basis for the tribal economy. Prior to the flooding, the tribe relied on these lands for firewood and building material, game, wild fruits and berries, as well as cover from the severe storms that characterize winters in South Dakota and shelter from the heat of the prairie summer. Indian ranchers no longer had places to shelter their cattle in the wintertime, causing a significant loss in the value of their operations.

The loss of these important river bottom lands can be felt today. Last year, during the extreme winter of 1996–1997, the tribe lost roughly 30,000 head of livestock, including 25,000 head of cattle. Without adequate natural shelter, the remaining Indian ranchers along this stretch of river can expect to continue to have difficulty scratching out a living in future years when the winter turns particularly hard.

Mr. President, the damage caused by the Pick-Sloan projects touched every aspect of life on the Cheyenne River reservation. Ninety percent of the timber on the reservation was wiped out, causing shortages of building material and firewood. Wildlife, once abundant in the river bottom, became more scarce. The entire lifestyle of the tribe changed as it was forced to relocate much of its people from the lush river bottom lands to the windswept prairie.

Most Americans, if not all, are familiar with the many broken promises of the United States Government to Native Americans during the 1800's. For Indian tribes located along the Missouri River in the State of South Dakota, the United States Government still has not met its responsibilities for compensation for losses suffered as a result of the construction of the Pick-Sloan dams. This proposed legislation is intended to correct that situation as it applies to the Cheyenne River Sioux Tribe.

We cannot, of course, remake the lost lands and return the tribe to its former existence. We can, however, help provide the resources necessary to the tribe to improve the infrastructure on the Cheyenne River reservation. This, in turn, will enhance opportunities for economic development which will benefit all members of the tribe. Perhaps most importantly, it will fulfill part of our commitment to improve the lives of Native Americans—in this case the Cheyenne River Sioux.

I strongly urge my colleagues to approve this legislation this year. Providing compensation to the Cheyenne River Sioux Tribe for past harm inflicted by the federal government is long-overdue and any further delay only compounds that harm. I ask unanimous consent that the entire 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. 1905

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Cheyenne River Sioux Tribe Equitable Compensation Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Congress approved the Pick-Sloan Missouri River Basin program by passing the Act of December 22, 1944, commonly known as the ''Flood Control Act of 1944'' (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.)—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Oahe Dam and Reservoir project is a major component of the Pick-Sloan program, and contributes to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) notwithstanding the contributions referred to in paragraph (1), the Oahe Dam and Reservoir project has contributed little to the economy of the Tribe;

(4) the Oahe Dam and Reservoir project overlies the eastern boundary of the Crow Creek Indian Reservation;

(5) the Oahe Dam and Reservoir project has—

(A) inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Tribe and the homeland of the members of the Tribe; and

(B) as a result of that inundation, severely damaged the economy of the Tribe and the members of the Tribe;

(6) the Secretary appointed a Joint Tribal Advisory Committee that examined the Oahe Dam and Reservoir project and that advisory committee correctly concluded that—

(A) the Federal Government did not justify, or fairly compensate the Tribe for, the Oahe Dam and Reservoir project when the Federal Government acquired 104,492 acres of land of the Tribe for that project; and

(B) the Tribe should be adequately compensated for the taking described in subparagraph (A); and

(7) after applying the same method of analysis used for the compensation of similarly situated Indian tribes, the Comptroller General of the United States determined the amount of compensation for the taking described in paragraph (6) and determined that the appropriate amount of compensation to pay the Tribe for the taking would be $290,722,958;

(8) the Tribe is entitled to receiving additional financial compensation for the taking described in paragraph (6)(A) in a manner consistent with the determination of the Comptroller General under paragraph (7); and

(9) the establishment of a dual cash account with the amounts made available to the Tribe under this Act is consistent with the principles of self-governance and self-determination.

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

(1) To provide for additional financial compensation to the Tribe for the taking of 104,402 acres of land of the Tribe for the Oahe Dam and Reservoir project in a manner consistent with the determination of the Comptroller General of the United States described in subsection (a)(7).

(2) To provide for the establishment of the Cheyenne River Sioux Recovery Account, a dual cash account to be managed by the Office in order to make payments to the Tribe to carry out projects under a plan prepared by the Tribe.

SEC. 3. DEFINITIONS.

In this Act:

(1) ACCOUNT.—The term ''account'' means the Cheyenne River Sioux Recovery Account established under section 4.

(2) CHEYENNE RIVER SIOUX TRIBE; TRIBE.—The term ''Cheyenne River Sioux Tribe'' or ''Tribe'' means the Itazipco, Siha Sapa, Minnicoujou, and Oohenumpa bands of the Great Sioux Nation that reside on the Cheyenne Reservation, located in central South Dakota.

(3) FUND ACCOUNT.—The term ''Fund Account'' means a consolidated account for tribal trust funds in the Treasury of the United States that—

(A) is managed by the Secretary, through the Office, in accordance with applicable law; and

(B) as of the date of enactment of this Act, is numbered 14X8365.

(4) OFFICE.—The term ''Office'' means the Office of Trust Fund Management within the Department of the Interior.

(5) PROGRAM.—The term ''Program'' means the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. CHEYENNE RIVER SIOUX TRIBAL RECOVERY ACCOUNT.

(a) CHEYENNE RIVER SIOUX TRIBAL RECOVERY ACCOUNT.—The Secretary of the Treasury shall establish in the Fund Account a dual cash account to be known as the ''Cheyenne River Sioux Tribal Recovery Account''. The dual cash account shall have a principal component and an interest component. The interest component of the account shall be used to make payments to the Tribe in accordance with this Act. The principal component of the account may not be expended. The corpus and the income of the account may be invested in accordance with applicable law.

(b) FUNDING.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), beginning with fiscal year 1999, and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited is $290,722,958, the Secretary of the Treasury shall deposit into the fund an amount equal to 10 percent of the receipts

from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(2) PERCENTAGE AMOUNT.—Beginning with fiscal year 2004, if no other law provides for the compensation to parties in conjunction with an applicable plan for the Program, the Secretary of the Treasury shall deposit into the fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program, until such time as the aggregate of the amounts deposited into the fund from such receipts and receipts deposited under paragraph (1) equals the amount specified in paragraph (1).

(3) ADDITIONAL INTEREST.—If, by the date that is 60 days after the end of a fiscal year, the Secretary of the Treasury fails to deposit into the fund an amount determined under paragraph (1) or (2), the Secretary of the Treasury shall deposit, in addition the applicable amount required to be deposited under paragraph (1) or (2), interest on the amount required to be deposited, determined for the period beginning on the day after the termination of that 60-day period and ending on the date on which the amount determined under paragraph (1) or (2) is deposited, and based on a rate of interest that is commonly referred to as the Treasury overnight rate.

(c) WITHDRAWAL.—

(1) IN GENERAL.—Subject to paragraph (2), in accordance with section 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4022), the Tribe may, in accordance with that Act, voluntarily withdraw some or all of the funds held in trust for the Tribe by the United States and managed by the Secretary through the Office.

(2) LIMITATION.—No amount of principal withdrawn under this subsection may be expended by the Tribe. The Tribe may withdraw funds under this subsection on the condition that the Tribe may expend only the interest earned on the principal.

(e) PAYMENT OF INTEREST TO TRIBE.—In accordance with this Act, the Secretary, acting through the Office, and in a manner consistent with the first section of the Act of June 24, 1938 (52 Stat. 1037 et seq., chapter 648; 25 U.S.C. 162a) shall make payments to the Tribe from the interest credited to the interest component of the account, beginning at the end of the first fiscal year during which interest is credited to the account. The Tribe shall use the payments made under this subsection only for carrying out projects and programs pursuant to the plan prepared under subsection (f).

(f) PLAN.—

(1) IN GENERAL.—The governing body of the Tribe shall, not later than 18 months after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under subsection (e).

(2) CONTENTS OF PLAN.—The plan developed under this subsection shall provide for the manner in which the Tribe will expend the payments referred to in paragraph (1) to promote—

(A) economic development;

(B) infrastructure development;

(C) the educational, health, recreational, and social welfare objectives of the Tribe and its members; or

(D) any combination of the activities referred to in subparagraphs (A) through (C).

(3) PLAN REVIEW AND REVISION.—The Tribal Council of the Tribe shall make available for review and comment by the members of the Tribe a copy of the plan before the plan becomes final, in accordance with procedures established by the Tribal Council. The Tribal Council may, on an annual basis, update the plan by revising the plan in a manner that provides the members of the Tribe to review and comment on any proposed revision.

(4) AUDIT.—The activities of the Tribe in carrying out the plan under this subsection shall be audited as part of an annual audit conducted for the Tribe. The auditors that conduct the audit shall include in the written findings of that audit a determination whether the funds received by the Tribe under this section were expended in a manner consistent with this section to carry out the plan under this subsection.

(g) TRANSFERS; LIMITATIONS.—

(1) WITHDRAWAL AND TRANSFER OF FUNDS.—In a manner consistent with the requirements of this Act, upon request of the Secretary of the Interior, the Secretary of the Treasury shall withdraw amounts in the interest component of the account and transfer such amounts to the Secretary of the Interior for use in accordance with paragraph (2). The Secretary of the Treasury may only withdraw funds from the account for the purpose specificed in paragraph (2).

(2) PAYMENTS TO TRIBE.—The Secretary of the Interior shall use the amounts transferred under paragraph (1) only for the purpose of making annual payments to the Tribe.

(4) PROHIBITION ON PER CAPITA PAYMENTS.—No portion of any payment made under this subsection may be distributed to any member of the Tribe on a per capita basis.

SEC. 5. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.

(a) IN GENERAL.—No payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

(b) EXEMPTIONS FROM TAXATION.—No payment made pursuant to this Act shall be subject to any Federal or State income tax.

(c) POWER RATES.—No payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

SEC. 6. SALE OF WESTERN AREA POWER AUTHORITY.

(a) IN GENERAL.—If, before the amount specified in section 4(b)(1) is deposited into the Fund, the United States sells or otherwise transfers title to the assets and income of the Western Area Power Authority to an entity other than the United States—

(1) an amount of the proceeds from that sale equal to the difference between the amount specified in section 4(b)(1) and the aggregate amount that, as of the sale of power authority, had been paid into the Fund, shall be deposited in the Fund; or

(2) the purchaser may assume responsibility for making payments to the Treasury of the United States for deposit in the Fund in amounts determined under section 4(b)(1).

(b) SECURITY.—If a purchaser assumes the responsibility for making the payments and shall provide the Tribe with appropriate security to secure those payments.

By Mr. LEAHY:

S. 1906. A bill to require the Senate to remain in session to act on judicial nominations in certain circumstances; to the Committee on Rules and Administration.

THE JUDICIAL EMERGENCY RESPONSIBILITY ACT OF 1998

Mr. LEAHY. Mr. President, last week, faced with five continuing vacancies on a 13-member Court, Chief Judge Winter of the United States Court of Appeals for the Second Circuit certified the judicial emergency caused by these continuing vacancies, began canceling hearings and took the unprecedented step in the Second Circuit of authorizing 3-judge panels to be composed of two visiting judges and only one Second Circuit Judge.

The Judiciary Committee has reported to the Senate the nomination of Judge Sotomayor to the Second Circuit, but her nomination continues to sit on the Senate calendar. Her nomination was received back in June 1997. She was favorably reported by a Committee vote of 16 to 2, once the Committee finally considered her nomination. She is strongly supported by both New York Senators, yet the nomination continues to languish without consideration.

Three additional outstanding Second Circuit nominees are pending before the Judiciary Committee and await their confirmation hearings. Judge Rosemary Pooler was nominated back on November 6, 1997, as was Robert Sack, a partner in the law firm of Gibson Dunn & Crutcher. The final pending nomination to the Second Circuit was received two months ago, back on February 11, when the President nominated Chester J. Straub, a partner in the law firm of Wilkie Farr & Gallagher.

I have been urging action on the nominees to the Second Circuit for many months. The Senate is failing in its obligations to the people of the Second Circuit, to the people of New York, Connecticut and Vermont. We should call an end to this stall and take action.

Last Friday I urged consideration of the nomination of Judge Sotomayor without further delay and requested that the Judiciary Committee proceed to hold the necessary hearings on the three other Second Circuit nominees this week so that they, too, might be confirmed before the upcoming recess.

I do not believe that the Senate should be leaving for two weeks' recess and leaving the Second Circuit with vacancies for which it has qualified nominations pending. This is too reminiscent of the government shutdown only a couple of years ago and the numerous times of late when the Republican congressional leadership has recessed without completing work on emergency supplemental and disaster relief legislation.

In his most recent Report on the Judiciary the Chief Justice of the United States Supreme Court warned that persisting vacancies would harm the administration of justice. The Chief Justice of the United States Supreme Court pointedly declared: ''Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary.''

The people and businesses in the Second Circuit need additional federal judges confirmed by the Senate. Indeed, the Judicial Conference of the United States recommends that in addition to the 5 vacancies, the Second

Circuit be allocated an additional 2 judgeships to handle its workload. The Second Circuit is suffering harm from Senate inaction. That is why the Chief Judge of the Second Circuit had to declare the Circuit in a state of emergency.

Must we wait for the administration of justice to disintegrate further before the Senate will take this crisis seriously and act on the nominees pending before it? I hope not.

As part of my efforts to encourage the Senate to do its job, I am today introducing the Judicial Emergency Responsibility Act. The purpose of this bill is to supplement the law by which Chief Justice Winter certified the emergency and to require the Senate to do its duty and to act on judicial nominations before it recesses for significant stretches of time when a Circuit Court is suffering from a vacancy emergency.

I urge prompt action on the bill and immediate action on the nomination of Judge Sonia Sotomayor to the Second Circuit.

By Mr. DASCHLE:

S. 1907. A bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for wetland restoration and conservation expenses; to the Committee on Finance.

WETLANDS RESTORATION AND CONSERVATION LEGISLATION

Mr. DASCHLE. Mr. President, today I am introducing legislation to provide a refundable tax credit to farmers for the restoration and conservation of wetlands.

We have learned over the years the extraordinary value that wetlands can provide as habitat for plants and waterfowl, as a filter for water and as a buffer against flooding. At the same time, anyone who has ever owned a farm in South Dakota with what we call prairie potholes can appreciate the frustration wetlands can generate, making it logistically difficult to till the field efficiently and, of course, impossible to grow crops on lands that are flooded.

To add insult to injury, farmers often need to pay property taxes on these wetlands, even though they provide no financial return.

As a nation, we have recognized the dilemma this presents and have taken steps in the past to provide farmers with a means of obtaining some value for their efforts to protect wetlands. For years the Department of Agriculture has allowed farmers to enroll wetlands into the Wetland Reserve Program, while the U.S. Fish and Wildlife Service has worked with conservation groups to provide farmers with long-term easement options. Recently, Congress enacted legislation I sponsored to allow farmers to enroll wetlands in the Conservation Reserve Program.

Unfortunately, due to the funding caps, many farmers cannot enroll their wetlands into the CRP while others are reluctant to use the WRP or U.S. Fish and Wildlife easements. Consequently, despite these efforts, many wetlands throughout this country continue to present farmers with a challenge: ensuring their protection without any compensation.

In addition, over the last century, many wetlands have been drained, filled or otherwise degraded. These areas represent a vast reservoir of potentially important wetlands that could provide useful environmental functions if fully restored. The time has come for Congress to establish a more comprehensive set of incentives to both restore degraded wetlands and ensure their long-term protection.

Under the legislation I am introducing today, owners of wetlands, farmed wetlands and prior-converted croplands that are surrounded by or immediately adjacent to actively farmed cropland in the same ownership are eligible for a tax credit. To take advantage of this credit, farmers must restore to fully functioning condition their farmed wetlands or prior converted croplands condition according to a restoration plan approved by the Natural Resources Conservation Service. A tax credit equal to the restoration costs will be available under this bill. To protect the water quality of wildlife values, a maximum of three associated acres of non-wetland may be eligible for the credit for every acre of wetland. To ensure that the federal government does not pay twice to protect the same wetlands, those enrolled in CRP or WRP are not eligible for this credit.

The bill provides a tax credit equal to 50% to 70% of the soil-specific Conservation Reserve Program (CRP) rental rate for eligible wetland and associated non-wetland acres, plus any certification fee. This may be taken in each year of the conservation agreement in which the eligible land is not used for agricultural production or drained, dredged, filled, leveled, or otherwise manipulated for that purpose.

A farmer who enters into an agreement to conserve the eligible wetland and associated non-wetland acres for a period of not less than 10 years will receive 50% of the annual CRP rental rate; a farmer who agrees to conserve the wetland for not less than 20 years will receive 60% of the annual CRP rental rate; and a farmer who agrees to conserve the wetland for 30 years will receive 70% of the annual CRP rental rate. Certification of compliance with the agreement must be made at least every 5 years.

As a long-term alternative to the conservation credit, farmers may opt for an easement credit, which would be equal to the fair market value of the land in agricultural use, as determined by a certified appraisal. This would be based on the charitable donation by the landowner of a deed restriction, granted in perpetuity on the use which may be made of the eligible land to a qualified conservation organization, exclusively for conservation purposes. The full credit may be taken in the year in which the deed restriction is recorded.

Mr. President, Americans increasingly are becoming aware of the tremendous environmental benefits that wetlands provide. From critical waterfowl habitat to reducing the severity of flooding, wetlands are a critical component of our landscape. What may not be as widely appreciated is the nature of the farmer's role in protecting this resource.

The time has come for us to both acknowledge the contributions made by farmers to the conservation of wetlands and provide them with appropriate incentive to preserve them. Farmers should not be penalized for doing the right thing. This legislation will take a giant step toward making available fair and reasonable compensation for their efforts in this regard.

I urge my colleagues to join me in supporting this legislation. It represents an idea that is popular with conservation organizations as well as producers, and I am hopeful that Congress will enact it in the very near future. I ask unanimous consent that the full 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. 1907

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

SECTION 1. REFUNDABLE CREDIT FOR WETLAND RESTORATION AND CONSERVATION EXPENSES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. WETLAND RESTORATION AND CONSERVATION EXPENSES.

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year in an amount equal to the sum of—

''(1) the wetland restoration credit, plus

''(2) the wetland conservation credit, plus

''(3) the wetland easement credit.

''(b) WETLAND RESTORATION CREDIT.—

''(1) IN GENERAL.—The wetland restoration credit for any taxable year is an amount equal to the wetland restoration expenditures paid or incurred by the eligible taxpayer for such taxable year.

''(2) WETLAND RESTORATION EXPENDITURES.—For purposes of this subsection, the term 'wetland restoration expenditure' means an expenditure for the restoration of farmed wetland or prior converted wetland to fully functioning wetland condition—

''(A) pursuant to a restoration plan approved by the Natural Resources Conservation Service of the Department of Agriculture, and

''(B) paid or incurred during the first 5 years of the qualified conservation agreement or qualified conservation easement relating to such farmed wetland or prior converted wetland.

Such term shall not include any expenditure which is required to be made pursuant to any Federal or State law.

''(c) WETLAND CONSERVATION CREDIT.—

''(1) IN GENERAL.—The wetland conservation credit for any taxable year is an amount equal to the sum of—

''(A) the applicable percentage of the soil-specific Conservation Reserve Program rental rate applicable to the eligible taxpayer's qualified wetland for such taxable year under title XII of the Food Security Act of 1985, plus

''(B) any fee for certification of compliance paid or incurred by the eligible taxpayer in such taxable year with respect to the qualified conservation agreement relating to such qualified wetland.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)(A), the applicable percentage is equal to, in the case of an eligible taxpayer who has entered into a qualified conservation agreement with a term of—

''(A) at least 10 years, but less than 20 years, 50 percent,

''(B) at least 20 years, but less than 30 years, 60 percent, and

''(C) 30 years, 70 percent.

''(3) DENIAL OF CREDIT IF WETLAND EASEMENT CREDIT IS ELECTED.—With respect to any qualified wetland with respect to which the taxpayer makes an election under subsection (d) for any taxable year, the wetland conservation credit with respect to such qualified wetland for such taxable year is zero.

''(d) WETLAND EASEMENT CREDIT.—

''(1) IN GENERAL.—At the election of the eligible taxpayer, the wetland easement credit for any taxable year is an amount equal to the fair market value of any qualified wetland of the taxpayer subject to a qualified conservation easement.

''(2) DETERMINATION OF VALUE.—For purposes of paragraph (1), the value of such qualified wetland is the fair market value of such qualified wetland in agricultural use (as determined by a certified appraisal) during the taxable year (determined as of the date of the grant of the easement).

''(3) ELECTION.—An election under this subsection shall apply to the taxable year for which made.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a taxpayer who—

''(A) owns property which consists of—

''(i) wetlands, farmed wetlands, or prior converted wetlands, and

''(ii) the surrounding or immediately adjacent actively farmed cropland, and

''(B) with respect to such property, has entered into a qualified conservation agreement or a qualified conservation easement.

''(2) QUALIFIED WETLAND.—

''(A) IN GENERAL.—The term 'qualified wetland' means—

''(i) wetland, including farmed wetland or prior converted wetland, which through the use of wetland restoration expenditures is being converted to fully functioning wetland condition, plus

''(ii) as determined under a qualified conservation agreement or a qualified conservation easement, such surrounding or immediately adjacent nonwetland as is appropriate to buffer the water quality or wildlife habitat values associated with the wetland, but only to the extent the nonwetland acreage is not more than 3 times greater than the wetland acreage.

''(B) CERTAIN PROPERTY EXCLUDED.—Such term shall not include any acre of land with respect to which contract or easement payments are received in the taxable year from the Conservation Reserve Program or the Wetlands Reserve Program under title XII of the Food Security Act of 1985.

''(3) WETLAND, FARMED WETLAND, AND PRIOR CONVERTED WETLAND.—The terms 'wetland', 'farmed wetland', and 'prior converted wetland' shall have the meanings given such terms by title XII of the Food Security Act of 1985.

''(4) QUALIFIED CONSERVATION AGREEMENT.—

''(A) IN GENERAL.—The term 'qualified conservation agreement' means an agreement by the eligible taxpayer—

''(i) with a governmental unit referred to in section 170(c)(1),

''(ii) for a term of not less than 10 years and not more than 30 years,

''(iii) under which the taxpayer agrees to comply with the conservation requirements of subparagraph (B) with respect to the qualified wetland, and

''(iv) under which the taxpayer agrees to obtain a certification of compliance not less than every 5 years during the period of the agreement.

''(B) CONSERVATION REQUIREMENTS.—An eligible taxpayer complies with the conservation requirements of this subparagraph if—

''(i) the taxpayer does not use the qualified wetland for agricultural production, and

''(ii) the taxpayer does not drain, dredge, fill, level, or otherwise manipulate the qualified wetland (including the removal of woody vegetation, or any activity which results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or that has the effect, of making production of an agricultural commodity or development of built structures on such wetland possible.

''(5) QUALIFIED CONSERVATION EASEMENT.—The term 'qualified conservation easement' means an easement granted in perpetuity by the eligible taxpayer restricting the use which may be made of the qualified wetland to a qualified organization exclusively for conservation purposes (as defined in section 170(h)).

''(f) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—

''(A) IN GENERAL.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

''(B) GRANTS.—No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

''(2) MARRIED COUPLES MUST FILE JOINT RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.''

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 35 of such Code''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following:

''Sec. 35. Wetland restoration and conservation expenses.

''Sec. 36. Overpayments of tax.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 1908. A bill to amend title XVIII of the Social Security Act to carve out form payments to Medicare+Choice organizations amounts attributable to disproportionate share hospital payments and pay such amounts directly to those disproportionate share hospitals in which their enrollees receive care; to the Committee on Finance.

THE MANAGED CARE FAIR PAYMENT ACT OF 1998

Mr. MOYNIHAN, Mr. President, I rise today to introduce with my colleague Senator D'AMATO, the ''Managed Care Fair Payment Act of 1998,'' a companion to H.R. 2701 which was introduced in the House of Representatives last year by my colleague and friend, Representative RANGEL.

In the Balanced Budget Act of 1997 (BBA), Congress and the President agreed to ''carve out'' the payment made to Medicare HMOs attributed to the cost for graduate medical education (GME), and instead make the payment for GME directly to teaching hospitals. The BBA did not contain, however, a provision passed by the Senate to ''carve out'' payments to disproportionate share hospitals—often called DSH payments.

Medicare DSH payments are paid to almost 2000 hospitals that serve a ''disproportionate share'' of low-income—often uninsured—patients. The DSH adjustment for each hospital is determined by a complex set of formulas relating to a hospital's location, size and percentage of low-income patients.

Until 1998, Medicare's payments to private health plans were based on the average payments made on behalf of Medicare beneficiaries in the fee-for-service program. Under the BBA, Medicare+Choice payment rates are no longer directly linked to local fee-for-service spending. Instead, they blend average spending locally and nationally. Because the DSH payment was not carved out in the BBA, the DSH payment will continue to be made with the expectation that HMOs will, when negotiating rates with hospitals, ''pass on'' the DSH payment to hospitals that serve a large number of low-income, uninsured individuals. Unfortunately, as was the case before the BBA was enacted, DSH payments to managed care plans will likely not be passed on to hospitals. This bill seeks to correct this problem by ''carving out'' the DSH payment from the Medicare+Choice payments to managed care plans and giving the payments directly to hospitals.

This issue is particularly important to New York state. Hospitals in New York currently receive approximately $700 million per year in DSH payments. The number of New York Medicare beneficiaries enrolled in HMOs and other managed care plans has grown by nearly 86 percent to more than 300,000 since 1995. At this level of penetration, a DSH carve out would redirect $150 million each year to New York's 127 DSH hospitals.

To preserve the viability of hospitals that provide the bulk of the care to low-income—often uninsured—patients, it is imperative, as managed care enrollment grows, that Medicare DSH payments be carved out from HMO payments. The bill I am introducing today does just that—it would carve out 100 percent of the DSH funds

from the managed care payment rate, beginning in January 1999 and pay these funds directly to hospitals. These payments must go directly to hospitals that serve the poor. I urge my colleagues to join me in supporting the Managed Care Fair Payment Act of 1998.

I ask unanimous consent that the full 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. 1908

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 ''Managed Care Fair Payment Act of 1998''.

SEC. 2. CARVING OUT DSH PAYMENTS FROM PAYMENTS TO MEDICARE+CHOICE ORGANIZATIONS AND PAYING THE AMOUNTS DIRECTLY TO DSH HOSPITALS ENROLLING MEDICARE+CHOICE ENROLLEES.

(a) IN GENERAL.—Section 1853(c)(3) of the Social Security Act (42 U.S.C. 1395w–23(c)(3)), as inserted by section 4001 of the Balanced Budget Act of 1997, is amended—

(1) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (D)'',

(2) by redesignating subparagraph (D) as subparagraph (E), and

(3) by inserting after subparagraph (C) the following:

''(D) REMOVAL OF PAYMENTS ATTRIBUTABLE TO DISPROPORTIONATE SHARE PAYMENTS FROM CALCULATION OF ADJUSTED AVERAGE PER CAPITA COST.—

''(i) IN GENERAL.—In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 1999), the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) shall be adjusted, subject to clause (ii), to exclude from the rate the additional payments that the Secretary estimates were payment during 1997 for additional payments described in section 1886(d)(5)(F).

''(ii) TREATMENT OF PAYMENTS COVERED UNDER STATE HOSPITAL REIMBURSEMENT SYSTEM.—To the extent that the Secretary estimates that an annual per capita rate of payment for 1997 described in clause (i) reflects payments to hospitals reimbursed under section 1814(b)(3), the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.''.

(b) ADDITIONAL PAYMENTS FOR MANAGED CARE ENROLLEES.—Section 1886(d)(5)(F) of the Social Security Act ((42 U.S.C. 1395ww(d)(5)(F)) is amended—

(1) in clause (ii), by striking ''clause (ix)'' and inserting ''clauses (ix) and (x)'', and

(2) by adding at the end the following:

''(ix)(I) For portions of cost reporting periods occurring on or after January 1, 1999, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital that is a disproportionate share hospital (as described in clause (i)).

''(II) For purposes of this clause, the term 'applicable discharge' means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1876 and who is entitled to benefits under part A or any individual who is enrolled with a Medicare+Choice organization under part C.

''(III) The amount of the payment under this clause with respect to any applicable discharge shall be equal to the estimated average per discharge amount that would otherwise have been paid under this subparagraph if the individuals had not been enrolled as described in subclause (II).

''(IV) The Secretary shall establish rules for an additional payment amount, for any hospital reimbursed under a reimbursement system authorized under section 1814(b)(3) if such hospital would qualify as a disproportionate share hospital under clause (i) were it not so reimbursed. Such payment shall be determined in the same manner as the amount of payment is determined under this clause for disproportionate share hospitals.''.

By Mr. MCCAIN:

S. 1909. A bill to repeal the telephone excise tax; to the Committee on Finance.

THE TELEPHONE EXCISE TAX REPEAL ACT OF 1998

Mr. MCCAIN. Mr. President, I rise to offer a bill to repeal the three percent federal excise tax that all Americans pay every time they use a telephone.

Under current law, the federal government taxes you three percent of your monthly phone bill for the so-called ''privilege'' of using your phone lines. This tax was first imposed one hundred years ago. To help finance the Spanish-American War, the federal government taxed telephone service, which in 1898 was a luxury service enjoyed by relatively few. The tax reappeared as a means of raising revenue for World War I, and continued as a revenue-raiser during the Great Depression, World War II, the Korean and Vietnam Wars, and the chronic federal budget deficits of the last twenty years.

Earlier this month, however, we received some long-overdue good news: thanks to the Balanced Budget Act enacted by the Congress in 1997, the Congressional Budget Office projected an $8 billion federal budget surplus for 1998. Mr. President, that announcement should mean the end of the federal phone excise tax.

Here's why. First of all, the telephone is a modern-day necessity, not like alcohol, or furs, or jewelry, or other items of the sort that the government taxes this way. The Congress specifically recognized the need for all Americans to have affordable telephone service when it enacted the 1996 Telecommunications Act. The universal service provisions of the Act are intended to assure that all Americans, regardless of where they live or how much money they make, have access to affordable telephone service. The telephone excise tax, which bears no relationship to any government service received by the consumer, is flatly inconsistent with the goal of universal telephone service.

It's also a highly regressive and unfair tax that hurts low-income and rural Americans even more than other Americans. Low-income families spend a higher percentage of their income than medium- or high-income families on telephone service, and that means the telephone tax hits low-income families much harder. For that reason the Congressional Budget Office has concluded that increases in the telephone tax would have a greater impact on low-income families than tax increases on alcohol or tobacco products. And a study by the American Agriculture Movement concluded that excise taxes like the telephone tax impose a disproportionately large tax burden on rural customers, too, who rely on telephone service in isolated areas.

But, in addition to being unfair and unnecessary, there is another reason why we should eliminate the telephone excise tax. Implementation of the Telecom Act of 1996 requires all telecommunications carriers—local, long-distance, and wireless—to incur new costs in order to produce a new, more competitive market for telecommunications services of all kinds.

Unfortunately, the cost increases are arriving far more quickly than the new, more competitive market. The Telecom Act created a new subsidy program for wiring schools and libraries to the Internet, and the cost of funding that subsidy has already increased bills for business users of long-distance telephone service and for consumers of wireless services. Because of more universal service subsidy requirements and other new Telecom Act mandates, more rate increases for all users will occur later this year and next year.

Mr. President, the fact that the Telecom Act is imposing new charges on consumers' bills makes it absolutely incumbent upon us to strip away any unnecessary old charges. And that means the telephone excise tax.

Mr. President, the telephone excise tax isn't a harmless artifact from bygone days. It collects money for wars that are already over, and for budget deficits that no longer exist, from people who can least afford to spend it now and from people who will have new bills to foot as the 1996 Telecom Act gets implemented. That's unfair, that's wrong, and that must be stopped.

San Juan Hill and Pork Chop Hill have now gone down in history, and so should this tax.

Mr. President, I ask unanimous consent that the text of the bill appear in the RECORD.

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

S. 1909

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

SECTION 1. REPEAL OF TELEPHONE EXCISE TAX.

(a) IN GENERAL.—Effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1999, subchapter B of chapter 33 of the Internal Revenue Code of 1986 (26 U.S.C. 4251 et seq.) is repealed. For purposes of the preceding sentence, in the case of communications services rendered before December 1, 1998, for which a bill has not been rendered before January 1, 1999, a bill shall be treated as having been first rendered on December 31, 1998.

(b) CONFORMING AMENDMENT.—Effective January 1, 1999, the table of subchapters for

such chapter is amended by striking out the item relating to subchapter B.

By Mr. D'AMATO:

S. 1911. A bill to amend the Internal Revenue Code of 1986 to provide a $500 nonrefundable credit to individuals for the payment of real estate taxes; to the Committee on Finance.

THE WORKING MIDDLE-CLASS TAX RELIEF ACT OF 1998

Mr. D'AMATO. Mr. President, last year, the Congress delivered some long-overdue and much-deserved tax relief to the American people. The Taxpayer Relief Act of 1997 provided the first middle-class tax cut in 16 years.

The tax cuts we passed last year are making a difference in the monthly budgets of working middle-class families. But we can and we must do more. These families still send too much of their hard-earned money to Washington. And between federal, state, and local taxes, the average American's tax bill is nearly 35 percent of their total income. In fact, most Americans spend more time working to pay their tax bills than they spend working to provide food, clothing, and shelter combined. We absolutely must continue our efforts to reduce the tax burden.

One area that escaped our tax-cutting efforts last year was the enormous property tax bills paid by homeowners. Last year, hardworking Americans paid about $209 billion in real-estate property taxes. This was more than one-and-one-half times what individuals paid in state income taxes.

In addition, property tax rates have increased almost twice as fast as inflation. Property taxes are spiraling out of control, and the time has come to give homeowners some real relief.

Homeownership is the American dream, but that dream now comes with a tax bill that puts a heavy burden on working families. This property tax bill also provides a disincentive to any young couple considering purchasing a home. We in Washington should change that equation—we should be doing everything we can to encourage and assist homeownership.

Today, I am introducing the ''Working Middle-Class Tax Relief Act of 1998.'' This bill will allow homeowners to take a federal tax credit for the first $500 of property taxes paid on their personal residence. The Working Middle Class Tax Relief Act will provide real help to working families who are struggling to make ends meet, and it will send a strong message that homeownership can become a reality for all Americans.

Here are a few examples of how my bill works. Under current law, there are nearly 36 million taxpayers who do not get any savings on property taxes because they don't file an itemized federal tax return. Under my bill, every dollar of property tax that they pay, up to $500, will come back to them in the form of federal tax savings.

Of course, millions of other Americans do itemize. Take, for example, a typical family of four with a taxable income of $42,000, and a property tax bill of $3,000. Under current law they receive a $450 federal tax benefit. By turning the first $500 of property taxes into a tax credit, my legislation would give this typical family an additional $425 savings, for a total tax benefit of $875.

This savings to homeowners could cut their property tax bill by one-third or more, and in some cases wipe it out all together. This legislation will let working families keep more of their money. That's the way it should be. After all, the American people know how to manage their own money much better than Washington does.

The Working Middle-Class Tax Relief Act is real savings for the 66 million Americans who have realized the dream of owning a home, and it will help millions more achieve that dream.

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. 1911

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 ''Working Middle Class Tax Relief Act of 1998''.

SEC. 2. NONREFUNDABLE TAX CREDIT FOR REAL ESTATE TAXES ON PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25A the following:

''SEC. 25B. REAL ESTATE TAXES ON PRINCIPAL RESIDENCE.

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the lesser of—

''(1) the applicable dollar amount, or

''(2) the amount allowable as a deduction under section 164 (determined without regard to subsection (c)(3) thereof) for State, local, and foreign real property taxes paid or accrued by the taxpayer on property for periods the property was owned and used by the taxpayer as the taxpayer's principal residence.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount shall be determined in accordance with the following table:

''For taxable years beginning in:	The dollar amount is:
1999	$100
2000	200
2001	300
2002	400
2003 and thereafter	500.

''(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the meaning given such term by section 121, except that the period for which a dwelling unit is treated as a principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this paragraph) be treated as the taxpayer's principal residence.

''(3) JOINT RETURN REQUIRED.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply.

''(4) OWNERSHIP AND USE.—Rules similar to the rules of paragraphs (1), (2), (3), (4), and (7) of section 121(d) shall apply.''

(b) DENIAL OF DOUBLE BENEFIT.—Section 164(c) of the Internal Revenue Code of 1986 (relating to deduction denied in case of certain taxes) is amended by adding at the end the following:

''(3) Taxes on real property to the extent of the amount of the credit allowed under section 25B.''

(c) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25A the following:

''Sec. 25B. Real estate taxes on principal residence.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

By Mr. FORD (for himself and Mr. BOND):

S. 1912. A bill to amend title 10, United States Code, to exclude additional reserve component general and flag officers from the limitation on the number of general or flag officers who may serve on active duty; to the Committee on Armed Services.

NATIONAL GUARD LEGISLATION

Mr. FORD. Mr. President, today I join Senator BOND, my fellow co-chairman of the National Guard Caucus, in introducing legislation to allow the Secretary of Defense to increase the number of National Guard and reserve generals on active duty.

Deputy Secretary of Defense John Hamre brought it to our attention that under current law, guard and reserve general officers brought on active duty for more than 180 days count against the service's active duty ceilings specified in 10 U.S.C. 526. Our proposed legislation would exempt full-time active duty guard and reserve general officers from the limit in title 10. But we only allow the exemption so it does not exceed 3 percent of the current limit of 877 general officers.

This legislation will encourage the military services to assign guard/reserve general officers to a wider variety of non-traditional assignments allowing these general officers to gain a greater depth of experience. The legislation will greatly enhance the total force idea, by providing a more seamless integration of the reserve and active component senior leadership. Senator BOND and I also believe this legislation will foster a greater appreciation by the active duty service leadership of the expertise available from the guard and reserve community.

This legislation would eliminate the disincentive to expand guard and reserve general officers assignments by easing the one-for-one reserve component versus active component offset. There are currently 22 Guard and Reserve general officers on full time active duty. All but three of those officers are serving in assignment directly related to Guard and Reserve matters. This legislation would exempt up to 25 Guard and Reserve general officers

from counting against active duty general officer end strength.

Senator BOND and I would encourage the Senate Armed Services Committee to include this legislation in the fiscal year 1999 defense authorization bill.

I ask unanimous consent that the bill and section-by-section be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follow:

S. 1912

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

SECTION 1. EXCLUSION OF ADDITIONAL RESERVE COMPONENT GENERAL AND FLAG OFFICERS FROM LIMITATION ON NUMBER OF GENERAL AND FLAG OFFICERS WHO MAY SERVE ON ACTIVE DUTY.

Section 526(d) of title 10, United States Code, is amended to read as follows:

''(d) EXCLUSION OF CERTAIN RESERVE OFFICERS.—(1) Subject to paragraph (2), the limitations of this section do not apply to the following reserve component general or flag officers:

''(A) A general or flag officer who is on active duty for training.

''(B) A general or flag officer who is on active duty under a call or order specifying a period of less than 180 days.

''(C) A general or flag officer who is on active duty under a call or order specifying a period of more than 179 days.

''(2) The number of general or flag officers of an armed force covered by paragraph (1)(C) at any one time may not exceed the number equal to three percent of the number specified for that armed force under subsection (a).''.

AUTHORIZED STRENGTH: GENERAL AND FLAG OFFICERS ON ACTIVE DUTY

SECTION BY SECTION ANALYSIS

Section 526(a) limits the number of general and flag officers on active duty in the Army (302), Navy (216), Air Force (279) and Marine Corps (80). Section 526(d), title 10, United States Code provides that these limits do not apply to reserve general or flag officers who are on active duty for training or who are on active duty under a call or order specifying a period of less than 180 days.

The intent of the proposed language is to exempt Reserve and National Guard general/flag officers from the limits in Section 526(a), up to a maximum of 3% of the total number of general and flag officers currently authorized for each Service.

RESERVE/GUARD GENERAL/FLAG OFFICER EXEMPTION JUSTIFICATION

Currently, any Reserve or Guard general officer ordered to active duty for a period of more than 179 days counts against the Service's active duty general and flag officer limit.

Greater participation by Reserve and Guard senior leadership in the day-to-day planning, decision-making and execution will lead to a more seamless Total Force and will immeasurably benefit both the Reserve and Active Components. Reserve and Guard officers will gain greater depth of experience from their full-time assignment and Active Component will gain greater understanding of the assets the Reserve and Guard community bring to the table.

This legislation will also encourage the Services to assign Reserve and Guard general and flag officers to a wider variety of non-traditional billets, to include joint assignments.

This section amends Section 526 by adding a provision to exempt a number of Reserve and Guard general and flag officers serving on full-time active duty from the limits of subsection (a).

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1913. A bill to require the Secretary of the Interior to sell leaseholds at the Canyon Ferry Reservoir in the State of Montana and to establish a trust and fund for the conservation of fish and wildlife and enhancement of public hunting and fishing opportunities in the State; to the Committee on Environment and Public Works.

THE MONTANA FISH AND WILDLIFE CONSERVATION ACT OF 1998

Mr. BAUCUS. Mr. President, I rise today to announce the introduction of ''The Montana Fish and Wildlife Conservation Act of 1998.'' I am pleased to be joined on this bill by my Colleague from Montana, Senator BURNS. This bill will help protect important lands in Montana for the use and enjoyment of all Americans. It will protect our hunting and fishing heritage and ensure that our children and our grandchildren can enjoy our great wild lands, just as we do today.

Canyon Ferry Reservoir sits just east of Helena, Montana. Along the north shore of the reservoir, there are 265 cabin sites that have been leased by the Bureau of Reclamation for over two decades. On these sites, families have built cabins and houses, car ports and garages, and planted lawns and gardens. Many families now live in these cabins year-round.

These cabin sites have been a constant management problem for the Bureau of Reclamation. In addition to managing the reservoir, the Bureau of Reclamation has been forced to play landlord. Like all landlords, the Bureau of Reclamation has often been at odds with the cabin owners over rental payments and maintenance of the property. This conflict has damaged public good will and created administrative expenses for the government as appeals are filed to respond to the conflict of the day.

The Montana Fish and Wildlife Conservation Act establishes an equitable means of resolving these conflicts and, at the same time, provide substantial benefit to the public. This Act proposes to sell all 265 cabin sites through a sealed bid process with the minimum bid set at fair market value determined in accordance with federal appraisal standards. All existing lease arrangements would have to be honored by the purchaser of the 265 cabin sites, and each cabin owner would have to be given an option to purchase their cabin site from the successful bidder. In this way, the Act ensures that the public will receive a maximum return on the investment, while at the same time, fully protecting the interests of the current leaseholders.

The Montana Fish and Wildlife Conservation Act of 1998 would use the proceeds from this sale to establish two funds for the conservation of fish and wildlife and would return 10% of the proceeds to the U.S. Treasury.

The first fund established by this Act, the Canyon Ferry-Missouri Trust, would be a perpetual endowment fund with 45% of the proceeds from the sale of the cabin sites. It would be used for the public acquisition of property at Canyon Ferry Reservoir and along the Missouri River and its tributaries upstream to the confluence of the Madison, Jefferson, and Gallatin Rivers.

This trust would be managed by a board consisting of representatives of local and statewide sportsmens organizations and local landowners. The Canyon Ferry-Missouri River Endowment would be used to purchase public access to hunting and fishing sites and to acquire property and conservation easements to enhance public hunting and fishing opportunities at the reservoir and along the Missouri. All property acquired by this trust would be purchased from willing sellers.

The second fund, Montana Hunter and Fisherman Access Fund would be a state-wide fund established with another 45% of the proceeds from the sale of the cabin sites. It would be used to acquire public access to federal lands in Montana and to acquire property and conservation easements to enhance public hunting and fishing opportunities across the state. This fund would be managed by the Bureau of Land Management, the Forest Service, and Fish and Wildlife Service. This fund could be used to acquire property only from willing sellers.

The remaining 10% of the proceeds from the sale of the cabin sites would be returned to the U.S. Treasury.

The Montana Fish and Wildlife Conservation Act of 1998 presents an exciting opportunity for us to ensure that our children can enjoy hunting and fishing just as we do. This bill will improve access to public lands and will protect important fish and wildlife habitat for the benefit of all Americans. It does so by selling cabin sites which currently are providing very few benefits to the general public while causing significant management conflicts and expenses for the Bureau of Reclamation.

This is a fair bill that is widely supported by cabin owners, local land owners, and sportsmen throughout Montana. There are a number of issues that still need to be ironed out with this bill. In particular, the Canyon Ferry Recreation Association (the association of cabin owners) has expressed concern that they may not financially be able to step into the role of landlord for those leasees who are unable to purchase the cabin sites should be Association be the highest bidder. We'll have to work through these and other issues as this bill moves forward.

Nonetheless, Mr. President, I believe that this bill is a good start. I look forward to working with my Colleague from Montana and with all the members of the Senate to finalize and pass

this legislation for the benefit of America's fish and wildlife heritage.

Mr. President, I urge my colleagues to join me in supporting this important bill.

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. 1913

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 ''Montana Fish and Wildlife Conservation Act of 1998''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the interest of the United States for the Secretary of the Interior to sell leaseholds at Canyon Ferry Reservoir in the State of Montana for fair market value if the proceeds from the sale are used—

(A) to establish a trust to provide a permanent source of funding to acquire access or other property interests from willing sellers to conserve fish and wildlife and to enhance public hunting and fishing opportunities at the Reservoir and along the Missouri River;

(B) to establish a fund to be used to acquire access or other property interests from willing sellers to increase public access to Federal land in the State of Montana and to enhance hunting and fishing opportunities; and

(C) to reduce the Pick-Sloan project debt for the Canyon Ferry Unit;

(2) existing trusts in the State of Montana, including the Rock Creek Trust and the Montana Power Company Missouri-Madison Trust, have provided substantial public benefits by conserving fish and wildlife and by enhancing public hunting and fishing opportunities in the State of Montana;

(3) many Federal lands in the State of Montana do not have suitable public access, and establishing a fund to acquire easements to those lands from willing sellers would enhance public hunting and fishing opportunities in the State of Montana;

(4) the sale of the leaseholds at the Reservoir will reduce Federal payments in lieu of taxes and associated management expenditures in connection with the ownership by the Federal Government of the leaseholds while increasing local tax revenues from the new owners of the leased lots; and

(5) the sale of the leaseholds at the Reservoir will reduce expensive and contentious disputes between the Federal Government and leaseholders, while ensuring that the Federal Government receives full and fair value for the acquisition of the property.

SEC. 3. DEFINITIONS.

In this Act:

(1) CFRA.—The term ''CFRA'' means the Canyon Ferry Recreation Association, Incorporated, a Montana corporation.

(2) FUND.—The term ''Fund'' means the Montana Hunter and Fisherman Access Fund established under section 6(a).

(3) LESSEE.—The term ''lessee'' means the holder of a leasehold described in section 4(b) as of the date of enactment of this Act, and the holder's heirs, executors, and assigns of the holder's leasehold interest.

(4) PURCHASER.—The term ''Purchaser'' means the person or entity that purchases the 265 leaseholds under section 4.

(5) RESERVOIR.—The term ''Reservoir'' means the Canyon Ferry Reservoir in the State of Montana.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) TRUST.—The term ''Trust'' means the Canyon Ferry-Missouri River Trust established under section 5(a).

SEC. 4. SALE OF LEASEHOLDS.

(a) IN GENERAL.—Subject to subsection (c) and notwithstanding any other provision of law, the Secretary shall sell at fair market value—

(1) all right, title, and interest of the United States in and to all (but not fewer than all) of the leaseholds described in subsection (b), subject to valid existing rights; and

(2) easements for—

(A) vehicular access to each leasehold;

(B) access to and the use of 1 dock per leasehold; and

(C) access to and the use of all boathouses, ramps, retaining walls, and other improvements for which access is provided in the leases as of the date of this Act.

(b) DESCRIPTION OF LEASEHOLDS.—

(1) IN GENERAL.—The leaseholds to be conveyed are—

(A) the 265 cabin sites of the Bureau of Reclamation located along the northern portion of the Reservoir in portions of sections 2, 11, 12, 13, 15, 22, 23, and 26, Township 10 North, Range 1 West; plus

(B) any small parcels contiguous to the leaseholds (not including shoreline property or property needed to provide public access to the shoreline of the Reservoir) that the Secretary determines should be conveyed in order to eliminate inholdings and facilitate administration of surrounding land remaining in Federal ownership.

(2) ACREAGE; LEGAL DESCRIPTION.—The acreage and legal description of each property shall be agreed on by the Secretary and the Purchaser.

(c) PURCHASE PROCESS.—

(1) IN GENERAL.—The Secretary shall—

(A) solicit sealed bids for all of the leaseholds; and

(B) subject to paragraph (2), sell the leaseholds to the bidder that submits the highest bid above the minimum bid determined under paragraph (2).

(2) MINIMUM BID.—Before accepting bids, the Secretary, in consultation with interested bidders, shall establish a minimum bid based on an appraisal of the fair market value of the leaseholds, exclusive of the value of private improvements made by the leaseholders before the date of the conveyance, by means of an appraisal conducted in accordance with the appraisal procedures used under Federal law, including, to the extent practicable, the procedures specified in sections 2201.3 through 2201.3–5 of title 43, Code of Federal Regulations.

(3) RIGHT OF FIRST REFUSAL.—If the highest bidder is other CFRA, CFRA shall have the right to match the highest bid and purchase the leaseholds at a price equal to the amount of that bid.

(d) CONDITIONS.—

(1) CONSIDERATION.—As consideration for the conveyance under subsection (a), the Purchaser shall—

(A) contribute to the Trust the amount that is equal to 45 percent of the purchase price of the leaseholds;

(B) contribute to the Fund the amount that is equal to 45 percent of the purchase price of the leaseholds; and

(C) pay the Secretary for deposit in the Treasury of the United States an amount that is equal to 10 percent of the purchase price of the leaseholds.

(2) NO CHARITABLE DEDUCTION.—The Purchaser, any owner, member, or other interest holder in the Purchaser, and any leaseholder shall not be entitled to a charitable deduction under the Internal Revenue Code of 1986 by reason of the making of the contribution under subparagraph (A) or (B) of paragraph (1).

(3) OPTION TO PURCHASE.—

(A) IN GENERAL.—The Purchaser shall give each leaseholder of record of a leasehold conveyed under this section an option to purchase the leasehold at fair market value.

(B) NONPURCHASING LESSEES.—

(i) RIGHT TO CONTINUE LEASE.—A lessee that is unable or unwilling to purchase a property shall be permitted to continue to lease the property for fair market value rent under the same terms and conditions as the existing leases, including the right to renew the term of the existing lease for 2 consecutive 5-year terms.

(ii) COMPENSATION FOR IMPROVEMENTS.—If a lessee declines to purchase a leasehold, the Purchaser shall compensate the lessee for the full market value of the improvements made to the leasehold.

(4) HISTORICAL USE.—The Purchaser shall honor the existing property descriptions and historical use restrictions for the leaseholds, as determined by the Bureau of Reclamation.

(e) ADMINISTRATIVE COSTS.—Any administrative cost incurred by the Secretary incident to the conveyance under subsection (a) shall be reimbursed by the Purchaser.

SEC. 5. CANYON FERRY-MISSOURI RIVER TRUST.

(a) ESTABLISHMENT.—The Secretary shall encourage establishment of a nonprofit charitable permanent perpetual trust, similar in structure and purpose to the existing trusts referred to in section 1(2), to be known as the ''Canyon Ferry-Missouri River Trust'', to provide a permanent source of funding to acquire land and interests in land from willing sellers at fair market value to conserve fish and wildlife, enhance public hunting and fishing opportunities, and improve public access at the Reservoir and along the Missouri River and its tributaries from the confluence of the Madison River, Gallatin River, and Jefferson River downstream to the Reservoir.

(b) BOARD OF TRUSTEES.—

(1) MEMBERSHIP.—The trust referred to in subsection shall have a Board of Trustees consisting of 1 representative of each of—

(A) local agricultural landowners;

(B) a local hunting organization;

(C) a statewide hunting organization;

(D) a fisheries conservation organization; and

(E) a nonprofit land trust or environmental organization.

(2) CONSULTATION.—In managing the Trust, the Board of Directors shall consult with representatives of—

(A) the Bureau of Reclamation;

(B) the Forest Service;

(C) the Bureau of Land Management;

(D) the United States Fish and Wildlife Service;

(E) the Montana Department of Fish, Wildlife, and Parks;

(F) the Montana Science Institute at Canyon Ferry, Montana; and

(G) local governmental bodies (including the Lewis and Clark and Broadwater County Commissioners).

(c) USE.—

(1) PRINCIPAL.—The principal amount of the Trust shall be inviolate.

(2) EARNINGS.—Earnings on amounts in the Trust shall be used to carry out subsection (a) and to administer the Trust.

(d) MANAGEMENT.—Land and interests in land acquired under this section shall be managed for the purposes described in subsection (a).

SEC. 6. MONTANA HUNTER AND FISHERMAN ACCESS FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States an interest-bearing account, to be known as the

''Montana Hunter and Fisherman Access Fund'', for the purpose of acquiring land and interests in land in the State of Montana from willing sellers at fair market value to—

(1) improve public access to Federal land in the State of Montana for hunting or fishing; and

(2) enhance public hunting and fishing opportunities in the State of Montana through the conservation of fish and wildlife.

(b) USE.—

(1) PRINCIPAL.—The principal amount of the Fund shall be inviolate.

(2) EARNINGS.—

(A) IN GENERAL.—Earnings on amounts in the Fund shall be used to carry out subsection (a).

(B) ADMINISTRATION.—The earnings shall be used at the joint direction of—

(i) the Chief of the Forest Service;

(ii) the Director of the Bureau of Land Management; and

(iii) the Director of the United States Fish and Wildlife Service.

(c) MANAGEMENT.—Land and interests in land acquired under this section shall be managed for the purposes described in subsection (a).

By Mr. GRASSLEY:

S. 1914. A bill to amend title 11, United States Code, provide for business bankruptcy reform, and for other purposes; to the Committee on the Judiciary.

THE BUSINESS BANKRUPTCY REFORM ACT OF 1998

Mr. GRASSLEY. Mr. President, today I am introducing ''The Business Bankruptcy Reform Act of 1998.'' As Members of this body may remember, the National Bankruptcy Review Commission submitted a list of recommendations to Congress in October of last year. So far, the public has tended to focus on the consumer bankruptcy recommendations, which unfortunately would have made it easier to get into bankruptcy and would have given consumers even more of an upper hand. I think that these recommendations were fatally flawed, and that's why I introduced the Consumer Bankruptcy Reform Act with Senator DURBIN last year to tighten up the bankruptcy system and provide new consumer protections when creditors use abusive tactics.

The legislation I am introducing today will make many badly-needed reforms to the business provisions of the bankruptcy code. This legislation will provide—for the first time ever—new protections for patients of hospitals and HMOs and nursing homes that declare bankruptcy. Under current law, the bankruptcy process is oriented toward protecting the interests of creditors and helping the debtor corporation reorganize. And that is all we need most of the time.

But hospitals and HMOs and nursing homes are different. Patients are uniquely vulnerable and Congress needs to take special care to ensure that patients are protected during the bankruptcy process. For that reason, this bill allows a bankruptcy judge to appoint a patient ombudsman to make sure that the bankruptcy process is fair to patients. If the ombudsman determines that the quality of patient care is declining, he must notify the bankruptcy court so that corrective action can be taken.

This legislation also requires that the bankruptcy trustee ensure patients are transferred to other hospitals when a health care provider is winding down. Under current bankruptcy law, there's no such requirement. Under current law, patients could just be thrown out and have nowhere to go. Congress can't let that happen.

Importantly, to the extent that there are some State laws which already require a State agency to place patients when health care providers go under, this legislation will allow those agencies to recoup their expenses from the estate of the bankrupt health care provider. Otherwise, the bankruptcy code forces State taxpayers to pay for something which should be paid for by the defunct health care provider.

Following a recommendation of the National Bankruptcy Review Commission, this legislation provides an important new protection for employee health care and pensions. Under current law, if money is withheld from wages to pay for health care insurance or pension contributions, but a company declares bankruptcy before the withheld money is actually transferred, then the bankruptcy code prohibits the company from transferring this money. In practical terms, this means that workers lose their health insurance and forfeit pension contributions. I think this is wrong. So, my legislation will create a special carve out so that withheld money can go for its intended purpose.

The Business Bankruptcy Reform Act also makes several changes to the way securities transactions are treated under the bankruptcy code. Many of these changes are supported by the administration. I would call my colleagues' attention to one provision in particular. As we all know, home mortgage rates are at an all time low, allowing many Americans to purchase homes for the first time or to move into a larger home to accommodate a growing family. One factor in keeping mortgage interest rates very low is the existence of a robust secondary market where mortgage lenders can spread the risk by issuing securities backed up by home mortgages. With the risk spread by a securities market, mortgage bankers can make loans at lower interest rates.

Unfortunately, a provision of the bankruptcy code threatens to undermine the viability of this important secondary market. And if the secondary market dries up, then lenders will have to raise interest rates. Under current law, it isn't clear that the income stream going to the purchaser of the mortgage-backed securities will continue if the lender declares bankruptcy. In my bill, we expressly say that the income stream belongs to the securities purchaser and not the bankrupt lender. This change will help ensure that the secondary market stays strong by providing much-needed certainty to purchasers of mortgage-backed and other asset-backed securities.

On another topic, this legislation enacts the model law on international bankruptcies. When I held a hearing on international bankruptcies before my subcommittee last year, I learned that many times bankruptcy proceedings in this county are hampered because foreign countries won't cooperate with our bankruptcy courts. This model law would provide for standard procedures for recognizing and cooperating with foreign bankruptcy proceedings. If other countries—especially our trading partners—follow our lead in enacting this model law, then our bankruptcy proceedings will be treated fairly and American creditors will be able to get a fair shake for the first time when trying to collect from a foreign corporation which has declared bankruptcy.

The development of bankruptcy systems is a critically important factor in ensuring that international trade will continue to expand and benefit the United States economy. Many international insolvency specialists tell me that the lack of a good bankruptcy system in the Asian countries is making the Asian financial crisis even worse. When we finally get to consider the IMF funding bill, I intend to offer an amendment which would require the IMF to push for meaningful bankruptcy reforms when they provide loans to countries in economic trouble. I hope that my colleagues will support me in this effort.

Finally, the legislation I'm introducing today will provide for special fast-track procedures for businesses that declare bankruptcy which have less than $5 million in debt. Right now, these cases often languish for years in bankruptcy without a real hope of reorganizing. I believe that the bankruptcy code should identify cases which have no realistic chance of reorganizing and get them into chapter 7 as quickly as possible. In this way, creditors will get more of what they are owed. Most of these special fast-track proceedings were recommended by the Bankruptcy Review Commission, although I've added some changes to reduce the chances that clever bankruptcy lawyers will find a way to keep a company in chapter 11 which should be liquidated. The Business Bankruptcy Reform Act also contains special tax provisions so that taxing authorities will receive effective notice of a bankruptcy.

Mr. President, I believe that this bill will do much good for patients, for creditors and for all Americans whose lives are increasingly affected by business bankruptcies. I hope that we can pass this bill in this Congress.

By Mr. LEAHY:

S. 1915. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired

electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 1998

Mr. LEAHY. Mr. President, today I am introducing the ''Omnibus Mercury Emissions Reduction Act of 1998.'' As United States Senators, we all have a responsibility to build a nation for our children. As a recent grandfather, this commitment has never been more real for me. I am introducing this comprehensive piece of legislation to eliminate mercury—one of the last remaining poisons without a specific control strategy—from our air, our waters and our forests. By eliminating mercury from our natural resources, we will protect our nation's most important resource—our children and grandchildren.

As we learned from the campaign to eliminate lead, our children are at the greatest risk from these poisons. I often ask myself how many Albert Einsteins have we lost in the last generation because of the toxics they have been exposed to? Just as with lead, we know that mercury has much graver effects on children at very low levels then it does on adults. The level of lead pollution we and our children breathe today is one-tenth what it was a decade ago. That figure by itself is a tribute to the success of the original Clean Air Act. I want to achieve the same results with mercury.

Mercury is toxic in every known form and of utterly no nutritional value. At high enough levels it poisons its victims in terribly tragic ways. In Japan, victims of mercury poisoning came to be known as suffering from Minimata Disease, which took its name from the small Minimata Bay in which they caught fish for their food.

For years, the Chisso Company discharged mercury contaminated pollution in the Bay, which was taken into the flesh of fish and then the people who ate them. Their disease was frightfully painful, causing tremors and paralysis, and sometimes leading to death. Thankfully, discharges of mercury like those in Minimata Bay have been eliminated. But a torrent of air pollution still needlessly pours this heavy metal into the air of North America, poisoning lakes and streams, forests and fields and—most importantly—our children. Mercury control needs to be a priority now because we know, without a doubt, of the neurological damage it causes.

This is not to say that men, women and children are doubled over in agony as they were three decades ago in Japan. But wildlife are being killed—we know that endangered Florida panthers have been fatally poisoned by mercury and that loons are endangered as well. In Lake Champlain we now have fish advisories for walleye, trout and bass even though we have relatively no mercury emissions within our own state borders.

Instead, we Vermonters are exposed to mercury and other pollutants that blow across Lake Champlain and the Green Mountains every day from other regions of the country. The waste incinerators and coal-fired power plants are not accountable to the people of Vermont and therefore a federal role is needed to control the pollution.

That is part of the reason voters send us here. They expect Members of the Congress to determine what is necessary to protect the public health and the environment nationally, then require it. And in many cases, perhaps most, we have done that. But not with respect to mercury.

Mr. President, what I propose is that we put a stop to this poisoning of America. It is unnecessary, and it is wrong. Mercury can be removed from products, and it has been done. Mercury can be removed from coal-fired powerplants, and it should be done. With states deregulating their utility industries, this is the best opportunity to make sure powerplants begin to internalize the cost of their pollution. We cannot afford to give them a free ride into the next century at the expense of our children's health.

So, too, should mercury be purged from chlor alkali plants, medical waste incinerators, municipal combustion facilities, large industrial boilers, landfills, lighting fixtures and other known sources.

My bill directs EPA to set mercury emission standards for the largest sources of mercury emissions. The bill requires reducing emissions by 95 percent, but it also lets companies choose the best approach to meet the standard at their facility whether through the use of better technology, cleaner fuels, process changes, or product switching.

We will hear a lot of rhetoric about how much implementing this bill will cost. In advance of those complaints I want to make two points. First, when we were debating controls for acid rain we heard a lot about the enormous cost of eliminating sulphur dioxide. But what we learned from the acid rain program, is that when you give industry a financial incentive to clean up their act they will find the cheapest way. More often than not, assertions about the cost of controlling pollution grossly overestimate and distort reality. If you look at electricity prices of major utilities since the acid rain program was implemented, their rates have remained below the national average and some have actually decreased—even without adjusting for inflation.

Secondly, and most importantly, the bottom line here should not be the cost of controlling mercury emissions, but the cost of NOT controlling mercury. While we may not be able to calculate how many Einstein's we have lost, if we lose one the price has been too high.

By Mr. DURBIN:

S. 1916. A bill for the relief of Marin Turcinovic, and his fiancee, Corina DeChalup; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. DURBIN. Mr. President, I rise today to introduce a private bill for the relief of Marin Turcinovic of Croatia and his wife Corina DeChalup of France. My bill would grant permanent resident status to Marin and Corina, affording them the legal security they need to rebuild their lives in this country.

Marin Turcinovic first arrived in the United States from Croatia in January 1990. He was admitted on an H–1 visa as a member of the band Libertas. On February 8, 1990, during the period of his authorized stay, Marin was hit by a car in Fairview, New Jersey. Both his legs were shattered. His spinal cord was severed, leaving him paralyzed below the neck. He will probably never walk again. His then-fiancee, Corina DeChalup of France, immediately came to the United States. Both Marin and Corina have been in the United States since their initial entries, and neither now has legal status.

Marin requires 24-hour medical care for his survival. An insurance settlement from the car accident litigation provides Marin with lifetime medical and rehabilitative care, in a specially modified house located in the Beverly community of Chicago. According to Marin's lawyers, the insurance settlement that provides for Marin's lifetime shelter and medical care would not cover him at another location. A medical malpractice suit against the doctors who initially provided care to Marin is pending.

Corina and Marin married in February 1996, 6 years after his accident. Corina is an essential part of Marin's life. She has been with Marin throughout his ordeal and has been instrumental in coordinating his medical care. She has directly provided care for Marin, and he could never have reached the degree of recovery he now enjoys without her support.

Before arriving in the U.S., Corina, a university graduate, worked as a tour guide for a Yugoslavian tourist agency. Although her days are primarily devoted to Marin, she has the skills and desire to find part-time employment and would like to obtain authorization to work.

According to Marin and Corina's lawyer, Corina has no way to legally gain permanent resident status in the U.S. Because she entered the U.S. under the visa waiver pilot program, she was subject to an order of deportation, without the right to an administrative hearing, once she overstayed her 90-day authorized admission in February 1990. Since 1994, she has received a stay of deportation in 1-year increments. She cannot currently travel to see her family in

France, and she has no assurance that her stay will be renewed from 1 year to the next.

Marin was placed in deportation proceedings in 1997 at his request. This allowed him to seek a suspension of deportation, a legal remedy that in the past has resulted in permanent resident status. Although Marin's application was granted, the grant is conditional. If Marin's grant does not fall within the annual quota set by the Illegal Immigration Reform and Immigration Responsibility Act of 1996, it is unclear to what status he will revert. There is a possibility that Marin would be issued an order of voluntary departure.

Corina's status depends on Marin. If granted permanent resident status, Marin will be able to petition for Corina, but she will face a 4- to 5-year wait before qualifying for resident status, herself.

Mr. President, 8 years ago, fate tragically changed forever the lives Marin Turcinovic of Croatia and Corina DeChalup of France. A terrible accident in the United States left Marin permanently injured, making his return home impossible. Fortunately for Marin, he had the love and support of Corina, without whom he may not have made it this far. Given the tremendous adversity that Marin and Corina already face on a day-to-day basis, I believe it appropriate for Congress to grant them permanent resident status. Such status would clear up much of the uncertainly that currently clouds their future, and would allow Marin and Corina to rebuild their lives in our country with confidence.

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. 1916

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

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Marin Turcinovic and his fiancee, Corina Dechalup, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Marin Turcinovic and his fiancee, Corina Dechalup, as provided in this Act, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Mr. DURBIN (for himself, Mr. CHAFEE, Mr. REED, and Mrs. BOXER):

S. 1917. A bill to prevent children from injuring themselves and others with firearms; to the Committee on the Judiciary.

THE CHILD FIREARM ACCESS PREVENTION ACT

Mr. DURBIN. Mr. President, I rise today with Senators CHAFFEE, REED and BOXER, to introduce the Child Firearm Access Prevention Act.

The tragedy which occurred in Jonesboro, AR, last week raises many questions. Two come to mind immediately. Why do children kill? I do not know the answer to that. I have heard a variety of opinions from people who suggest that violent television and violent movies are somehow contributing to this. There are others who say, if the children would just pray in school, it would make all the difference in the world. Some look to the families more than the schools; others think the schools have a greater role to play.

We will debate this at length, and I am sure many of us will come up with a lot of different explanations as to why children reach the point in their young lives where they would take the life of another.

But the tragedy in Jonesboro raised another question which I think we can address because it is a simpler question. How do children at that young age come to possess lethal weapons? Think about it. An 11-year-old and a 13-year-old with 10 firearms—rifles, shotguns, and handguns, and 3,000 rounds of ammunition—went into the woods behind that middle school, tricked the students out with a fake fire alarm, opened fire and shot off somewhere in the range of 30 to 40 rounds before they were finally stopped.

Four little girls were killed. A teacher, who deserves all of our recognition and praise for her courage, stood in the line of fire to protect one of those little girls and lost her own life. This teacher, the mother of a 2-year-old, lost her life defending her students.

How do kids come into possession of firearms? They do not buy them. In most States it is unthinkable that they would even approach a counter and try. And yet, day after day in America there is further evidence of children, younger and younger, being found with firearms.

The day after the Jonesboro, AR, tragedy, in Cleveland, OH, a 4-year-old showed up at a day-care center with a loaded handgun.

In my home State of Illinois, in Marion, IL, a high school student showed up at school the next day with a handgun.

In Daly City, CA, the day after Jonesboro, a 13-year-old was arrested for attempting to murder his principal with a semiautomatic pistol.

There is something we can do about this. I am not sure that it will solve the problem completely, but it can help. Fifteen States have already recognized this problem and done something about it. These States have passed a child access prevention law which is known as a CAP law, saying to those who purchase and own handguns, it is not enough for you to follow the law in purchasing them and to use those guns safely; you have another responsibility. If you are going to own a firearm in your home, you have to keep it safely and securely so that children do not have access to it.

And these laws are effective. Florida was the first state to pass a CAP law in 1989. The following year, unintentional shooting deaths of children dropped by 50 percent. Moreover, a study published in the Journal of the American Medical Association in October 1997 found that there was a 23% decrease in unintentional firearm related deaths among children younger than 15 in those states that had implemented CAP laws. According to the Journal of the American Medical Association, if all 50 states had CAP laws during the period of 1990–1994, 216 children might have lived.

Should we consider these state laws as a national model? I think the obvious answer is yes, because the tragedy in Jonesboro, which we will not forget for a long, long time, unfortunately, is not unique. Every day in America 14 young people, ages 19 and under, are killed in gun homicides, suicides and unintentional shootings, with many more wounded.

The scourge of gun violence frequently attacks the most helpless members of our society—our children.

Mr. President, what I propose today is Federal legislation that will apply to every State, not just 15, but every State. And this is what it says. If you want to own a handgun, a rifle or shotgun, and it is legal to do so, you can; but if you own it, you have a responsibility to make certain that it is kept securely and safely.

You may buy a trigger lock. Senator HERB KOHL of Wisconsin has a proposal that all handguns be sold with trigger locks. I support it. I am a cosponsor of it. It makes sense.

How many times do you read in the paper, how many times do you listen on TV, to kids with their playmates and the gun goes off and someone is killed? A trigger lock, as Senator KOHL has proposed, is sensible. It should be required. It shouldn't even be debated. I think that legislation will go a long way toward reducing gun violence.

But beyond that proposal, the legislation I propose today, says to every gunowner, if it is not a trigger lock, put that gun in a place where that child cannot get to it.

As to these two kids, 11 and 13 years old, God only knows what was going through their minds when they were setting out to get the guns to go out and start shooting. They first stopped at the parents of one of the kids and wanted to pick up that parents' guns. That parent had the guns under lock and key in a vault and they couldn't get to them. So they thought about it and said, wait a minute, my grandfather has some, too; let's go over to his place. And that is where they came up with the weapons and the ammunition.

In one instance, one parent had taken the necessary steps to take the guns and keep them away from kids. Sadly, it appears—and I just say ''appears'' because I do not know all the details—in another case that did not happen.

Now a lot of people will say to me, ''There they go again, those liberals on Capitol Hill. Another bill, another law to infringe on second amendment rights.'' Oh, I know I will hear from the folks from the National Rifle Association, all the other gun lobbies, screaming bloody murder about the second amendment.

But look at the 15 States that have already passed these child access prevention laws, to protect kids, to say to gun owners ''you have a special responsibility.'' You will not find a list of the most liberal States in America. The first State to pass this legislation in 1989 was Florida. The list goes on: Connecticut, Iowa, California, Nevada, New Jersey, Virginia, Wisconsin, Hawaii, Maryland, Minnesota, North Carolina, Delaware, Rhode Island, and in 1995, the last State to pass a child access prevention law, certainly no bleeding heart State by any political definition, was Texas. The Texas law says it is ''unlawful to store, transport or abandon an unsecured firearm in a place where children are likely to be and can obtain access to it,'' and it is a criminal misdemeanor if you do it.

I am going to ask my colleagues in the Senate to not only return home during this recess and to not only witness those sad events on television—the funerals in Jonesboro, the tributes—but to also resolve to do something about it. That is what we are here for. That is why we were elected to the Senate and the House, not just to be sad as we should be, but to do something about it. Not to infringe on people's right to own firearms, but to say ''Own them responsibly, put them securely in your homes, keep them safely, keep them away from children.''

Mark my words, my friends, and you know this from human experience, no matter where you hide a gun or a Christmas gift, a kid is going to find it. You can stick it in a drawer and say, ''Oh, they will never look behind my socks, that is the last place in the world,'' or up on some shelf in the closet and believe your child can't reach that, but you know better. You know when you are gone and the house is empty those kids are scurrying around and looking in those hiding places. So I hope we can address this issue.

First, Senator KOHL's legislation for these child safety devices, these trigger locks, will help. But then take the extra step, follow these 15 States and enact a federal law.

But please, let this Senate and this House, before we leave this year, do something to make certain that those troubled children cannot get their hands on a firearm. I think every parent in America, particularly those of children of school age, paused at least for a moment after they heard about Jonesboro and thought, could it happen to my son, my daughter, my grandson, my granddaughter? The sad reality of life in modern America, is, yes, it could. There are so many weapons being kept so carelessly that it could happen to any of us or any of our children in virtually any school in America.

Mr. President, I know that the Senate has a very busy schedule and limited opportunity this year, but I hope as part of our work we will let the lesson of the tragedy of Jonesboro result in legislation that will be designed to protect children and schoolteachers and innocent people in the future.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 1917

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 ''Child Firearm Access Prevention Act''.

SEC. 2. CHILDREN AND FIREARMS SAFETY.

(a) SECURE GUN STORAGE OR SAFETY DEVICE.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(34) The term 'secure gun storage or safety device' means—

''(A) a device that, when installed on a firearm, prevents the firearm from being operated without first deactivating or removing the device;

''(B) a device incorporated into the design of the firearm that prevents the operation of the firearm by anyone not having access to the device; or

''(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that can be unlocked only by means of a key, a combination, or other similar means.''.

(b) PROHIBITION AND PENALTIES.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

''(y) PROHIBITION AGAINST GIVING JUVENILES ACCESS TO CERTAIN FIREARMS.—

''(1) DEFINITION OF JUVENILE.—In this subsection, the term 'juvenile' means an individual who has not attained the age of 18 years.

''(2) PROHIBITION.—Except as provided in paragraph (3), any person that—

''(A) keeps a loaded firearm, or an unloaded firearm and ammunition for the firearm, any of which has been shipped or transported in interstate or foreign commerce or otherwise substantially affects interstate or foreign commerce, within any premise that is under the custody or control of that person; and

''(B) knows, or reasonably should know, that a juvenile is capable of gaining access to the firearm without the permission of the parent or legal guardian of the juvenile;

shall, if a juvenile obtains access to the firearm and thereby causes death or bodily injury to the juvenile or to any other person, or exhibits the firearm either in a public place, or in violation of subsection (q), be imprisoned not more than 1 year, fined not more than $10,000, or both.

''(3) EXCEPTIONS.—Paragraph (2) does not apply if—

''(A) the person uses a secure gun storage or safety device for the firearm;

''(B) the person is a peace officer, a member of the Armed Forces, or a member of the National Guard, and the juvenile obtains the firearm during, or incidental to, the performance of the official duties of the person in that capacity;

''(C) the juvenile obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of 1 or more other persons; or

''(D) the person has no reasonable expectation, based on objective facts and circumstances, that a juvenile is likely to be present on the premises on which the firearm is kept.''.

(c) ROLE OF LICENSED FIREARMS DEALERS.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d) The Secretary shall ensure that a copy of section 922(y) appears on the form required to be obtained by a licensed dealer from a prospective transferee of a firearm.''.

(d) NO EFFECT ON STATE LAW.—Nothing in this section or the amendments made by this section shall be construed to preempt any provision of the law of any State, the purpose of which is to prevent children from injuring themselves or others with firearms.

By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. WELLSTONE, Mr. JOHNSON, Mr. CONRAD, Mr. HARKIN, and Mr. BAUCUS):

S. 1918. A bill to require the Secretary of Agriculture to make available to producers of the 1998 and subsequent crops of wheat and feed grains nonrecourse loans that provide a fair return to the producers in relation to the cost of production; to the Committee on Agriculture, Nutrition, and Forestry.

THE COST OF PRODUCTION SAFETY NET ACT OF 1998

Mr. DORGAN. Mr. President, we now have had two crop years under the 1996 farm law and soon farmers across this country will be planting their spring crops for the third year of this seven-year farm law. It is time to take a serious look at how this new farm law, often called the Freedom to Farm law, is working. Is it achieving the goals and promises that were made? What is happening to our nation's system of family farm agriculture under this law? Is it creating new hope and new opportunities for a new generation of family farms on the land? Or is it pushing more and more family farm operators off the land and further depopulating rural America?

Launched during a period of high grain prices with a flurry of optimism and hope, the Freedom to Farm law is taking family farmers down a very rocky path and even more uncertain future. The initially generous farm payments that fueled its passage are now giving way to the harsher realities of not having a working safety net.

When poor crops, low prices, escalating production costs, and abnormal weather all arrive at the same time, the current farm law, with its capped commodity loan rates and declining transition payments, is poorly suited to respond to the disastrous conditions facing many of our farm families. During the debate of the 1996 farm bill, I said that the time would come when

farm commodity prices would fall well below the costs of production and we would need a working safety net for our nation's family farmers. In fact, the failure to have a working safety net was the primary reason that many of us could not support the 1996 farm bill.

The proponents of the Freedom to Farm law promised that a second look would be taken if rural America ran into trouble under their farm bill. As we begin the third crop year under this farm law, there is no question that large portions of rural America are in serious trouble. The economic crisis in the countryside is being demonstrated every week by the hundreds of farm auction notices that appear in rural America's newspapers, particularly our agricultural weeklies. The sheer volume of these farm auctions demands that the farm bill debate be reopened, so that we can make the needed midcourse corrections to this farm law.

Behind the escalating exodus of farmers this spring is the underlying issue of farm commodity prices. The value of North Dakota's spring wheat and barley crops this past year have each dropped by 41 percent from the previous year. This is a combined total of $659 million less than the year before. That's a tremendous drain of money out of farmers pockets and North Dakota's farm economy. It is why our farms are not cash flowing and our bankers are having more and more difficulty in financing their borrowers for another year.

After talking with North Dakota farmers and the agricultural community, I'm convinced the problem is not just the blizzards and floods that we have experienced in the past few years, nor is it just confined to North Dakota.

There are a number of underlying problems that must be addressed within our nation's farm policies. We need increased agricultural research to combat specific crop disease problems such as fusarium head blight, which is also known as scab. This disease has had a devastating effect on producers in many parts of North Dakota. We need to recognize that the current Federal Crop Insurance program is not adequately addressing disaster conditions, particularly in regions which have suffered a succession of weather-related disasters. We need to address a multitude of trade issues that are adversely affecting our foreign agricultural markets, and unfairly interfering in our domestic markets.

BOTTOM LINE IS FARM PRICES

We can talk for hours about the variety of problems that are facing farmers, but the bottom line is and always has been the commodity prices that our farmers receive when they seek to sell their harvests in the marketplace. The simple fact is that ever since the passage of the 1996 farm law wheat prices have been on a downward slide, and there is nothing in place to stop these prices from falling further.

Today, I am introducing legislation which would strengthen the farm commodity loan safety net, by establishing a new targeted commodity loan program geared to the actual costs of production. This is an addition to the current commodity loan program. My bill would not take anything away from producers, nor would it change any of the existing programs in current law. The legislation I am introducing would establish a new tier of marketing loans to provide a working safety net targeted to our nation's family farms for wheat and feed grains.

We need to provide farmers, particularly our wheat producers, an effective marketing tool so that they can hold off selling their harvests until prices improve sufficiently to meet their production costs. They need a functional loan program that allows orderly marketing so that the supply they offer to the market demands a better price.

When Congress told family farmers it was going to phase out price supports and farmers would have to get their price from the marketplace, Congress should have established a commodity loan program to allow such orderly marketing. Without a decent commodity loan, too many farmers are forced to sell grain when the market offers dirt cheap prices.

To provide a working safety net, we need to increase the loan rate to bring it more in line with the costs of production and give wheat producers greater equity with other commodities. We also need a loan that lasts at least 12 months and can be extended for another 6 months, if needed.

The U.S. Department of Agriculture has determined that the most recent five year average of the economic costs of production for wheat is $5.00 per bushel. Under my plan, the loan rate would be pegged at a minimum of 75% of those costs. That would mean a minimum wheat loan of $3.75 per bushel, compared to the $2.58 maximum under the current farm law.

I am greatly concerned that the current wheat loan lags significantly behind other commodities in relationship to production costs. For example, the current maximum loan rate under the 1996 farm law for corn is 72% of its economic costs of production. The maximum loan rate under current law for soybeans is set at 89% of its costs of production. Yet, the maximum loan available for wheat under the current farm law is just 52% of the costs of production.

Equity among major farm commodities requires that Congress take a close look at why there is such a great discrepancy among loan rates for our major commodities in relationship to the costs of production of these commodities. Based on the fact that current wheat loans are at the lowest level in relationship to production costs, it is not surprising that wheat country is in greater economic trouble than the other sections of our nation's agriculture.

This legislation is a companion bill to S. 26, the Agricultural Safety Net Act, introduced by Senator DASCHLE and cosponsored by myself and others. Both bills seek to improve the underlying commodity loan program and provide higher, more meaningful commodity loan rates for our producers. S. 26 would remove the commodity loan caps in the current farm law. As a result, commodity loan rates could actually be set at 85 percent of the simple five-year Olympic average of prices received by farmers. S. 26 provides an important cushioning effect for farm prices and would help stabilize farm prices and thereby help farmers meet the challenges of price volatility in the marketplace.

The bill I am introducing today would add a critically important bottom line to ensure that farmers receive cost of production returns on a basic level of production. It establishes that commodity loan rates for wheat and corn must be at a minimum level of 75 percent of the economic costs of production. Other feed grain loan rates would be based on the historic relationship of using their feed equivalency value to corn.

TARGETING FARM PROGRAMS TO FAMILY FARMERS

There is one more essential reform. My plan targets the benefits to family farmers. My new loan program would be available on the first 20,000 bushels of wheat, and 30,000 bushels of corn, and similar amounts for other feed grains for each farm. By setting a limit on the amount of loans available to any farm, it not only ensures that the primary benefits go to our family farmers, but it also means that overproduction will be subject to the disciplines of market forces.

We cannot afford to cover every bushel produced in this country, so we need to target them to the family farm. If somebody wants to farm the entire township or even the entire county they can do so, but we do not need to give them a safety net for everything they produce. If they wish to take the risks of such endeavor, they should be free to do so. But, they shouldn't have the government as their silent partner.

One of the major problems of past farm programs has been that they were not targeted to an initial basic production level to family farmers. The farm programs were basically open-ended programs. The more you produced, the greater benefits you received. Thus the benefits of the farm program tended to accumulate at the top, rather than spreading out across the base of family farmers in rural America. Rather than carrying out our nation's historic goal of maintaining a widely-dispersed system of family farm agriculture, unfortunately the Freedom to Farm law, continued the old farm program's top-loaded pattern in its transition payment scheme.

My plan would target the benefits of a working safety net directly related to the costs of production to the initial production of family farmers in this

country. It is a true safety net designed to fit the typical family farmer. The simple fact is that our family farmers are the ones that have the greatest need for a safety net based on production costs. It makes good sense and good public policy to target our farm program to our family farmers. Such a safety net is particularly important to the beginning farmer and other low-equity farmers because it provides an assurance that they can more fully recover their costs during periods of low prices. It provides the stability they need to build their farm operation and it gives rural America the opportunity to reinvigorate the family farm system.

My plan continues to let farmers plant whatever they want, based on market signals. But it would also let them market their grain more effectively in response to those same market signals. It provides a new working safety net, and gives family farmers a tool they need as they do business in a market filled with far more powerful interests and forces, most of whom want lower, not higher, prices.

There are those who are fearful that if Congress reopens the farm bill debate that somehow the nation would return to the production controls and government involvement in planting decisions of past farm programs. This is simply not the case. I don't know of anybody who seriously wants to go back to such government involvement in agricultural production decisions.

In fact, those who believe that is the framework of agricultural policy choices, are not only misreading the current situation, but also did not listen very closely to the debate in the 1996 farm law. The debate was not about government production controls. The debate was whether or not there should be a safety net for family farmers, and how should that safety net be constructed. There were no bills offered in the farm bill debate to return to production controls. The debate was about whether to phase out farm programs in their entirety or to reform our nation's farm laws so that family farmers have a working safety net.

How do we construct a safety net that provides greater marketing capabilities into the hands of our family farmers? That is the debate we must have in this session of Congress. We cannot afford to wait while thousands of family farmers are in the process of leaving their homesteads and their chosen profession, and their dreams, and thousands of others are at increased risk of being forced out of agriculture.

Mr. President. During this past Christmas season, I received a copy of a family holiday letter from a fourth generation family farm couple that announced their decision to leave their chosen profession of farming and ranching. George and Karen Saxowsky of Hebron are scheduled to have their farm auction this spring. It is a powerful letter that captures the challenges, frustrations, and dreams of those families who have been struggling to make a livelihood in agriculture. They consider themselves lucky, because they were not forced by the bank to make the decision to leave farming. Yet, they have a host of loans and bills to pay and are not sure of how they will get all of that done. I ask unanimous consent that this letter be printed in the RECORD.

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

Holiday Greetings to our Friends and Families:

It is early Sunday morning and while the house is still quiet with everyone sleeping and the trees are so beautifully frost covered, I thought I would dash off a quick line in spite of my resolution not to send a letter this year—when I bought the Christmas cards I really loved the message but thought, that is enough reading for most people!

In April we had the worst blizzard ever—the city of Hebron was without electricity for 48 hours, but we did have it most of the time. A ''city'' friend and classmate of George's called during the blizzard to say he just loves a good blizzard—my perspective was different so as a gift to him I started a chronicle of the storm, the events that went with it, and the aftermath in a blow-by-blow account that took 15 typed pages; it was my way of coping and I handled everything fine at the time but now I can't read it without crying. Jason was off the farm during the whole thing but Glendon was here and such wonderful help and such a trooper.

March had gone out like a lamb with 60 degree days. The predictions were the storm would miss us; then changed to 3–5 inches of snow with wind and it would end Friday night. We had just bought another large portable (can be moved with two tractors) calf shelter, so now had two, and have lots of corrals, wind breaks, protection, feed and hay on hand—so felt pretty confident we were ready.

The storm actually raged all day Friday, Saturday, and on into Sunday afternoon with gusts through the evening. We got some outrageous amounts of snow—after twenty-four inches it didn't matter anymore.

The cattle started running with the storm, the guys were able to get them turned around and back to corrals but that was just the beginning of the nightmare! We chased different herds into protected areas (of course they don't want to go), then we worked on getting 70 calves into the calf-shelter and decided to haul those that were freezing from the corrals into the barn (the pick-ups, tractors nor bobcat could get through the snow) fighting 50 mph winds, George bought one calf while I tried to help Glendon bring another—going up hill and fighting the wind in thigh deep snow—I just couldn't do it. We got those two to the barn, decided they were in such bad shape if we were going to save them they would have to go to the house so took them there, then reassessed the situation. Glendon said, ''If we do another trip I'll have to pull Mom and the calf, in the calf sled, up hill, in the blizzard!'' And that was the truth of it.

The tractor bucket broke, but they couldn't get the tractor to the shop to weld it so in the raging blizzard they brought the welder, on a calf sled, from the shop to the house, pulled my stove ahead to plug it in, drove the tractor up on the porch and welded it in the kitchen doorway—twice. The stories just go on and on (guess you had to be there)! Those poor guys worked all day in the blizzard, came in exhausted, took a quick nap and went back out. At 7:30 Saturday night they were coming in for supper when they heard loud cracks in the barn—the roof beams were cracking from the weight of the snow! They stayed out and shoved off the roof until 11:30 (figured they moved about 3 tons of snow and ice), then got up at five the next morning and worked all day again.

As the storm abated Sunday evening I could hear Glendon yelling and ran to see what was going on now, but couldn't find him. Here, they had found a cow lying on its side drowning in muck. Glendon was lying flat on his belly holding the cows head out of the muck while George was trying frantically to get the tractor down to him. I plowed through four foot deep snow to help—the first tractor got wet and quit. (All during the storm we had distributor caps in the oven drying out!) He got the Bobcat—it quit; he got the next tractor and we made it down there, tore a fence down, put chains on the cow and pulled her out. She died; as did a calf that had been buried in the snow someplace in the ten feet where we had pulled the cow and we didn't even see, until the snow melted enough, that it was under her; as did those two calves in the basement; as did a calf that had followed its mother to the water fountain, got stuck in the snow and froze to death standing up—we must have walked by that calf fifty times but with the blizzard didn't see it—they get snow covered really fast; as did the cow in the corral with a roof over her head with water and hay right beside her; as did . . . well, you get the picture. It continued for fourteen days after the storm, every day we lost at least one cow and/or calf. We took them to the vets for autopsies and what-not but it just seemed there was nothing we could do to save them. One day we made it to 5:00 without any dying and thought the curse was broken but by midnight we had lost a cow and a calf. It was terrible, terrible time, but we lived through it—but not alone. Friends were there for us. On the Friday after the storm, one called to tell us to get out of the house and come to town for a Fireman's Dance—we were just too exhausted and depressed—but he was pushy (he did the same thing for us after last year's cow incident on I–94. We went, and visited with other farmer-ranchers who were in the same boat—it really was so helpful and encouraging.

We were really dreading the first snow of this winter. Long about October, George started talking about quitting farming—I took it as a mid-life crisis; a one time slide. But, he kept talking . . . and then started making plans. We would put in a crop in '98 and quit in '99. I still thought 'this-too-shall-pass'' but he just got more serious. In November I started getting calls asking if I would like a job off the farm? I have to tell you, I was so flattered that they even considered me capable of doing what they needed; I had been self-employed for almost 25 years. I turned them down, but it did start the wheels turning. Then, there was an ad in the paper for a job in Hebron with benefits. We talked about it and I applied; they offered me the job and I took it. This was not easy, now we couldn't put a crop in this spring as the job is 40 hours a week including every other Saturday and George can't farm without me.

The bottom line is; a 47 year old, 4th generation farmer in his 27th year of farming is quitting farming.

I started working at the Credit Union on December 1st. I thought my world would fall apart—the week before I started work everything just 'went-to-hell-in-a-basket' and I almost decided I couldn't do it! We sold a semi load of cattle, checked the night before and the market was strong so loaded them up early in the morning. At 10:00 the auctioneer called and said the bottom had fallen out of

the market, a bunch of Canadian cattle had just hit the meat packing plants and their buyers weren't buying. George was gone so I had decided what to do; with paying to have them hauled out, and back, then to sale again I said to let them go, when George got home he agreed with me but at the next sale the price was strong again—George and I said, ''That's why we're getting out of farming—there is no predictability!!''

It was like the farm really needed both of us—as much for moral support as the labor itself. The clincher almost came on Sunday night (before my new job on Monday morning) when I had planned a special ''last-supper'' of T-bones and had them thawing on the counter while I was working on the computer—the cats jumped up on the counter and ate them!! Monday morning came and—I went to work. I was so surprised, but I just love my job!! I don't know if it is the people I work with, the people that come in, the feeling of accomplishment, the challenge of balancing the books or what (there is life after farming???) but, I am really happy that I followed through!! In training the hardest part was the balancing out and having everything in the main office by 3:00—one night it was 5:15. Until we actually balance I am always so grateful if I am ''long'' on the money side so at least then they know I didn't take it!! I seem to have the hang of it now, so it is less stressful, easier and even balancing is fun! Everyone is so nice, and I really am trying hard—but keep me in your prayers!

It sounds like we are having an auction sale in March on the Saturday before Palm Sunday. We are planning on renting out the land and selling the cattle but still living on the farm. George will continue making hay to sell, doing custom combining and has been working with the local electrician and for elevator doing some carpentry stuff. I thought the deal was if I took a job he would stay home until the cows were gone but . . . I guess not!!

I have friend who just lost her 38 year old son-in-law to a 24 hour illness. Then, trying to come back home from her daughter and grandchildren she was delayed three days as the planes couldn't land due to fog. She was home three days when her house caught on fire. The good news is we're small town. We care about and support each other. We may have our little squabbles and irritations but we get over it and move on! Pastors sermon today was about helping each other cut the tops off some of the ills we have to climb and walking with them through the valley of grief for their upbuilding, encouragement, and consolation. We thought of you, our friends and family! With that thought in mind, we wish you little knolls rather than mountains to climb, friends to share the valleys with a sincere * * *.

Merry Christmas and a very Happy New Year!!

George and Karen Saxowsky, Hebron, North Dakota

Mr. DORGAN. Mr. President, in reading this letter, I am reminded of the reasons why it is so important that our nation provide a national agricultural policy framework that not only fosters a family farm system of agriculture, but purposefully sets out to undergird that system and provide the tools that are necessary for our family farmers and ranchers to have the opportunity to be successful.

It is for this reason that I am introducing the Cost of Production Safety Net Act. I am pleased to include Senators DASCHLE, WELLSTONE, JOHNSON, CONRAD, HARKIN and BAUCUS as cosponsors to my bill. I encourage others to join in this effort and look forward to having a meaningful debate on our nation's agricultural future in the remaining months of this session.

By Mr. MURKOWSKI (for himself, Mr. NICKLES, Mrs. HUTCHISON, and Mr. DOMENICI):

S. 1919. A bill to provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources from stripper wells on federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. NICKLES, and Mrs. HUTCHISON):

S. 1920. A bill to improve the administration of oil and gas leases on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

THE FEDERAL STRIPPER WELL ROYALTY REDUCTIONS LEGISLATION

Mr. MURKOWSKI. Mr. President, I rise today to introduce two important pieces of legislation relating to oil and gas production on federal lands. The first is a bill to authorize and direct the Secretary of the Interior to provide permanent regulatory authority to reduce the royalty rate for stripper oil and gas wells on federal lands.

This legislation is necessary, Mr. President, because of the depressed world oil price situation. With oil prices falling below $15 per barrel, it is more and more difficult for domestic energy companies to produce oil at a reasonable price. While this is good news to U.S. consumers because gasoline is at its lowest price ever when adjusted for inflation, it is not welcome news to small and independent oil and gas producers who will be especially hard hit.

Under ''normal'' circumstances, stripper wells are on the edge of profitability. Low world oil prices threaten stripper wells and the jobs associated with those wells. That, in turn, has ripple effects elsewhere in the economy through loss of jobs in the industries that supply goods and services to producers, and in the communities where they operate.

Mr. President, according to the Interstate Oil and Gas Compact Commission, there are approximately 430,000 stripper oil wells and 170,000 stripper gas wells in the U.S. A sizeable number of these, perhaps as many as 30,000, are on federal lands.

What is absolutely astounding, Mr. President, is the fact that stripper wells individually average a little more than 2 barrels of oil and 16 thousand cubic feet of gas production per day, yet in 1996 collectively contributed 352 million barrels of oil (more than 11 percent of U.S. production, and 5 percent of U.S. consumption), and almost 1 billion cubic feet of natural gas.

There are 38,000 jobs associated with stripper wells, and another 46,000 outside of the industry related to stripper wells. We cannot afford to lose stripper well production and the vital role they play in national energy security. Nor can we afford to lose the jobs associated with them. That is why I am introducing today the Federal Oil and Gas Stripper Well Preservation Act of 1998. I am pleased to be joined by Senator NICKLES and Senator HUTCHISON in sponsoring this important legislation.

Mr. President, our bill is very simple: it authorizes and directs the Secretary of the Interior to provide permanent regulatory authority to reduce the royalty rate for stripper oil and gas wells on federal lands. The Secretary already has limited authority to grant stripper oil well royalty reductions. We want to ensure that there is permanent authority to do so.

We also want to make sure that the Secretary has permanent authority to grant royalty rate reductions for stripper gas wells, something that the Secretary recently has declined to do.

Second, our bill requires the Secretary to suspend any minimum royalty (if applicable) and per acre lease rental on stripper oil and gas wells on federal lands during the time of any royalty rate reduction. This will ensure that stripper well operators are afforded the greatest leeway during hard times.

And finally, our bill requires the applicable lease rental and minimum royalty to be reinstated once the Secretary terminates a stripper well royalty rate reduction.

Mr. President, I believe this legislation will make a significant contribution in stemming the tide of lost production from our Nation's stripper oil and gas wells. Once plugged and abandoned, these wells—and their vital contribution to national energy security—are more likely than not permanently lost. We should not lose this valuable national asset.

I invite my colleagues to join Senator NICKLES, Senator HUTCHISON and me in sponsoring the Federal Oil and Gas Stripper Well Preservation Act of 1998.

TRANSFER OF CERTAIN FEDERAL OIL AND GAS LEASE MANAGEMENT FUNCTIONS

Mr. President, the second piece of legislation I introduce today relating to federal oil and gas production addresses the performance of oil and gas lease management activities on federal lands. We have been hearing for some time now that States are very much interested in assuming certain oil and gas lease management functions that are now performed by the U.S. on federal oil and gas leases. We saw strong interest from States in assuming certain royalty management functions when we considered and ultimately enacted the Federal Oil and Gas Royalty Simplification and Fairness Act in 1996. Devolution of federal oil and gas regulatory functions to States is a concept whose time has come.

The legislation I introduce today along with Senator NICKLES and Senator HUTCHISON would do the following: transfer the Bureau of Land Management's (BLM) authority to perform certain oil and gas regulatory duties to States; institute distinct and reasonable time frames for leasing decisions and appeals; require responsible actions to increase leasing; and reduce federal appeals delays by rejecting stay requests from parties that have no standing.

We believe this legislation will generate savings to the Treasury by increasing administrative efficiencies, eliminating duplication of effort, decreasing time frames on leasing and appeals decisions, and increasing certainty in leasing. We also believe the bill will increase federal acreage available for exploration and development, improve the domestic oil and gas resource base, and promote oil and gas production on federal lands.

The key feature of the bill is the transfer from BLM to States authority over such activities as: well drilling and production operations; well testing and completion; conversion of a producing well to a water well; well abandonment procedures; inspections; enforcement activities; and site security. Many States already perform these functions on federal leases, and are willing to do so on a permanent basis. By transferring federal responsibility for these activities, federal resources could be used for other purposes.

Our bill also requires BLM and the Forest Service to offer competitive oil and gas leases 90 days after lands are ''nominated'' by prospective lessees. The bill requires BLM and the Forest Service to render final decisions on administrative appeals within two years. These provisions will eliminate costly delays and litigation, allow realization of lease revenues (bonuses, rents, royalties) sooner, and provide stability and clarity to planning.

Mr. President, we believe the transfer of lease management functions can be achieved with significant savings to States and the Treasury and will not disrupt lease management functions or impair important resource production. We urge our colleagues in the Senate to join in supporting this important legislation.

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

S. 1921. A bill to ensure confidentiality with respect to medical records and health care-related information, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH CARE PIN ACT

Mr. JEFFORDS. Mr. President, today, I join with my good friend Senator CHRISTOPHER DODD, in announcing the introduction of the Health Care Personal Information Nondisclosure Act of 1998—The Health Care PIN Act. This legislation will establish necessary national standards to protect the confidentiality of each American's medical records.

Information technology presents our nation with the difficult challenge of ensuring that we reap its benefits without sacrificing one of our most important values: the right to individual privacy. In order to maintain control over our personal medical information, Congress must pass health care confidentiality legislation—as quickly as possible.

The time is ripe for action. There have been major technological advances in health care's administrative, delivery, and payment systems. These advances have the potential to improve the quality of patient care. For example, electronic pharmaceutical records make it possible for pharmacists to identify potential drug interactions before filling a prescription. However, we must also have guarantees that our personal health care information is not being used inappropriately.

Congress has made repeated attempts to enact a comprehensive federal privacy law but has, to date, been unsuccessful. The loose web of protections at the federal and state levels that has evolved in the absence of a comprehensive law leaves many aspects of health information unprotected.

The Health Care PIN Act represents a synthesis of recommendations from many sources. It draws heavily from the discussion draft that I worked on with Senator BENNETT and the ''Medical Information Privacy and Security Act,'' introduced by Senator LEAHY and Senator KENNEDY. The Labor and Human Resources Committee has held three hearings on the confidentiality of health care information, and the testimony and comments provided at each of those hearings has been invaluable—especially, the administration's recommendations presented by Secretary Shalala in September.

Under the terms of the Kassebaum/Kennedy legislation, if Congress fails to enact federal privacy legislation by August 1999, the Secretary of Health and Human Services is required to promulgate regulations establishing electronic privacy standards in the year 2000. This is too important a matter of public policy to be done outside of the legislative process and it is another reason why I intend to make this task one of the highest priorities of the Labor and Human Resources Committee.

Other nations have taken steps to protect patient privacy. In 1995, the European Union enacted the Data Privacy Directive. The EU Directive requires that individuals have rights of consent, access, correction, and remedies for failure to protect confidential personal information. This Directive requires that by October 1998, if countries trading with any of the 15 European Union member states do not introduce similar rules, data cannot be transmitted between these countries. If we do not act promptly, this initiative raises the concern that the European Union could limit the flow of health care data between our countries for research and restrict the ability of American companies to compete overseas.

The Health Care PIN Act would preempt state laws relating to medical records confidentiality—with the important exception of public health issues and those areas having a history of discrimination, such as mental health and HIV–AIDS. Since most health plans exchange health care information over the borders of many states, we need one privacy standard in this county—rather than 50 different ones—in order to achieve the greatest benefits from information technology and also ensure that all Americans have a uniform standard of privacy protection.

The Act requires that individually identifiable health care information not be released unless authorized by patient consent. With very few exceptions, individually identifiable health care information should be disclosed for health purposes only, which includes the provision and payment of care and plan operations. Under the legislation, patients would have the right to copy and correct their medical records. In order to achieve accountability, the Health Care PIN Act provides that civil and criminal penalties would be imposed on individuals who use information improperly through unauthorized disclosure.

Our individual right to privacy at times must be balanced against the need to protect the health of others. The Health Care PIN Act allows for the disclosure of health information without patient consent for the release of information to public health authorities for disease reporting. In addition, patient consent would not be required to disclose information needed for legitimate law enforcement purposes, including purposes required by state law such as the reporting of gunshot victims. Quality care requires more than the free flow of information between providers, payers, and other users of health information. It requires trust between a patient and a care giver. For our health care system to be effective, as well as efficient, patients must feel comfortable sharing sensitive information with health professionals. Technology has provided the tools to allow the ease of access to health care information. Now, the Health Care PIN Act is needed to ensure the confidentiality of this personal health information.

It is my intent to work closely with the other members of the Labor and Human Resources Committee, and Senators BENNETT and LEAHY, to enact legislation this year that will establish national standards to protect medical information and enhance quality of health care for all Americans.

Mr. DODD. Mr. President, I am pleased to join the Chairman of the Labor and Human Resources Committee, Senator JEFFORDS, in introducing the Health Care Personal Information Nondisclosure (PIN) Act of 1998. This legislation is designed to offer Americans the peace of mind that comes with

knowing that their most personal and private medical information is protected from misuse and exploitation.

Medicine has changed dramatically since the time Norman Rockwell painted the scene of a doctor examining his young patient's doll. The flow of medical information is no longer confined to doctor-patient conversations and hospital charts. Recent technological advances have introduced more efficient methods of organizing data that allow information to be shared instantaneously—helping to contain costs—and even save lives. The national database of medical information provides a prime example of the benefits of these advances. Through the use of a simple computer, emergency room doctors are now equipped with a quick and inexpensive means of accessing the medical records needed to properly treat unconscious patients.

Unfortunately, as we saw all too clearly just a few months ago, our laws have not kept pace with technology. In February the Washington Post exposed the activities of two pharmacies that were sharing personal medical information about prescription drug use with unauthorized third parties. And, most disturbingly, these actions were perfectly legal. Clearly, the existing patchwork of state laws protecting medical records are proving to be inadequate to address the public's concerns.

These concerns are so strong that in some cases they threaten to actually negate the benefits of advances in medicine and technology. The fear of discrimination and exploitation has led some ethnic communities with susceptibility to certain conditions to urge their members to avoid genetic testing. The fear that sensitive medical information might be released without authorization has led patients to avoid full disclosure of mental health concerns to their physicians and to unnecessarily forego opportunities for treatment.

I believe that the Health Care PIN Act offers the privacy protections that the public demands. This legislation sets clear guidelines for the use and disclosure of medical information by health care providers, researchers, insurers, employers and others. The Health Care PIN Act provides individuals with control over their most personal information, yet promotes the efficient exchange of health data for the purposes of treatment, payment, research and oversight. To ensure the accountability of entities and individuals with access to personal medical information, the legislation imposes stiff penalties for unauthorized disclosures.

The Health Care PIN Act provides consumers with a strong, nationally uniform set of privacy protections. However, in areas of privacy law in which states have been the most active—namely in the confidentiality of sensitive mental health and public health records—states could continue to establish additional protections.

I would also like to indicate my intent to work with Senator JEFFORDS to incorporate into this legislation protections against genetic discrimination in both employment and health insurance. Although we were unable to resolve this issue before introduction of this legislation, I am confident that we can reach consensus on this critical and timely issue.

This legislation represents commonsense middle ground in the range of proposals that have been offered both this and the previous Congress. I look forward to working with Senator JEFFORDS, as well as with Senators BENNETT, LEAHY, and KENNEDY, who have contributed so much to this debate, to move forward quickly to enact comprehensive, bipartisan legislation.

By Mr. CAMPBELL:

S. 1922. A bill to amend chapter 61 of title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as ''Freedom and Democracy Day''; to the Committee on the Judiciary.

FREEDOM AND DEMOCRACY DAY LEGISLATION

Mr. CAMPBELL. Mr. President, as our nation approaches the Millennium, it is an appropriate time to renew the appreciation and understanding of the American people in the democratic heritage and principles which make our country the greatest in the world. That is why I am introducing legislation today to rename Election Day as Freedom and Democracy Day and to renew civic responsibility.

The two main objectives of this legislation are first, to broaden and increase voter turnout, and second, to restore appreciation for our country's most fundamental expression of freedom and its democratic underpinnings—the right to vote. As a nation, we must all be concerned that voter apathy is so high, while voter participation is so low. Voting, it seems, has become a neglected, if not cumbersome, privilege of Americans. In the past 20 years, voter participation in presidential election years has remained barely above 50 percent, and during midterm congressional election years it has not been more than 50 percent.

I am alarmed at the unfortunate fact that voter participation has declined to the point that it is now among the lowest of any democratic nation. The rate of voter participation among younger Americans—the future leaders, teachers, and business executives—has declined significantly. It is our responsibility as elected officials, and, more importantly, as American citizens, to support additional efforts to strengthen the electoral process, to encourage civic awareness, and to promote active participation in the exercise of liberty.

Therefore, the first goal of the bill is to renew civic spirit and highlight the importance of Americans to fulfill their civic responsibilities by making Election Day a legal public holiday, known as Freedom and Democracy Day. This designation gives new meaning to the importance of voting on the first Tuesday in November. We need to stress the importance of self-government, encourage Americans to exercise their freedom and liberty as citizens by voting, and encourage Americans to reinvigorate their support for their civic duties.

Although my bill designates this day as a legal public holiday, I want to emphasize that Freedom and Democracy Day will remain a regular workday. The bill specifically does not reference statutes relating to pay and leave of federal employees, and it does not affect the regular operations of the federal government.

We as legislators and as citizens should do more to promote voter turnout and increase understanding of the value and importance of the right to vote. That is why the second objective of this bill is to encourage communities, schools, civic organizations, charitable organizations, companies, radio and television broadcasters, and public officials at all levels of government to support and celebrate Freedom and Democracy Day. The legislation encourages these key segments of society to sponsor and publicize appropriate celebrations and events which stress the importance of participation in self government. Their programs and support will send a strong message that the legitimacy of the democratic process is created from the consent of the governed, and voiced in the full participation of an informed, aware and active citizenry.

I believe my bill provides a starting point for a renewed spirit and appreciation of freedom and democracy. It is my sincere hope that given more incentive to vote, more Americans will seize and exercise this expression of freedom. It is a small step in the overall effort to encourage all American citizens to take pride and participate in their representative system of government.

Much of the voter apathy reflects many citizens' lack of faith in all levels of government. In America, power is supposed to be delegated from the citizen and loaned to the government. The Founding Fathers, who pledged their lives, their fortunes and their sacred honor for a new country, knew that as a nation we must leave room for change and growth and development. They knew the nation they left for us would modernize, rethink, and restructure.

Let us be vigilant in remembering that the American idea of democracy is a government ''of the people, by the people, for the people.'' This is the idea of freedom and liberty; uniquely American. And, it is the goal of this bill to strengthen the American people's right to freedom and celebrate the spirit of democracy in the country which first empowered citizens with ''certain unalienable rights.''

Mr. President, I ask unanimous consent that the bill be entered into the RECORD.

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

S. 1922

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

SECTION 1. FINDINGS.

The Congress finds that—

(1) democratic government derives its legitimacy from the consent of the governed, as manifested in the full participation of an informed and aware electorate;

(2) since 1960 the rate of voter participation in the United States has declined and is now among the lowest of any nation with a democratic form of government;

(3) since 1972 the rate of voter participation among young people in the United States has declined significantly;

(4) the Federal Government should encourage personal responsibility and the broader understanding of the value and importance of the right to vote; and

(5) the establishment of a legal public holiday on election day, the first Tuesday after the first Monday in November of each even numbered year, could provide a substantial incentive to increase voter participation by the American public.

SEC. 2. SENSE OF THE CONGRESS.

It is the sense of the Congress that educators, civic and charitable organizations, radio and television broadcasters, and public officials at all levels of government should help the people of the United States celebrate Freedom and Democracy Day through appropriate celebrations and events which stress the importance of self-government.

SEC. 3. DESIGNATION OF ELECTION DAY AS LEGAL PUBLIC HOLIDAY.

Section 6103 of title 5, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d)(1) Subject to paragraph (2), the first Tuesday after the first Monday in November in each even numbered year, Election Day, shall be a legal public holiday, with such holiday to be known as Freedom and Democracy Day.

''(2) Freedom and Democracy Day—

''(A) shall be a regular workday;

''(B) shall not be treated as a legal public holiday for purposes of statutes relating to pay and leave of employees as defined by section 2105 of this title; and

''(C) shall not affect the regular operations of the Federal Government.''.

By Mr. COVERDELL (for himself, Mr. BREAUX, and Mr. DEWINE):

S. 1923. A bill to amend the Federal Water Pollution Control Act to ensure compliance by Federal facilities with pollution control requirements; to the Committee on Environment and Public Works.

THE FEDERAL FACILITIES CLEAN WATER COMPLIANCE ACT OF 1999

Mr. COVERDELL. Mr. President, I rise today to introduce legislation with the Senior Senator from Louisiana and the Junior Senator from Ohio. This legislation—The Federal Facilities Clean Water Compliance Act of 1998—will guarantee that the federal government is held to the same full range of enforcement mechanisms available under the Clean Water Act as private entities, states, and localities. Each federal department, agency, and instrumentality will to be subject to and comply with all Federal, State, and local requirements with respect to the control and abatement of water pollution and management in the same manner and extent as any person is subject to such requirements, including the payment of reasonable service charges.

Last year marked the twenty-fifth anniversary of the Clean Water Act. This Act has been an effective tool in improving the quality of our nation's rivers, lakes, and streams. Over that period of time, however, states have not had the ability to impose certain fines and penalties against federal agencies for violations of the Clean Water Act. This is a double standard that should not be continued.

In 1972, Congress included provisions on federal facility compliance with our nation's water pollution laws in section 313 of the Clean Water Act. Section 313 called for federal facilities to comply with all federal, state, and local water pollution requirements. However, in 1992, the United States Supreme Court ruled in *U.S. Dept. Of Energy* v. *Ohio*, that States could not impose certain fines and penalties against federal agencies for violations of the Clean Water Act and the Resource Conservation Recovery Act (RCRA). Because of this decision, the Federal Facilities Compliance Act (H.R. 2194) was enacted to clarify that Congress intended to waive sovereign immunity for agencies in violation of RCRA. Federal agencies in violation of the RCRA are now subject to State levied fines and penalties. However, this legislation did not address the Supreme Court's decision with regard to the Clean Water Act.

The Federal Facilities Clean Water Compliance Act of 1998 makes it unequivocally clear that the federal government waives its claim to sovereign immunity in the Clean Water Act. The federal government owns hundreds of thousands of buildings, located on millions of acres of land, none of which have to abide by the same standards as a private entity does under the Clean Water Act. This legislation simply ensures that the federal government lives by the same rules it imposes on everyone else.

Mr. BREAUX. Mr. President, I am pleased to join Senator COVERDELL today in introducing the ''Federal Facilities Clean Water Compliance Act of 1998''.

My primary reason for sponsoring the bill with the Senator from Georgia is to make the federal Clean Water Act equitable by requiring that it apply to and be enforced against the federal government.

Currently, states, local governments and the private sector do not have immunity from the act's enforcement. By the same principle, the federal government should not be granted such immunity from the clean water statute and this bill provides that parity.

The bill also provides that the federal government would be subject to all the same enforcement mechanisms that apply to states, local governments and the private sector under the Clean Water Act.

Fairness, safety, public health and environmental protection all dictate that Federal agencies should be held to the same standards for water pollution prevention and control as apply to states, local governments and the private sector.

Equity is ensured by the Coverdell-Breaux bill because all levels of government and the private sector would be treated the same under the Clean Water Act's enforcement programs. No one would be allowed immunity.

To paraphrase a well-known adage, what's good for states, local governments and the private sector in terms of clean water should be good for the federal government.

In addition to the provisions stated previously, the Coverdell-Breaux bill reflects the adage's fairness principle in another fashion.

The bill would hold the federal government accountable to comply not only with its own clean water statute, but also with state and local clean water laws. Again, equity would be upheld. And, safety, public health and environmental protection would be strengthened.

Other provisions are contained as well in the legislation which Senator COVERDELL and I are introducing today. For example the EPA administrator, the Secretary of the Army and the Secretary of Transportation would be authorized to pursue administrative enforcement actions under the Clean Water Act against any non-complying federal agencies. It also includes provisions for federal employees' personal liability under the act's civil and criminal penalty provisions and a requirement that the federal government pay reasonable service charges when complying with clean water laws.

Over the past 25 years, the United States has made dramatic advances in protecting the environment as a result of the Clean Water Act. We have all benefitted as a result.

Today, I encourage other Senators to join Senator COVERDELL and I as cosponsors of the bill to bring equity to the clean water program and to make possible the expansion of its public and private benefits.

By Mr. MACK (for himself, Mr. KERRY, Mr. D'AMATO, Mrs. FEINSTEIN, Mr. BOND, Ms. MOSELEY-BRAUN, Mr. COVERDELL, Mrs. BOXER, Mr. GREGG, Mr. KENNEDY, Mr. THURMOND, Mr. ROBB, Mr. GRAMS, Mr. BUMPERS, Mr. COATS, Mr. DODD, Mr. INHOFE, Mr. INOUYE, Mr. SANTORUM, Mr. DURBIN, Ms. SNOWE, Mr. WYDEN, and Mr. HOLLINGS):

S. 1924. A bill to restore the standards used for determining whether technical workers are not employees as in effect before the Tax Reform Act of 1986; to the Committee on Finance.

THE TECHNICAL WORKERS FAIRNESS ACT OF 1998

Mr. MACK. Mr. President, today Senator KERRY and I introduce the Technical Workers Fairness Act of 1998. This bill would repeal Section 1706 of the 1986 Tax Reform Act, something that is long overdue and is now supported by a strong bipartisan consensus.

Section 1706 added a new subsection (d) to Section 530 of the Revenue Act of 1978. For the class of businesses known as ''technical services firms'' who provide technical services to their customers, Section 1706 removed the Section 530 employment tax safe harbors that otherwise apply to all other types of businesses that use the services of independent contractors. These Section 530 safe harbors were enacted by Congress in 1978 to protect business taxpayers, especially small businesses, from arbitrary IRS decisions interpreting the common law employment test in employment tax audits.

Yet Section 1706 leaves one group of taxpayers back in the pre-Section 530 days. As a result of Section 1706, if a technical services firm hires, as an independent contractor, a computer programmer, systems analyst, software engineer, or similarly-skilled worker who will perform services for that firm's customers, then the technical services firm—which is operating in a so-called ''three-party'' arrangement—must prove to the IRS that this worker is an independent contractor under the centuries-old common law employment test that Congress found so troublesome in 1978. Even if the firm can show that it has a reasonable basis for treating the worker as an independent contractor—for instance, if its past treatment of this worker as an independent contractor was approved by the IRS in prior IRS audits, or its treatment is consistent with industry practice or a relevant court ruling, all of which constitute a ''safe harbor'' under Section 530—none of these factors is relevant because of the enactment of Section 1706.

The harm caused to the technical services industry and its workers by Section 1706 is more than theoretical. Technical services firms which use independent contractors—even if they act in good faith—can be severely penalized by the IRS and forced to pay ''unpaid'' employment taxes even though the contractors have already paid these same taxes in full. In fact, some IRS auditors have used Section 1706 to claim that even incorporated independent contractors are not legitimate. Left with only the common law employment test to demonstrate a worker's status to the IRS, many technical services firms will not hire any independent contractors in order to avoid tempting an IRS audit.

In 1991, the Treasury Department issued a 100-page study of Section 1706, as required by Congress. The Treasury Study found that tax compliance is actually better-than-average among technical services workers compared to other contractors in other industries. It also found the scope of Section 1706 was ''difficult to justify on equity or other policy considerations.'' Further, Section 1706 is the only occasion since the enactment of Section 530 that Congress has ever cut back on the safe harbor protections in Section 530. In fact, in response to concerns that IRS decisions in independent contractor audits were too often arbitrary and unpredictable, in the Small Business Job Protection Act of 1996 Congress expanded the Section 530 protections and even shifted the burden of proof from the taxpayer to the IRS. More recently, the Department of Labor's Bureau of Labor Statistics found that many high-tech professionals are actually being forced to work as employees when their preference is to be independent contractors.

It is time to repeal Section 1706 and end the discrimination against this one industry.

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. 1924

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 ''Technical Workers Fairness Act of 1998''.

SEC. 2. RESTORATION OF STANDARDS FOR DETERMINING WHETHER TECHNICAL WORKERS ARE NOT EMPLOYEES.

(a) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (c) shall apply to periods ending after the date of enactment of this Act.

Mr. KERRY. Mr. President, I join Senator MACK in supporting his legislation to repeal Section 1706 of the 1986 Tax Reform Act. We must take this opportunity to repeal an unfair section of employment tax law which singles out only the computer and high-technology industry and makes it difficult for firms in that industry to retain the services of self-employed contractors.

For many years, the common law test used to classify a worker as an employee or an independent contractor for employment tax purposes lacked precision and predictability. In 1978, in Section 530 of the 1978 Revenue Act, Congress acted to allow taxpayers, as an alternative to the common law test, to use a ''reasonable basis'' safe haven test to classify a worker. However, in 1986, Congress enacted Section 1706 which eliminated all Section 530 protections from only the technical services industry, and only in so-called ''three party situations'' in that industry in which a worker is paid by a technical service firm to perform services for a customer.

I have heard from a number of computer consultants in Massachusetts who believe this unfairly discriminates against the computer consulting industry and seriously impairs the ability of legitimate self-employed computer consultants to work effectively in the marketplace. Many firms in Massachusetts will not use the services of valid self-employed contractors because they believe doing so could attract an Internal Revenue Service audit and potentially subject the companies to penalties or back tax liabilities.

For many years, along with many of my colleagues in the Senate, I have worked unsuccessfully to develop and enact a new definition of ''leased employee.'' The legislation introduced by Senator MACK today is another effort to resolve this problem; it will repeal Section 1706 and thereby renew the ''reasonable basis'' safe haven test to classify workers in the computer consultant industry. A 1991 Treasury Department report stated that the tax compliance rates of computer consultants were somewhat better than those of other workers who are classified as independent contractors. That study also found that the treatment of technical service workers as independent contractors actually ''increases tax revenue'' which ''tends to offset'' any revenue loss that might result from any noncompliance by such individuals ''because direct compensation to independent contractors is substituted for tax favored employee fringe benefits.''

Repealing Section 1706 will allow companies to hire computer consultants without fearing a negative ruling from the IRS. We should take this step this year, and I look forward to working with Senator MACK to gain Congressional passage of this legislation.

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

S. 1925. A bill to make certain technical corrections in laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

TECHNICAL CORRECTIONS LEGISLATION

Mr. CAMPBELL. Mr. President, today I introduce legislation to make certain technical corrections to a number of unrelated laws affecting Indian tribes.

I am pleased to be joined in this effort by my friend and colleague from Hawaii, Senator INOUYE.

The bill will allow us to address a series of minor amendments to Indian laws in one piece of legislation, without having to introduce and legislate on a number of separate bills.

I conferred with the delegation of each state involved on each of these amendments and the delegations generally support the respective amendment affecting tribes in their states.

The bill contains a total of 14 amendments addressing a variety of issues including: increasing the allowable lease terms of reservation lands; reservation boundary adjustments; amendments to facilitate water rights settlements; clarification of federal service areas for tribes; and a number of others.

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. 1925

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

SECTION 1. AUTHORIZATION FOR 99-YEAR LEASES.

The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415), is amended—

(1) by inserting ''lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon,'' after ''lands held in trust for the Cahuilla Band of Indians of California,''; and

(2) by inserting ''the Cabazon Indian Reservation,'' after ''the Navajo Reservation,''.

SEC. 2. GRAND RONDE RESERVATION ACT.

Section 1(c) of the Act entitled ''An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes,'' approved September 9, 1988 (102 Stat. 1594), is amended—

(1) by striking ''10,120.68 acres of land'' and inserting ''10,311.60 acres of land''; and

(2) in the table contained in that subsection, by striking all after

''4	7	30	Lots 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼;	240''

through the end of the table, and inserting the following:

''6	8	1	N½SW¼	29.59
6	8	12	W½SW¼NE¼, SE¼SW¼NE¼NW¼, N½SE¼NW¼, N½SW¼SW¼SE¼	21.70
6	8	13	W½E½NW¼NW¼	5.31
6	7	7	E½E½	57.60
6	7	8	SW¼SW¼NW¼, W½SW¼	22.46
6	7	17	NW¼NW¼, N½SW¼NW¼	10.84
6	7	18	E½NE¼	43.42
6	.....	.....	Total	10,311.60''.

SEC. 3. SAN CARLOS APACHE WATER RIGHTS SETTLEMENT.

Section 3711(b) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking ''subsections (c) and (d) of section 3704'' inserting ''section 3704(d)''.

SEC. 4. YUROK SETTLEMENT RECOGNITION.

Section 4 of Public Law 98–458 (25 U.S.C. 1407) is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by inserting ''or'' at the end; and

(3) by inserting after paragraph (3) the following:

''(4) are distributed pursuant to—

''(A) the judgment of the United States Claims Court (which was subsequently reorganized as the United States Court of Federal Claims) in Jesse Short et al. v. United States, 486 F2d. 561 (Ct. Cl. 1973); or

''(B) any other judgment of the United States Court of Federal Claims in favor of 1 or more individual Indians,''.

SEC. 5. SELF-DETERMINATION CONTRACT CARRY-OVER EXPENDITURE AUTHORIZATION.

Notwithstanding any other provision of law, any funds that were provided to the Ponca Tribe of Nebraska for any of the fiscal years 1992 through 1998 pursuant to a self-determination contract with the Secretary of Health and Human Services that the Ponca Tribe of Nebraska entered into under section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) that were retained by the Ponca Tribe of Nebraska to carry out programs and functions of the Indian Health Service may be used by the Ponca Tribe of Nebraska to purchase or build facilities for the health services programs of the Ponca Tribe of Nebraska.

SEC. 6. NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT.

Section 12 of the Navajo-Hopi Land Dispute Settlement Act (Public Law 104–301; 110 Stat. 3653) is amended—

(1) in subsection (a)(1)(C), in the first sentence, by inserting ''of surface water'' after ''on such lands''; and

(2) in subsection (b), striking ''subsection (a)(3)'' both places it appears and inserting ''subsection (a)(1)(C)''.

SEC. 7. TREATMENT OF CERTAIN DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of the Interior shall take such action as may be necessary to extend the terms of the projects referred to in section 512 of the Indian Health Care Improvement Act (25 U.S.C. 1660b) so that the term of each such project expires on October 1, 2002.

(b) AMENDMENT TO INDIAN HEALTH CARE IMPROVEMENT ACT.—Section 512 of the Indian Health Care Improvement Act (25 U.S.C. 1660b) is amended by adding at the end the following:

''(c) In addition to the amounts made available under section 514 to carry out this section through fiscal year 2000, there are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2001 and 2002.''.

SEC. 8. CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS RESERVATION ACT.

Section 7(b) of the Coos, Lower Umpqua, and Siuslaw Restoration Act (Public Law 98–481, 98 Stat. 2253) is amended by adding at the end the following:

''(4) In Lane County, Oregon, a parcel described as beginning at the common corner to sections 23, 24, 25, and 26 township 18 south, range 12 west, Willamette Meridian; then west 25 links; then north 2 chains and 50 links; then east 25 links to a point on the section line between sections 23 and 24; then south 2 chains and 50 links to the place of origin, and containing .062 of an acre, more or less, situated and lying in section 23, township 18 south, range 12 west, of Willamette Meridian.''.

SEC. 9. HOOPA VALLEY RESERVATION BOUNDARY ADJUSTMENT.

Section 2(b) of the Hoopa Valley Reservation South Boundary Adjustment Act (25 U.S.C. 1300i–1 note) is amended—

(1) by striking ''north 72 degrees 30 minutes east'' and inserting ''north 73 degrees 50 minutes east''; and

(2) by striking ''south 15 degrees 59 minutes east'' and inserting ''south 14 degrees 36 minutes east''.

SEC. 10. CLARIFICATION OF SERVICE AREA FOR CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON.

Section 2 of the Act entitled ''An Act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon'', approved September 4, 1980 (94 Stat. 1073 and 1074), is amended—

(1) in the first sentence, by striking ''The Secretary'' and inserting ''(a) The Secretary''; and

(2) by adding at the end the following:

''(b) Subject to the express limitations under sections 4 and 5, for purposes of determining eligibility for Federal assistance programs, the service area of the Confederated Tribes of the Siletz Indians of Oregon shall include Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties in Oregon.''.

SEC. 11. MICHIGAN INDIAN LAND CLAIMS SETTLEMENT.

Section 111 of the Michigan Indian Land Claims Settlement Act (111 Stat. 2665) is amended—

(1) by striking ''The eligibility'' and inserting the following:

''(b) TREATMENT OF FUNDS FOR PURPOSES OF CERTAIN FEDERAL PROGRAMS AND BENEFITS.—The eligibility''; and

(2) by inserting before subsection (b), as designated by paragraph (1) of this section, the following:

''(a) TREATMENT OF FUNDS FOR PURPOSES OF INCOME TAXES.—None of the funds distributed pursuant to this Act, or pursuant to

any plan approved in accordance with this Act, shall be subject to Federal or State income taxes.''.

SEC. 12. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) AUTHORIZATION.—Section 711(h) of the Indian Health Care Improvement Act (25 U.S.C. 1665j(h)) is amended by striking ''for each'' and all that follows through ''2000,'' and inserting ''for each of fiscal years 1996 through 2000,''.

(b) REFERENCE.—Section 4(12)(B) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(12)(B)) is amended by striking ''Indian Self-Determination and Education Assistance Act of 1975'' and inserting ''Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)''.

SEC. 13. TRANSFER OF WATER RIGHTS.

The Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237 et seq.) is amended by adding at the end the following:

''SEC. 12. TRANSFER OF WATER RIGHTS.

''(a) IN GENERAL.—In accordance with the requirements of section 2116 of the Revised Statutes (25 U.S.C. 177), the transfer of water rights set forth in paragraph (5) of the stipulation and settlement agreement between the Jicarilla Apache Tribe and other parties to the case referred to in section 8(e)(1)(B)(ii), that was executed on October 7, 1997, is approved.

''(b) EFFECTIVE DATE.—The approval under subsection (a) shall become effective on the date of entry of a partial final decree by the court for the case referred to in that subsection that quantifies the reserved water rights claims of the Jicarilla Apache Tribe.''.

SEC. 14. NATIVE HAWAIIAN HEALTH SCHOLARSHIP PROGRAM.

(a) ELIGIBILITY.—Section 10(a)(1) of the Native Hawaiian Health Care Act of 1988 (42 U.S.C. 11709(a)(1)) is amended by striking ''meet the requirements of section 338A of the Public Health Service Act (42 U.S.C. 2541)'' and inserting ''meet the requirements of paragraphs (1), (3), and (4) of section 338A(b) of the Public Health Service Act (42 U.S.C. 254*l*(b))''.

(b) TERMS AND CONDITIONS.—Section 10(b)(1) of the Native Hawaiian Health Care Act of 1988 (42 U.S.C. 11709(b)(1)) is amended—

(1) in subparagraph (A), by inserting ''identified in the Native Hawaiian comprehensive health care master plan implemented under section 4'' after ''health care professional'';

(2) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(3) by inserting after subparagraph (A) the following:

''(B) the primary health services covered under the scholarship assistance program under this section shall be the services included under the definition of that term under section 12(8),'';

(4) by striking subparagraph (D), as redesignated, and inserting the following:

''(D) the obligated service requirement for each scholarship recipient shall be fulfilled through the full-time clinical or nonclinical practice of the health profession of scholarship recipient, in an order of priority that would provide for practice—

''(i) first, in any 1 of the 5 Native Hawaiian health care systems, and

''(ii) second, in—

''(I) a health professional shortage area or medically underserved area located in the State of Hawaii, or

''(II) geographic area or facility that is—

''(aa) located in the State of Hawaii, and

''(bb) has a designation that is similar to a designation described in subclause (I) made by the Secretary, acting through the Public Health Service,'';

(5) in subparagraph (E), as redesignated, by striking the period and inserting a comma; and

(6) by adding at the end the following:

''(F) the obligated service of a scholarship recipient shall not be performed by the recipient through membership in the National Health Service Corps, and

''(G) the requirements of sections 331 through 338 of the Public Health Service Act (42 U.S.C. 254d through 254k), section 338C of that Act (42 U.S.C. 254m), other than subsection (b)(5) of that section, and section 338D of that Act (42 U.S.C. 254n) applicable to scholarship assistance provided under section 338A of that Act (42 U.S.C. 254*l*) shall not apply to the scholarship assistance provided under subsection (a) of this section.''.

By Mr. GRASSLEY:

S. 1926. A bill for the relief of Regine Beatie Edwards; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. GRASSLEY. Mr. President, today I am proposing a private relief bill, under the Immigration and Nationality Act, that would classify Regine Beatie Edwards as a child, and therefore, allow her to become a citizen of the United States.

This bill originates from a request of Mr. Stan Edwards, a United States citizen and Regine's adopted father, concerning his daughter's naturalization application. Regine Beatie Edwards was born on August 3, 1980 in Germany and arrived in the United States with her mother on October 16, 1994. In 1997, Mr. Edwards, on several occasions, contacted the Immigration and Naturalization Service to obtain the proper form to apply for his daughter's naturalization. In response, the INS sent Mr. Edwards the form N–643, Application for Certificate in Behalf of an Adopted Child, and notified him that the adoption must be completed and that the application must be submitted by his daughter's 18th birthday. On January 13, 1997, Regine was legally adopted by Mr. Edwards. At this time, Regine was 16½ years old. After the completion of the adoption, Mr. Edwards delivered his daughter's application, in person, to the INS office in Omaha, Nebraska on March 27, 1997.

Over the following months, Mr. Edwards became concerned about the amount of time that had passed since the submission of the application to the INS. In January of 1998, the INS reported that Regine Edwards' application was to be denied because the adoption had not been completed by the child's 16th birthday and that the form N–643 was the incorrect form for application. This new information contradicted what the INS had previously told Mr. Edwards that Regine had to be adopted by her 18th birthday. The INS indicated that Mr. Edwards' daughter had met three of the four qualifications to qualify for citizenship. As a result of this misinformation, Regine did not meet the qualification of an adoption by a citizen parent before the child had reached the age of sixteen. In response to the incorrect information given in this case, the INS refunded the money for the N–643 application to Mr. Edwards.

I feel that Regine Edwards should not be denied citizenship due to the wrong information provided by the Immigration and Naturalization Service. The Edwards family fulfilled the qualifications that they were originally told by the INS were necessary. Unfortunately, Mr. Edwards was misinformed which has cost his daughter the opportunity for citizenship at this time. Mr. President, I ask you and my fellow colleagues to support this young woman by allowing her to fulfill her wish to become a United States citizen and not deprive her of this opportunity.

By Ms. MOSELEY-BRAUN:

S. 1927. A bill to amend section 2007 of the Social Security Act to provide grant funding for 20 additional Empowerment Zones, and for other purposes; to the Committee on Finance.

THE EMPOWERMENT ZONE ENHANCEMENT ACT OF 1998

Ms. MOSELEY-BRAUN. Mr. President, it gives me great pleasure to introduce the Empowerment Zone Enhancement Act of 1998. This legislation, I believe, will build on the economic success we have built over the last several years.

We have worked to make this the strongest economy in a generation—by balancing the budget, investing in education and training, and opening up new markets for American products around the world. But we have also worked to make this the most inclusive economy in history, so everyone has a chance to participate, and no one is left behind. Further, we have stressed Community Empowerment. A strategy that gives people the tools—and acts as a catalyst for community collaboration—then communities can tap the ingenuity and enthusiasm of every citizen, and restore our downtowns and distressed areas to a level even our grandparents would be proud of.

I believe that we are beginning to see results in this Community Empowerment Philosophy. The Empowerment Zone Initiative is the cornerstone program to ensure that all Americans benefit from the strong economy. The purpose of the EZ/EC Initiative is to assist distressed urban and rural communities to develop and implement holistic revitalization programs. In the first round of the Initiative, 105 urban and rural EZ's and EC's were designated.

This Initiative has not only produced the intended benefits of creating economic opportunity, broad-based community partnerships and sustainable community development, but has also had far-reaching spin-off benefits in bringing together all segments of the EZ/ECs around the goal of community revitalization.

Over $4 Billion in private investment has been leveraged in the EZ and EC's. Nearly 20,000 jobs have been created that have been filled by people who have previously not had access to economic opportunity. Entrepreneurship

opportunities have been created for people with a dream and the economic opportunity to see that dream realized. Job training and education opportunities have been created for nearly 45,000 residents. More than 12,000 Housing units have been constructed or rehabilitated. Communities have addressed public safety, infrastructure and environmental clean-up needs through more than 350 programs. More than 52,000 children, youth and adults have been provided with services to help overcome challenges and contribute to their communities growth. In short, the EZ/EC Initiative has proven to be a successful holistic approach to community revitalization and economic development.

The Taxpayer Relief Act of 1997 authorized designation of 20 additional Empowerment Zones (15 urban and 5 rural), and provided for tax incentives for these new zones. However, that Act did not provide the flexible grant funding critical to the core concept and mission of the EZ/EC Initiative. This bill provides for $1.7 billion in grant funds over a 10-year period, $1.5 billion for the urban zones and $0.2 billion for the rural zones. The application process for the second round of Empowerment Zones will begin in a few weeks. Communities will have several months to put together a comprehensive strategic plan that leverages private investment and provides for economic opportunity.

We can rebuild even our poorest areas—if all the people in the community get together and decide to do it, and then find the tools they need to get it done. That's why we are so committed to our approach. We believe in government as a catalyst—helping to bring communities together to plan their future, and giving them the tools they need to reach that future. And it's working. For the first time in 30 years, we're seeing success.

From the South Bronx to areas of the Mississippi Delta to South Central LA to North Kenwood in Chicago—there is a growing American renaissance that is turning abandoned buildings, empty lots, and crime-ridden street corners into new homes, new hope and new opportunity for the millions of Americans. This success makes us more and more convinced we're on the right track to reverse decades of decay, and to remake America's distressed areas into sources of pride and prosperity.

The hardest part is getting started, and we've got it started now all across the country. Now it's just a matter of moving up the momentum by expanding the number of zones. With communities working from the inside, the federal government helping draw investment from the outside—I know this is a battle we're going to win.

I urge all of my colleagues to join me in supporting quick passage of this legislation. I ask unanimous consent that the full 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. 1927

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the ''Empowerment Zone Enhancement Act of 1998''.

SEC. 2. FUNDING ENTITLEMENT FOR ADDITIONAL ENTERPRISE ZONES.

(a) ENTITLEMENT.—Section 2007(a)(1) of the Social Security Act (42 U.S.C. 1397f(a)) is amended—

(1) in subparagraph (A), by striking ''in the State; and'' and inserting ''in the State designated pursuant to section 1391(b) of the Internal Revenue Code of 1986;'';

(2) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(3) by adding after subparagraph (B) the following new subparagraph:

''(C) 10 grants under this section for each qualified empowerment zone in the State designated pursuant to section 1391(g) of such Code.''.

(b) AMOUNT OF GRANTS.—Section 2007(a)(2) of that Act (42 U.S.C. 1397f(a)(2)) is amended—

(1) in the heading of subparagraph (A), by inserting ''ORIGINAL'' before ''EMPOWERMENT'';

(2) in subparagraph (A), in the matter preceding clause (i), by inserting ''described in paragraph (1)(A)'' after ''empowerment zone'';

(3) by redesignating subparagraph (C) as subparagraph (D); and

(4) by inserting after subparagraph (B) the following new subparagraph:

''(C) ADDITIONAL EMPOWERMENT GRANTS.—The amount of each grant to a State under this section for a qualified empowerment zone described in paragraph (1)(C) shall be—

''(i) if the zone is designated in an urban areas, $10,000,000, or

''(ii) if the zone is designated in a rural area, $4,000,000,

multiplied by the proportion of the population of the zone that resides in the State.''.

(c) TIMING OF GRANTS.—Section 2007(a)(3) of that Act (42 U.S.C. 1397f(a)(3)) is amended—

(1) in the heading of subparagraph (A), by inserting ''ORIGINAL'' before ''QUALIFIED'';

(2) in subparagraph (A), in the matter preceding clause (i), by inserting ''described in paragraph (1)(A)'' after ''empowerment zone''; and

(3) by adding after subparagraph (B) the following new subparagraph:

''(C) ADDITIONAL QUALIFIED EMPOWERMENT ZONES.—With respect to each qualified empowerment zone described in paragraph (1)(C), the Secretary shall make—

''(i) 1 grant under this subsection to the State in which the zone lies, on the date of the designation of the zone under such part I; and

''(ii) 1 grant under this subsection to such State, on the first day of each of the nine fiscal years that begin after the date of the designation.''.

(d) FUNDING.—Section 2007(a)(4) of that Act (42 U.S.C. 1397f(a)(4)) is amended—

(1) by relocating and redesignating the matter following the caption as subparagraph (A);

(2) by inserting ''ORIGINAL GRANTS.—'' after the subparagraph designation ''(A)'';

(3) in subparagraph (A), as so redesignated, by inserting before the period ''for empowerment zones and enterprise communities described in subparagraphs (A) and (B) of paragraph (1)''; and

(4) by adding after subparagraph (A), as so redesignated, the following new subparagraph:

''(B) ADDITIONAL GRANTS.—$1,700,000,000 shall be made available to the Secretary for grants under this section for empowerment zones described in paragraph (1)(C).''.

SEC. 3. USE OF GRANTS FOR LOAN FUNDS AND SIMILAR ARRANGEMENTS.

Section 2007(b) of the Social Security Act (42 U.S.C. 1397f(b)) is amended by adding at the end the following new paragraph:

''(5)(A) In order to assist disadvantaged adults and youth in achieving and maintaining economic self-support, a State may use amounts paid under this section to fund revolving loan funds or similar arrangements for the purpose of making loans, loan guarantees, financial services, or related activities more accessible to residents, institutions, organizations, or businesses.

''(B) Interest earned by, and repayments of principal and interest on loans made from, revolving funds or similar arrangements described in subparagraph (A) shall be credited to such funds.

''(C) The funding of, or holding of funds in, a revolving loan fund or similar arrangement in accordance with subparagraph (A), in amounts reasonably necessary to carry out the purposes of such subparagraph (A), shall be deemed to comply with any requirement to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance of payments for program purposes.''.

SEC. 4. RESPONSIBILITY FOR ENVIRONMENTAL REVIEW.

Section 2007 of the Social Security Act (42 U.S.C. 1397f) is amended—

(1) by redesignating subsection (f) as subsection (h); and

(2) by inserting after subsection (e) the following new subsection:

''(f) ENVIRONMENTAL REVIEW.—

''(1) EXECUTION OF RESPONSIBILITY BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT AND THE SECRETARY OF AGRICULTURE.—

''(A) APPLICABILITY.—This subsection shall apply to grants under this section in connection with empowerment zones and enterprise communities designated under section 1391(a) of the Internal Revenue Code of 1986 and empowerment zones designated under section 1391(g) of such Code—

''(i) by the Secretary of Housing and Urban Development in the case of those located in urban areas; and

''(ii) by the Secretary of Agriculture in the case of those located in rural areas.

''(B) EXECUTION OF RESPONSIBILITY.—With respect to grants described in subparagraph (A), the Secretary of Housing and Urban Development and the Secretary of Agriculture, as appropriate, shall execute the responsibilities under the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in under this section if the State, unit of general local government, or Indian tribe, as designated by the Secretary in accordance with regulations issued by the Secretary under paragraph (2)(B), assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake such projects as Federal projects.

''(B) IMPLEMENTATION.—The Secretary of Housing and Urban Development and the Secretary of Agriculture shall each issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality. Such regulations shall—

''(i) specify any other provisions of law which further the purposes of the National Environmental Policy Act of 1969 and to which the assumption of responsibility as provided in this subsection applies;

''(ii) provide eligibility criteria and procedures for the designation of a State, unit of general local government, or Indian tribe to assume all of the responsibilities in this section;

''(iii) specify the purposes for which funds may be committed without regard to the procedure established under paragraph (3);

''(iv) provide for monitoring of the performance of environmental reviews under this subsection;

''(v) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

''(vi) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under subparagraph (A).

''(C) RESPONSIBILITIES OF STATE, UNIT OF GENERAL LOCAL GOVERNMENT, OR INDIAN TRIBE.—The Secretary's duty under subparagraph (B) shall not be construed to limit any responsibility assumed by a State, unit of general local government, or Indian tribe with respect to any particular release of funds under subparagraph (A).

''(3) PROCEDURE.—The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects (except for such purposes specified in the regulations issued under paragraph (2)(B)), the recipient submits to the Secretary a request for such release accompanied by a certification of the State, unit of general local government, or Indian tribe which meets the requirements of paragraph (4). The approval by the Secretary of any such certification shall be deemed to satisfy the Secretary's responsibilities pursuant to paragraph (1) under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

''(4) CERTIFICATION.—A certification under the procedures authorized by this subsection shall—

''(A) be in a form acceptable to the Secretary;

''(B) be executed by the chief executive officer or other officer of the State, unit of general local government, or Indian tribe who qualifies under regulations of the Secretary:

''(C) specify that the State, unit of general local government, or Indian tribe under this subsection has fully carried out its responsibilities as described under paragraph (2); and

''(D) specify that the certifying officer—

''(i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (2); and

''(ii) is authorized and consents on behalf of the State, unit of general local government, or Indian tribe and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

''(5) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in paragraph (2), the Secretary may permit the State to perform those actions of the Secretary described in paragraph (3). The performance of such actions by the State, where permitted, shall be deemed to satisfy the responsibilities referred to in the second sentence of paragraph (3).''.

SEC. 5. PERFORMANCE MEASUREMENT AND EVALUATION; GRANT ADJUSTMENTS.

Section 2007 of the Social Security Act (42 U.S.C. 1397f), as amended by section 4, in further amended by adding after subsection (f) the following subsection:

''(g) PERFORMANCE MEASUREMENT SYSTEM, REPORTS, AND EVALUATIONS, GRANT ADJUSTMENTS, AND RELATED MATTERS.—

''(1) APPLICABILITY.—The requirements of this subsection—

''(A) apply to all grants made by a State, from grants to the State under subsection (a)(2)(C), to lead implementing entities (as defined in paragraph (7)) for empowerment zones designated pursuant to section 1391(g) of the Internal Revenue Code of 1986 (26 U.S.C. 1391(g)); and

''(B) are in addition to the annual report and biennial audit requirements applicable to States under section 2006.

''(2) PERFORMANCE MEASUREMENT SYSTEM.—The lead implementing entity for an empowerment zone shall establish a performance measurement system acceptable to the Secretary to assist in assessing the extent to which its strategic plan is being implemented and funds made available under subsection (a)(2)(C) are being used effectively.

''(3) PERFORMANCE REPORT.—Each lead implementing entity shall submit to the Secretary (and make available to the public upon request), at such time and in such manner as the Secretary shall prescribe, a report including an assessment of the progress the empowerment zone has made toward implementing its strategic plan, and such other information as the Secretary shall prescribe. To the extent practicable, the report shall also include information available to the lead implementing entity with respect to the use of tax incentives available to empowerment zones designated pursuant to section 1391(g) of the Internal Revenue Code of 1986.

''(4) PERFORMANCE EVALUATIONS, ADJUSTMENTS, AND RECORDKEEPING.—

''(A) PERFORMANCE EVALUATIONS.—The Secretary shall regularly evaluate the progress of the lead implementing entity for the empowerment zone in implementing the strategic plan for the zone, on the basis of performance reviews and any other information that the Secretary may require.

''(B) ADJUSTMENTS.—On the basis of the Secretary's evaluation under subparagraph (A), the Secretary may direct the Secretary of Health and Human Services to adjust, reduce, or cancel the grant to a State under subsection (a)(2)(C) for the current or any future fiscal year or years, except that amounts already properly expended by a lead implementing entity on eligible activities under this Act shall not be recaptured or deducted from future grants to the State.

''(5) RETENTION OF RECORDS.—Each lead implementing entity shall keep such records relating to funds received from grants to the State under subsection (a)(2)(C), including the amounts and disposition of such funds and the types of activities funded, as the Secretary determines to be necessary to enable the Secretary to evaluate the performance of the lead implementing agency and to determine compliance with the requirements of this subsection.

''(6) SECRETARY'S ACCESS TO DOCUMENTS.—The Secretary shall have access, for the purpose of evaluations and examinations pursuant to paragraph (4)(A), to any books, documents, papers, and records of any grantee or other entity or person that are pertinent to grant amounts received in connection with this section.

''(7) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'lead implementing entity' means the local government or governments, the governance body of an empowerment zone as specified in the strategic plan, or any non-profit entity that is principal administrator of an empowerment zone.

''(B) The term 'Secretary' means the Secretary of Housing and Urban Development for purposes of grants under this section with respect to urban areas and means the Secretary of Agriculture for purposes of grants under this section with respect to rural areas, except as the context otherwise indicates.

SEC. 6. TECHNICAL AMENDMENTS.

Section 2007(b) of the Social Security Act is amended—

(1) in paragraph (2), in the matter preceding subparagraph (A), by striking ''to prevent''; and

(2) in paragraph (4), in the matter preceding subparagraph (A), by striking ''maintain'' and inserting ''maintaining''.

By Mr. LEAHY:

S. 1928. A bill to protect consumers from overcollections for the use of pay telephones, to provide consumers with information to make informed decisions about the use of pay telephones, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CONSUMER PAY TELEPHONE PROTECTION ACT

Mr. LEAHY. Mr. President, I have voiced my great disappointment many times with how the Telecommunications Act of 1966 is costing consumers millions of dollars.

I complained about this at the time that Act passed, and continue to be concerned that Vermonters are being taken to the cleaners.

I was one of five Senators to vote against that bill. I thought it was clear then, and it should be clear by now to everyone, that the Telecommunications bill means higher costs for consumers.

As other hi-tech industries, such as computer technology, offer lower and lower prices over time—the telephone and cable TV industries are presenting consumers with higher and higher charges.

For example, I am mad as heck that pay phone charges in Vermont went up to 35 cents—from 10 cents.

But what annoys me more is that if I do not have exact change—if I use two quarters—the change the phone company keeps is more than the ten cents the call used to cost.

I have been know to say ''keep the change'' in restaurants, or when I buy a newspaper.

But I do not like phone companies taking my change. I am fed up with pay phone service providers nickel and diming consumers.

This bill will make phone companies provide change to consumers at the pay phone—or provide a credit in the amount of the lost change to the consumer or to states to be used to help consumers.

My bill will also give the FCC broad powers to give states authority to control pay phone rates, if necessary.

The bill permits pay phone providers in Vermont to issue a credit when

change is not provided to the consumer which would go to Vermont. This means that Vermont could provide better pay phone service for public safety or health reasons.

For example, this fund could be used by states to provide better pay phone service to those with disabilities, or those living in nursing homes. It would provide funding for pay phones to be placed in remote areas in case of emergencies.

I would rather this change go directly to the consumer, and believe when this bill is fully implemented that most consumers will not be overcharged for calls.

In the meantime, however, I would rather have the change used to benefit Vermonters than go to the phone companies.

There are over 2 million pay phones in the United States. The Washington Post explained on Monday that if 75 percent of those pay phones charge 35 cents for a local call and if just one person a day overpays 15 cents at each of those phones, companies would get more than $230,000 extra a day, or about $7 million a month.

My guess is that this hugely underestimates the size of this windfall.

Keep in mind this windfall, in Vermont, is on top of the raise from 10 cents to 35 cents. I have also noticed fewer and fewer phone booths except at places such as airports or train stations where consumers are in a hurry and may not have time to track down change.

My bill goes beyond just keeping phone companies from getting windfall profits. It calls for a national investigation of monopoly pricing and price gouging in the pay telephone markets.

It goes further than that—it then gives the Federal Communications Commission the tough new authority to deal with this problem. It allows them to give states the right to establish rates for local calls if necessary to stop this overcharging. Remember, when Vermont was in charge before the Telecommunications Act passed the pay phone rates were a dime.

My bill will also encourage the development of new technologies so that consumers are not overcharged for local phone calls to begin with.

My bill also provides funding—and the money comes from telephone companies not consumers—for public interest pay phones. These are phones which the FCC has determined each state should provide to its citizens in areas where there otherwise might not be a phone. They did this in a decision issued on October 7, 1996.

This was a good idea—but there is no federal funding to implement the decision.

In addition, it is uneconomic for a phone company to provide a pay phone in remote areas of Vermont. But in a roadside emergency these phones could be vital. My bill would provide for this program using money that now just goes out of your pockets to the phone companies.

Also, public interest pay phones could be placed in nursing homes, emergency homeless shelters, emergency rooms in hospitals, and other similar places.

Emergency 911 calls would be free from these phones, and other calls would cost but at least there would be a phone in a location where there otherwise might not be one.

What is best about this approach is that Vermont would decide how to use this funding that now goes directly into the coffers of phone companies.

I have also designed the bill in a way that prevents phone companies from trying to take advantage of this situation.

The bill gives the FCC board powers to ensure that the pay phone providers ''do not pass any costs relating to such compliance to consumers.''

It also mandates that the FCC monitor this situation and ensure that implementation does not result in any reduction in pay phone service.

The bill requires that pay phone companies which charge more than 10 cents for local phone calls provide either cash change or other alternatives to consumers, or credits to states equal to the value of the unpaid change.

These credits to states would be used by states for telecommunications activities that promote the public interest, such as safety, health, emergency services, or education and promote public interest pay phones in hospitals, schools, emergency homeless shelters, facilities for the disabled, and at similar types of locations.

The bill directs the FCC, within one year of the bill's enactment, to issue proposed rules that apply to pay phone providers that charge more than 10 cents for local pay phone calls. Companies would have to provide for cash change or automatically credit the appropriate public service agency in the respective states to account for instances in which change is not provided at the pay phone.

The bill requires that the FCC ensure that pay phone providers do not pass any costs of compliance with this bill on to consumers and that pay phone providers in no way reduce or limit service based on this anti-windfall requirement.

The FCC is given major new powers to take action to prevent any price gouging including giving states back the authority to regulate the price of local calls.

The bill requires that small stickers or other notice be posted on pay phones for the purpose of advising consumers when cash change will not be provided.

The bill directs the FCC to reconsider its rules under which the FCC removed authority from states to regulate the charge for local calls made over pay phones. The FCC would reexamine the need for states to have greater decision making roles where local competition between pay phone providers is not present.

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. 1928

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 ''Consumer Pay Telephone Protection Act of 1998''.

SEC. 2. FINDINGS AND PURPOSE.

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

(1) Some payphone service providers have increased the charge for the use of a coin-operated pay telephone for a local call to 35 cents but have not put into place a system for providing change to users of such telephones for amounts deposited in such telephones in excess of such charge.

(2) Payphone service providers should charge pay telephone users only for the actual time of use of pay telephones.

(3) Most consumers, if given a choice, would prefer that any amount of such excess deposits that are not refunded to consumers be used for pay telephones for public health, safety, and welfare purposes rather than have such excess deposits accrue to the financial benefit of payphone service providers.

(4) There are approximately 2,000,000 pay telephones in the United States, and payphone service providers accrue substantial revenue at the expense of Americans who do not have the exact amount of the charge for their use.

(5) A decision of the Federal Communications Commission to deregulate the provision of payphone service was premature and did not address adequately the need for local competition that would benefit users of pay telephones.

(6) The decision of the Commission does not promote the widespread deployment of affordable payphone service that would benefit the general public, nor does the decision promote the widespread deployment of public interest telephones.

(7) The use of coin-operated pay telephones represents an increasing commercial activity that substantially affects interstate commerce.

(8) Public interest telephones should be maintained in each State and should be provided to promote the public safety, health, and welfare.

(b) PURPOSE.—The purpose of this Act is—

(1) to require payphone service providers—

(A) to provide cash change to pay telephone users who deposit amounts for local telephone calls in excess of the amounts charged for such calls; or

(B) in the event that such providers do not provide such change, to transfer amounts equal to such change to appropriate State entities for public interest purposes related to telephone service;

(2) to encourage such changes in pay telephone technology as are needed to assure that payphone service providers—

(A) do not overcharge pay telephone users who do not have the exact amount of the charge for local pay telephone calls; and

(B) do not charge pay telephone users for any time in which pay telephones are not actually in use; and

(3) to require the Federal Trade Commission to determine—

(A) whether dysfunctions exist in the market for payphone service including locational monopolies in which the size of the market concerned results in the availability of payphone service from a single provider; and

(B) whether rates for coin-operated pay telephones for local telephone calls are market based.

SEC. 3. PUBLIC INTEREST PAY TELEPHONES.

Section 276(b)(2) of the Communications Act of 1934 (47 U.S.C. 276(b)(2)) is amended to read as follows:

''(2) PUBLIC INTEREST PAY TELEPHONES.—

''(A) SENSE OF CONGRESS.—It is the sense of Congress that—

''(i) in the interest of the public health, safety, and welfare, public interest pay telephones should be available and maintained in locations where there would not otherwise likely be a pay telephone; and

''(ii) such public interest pay telephones should be fairly and equitably supported.

''(B) USE OF FUNDS.—In accordance with such regulations as the Commission shall prescribe, each State agency that receives amounts under subsection (c)(2)(A) shall use such amounts to promote or otherwise support the installation, maintenance, and use of public interest pay telephones, including specially designed payphones for the disabled and the provision of payphone service in remote locations, nursing homes, emergency homeless shelters, hospitals, facilities that assist the disabled, schools, and other appropriate locations determined by the State agency concerned.''.

SEC. 4. REQUIREMENT FOR CHANGE AT PAY TELEPHONES.

(a) REQUIREMENT.—Section 276 of the Communications Act of 1934 (47 U.S.C. 276), as amended by section 3 of this Act, is further amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

''(c) CHANGE AT PAY TELEPHONES.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—Except as provided in paragraph (2), a payphone service provider shall provide any individual using a pay telephone of such provider to make a telephone call described in subparagraph (B) an amount of cash change equal to the amount (if any) by which the amount deposited by the individual for the call exceeds the charge for the call.

''(B) COVERED TELEPHONE CALLS.—Subparagraph (A) applies to any local telephone call the charge for which exceeds 10 cents.

''(2) ALTERNATIVE USE OF EXCESS COLLECTIONS.—

''(A) TRANSFER.—In accordance with such regulations as the Commission shall prescribe, a payphone service provider may, in lieu of providing cash change under paragraph (1)—

''(i) transfer any excess amounts collected by the provider at pay telephones to the State agency in the State in which the telephones are located that is responsible for the support of public interest pay telephones under subsection (b)(2); or

''(ii) if the State has no such agency by reason of a determination under subparagraph (B), transfer such excess amounts to the Commission for use under subparagraph (D).

''(B) STATE OPTION.—

''(i) STATE OPTION.—The chief executive officer of each State may determine whether or not to permit the transfer of funds to an agency of such State under subparagraph (A).

''(ii) REVOCATION.—The chief executive officer of a State may revoke any previous decision with respect to the State under this subparagraph.

''(iii) NOTICE.—The chief executive officer of a State shall notify the Commission, in writing, of any determination or revocation of a determination under this subparagraph.

''(C) USE BY STATES.—

''(i) IN GENERAL.—A State agency receiving amounts under subparagraph (A) shall utilize such amounts for purposes of promoting and supporting public interest pay telephones in the State under subsection (b)(2).

''(ii) ADDITIONAL USE.—In the event that amounts received by a State agency under subparagraph (A) exceed the amounts determined by the agency to be required to properly promote and support public interest pay telephones in the State, the agency shall utilize the excess amounts for purposes relating to providing universal service or improving telephone service in the State under section 254.

''(D) USE BY COMMISSION.—

''(i) DEPOSIT.—The Commission shall deposit any amounts received by the Commission under subparagraph (A) in an account in the Treasury established for that purpose.

''(ii) AVAILABILITY.—Under such regulations as the Commission shall prescribe, the Commission shall utilize amounts in the account under clause (i) to assist States that receive amounts under subparagraph (A) with additional assistance to promote and support public interest pay telephones under subsection (b)(2).

''(E) NOTICE TO CONSUMERS.—

''(i) IN GENERAL.—In the event a payphone service provider decides to transfer excess amounts deposited at any given pay telephone under subparagraph (A) for purposes of supporting public interest pay telephones under subsection (b)(2), the provider shall post at such pay telephone a notice informing potential users of such pay telephone that any such excess amount shall not be returned as cash change or credit but shall be utilized for such purposes.

''(ii) ADDITIONAL NOTICE.—Nothing in clause (i) shall be interpreted to limit a State from requiring additional notices with respect to the matters set forth in that clause.

''(3) REGULATIONS.—

''(A) REQUIREMENT.—Not later than one year after the date of enactment of the Consumer Pay Telephone Protection Act of 1998, the Commission shall prescribe the regulations required under this subsection.

''(B) ADDITIONAL ELEMENTS.—The regulations shall—

''(i) provide for the monitoring of the compliance of payphone service providers with the provisions of this subsection;

''(ii) ensure that such providers do not pass any costs relating to such compliance to consumers; and

''(iii) ensure that the implementation of such provisions do not result in any reduction in payphone service, including the imposition of time limits on local telephone calls or other reductions or limitations in such service.

''(C) EFFECTIVE DATE.—The regulations shall provide that the provisions of the regulations take effect not earlier than 6 months after the date of the final issuance of the regulations and not later than 12 months after that date.''.

(b) STUDY OF ALTERNATIVE TECHNOLOGIES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Federal Communications Commission shall submit to Congress a report on the availability of technologies or systems that permit persons who do not have exact change to utilize pay telephones for local telephone calls without being overcharged for such calls.

(2) ELEMENTS.—The report shall address the use of tokens, cash debit cards, systems for crediting the monthly telephone bills of individuals who use pay telephones, and such other technologies and systems as the Commission considers appropriate.

SEC. 5. STUDY OF COMPETITIVENESS OF PAY TELEPHONE MARKET.

(a) STUDY.—

(1) IN GENERAL.—The Federal Trade Commission shall, in consultation with the Federal Communications Commission, carry out a study of competition in the market for intrastate payphone service, including—

(A) whether or not locational monopolies in such service exist by reason of the size of particular markets for such service;

(B) whether or not potential users of such service are effectively barred from choice in such service in particular markets by reason of difficulties in identifying a variety of payphone service providers in such markets;

(C) whether or not rates for local pay telephone calls are market-based; and

(D) whether or not there is evidence of monopoly pricing in such service.

(2) SCOPE OF COMMENT.—In carrying out the study, the Federal Trade Commission shall seek comment from a variety of sources, including State and local public entities, consumers and consumer representatives, and payphone service providers and their representatives.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report on the results of the study carried out under subsection (a). The report shall include the findings of the Commission with respect to the matters set forth under paragraph (1) of that subsection.

(c) FEDERAL COMMUNICATIONS COMMISSION ACTION.—Notwithstanding any provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission may, as a result of the study under subsection (a), conduct a rule-making proceeding in order to accomplish any of the following:

(1) To set limitations on rates for local pay telephone calls.

(2) To permit the States to establish rates for such calls on a cost basis.

(3) To set limitations on the commissions that payphone service providers may pay to persons who lease space to such providers for pay telephones.

(4) To prohibit payphone service providers from entering into exclusive contracts with persons who lease space to such providers for pay telephones which contracts cover multiple locations.

By Mrs. HUTCHISON (for herself, Mr. MURKOWSKI, Mr. NICKLES, and Mr. DOMENICI):

S. 1929. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes; to the Committee on Finance.

THE U.S. ENERGY ECONOMIC GROWTH ACT

Mrs. HUTCHISON. Mr. President, a healthy domestic energy industry is critical to our nation's security and our economic well-being. That is why I am pleased today to introduce the U.S. Energy Economic Growth Act. My legislation provides much needed tax relief for the domestic oil and gas industry. It is a part of the omnibus Domestic Oil and Gas Security Enhancement Plan that I've developed with Senator MURKOWSKI and Senator NICKLES. Together, our comprehensive legislation represents the most sweeping tax and regulatory relief since before the Gulf War.

Our package could not come at a more critical time. The price of crude

oil recently dipped to its lowest level since April 1994. This downturn in world oil prices has exposed America's independent producers to great risk. If current market conditions persist, as is expected, thousands of wells could become uneconomic and be shut-in or plugged. It is time we acted to ensure this does not happen, and my bill is the first step in that direction.

The U.S. Energy Economic Growth Act will do three things.

MARGINAL WELL TAX RELIEF

First, this bill provides tax relief for producers who operate marginal oil and gas wells. A marginal oil well is one that produces less than 15 barrels per day or produces heavy oil. A marginal gas well is one that produces less than 90 thousand cubic feet a day. Those who operate marginal wells are most at risk in times of lower oil prices. The National Petroleum Council (NPC) reported that America has over 500,000 marginal wells that collectively produce nearly 700 million barrels of oil equivalent each year. Texas alone has over 100,000 marginal wells. These wells contribute nearly 80,000 jobs and generate close to $14 billion each year in economic activity.

In 1996, abandonment or plugging of these marginal wells led to a loss of more than 3,600 high-quality jobs and a loss of $84.1 million in earnings in 1996. States and federal governments lost $18.5 million in severance taxes and an equal amount of ad valorem taxes from wells plugged during 1996.

Many domestic oil and gas businesses rely on these marginal wells as the backbone of their operations. However, as global market factors cause commodity prices to fluctuate, the economic viability of these wells is precarious. Marginal wells provide countless jobs, energy security and federal tax and royalty revenues. The tax credits in my bill will help keep these marginal wells in production and Americans employed. My bill provides for a maximum $3 per barrel tax credit for the first 3 barrels of daily production from an existing oil well. In addition, marginal gas well will receive $0.50 per mcf for the first 18 mcf of daily natural gas production.

In addition, this tax credit would only occur when prices are low. This credit is phased out when prices for oil and natural gas increase.

INACTIVE WELL TAX RELIEF

The second plank of my bill creates an incentive for independent oil and gas producers to recover abandoned wells and put them back into production. This provision allows producers to exclude income attributable to oil and natural gas from a recovered inactive well. In order to qualify, the oil or gas well must have been abandoned for at least two years prior to the date of enactment. In addition, this incentive would only apply to wells that are brought back on line within 5 years of the date of enactment.

This economic incentive has a proven track record. In Texas, a similar law resulted in returning over 6,000 wells to production. The estimated annual production from these wells is worth $565 million at the wellhead, and approximately $1.65 billion to the economy of Texas each year. The wealth from this incentive provides over 10,000 direct and indirect jobs each year. The Texas legislature receives an estimated $22 million in additional annual tax revenues, over ten thousand jobs have been created, and $1.65 billion a year in wealth is generated. Over 90,000 idle wells remain in Texas. This incentive package would help return them to production and allow them to contribute to a strong economy in America.

Thirteen states have inactive well recovery programs, including Alaska, Arkansas, California, Florida, Kansas, Louisiana, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, Texas, Wyoming. This federal program would allow the benefits experienced by Texas and other states to continue to grow and to be shared by the rest of the country.

Importantly, this provision increases the stream of revenue going into the federal government in two ways. First, royalty owners will pay federal taxes on income generated from the recovered well. Currently, no taxes are paid on these wells because they are inactive. Returning them to production will increase the royalties paid to the federal government. Secondly, the new jobs created will add significantly to the taxes paid on wages and earnings.

This one-time shot-in-the-arm for the industry will provide countless jobs and considerable economic benefit to our communities.

OTHER INCENTIVES

The third provision of my bill makes changes to the tax code that makes it easier for producers to take full advantage of already existing tax credits. Under these provisions, both geological and geophysical expenditures on domestic production and delay rental payments would be allowed to be expensed at the time incurred rather than capitalized over the length of the well. This election would allow producers more control over their income stream without changing the amount of tax.

In addition, two relatively new types of drilling methods are included as a qualified enhanced oil recovery method for purposes of the Enhanced Oil Recovery Tax Credit. These two drilling methods, hydro-injection and horizontal drilling, would be included on the list of qualified methods. They provide us with some of the most innovative means of drilling and we should encourage producers to utilize these and other productive methods.

Mr. President, my legislation provides incentives for the most threatened parts of the oil and gas industry. Relief for marginal and inactive wells encourages full utilization of existing wells, clearly provides jobs and helps the local economy grow. I encourage my colleagues to support this legislation and their local communities by making marginal and inactive wells productive contributors to the local economy. Our energy security depends upon it.

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. 1929

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 ''United States Energy Economic Growth Act''.

TITLE I—PRODUCTION FROM MARGINAL AND INACTIVE WELLS

SEC. 101. TAX CREDIT FOR MARGINAL DOMESTIC OIL AND NATURAL GAS WELL PRODUCTION.

(a) CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business credits) is amended by adding at the end the following new section:

''SEC. 45D. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

''(b) CREDIT AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $14 ($1.40 for qualified natural gas production), bears to

''(ii) $4 ($0.40 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price for the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1999, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting '1998' for '1990').

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) DEFINITIONS.—

''(A) MARGINAL WELL.—The term 'marginal well' means a domestic well which during the taxable year has marginal production (as defined in section 613A(c)(6)).

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversion ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) of such Code is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the marginal oil and gas well production credit determined under section 45D(a).''.

(c) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 of such Code (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) SPECIAL RULES FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—

''(A) IN GENERAL.—In the case of the marginal oil and gas well production credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) subparagraphs (A) and (B) thereof shall not apply, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the marginal oil and gas well production credit).

''(B) MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—For purposes of this subsection, the term 'marginal oil and gas well production credit' means the credit allowable under subsection (a) by reason of section 45D(a).''.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 38(c)(2)(A)(ii) of such Code is amended by inserting ''or the marginal oil and gas well production credit'' after ''employment credit''.

(d) CARRYBACK.—Subsection (a) of section 39 of such Code (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following new paragraph:

''(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—In the case of the marginal oil and gas well production credit—

''(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

''(B) paragraph (1) shall be applied by substituting '10 taxable years' for '1 taxable years' in subparagraph (A) thereof, and

''(C) paragraph (2) shall be applied—

''(i) by substituting '31 taxable years' for '22 taxable years' in subparagraph (A) thereof, and

''(ii) by substituting '30 taxable years' for '21 taxable years'.''.

(e) COORDINATION WITH SECTION 29.—Section 29(a) of such Code is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following item:

''45D. Credit for producing oil and gas from marginal wells.''

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of the enactment of this Act.

SEC. 102. EXCLUSION OF CERTAIN AMOUNTS RECEIVED FROM RECOVERED INACTIVE WELLS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and by inserting after section 138 the following new section:

''SEC. 139. OIL OR GAS PRODUCED FROM A RECOVERED INACTIVE WELL.

''(a) IN GENERAL.—Gross income does not include income attributable to independent producer oil from a recovered inactive well.

''(b) DEFINITIONS.—For purposes of this section—

''(1) INDEPENDENT PRODUCER OIL.—The term 'independent producer oil' means crude oil or natural gas in which the economic interest of the independent producer is attributable to an operating mineral interest (within the meaning of section 614(d)), overriding royalty interest, production payment, net profits interest, or similar interest.

''(2) CRUDE OIL AND NATURAL GAS.—The terms 'crude oil' and 'natural gas' have the meanings given such terms by section 613A(e).

''(3) RECOVERED INACTIVE WELL.—The term 'recovered inactive well' means a well if—

''(A) throughout the 2-year period ending on the date of the enactment of this section, such well is inactive or has been plugged and abandoned, as determined by the agency of the State in which such well is located that is responsible for regulating such wells, and

''(B) during the 5-year period beginning on the date of the enactment of this section, such well resumes producing crude oil or natural gas.

''(4) INDEPENDENT PRODUCER.—The term 'independent producer' means a producer of crude oil or natural gas whose allowance for depletion is determined under section 613A(c).

''(c) DEDUCTIONS.—No deductions directly connected with amounts excluded from gross income by subsection (a) shall be allowed.

''(d) ELECTION.—

''(1) IN GENERAL.—This section shall apply for any taxable year only at the election of the taxpayer.

''(2) MANNER.—Such election shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) and shall be made annually on a property-by-property basis.''

(b) MINIMUM TAX.—Section 56(g)(4)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

''(iii) INACTIVE WELLS.—In the case of income attributable to independent producers of oil recovered from an inactive well, clause (i) shall not apply to any amount allowable as an exclusion under section 139.''

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 139 and inserting the following:

''Sec. 139. Oil or gas produced from a recovered inactive well.

''Sec. 140. Cross references to other Acts.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

TITLE II—OTHER INCENTIVES

SEC. 201. ELECTION TO EXPENSE GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 263 of the Internal Revenue Code of 1986 (relating to capital expenditures) is amended by adding at the end the following new subsection:

''(j) GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR DOMESTIC OIL AND GAS WELLS.—Notwithstanding subsection (a), a taxpayer may elect to treat geological and geophysical expenses incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) as expenses which are not chargeable to capital account. Any expenses so treated shall be allowed as a deduction in the taxable year in which paid or incurred.''

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) of the Internal Revenue Code of 1986 is amended by inserting ''263(j),'' after ''263(i),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to expenses paid or incurred after the date of enactment of this Act.

(2) TRANSITION RULE.—In the case of any expenses described in section 263(j) of the Internal Revenue Code of 1986, as added by this section, which were paid or incurred on or before the date of enactment of this Act, the

taxpayer may elect, at such time and in such manner as the Secretary of the Treasury may prescribe, to amortize the unamortized portion of such expenses over the 36-month period beginning with the month in which the date of enactment of this Act occurs. For purposes of this paragraph, the unamortized portion of any expense is the amount remaining unamortized as of the first day of the 36-month period.

SEC. 202. ELECTION TO EXPENSE DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 263 of the Internal Revenue Code of 1986 (relating to capital expenditures), as amended by section 201(a), is amended by adding at the end the following new subsection:

''(k) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Notwithstanding subsection (a), a taxpayer may elect to treat delay rental payments incurred in connection with the development of oil or gas within the United States (as defined in section 638) as payments which are not chargeable to capital account. Any payments so treated shall be allowed as a deduction in the taxable year in which paid or incurred.

''(2) DELAY RENTAL PAYMENTS.—For purposes of paragraph (1), the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well.''

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) of the Internal Revenue Code of 1986, as amended by section 201(b), is amended by inserting ''263(k),'' after ''263(j),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments made or incurred after the date of enactment of this Act.

(2) TRANSITION RULE.—In the case of any payments described in section 263(k) of the Internal Revenue Code of 1986, as added by this section, which were made or incurred on or before the date of enactment of this Act, the taxpayer may elect, at such time and in such manner as the Secretary of the Treasury may prescribe, to amortize the unamortized portion of such payments over the 36-month period beginning with the month in which the date of enactment of this Act occurs. For purposes of this paragraph, the unamortized portion of any payment is the amount remaining unamortized as of the first day of the 36-month period.

SEC. 203. EXTENSION OF SPUDDING RULE.

(a) IN GENERAL.—Section 461(i)(2)(A) of the Internal Revenue Code of 1986 (relating to special rule for spudding of oil or gas wells) is amended by striking ''90th day'' and inserting ''180th day''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 204. ENHANCED OIL RECOVERY CREDIT EXTENDED TO CERTAIN NONTERTIARY RECOVERY METHODS.

(a) IN GENERAL.—Clause (i) of section 43(c)(2)(A) of the Internal Revenue Code of 1986 (defining qualified enhanced oil recovery project) is amended to read as follows:

''(i) which involves the application (in accordance with sound engineering principles) of—

''(I) one or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered, or

''(II) one or more nontertiary recovery methods which are required to recover oil with traditionally immobile characteristics or from formations which have proven to be uneconomical or noncommercial under conventional recovery methods.''

(b) QUALIFIED NONTERTIARY RECOVERY METHODS.—Section 43(c)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraphs:

''(C) QUALIFIED NONTERTIARY RECOVERY METHOD.—For the purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified nontertiary recovery method' means any recovery method described in clause (ii), (iii), or (iv), or any combination thereof.

''(ii) ENHANCED GRAVITY DRAINAGE (EGD) METHODS.—The methods described in this clause are as follows:

''(I) HORIZONTAL DRILLING.—The drilling of horizontal, rather than vertical, wells to penetrate any hydrocarbon-bearing formation which has an average in situ calculated permeability to fluid flow of less than or equal to 12 or less millidarcies and which has been demonstrated by use of a vertical wellbore to be uneconomical unless drilled with lateral horizontal lengths in excess of 1,000 feet.

''(II) GRAVITY DRAINAGE.—The production of oil by gravity flow from drainholes that are drilled from a shaft or tunnel dug within or below the oil-bearing zone.

''(iii) MARGINALLY ECONOMIC RESERVOIR REPRESSURIZATION (MERR) METHODS.—The methods described in this clause are as follows, except that this clause shall only apply to the first 1,000,000 barrels produced in any project:

''(I) CYCLIC GAS INJECTION.—The increase or maintenance of pressure by injection of hydrocarbon gas into the reservoir from which it was originally produced.

''(II) FLOODING.—The injection of water into an oil reservoir to displace oil from the reservoir rock and into the bore of a producing well.

''(iv) OTHER METHODS.—Any method used to recover oil having an average laboratory measured air permeability less than or equal to 100 millidarcies when averaged over the productive interval being completed, or an in situ calculated permeability to fluid flow less than or equal to 12 millidarcies or oil defined by the Department of Energy as being immobile.

''(D) AUTHORITY TO ADD OTHER NONTERTIARY RECOVERY METHODS.—The Secretary shall provide procedures under which—

''(i) the Secretary may treat methods not described in clause (ii), (iii), or (iv) of subparagraph (C) as qualified nontertiary recovery methods, and

''(ii) a taxpayer may request the Secretary to treat any method not so described as a qualified nontertiary recovery method.

The Secretary may only specify methods as qualified nontertiary recovery methods under this subparagraph if the Secretary determines that such specification is consistent with the purposes of subparagraph (C) and will result in greater production of oil and natural gas.''

(c) CONFORMING AMENDMENT.—Clause (iii) of section 43(c)(2)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

''(iii) with respect to which—

''(I) in the case of a tertiary recovery method, the first injection of liquids, gases, or other matter commences after December 31, 1990, and

''(II) in the case of a qualified nontertiary recovery method, the implementation of the method begins after December 31, 1997.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1997.

By Mr. NICKLES (for himself, Mr. DOMENICI, Mr. MURKOWSKI, Mrs. HUTCHISON, Mr. BREAUX, and Mr. CRAIG):

S. 1930. A bill to provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

THE ROYALTY ENHANCEMENT ACT OF 1998

Mr. NICKLES. Mr. President, once again, our domestic oil and gas producers are facing devastating losses due to a significant drop in oil prices. This crisis creates a dangerous situation for the industry and for our national security. Unfortunately, the policies and practices of the Administration have exacerbated the problem, not helped. If we are to maintain a viable domestic petroleum industry, we must reverse these practices. An important step towards this end is reforming the Department of Interior's erratic, ever-changing royalty valuation practices. The Royalty Enhancement Act, that I am introducing today, will reduce regulatory costs and promote development of federal oil and gas resources vital to our national security. It will also significantly reduce the administrative costs associated with the federal royalty payment system.

Minerals Management Service (MMS), the agency within the Department of Interior given responsibility for administering royalties from federal leases, has imposed on oil and gas producers a bureaucratic labyrinth of rules and regulations. One of the most fundamental concepts of our society is the ability of any citizen, in particular, citizens who are parties to contracts with the federal government to be assured that the Federal government will not overreach and unilaterally interpret those contracts. Such a situation is what we have today with oil and gas producers who have contracted with the Federal government to expend their capital and resources to explore for, drill and produce valuable oil and gas reserves in the United States and offshore.

In the past few years oil and gas producers, both independent and major, have become increasingly frustrated with the unwillingness by MMS to produce a simplified and certain valuation method that accurately captures the value of oil or gas at the lease. This is the value that a federal oil and gas lessee owes and the American taxpayer deserves to be paid.

Recently, the MMS has proposed a new oil valuation rule which is the most administratively burdensome and complex method, available to the government. This new rule looks like the Clinton health care plan and makes the IRS code look simple. In short, the current MMS valuation system is badly broken and their outstanding oil proposal will only make it worth.

In 1995, I introduced the Federal Oil and Gas Royalty Simplification and Fairness Act because of the importance of federal royalty revenues to the United States Treasury and States.

The purpose of that legislation was to streamline and simplify the royalty management program for the over 20,000 federal lessees who are required to file over 3,000,000 reports annually. Despite the bipartisan support for my bill, MMS resisted this much needed reform during the entire legislative process. Fortunately, Congress saw the wisdom and need for the law and sent it to the President and it became effective in August, 1996.

Why is Congressional action needed, Mr. President? Despite the obvious importance of the oil and gas industry to our national economy and global stability, the MMS has failed to get the message we sent them in 1996 that the American people can no longer tolerate their ineffective and inefficient bureaucracy. The MMS valuation rules contain complicated formulas that can be both confusing and inaccurate. These ambiguous rules lead inevitably to expensive disputes and litigation that unnecessarily drain resources of the federal government and the lessees.

To ensure that the American people receive their full and fair value of production royalties from oil and gas produced on federal lands, we need to create a royalty valuation system that provides certainty, simplicity and fairness to the federal government, States, oil and gas producers and the American taxpayers. Only by doing this will companies want to take the risk of spending their capital to develop and produce federal oil and gas for our nation's use and benefit. It is important that we maintain the viability of existing production on federal lands and encourage development of the new frontiers of production in the deep waters off our coastlines.

Mr. President, my colleagues from New Mexico, Alaska, Texas and Louisiana, Senators DOMENICI, MURKOWSKI, HUTCHISON and BREAUX, join me today in introducing the Royalty Enhancement Act which is the Senate companion of H.R. 3334, a bill introduced this session by Congressman THORNBERRY. This bill cuts through the horrendously complicated and ambiguous current rules and provides certainty, simplicity and fairness to both the taxpayers and the companies who enter into oil and gas leases with the federal government.

This legislation will replace the current complicated and complex system of royalty valuation with a much clearer, simpler method of royalty payment that would avoid valuation disputes. This method will allow companies to pay the federal government its royalty share in actual barrels of oil or cubic feet of natural gas.

The bill contains a comprehensive well-designed royalty payment method that will streamline auditing and accounting systems for both the government and the producers and will reduce administrative costs. Reduced costs will help keep production economic for a longer period, extending the life of producing wells and thus providing more royalties from this continued production. The best way to be absolutely certain that the government receives fair market value at the lease is for the government to take production in-kind and have it marketed and sold by qualified private sector marketers who possess the expertise and experience to receive the best value for the United States.

Mr. President, it is not fair to subject companies who produce oil and gas on federal lands to the whim of the MMS with their record of retroactive second-guessing of valuation years after oil and gas has been produced and sold. It is fundamentally unfair to the American people for the agency's uncertain and ambiguous rules and practices to create delay in receipt of royalty revenues to the Treasury and to bear the expense of the government's bureaucracy. For these reasons, I am introducing the Royalty Enhancement Act of 1998.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1930

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Royalty Enhancement Act of 1998.''

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Rights, obligations, and responsibilities.
Sec. 4. Costs responsibility.
Sec. 5. Transporter charges.
Sec. 6. Imbalances.
Sec. 7. Royalty-in-kind for trucked, tankered, or barged oil or gas.
Sec. 8. Limitations on application.
Sec. 9. Reporting.
Sec. 10. Audit.
Sec. 11. Lease terms not affected.
Sec. 12. Eligible and small refiners.
Sec. 13. Applicable laws.
Sec. 14. Indian lands.
Sec. 15. Effective date; regulations.

SEC. 2. DEFINITIONS.

In this Act:

(1) AFFILIATE; AFFILIATED.—

(A) The term ''affiliate'' or ''affiliated'' means that a person controls, is controlled by, or is under common control with another person. Affiliation shall be determined on a lease-by-lease and asset-by-asset basis.

(B) For the purposes of this Act, based on the instruments of ownership—

(i) Ownership in excess of 50 percent constitutes control.

(ii) Ownership of at least 10 percent and not more than 50 percent creates a rebuttable presumption of control only if each owner has a separate and independent right to control or utilize the capacity of the asset.

(iii) Ownership of less than 10 percent does not constitute control.

(2) COMPENSATORY ROYALTY.—The term ''compensatory royalty'' means a payment made to a royalty owner as compensation for loss of income that it may suffer due to a lease being drained of oil and gas by wells drilled on lands adjacent to the lands subject to the lease.

(3) COMPRESSION.—The term ''compression'' means the process of raising the pressure of gas.

(4) CONDENSATE.—The term ''condensate'' means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is that stabilized mixture of liquid hydrocarbons at atmospheric pressure that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

(5) DELIVERY POINT.—The term ''delivery point'' means—

(A) for a lease premise for which a production measurement meter is approved in accordance with applicable laws before the date of enactment of this Act—

(i) subject to clause (ii), the existing approved meter location, or

(ii) a delivery point requested by a lessee and approved in accordance with subparagraph (B); or

(B) for a lease premise for which no production measurement meter is approved before the date of the enactment of this Act, that point on or near the lease premises, approved by the appropriate agency in accordance with applicable laws and regulations, where lease production can be measured and reported in a manner that is practical, economical, and verifiable, except that such point may be at a location off the lease premises where, if necessary, production can be allocated back to the lease premises.

(6) ELIGIBLE SMALL REFINER.—The term ''eligible small refiner'' means a refiner that—

(A) has applied to the Secretary for certification as an eligible small refiner;

(B) has a total crude oil and condensate refining capacity (including the refining capacity of any person who controls, is controlled by, or is under common control with such refiner) not exceeding 100,000 barrels per day;

(C) is a corporation, company, partnership, trust or estate organized under the laws of the United States or of any State, territory, or municipality thereof, or is a person who is a United States citizen; and

(D) has continuously operated a refinery in the United States for no less than 6 months immediately preceding the date of application for certification as an eligible small refiner.

(7) ELIGIBLE SMALL REFINER PORTION.—The term ''eligible small refiner portion'' means the portion of all royalty oil volumes required to be offered for sale to eligible small refiners. The eligible small refiner portion shall be 40 percent of all royalty oil volumes, unless the Secretary determines that a greater share is in the public interest.

(8) FERC.—The term ''FERC'' means the Federal Energy Regulatory Commission.

(9) FIELD.—The term ''field'' means a geographic region situated over one or more subsurface oil or gas reservoirs that encompass at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land service.

(10) FORCE MAJEURE.—The term ''force majeure'' means foreseen and unforeseen acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, hurricanes or storms, hurricane or storm warnings which, in the judgment of the party affected by such event, require the precautionary shutdown or evacuation of Production facilities, earthquakes, fires, floods, washouts, disturbances, explosions, accidental breakage to lines of pipe, machine breakage, freezing of wells or lines of pipe, partial or entire failure of wells, and any other cause of a similar nature beyond the reasonable control

of the party affected which renders that party unable to carry out its obligations under this Act. Force majeure as used in this Act shall not include market conditions.

(11) GAS.—The term ''gas'' means any fluid, whether combustible, noncombustible, hydrocarbon, or nonhydrocarbon, that—

(A) is extracted from a reservoir;

(B) has neither independent shape nor volume;

(C) tends to expand indefinitely; and

(D) exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(12) GATHERING.—The term ''gathering'' means the movement of unseparated, unidentifiable lease production upstream of the delivery point to a central accumulation point on or immediately adjacent to the lease premises, unit, or communitized area.

(13) GISB.—The term ''GISB'' means the Gas Industry Standards Board, as incorporated in the State of Delaware on September 26, 1994.

(14) LEASE OPERATOR; OPERATOR.—Each of the terms ''lease operator'' and ''operator'' means any person, including a lessee, who has control of or who manages operations on lease premises, according to the terms of the joint operating agreement or any other agreement or method by which an operator is designated, on Federal onshore lands or who has been designated as an operator on the outer continental shelf by applicable law.

(15) LEASE PREMISES.—The term ''lease premises'' means all land and interests in land owned by the United States that are subject to an oil and gas lease issued under the mineral leasing laws, including mineral resources of mineral estates reserved to the United States in the conveyance of a surface or non-mineral estate.

(16) LEASE PRODUCTION.—The term ''lease production'' means any produced oil or gas that is attributable to, originating from, or allocated to a Federal onshore or an outer continental shelf lease premises.

(17) LESSEE.—The term ''lessee'' means any person to whom the United States issues an oil and gas lease, or any person to whom operating rights under an oil and gas lease have been assigned.

(18) MERCHANTABLE CONDITION; MARKETABLE CONDITION.—Each of the terms ''merchantable condition'' and ''marketable condition'' means the condition of oil or gas that is sufficiently free of impurities to meet the requirements of or is accepted by the first transporter of royalty oil and royalty gas from that lease premises either prior to or at the delivery point. Whether or not lease production is in merchantable condition shall not affect the responsibility for the bearing of costs of gathering or transportation, as provided by this Act.

(19) MINIMUM ROYALTY.—The term ''minimum royalty'' means that minimum amount of annual royalty that a lessee must pay, as specified in the lease or in applicable leasing regulations.

(20) NET PROFIT SHARE LEASE ROYALTY PRIOR TO PAYOUT.—The term ''net profit share lease royalty prior to payout'' means the specified share of the net profit from production of oil and gas as provided in the lease.

(21) OIL.—The term ''oil''—

(A) means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities; and

(B) includes condensate.

(22) OIL AND GAS LEASE; LEASE.—Each of the terms ''oil and gas lease'' and ''lease'' means any contract, profit-share arrangement, or other agreement issued or maintained in accordance with the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.) or the Mineral Land Leasing Act (30 U.S.C. 181 et seq.) and issued or approved by the United States that authorizes exploration for, extraction of, or removal of oil or gas.

(23) OPERATING RIGHTS.—The term ''operating rights'' means the interest created by a lease or derived therefrom authorizing the holder of that interest to enter upon the lease premises to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title.

(24) PERSON.—The term ''person'' means an individual natural person, proprietorship, firm (private or public), corporation, business, limited liability company, unincorporated association, association, partnership, trust, consortium, joint venture, joint stock company.

(25) PROCESSING; PROCESS.—Each of the terms ''processing'' and ''process''—

(A) means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from oil or gas;

(B) includes absorption, adsorption, or refrigeration; and

(C) does not include lease or field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression on the upstream side of the delivery point.

(26) PRODUCING; PRODUCED; PRODUCTION.—The term ''producing'', ''produced'', or ''production'' means the act of bringing hydrocarbons to the surface.

(27) QUALIFIED MARKETING AGENT.—The term ''qualified marketing agent'' means a person with whom the Secretary has contracted to receive, handle, transport, deliver, market, process, dispose of, broker, or sell, or any combination thereof, royalty oil or royalty gas taken in kind by the United States from, or that is attributable to, an oil and gas lease.

(28) REGULATED PIPELINE; REGULATED FACILITY.—Each of the terms ''regulated pipeline'' and ''regulated facility''—

(A) means a pipeline, truck, tanker, barge, or other modality of carriage for oil or gas, the operation of which is subject to regulation by a State governmental authority or Federal governmental authority (or both) with respect to the rates that may be charged shippers for transportation service; and

(B) includes, but is not limited to—

(i) a pipeline performing the interstate movement of gas subject to regulation by the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

(ii) a pipeline whose movements of oil are subject to regulation by the Federal Energy Regulatory Commission under the Interstate Commerce Act (49 U.S.C. 1 et seq.); and

(iii) any pipeline, truck, tanker, barge or other modality of carriage for Oil or Gas whose rates for carriage are regulated by a governmental authority under State law.

(29) ROYALTY GAS.—The term ''royalty gas'' means that fraction or percentage of gas produced from or attributable to lease premises, that the United States as lessor is entitled to take in kind under the terms of an oil and gas lease.

(30) ROYALTY OIL.—The term ''royalty oil'' means that fraction or percentage of oil produced from or attributable to lease premises, that the United States as lessor is entitled to take in kind under the terms of an oil and gas lease.

(31) ROYALTY SHARE.—The term ''royalty share'' means that fraction or percentage of royalty oil or royalty gas (or both) produced from or attributable to lease premises, that the United States as lessor is entitled to take in kind under the terms of an oil and gas lease.

(32) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(33) TENDER.—The term ''tender'' means the act by which a lessee makes royalty oil or royalty gas produced from lease premises available to the United States for receipt.

(34) TRANSPORTATION; TRANSPORT.—Each of the terms ''transportation'' and ''transporting'' means any movement (including associated or related activities to facilitate movement such as compression and dehydration), upstream or downstream of the delivery point of royalty oil or royalty gas that is not gathering as defined herein including movement described as transportation in this paragraph. Such transportation shall include but not limited to—

(A) the movement of unseparated, unidentifiable lease production to a point not on or immediately adjacent to the lease premises, unit, or communitized area; and

(B) any movement of separated, identifiable lease production regardless of whether such movement is on or off the lease premises, unit or communitized area.

(35) TRANSPORTER.—The term ''transporter'' means a person or entity who is transporting or providing transportation.

(36) UNITED STATES.—The term ''United States'' means the United States of America and any agency, department, or instrumentality thereof.

SEC. 3. RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES.

(a) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES OF THE UNITED STATES.—

(1) GENERAL RULE.—Except as otherwise provided in section 8 of this Act, all royalty oil and royalty gas accruing to the United States under any oil and gas lease shall be taken in kind by the United States at the applicable delivery point for each lease premises.

(2) OWNERSHIP AND RECEIPT BY UNITED STATES.—Ownership of all right, title and interest in royalty oil and royalty gas produced from oil and gas lease premises governed by this Act shall remain in the United States until sale or other disposition by the United States. Nothing in this Act shall limit the right of the United States to have royalty oil or royalty gas stored after its production in such tanks or other surface facilities as the lessee may be expressly obligated to furnish under any applicable lease term. The United States shall not delay or defer the receipt of lease production, delay receipt of new production, or physically segregate the royalty share prior to receipt by the United States. The United States shall have custody, possession, and responsibility attendant thereto for royalty oil and royalty gas at and beyond the delivery point.

(3) SELECTION OF AND CONTRACTS WITH A QUALIFIED MARKETING AGENCY.—(A) Except as provided in subsection (b), the Secretary shall, for each lease premises, contract with a person to act as a qualified marketing agent to market and dispose of royalty oil and royalty gas. Each qualified marketing agent shall be authorized to advise and consult with the Secretary on the sale and disposition of the royalty oil and royalty gas and to directly sell and broker the royalty oil and royalty gas.

(B) To be eligible for a contract under this paragraph to act as a qualified marketing agent, a person must have the expertise necessary to receive, handle, transport, deliver, market, process, dispose, broker, or sell royalty oil and royalty gas in accordance with

this Act. Under rules promulgated by the Secretary, the Secretary may designate any person as ineligible or place other requirements on a person to act as a qualified marketing agent for a particular lease premises under this paragraph by reason of such person being affiliated with persons engaged in the, transporting, processing, or purchasing of oil or gas for that lease premises.

(C) The Secretary shall contract with not more than one qualified marketing agent for each lease premises for royalty oil and not more than one qualified marketing agent for each lease premises for royalty gas.

(D) The Secretary shall solicit competitive bids for contracts for qualified marketing agents. The Secretary shall promulgate final rules within 12 months after the date of the enactment of this Act regarding the competitive manner in which qualified marketing agents shall be selected.

(E) The compensation of each qualified marketing agent—

(i) shall be determined and made by the Secretary without further appropriation based on the services to be performed by the qualified marketing agent; and

(ii) shall be established in the contract between the qualified marketing agent and the United States.

(F) Except as otherwise provided in subsection (b), the Secretary shall be solely responsible for obtaining and contracting with qualified marketing agents and shall be authorized to pay qualified marketing agents from proceeds derived from the sale of royalty oil and royalty gas without further appropriation.

(G) Each contract shall—

(i) require the qualified marketing agent to dispose of and sell royalty oil and royalty gas in an open, nondiscriminatory, and competitive manner; and

(ii) prohibit the qualified marketing agent from precluding any person from competing for the handling, gathering, transporting, marketing, processing, or purchasing of royalty oil and royalty gas solely by reason of the person being a lessee or person affiliated with a lessee, qualified marketing agent; gatherer, royalty payor, transporter, processor, or purchaser.

(8) To further the purposes of this Act the Secretary shall be provided the greatest latitude in contracting with qualified marketing agents to market and dispose of royalty oil or royalty gas, contracts with qualified marketing agents under this Act shall be exempted from otherwise applicable federal procurement and property disposition laws, including but not limited to the Armed Services Procurement Act of 1947, 10 U.S.C. 2304, et seq. or the Federal Property Administration Services Act, 41 U.S.C. 253, et seq., or their implementing regulations.

(4) TRANSPORTATION COST.—Each contract under paragraph (3) shall require the Secretary to bear the costs of any transportation of royalty oil and royalty gas without further appropriation as specified by this Act incurred prior to the sale or other disposition of the royalty oil and royalty gas by the qualified marketing agent.

(5) PROCESSING.—The qualified marketing agent under paragraph (3) shall—

(A) have the right to process royalty oil and royalty gas, after receipt at the delivery point for the recovery and sale of valuable products; and

(B) require the Secretary to bear any applicable costs of exercising such right without further appropriation.

(6) COMPLIANCE WITH STANDARDS.—In taking in kind, processing, and shipping royalty oil and royalty gas, the United States and its qualified marketing agent shall comply with all procedures which are customary or required of processors and shippers, including but not limited to the applicable FERC-approved GISB standards, nominations of volumes, scheduling of deliveries, and the movement of oil or gas in or through the facilities of the initial transporter and any subsequent transporter. The United States and its qualified marketing agent shall separately contract with transporters, purchasers, and processors. The Secretary and his qualified marketing agent shall assume responsibility and any liability associated with such duties.

(7) FAIR MARKET VALUE REQUIREMENTS.—The net proceeds received by the United States from the sale of royalty oil and royalty gas shall satisfy in full the Secretary's responsibility to receive fair market value as defined by any applicable statute or lease provision.

(b) RIGHTS, OBLIGATIONS AND RESPONSIBILITIES OF STATES.—

(1) SELECTION OF QUALIFIED MARKETING AGENTS.—At its option and for the mutual benefit of the United States and the State, a State entitled to revenues under the provisions of section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353) may elect to act on behalf of the Secretary in selecting qualified marketing agents to sell or dispose of royalty oil or royalty gas produced from lease premises with the State or from section 8(g) lease premises adjacent to the State, whichever is applicable. If it makes such an election, the State shall enjoy all the rights and assume all obligations that the United States would otherwise have under this Act. If a State selects a qualified marketing agent that has contracted to market production from State leases, the contract with the qualified marketing agent shall be on terms no less favorable to the interests of the United States than the contract with the State. A State may make such an election from time to time in accordance with paragraph (4).

(2) COMPLIANCE WITH REQUIREMENTS.—A State that elects to act under this section shall—

(A) exercise such rights in accordance with the requirements established by this Act governing royalty in kind; and

(B) be subject to the rights, responsibilities, and obligations of the United States under this Act, as may be applicable, including those set forth in subsection (a) and in no event shall regulations be applicable to a State which do not apply in substance to the United States to the extent required by applicable law.

(3) NOTICE; EFFECTIVE PERIOD OF ELECTION.—A State may elect to act under this section after giving the Secretary 90 days notice. The election is effective 90 days after the date the Secretary receives notice of the election. The election shall remain in effect for a period of not less than 3 years. After the initial term, a State must give sufficient notice to the United States, but in no event less than 180 days, to terminate an election period.

(4) COVERED OIL AND GAS.—A State's election under this subsection shall apply to all royalty oil and royalty gas within the State and section 8(g) lands adjacent to the State, as applicable.

(5) EXISTING CONTRACTS.—If a contract between a qualified marketing agent and the United States exists that has not expired, the State's election shall be subject to that existing contract.

(6) LIMITATION ON DEDUCTIONS FROM STATE SHARE OF RECEIPTS.—If a State makes an election under this section, payment of the State's share of receipts for the sale of royalty oil and royalty gas shall be made without deductions for costs applicable to the services provided by the State under the net receipts sharing provisions of the Mineral Leasing Act.

(c) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES OF THE LESSEE.—

(1) EFFECT OF TENDER BY LESSEE.—A lessee shall tender royalty oil and royalty gas to the United States at the delivery point for each lease premises, except as provided in section 6. Upon such tender for any lease premises, all royalty obligations of the lessee shall be considered fulfilled and fully satisfied for the amount tendered, including any express or implied obligation or duty to market, except as provided in section 6. If the United States fails to take in kind the entire volume tendered, the lessee's obligation or duty shall nonetheless be fully satisfied.

(2) MEASUREMENT OF LEASE PRODUCTION.—A lessee shall measure or cause to be measured lease production, including royalty oil and royalty gas, at the delivery point in accordance with any applicable laws and lease terms.

(3) TERMINATION OF RESPONSIBILITIES OF LESSEE.—A lessee shall have no responsibility or obligation for royalty oil or royalty gas after tendering it in accordance with paragraph (1) and shall not be liable for any costs or liability downstream of the delivery point associated with the royalty oil or royalty gas.

(4) REPORTING AND RECORDKEEPING.—With respect to royalty oil and royalty gas taken in kind by the United States, a lessee shall not be subject to the reporting and RECORD KEEPING requirements of the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 et seq.) or other applicable laws for any lease, other than records or reports necessary to verify the quantity of royalty oil or royalty gas produced from a lease premises.

(d) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES OF QUALIFIED MARKETING AGENTS.—

(1) IN GENERAL.—In accordance with the terms of its contract with the United States, a qualified marketing agent shall—

(A) advise and consult with the United States regarding the terms and conditions of sales to purchasers;

(B) arrange for the receipt, handling, transporting, delivery, marketing, processing, disposition, brokering and sale of royalty oil and royalty gas; and

(C) be authorized to enter into sales contracts on behalf of the United States.

(2) MOVEMENT OF ROYALTY OIL AND ROYALTY GAS.—A qualified marketing agent shall be authorized to make any arrangements necessary to move royalty oil and royalty gas downstream of the applicable delivery point, and shall be authorized to enter into transportation and processing contracts on behalf of the United States.

(3) REQUIREMENT TO TAKE.—A qualified marketing agent shall be required to take 100 percent of the royalty share tendered by the lessee from each lease premises on a daily basis.

(4) ENHANCEMENT OF REVENUES TO UNITED STATES.—In handling, marketing, and disposing of royalty oil and royalty gas, a qualified marketing agent shall utilize its experience and expertise to seek opportunities to enhance revenues to the United States, including opportunities for the sale of royalty oil and royalty gas at or away from the lease premises, depending on the facts and circumstances relevant to receiving, handling, transporting, delivering, marketing, processing, disposition, brokering, and sale of the royalty oil or royalty gas.

(5) AFFILIATE TRANSACTIONS.—Qualified marketing agent sales to itself or an affiliate shall be made in accordance with the following standards:

(A) When selling royalty oil and royalty gas to an affiliate, a qualified marketing

agent shall not give preference to an affiliate, including but not limited to, favoring the affiliate with lower sales prices, rights of first refusal or more favorable terms than those offered to nonaffiliated purchasers of royalty oil and royalty gas.

(B) The managing employee of the qualified marketing agent shall periodically certify that it has complied with these provisions. The civil penalty provisions of section 109(d) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719(d)) shall apply to any qualified marketing agent who violates subparagraph (A).

SEC. 4. COSTS RESPONSIBILITY.

(a) MERCHANTABLE CONDITION.—The lessee shall bear the costs of placing royalty oil and royalty gas in merchantable condition at the delivery point, if not produced in such condition at the well: *Provided, however,* That gathering and transportation costs under this Act shall be governed solely by section 4(b) and section 5, and responsibility for such costs shall not be dependent upon whether the royalty oil or royalty gas is in merchantable condition at the time of gathering or transportation.

(b) GATHERING AND TRANSPORTATION OF ROYALTY OIL AND ROYALTY GAS.—

(1) GATHERING.—The lessee shall bear the costs of gathering royalty oil and royalty gas.

(2) TRANSPORTATION.—The United States shall bear the costs of transporting royalty oil and royalty gas to and beyond the delivery point until disposition or sale by the United States. Transportation costs shall include associated or related activities to facilitate movement, such as the costs of compression and dehydration associated with transportation. The movement of unseparated, unidentifiable lease production to a point not on or immediately adjacent to the lease premises, unit or communitized area and the movement of separated, identifiable lease production regardless of whether such movement on or off the lease premises, unit or communitized area shall be considered transportation. Transportation costs shall be governed solely by the definitions and provisions in this Act relating to transportation and responsibility for the payment of such costs shall not be dependent upon whether the royalty oil and royalty gas is in merchantable condition at the time of transportation.

(c) LIMITATION ON LESSEE'S RESPONSIBILITY FOR COSTS.—With respect to all royalty oil and royalty gas taken in kind by the United States, the lessee shall bear no costs other than those specifically identified in this section. After the royalty share is taken in kind, the United States shall dispose of and market its royalty oil and royalty gas and the lessee shall have no obligation to dispose of or market the United States royalty share of production.

(d) REIMBURSEMENT OF COSTS.—In bearing the cost of transporting royalty oil and royalty gas, the United States shall reimburse the lessee for transportation costs without further appropriation in accordance with the provisions of subsection (b) of this section and section 5.

SEC. 5 TRANSPORTER CHARGES.

(a) DETERMINATION.—The lessee or its affiliate shall determine and calculate, where applicable, the transportation charges governed by this Act in accordance with subsections (b) and (c).

(b) REIMBURSEMENT FOR TRANSPORTATION COSTS PRIOR TO THE DELIVERY POINT.—

(1) TRANSPORT BY REGULATED PIPELINE OR FACILITY.—Reimbursement to a lessee for costs of transporting royalty oil and royalty gas produced by the lessee and subsequently transported through a regulated pipeline or facility before the delivery point shall be—

(A) for nonaffiliated transactions, the actual rate paid under the tariff by the lessee, or

(B) for affiliated transactions, the lower of the tariff rate or the actual rate paid under the tariff.

(2) TRANSPORT BY SHIPMENT-BY-SHIPMENT TARIFF JURISDICTION PIPELINE OR FACILITY.—Reimbursement to a lessee for transportation costs incurred to transport royalty oil through a pipeline or facility for which jurisdiction for purposes of a tariff is determined on a shipment-by-shipment basis, shall be the tariff rate for all shipments by the lessee through the same pipeline or facility if there is a shipment through the pipeline or facility to which a tariff applies.

(3) TRANSPORT BY UNREGULATED PIPELINE OR FACILITY.—(A) Reimbursement to a lessee for transportation costs incurred to transport royalty oil or royalty gas through an unregulated pipeline or facility before the delivery point shall be—

(i) for nonaffiliated transactions, the actual costs incurred by the lessee; or

(ii) for affiliated transactions—

(I) if third party oil or gas is being transported through the pipeline or facility, the weighted average (by volume) third party charge; or

(II) if no third party oil or gas is being transported through the pipeline or facility, not to exceed the pipeline or facility owner's or its affiliate's costs of operating the pipeline or facility, including a return on undepreciated capital investment, subject to paragraph (4).

(B) For purposes of subparagraph (A)(ii)(II) the term ''costs of operating'' means the sum of the following:

(i) Direct operating, maintenance, and repair costs and expenses.

(ii) Indirect costs (including but not limited to costs such as information systems, business services and technical services) allocated to the pipeline or facility, in an amount not exceeding 15 percent of the amount of direct costs that applies under clause (I).

(iii) An allowance for capital investment calculated on the basis of either of the following, as may be, elected by the lessee:

(I) depreciation, plus a return on the undepreciated capital, or

(II) a return on depreciable capital investment.

Return under subclauses (I) and (II) shall be at a rate equal to twice the rate payable for bonds with a Standard and Poor's industrial BBB bond rating.

(4) ALLOWANCE OF HIGHER TRANSPORTATION COSTS.—If the amount specified in paragraph (3)(A)(ii) does not adequately reflect the costs of the transportation services provided by a lessee or its affiliate, the lessee may request a different transportation reimbursement from the Secretary. For pipelines in more than 200 meters of water, the Secretary may allow a higher rate of return, sufficient for an investment in the fabricating, installing, operating, and maintaining such pipelines as compared to pipelines in waters of less than 200 meters.

(5) RESTRICTION ON DISCLOSURE.—The United States and its qualified marketing agent shall keep confidential and shall not disclose the transportation charge or any facts or information related thereto used by a lessee or its affiliate for reimbursement under this subsection.

(c) CHARGES FOR TRANSPORTATION COSTS BEYOND THE DELIVERY POINT.—

(1) IN GENERAL.—Charges by the lessee or its affiliate for transportation of royalty oil or royalty gas through an unregulated pipeline or facility beyond the delivery point shall be a negotiated rate, that—

(A) shall not exceed the highest rate charged for transportation provided to a third party, if third party oil or gas is being transported through the pipeline or facility; or

(B) shall be the fair commercial value of the transportation services provided by the lessee or its affiliate if no third party oil or gas is being transported through the pipeline or facility.

(2) DETERMINATION OF COMMERCIAL VALUE.—The standard to be used to determine the commercial value for purposes of paragraph (1)(B) shall be based upon the transportation services provided and not on the ownership of the pipeline or facility by the lessee or its affiliate.

(d) ARBITRATION.—

(1) IN GENERAL.—If negotiations between a qualified marketing agent and an entity owning the pipeline or facility do not result in a mutually agreeable negotiated charge for transportation under subsection (c), then the qualified marketing agent on behalf of the Secretary or the entity owning the pipeline or facility may, at any time during the negotiation, require that such matter be submitted to arbitration in accordance with this subsection.

(2) SELECTION OF ARBITRATORS.—Any dispute regarding a charge for transportation that is not resolved by agreement shall be determined by a panel of 3 arbitrators upon written notice given by either party to the other, which notice shall also name one arbitrator. The party receiving such notice shall, within 10 business days thereafter, by written notice to the other party, name the second arbitrator, or failing to do so, the first party who gave notice shall name the second arbitrator. The two arbitrators so appointed shall name the third, or failing to do so within 5 business days then upon the request of either party, the third arbitrator shall be a certified arbitrator appointed by a professional arbitrator association. Whether appointed by the two party-named arbitrators or by a professional arbitration association, the third arbitrator shall be knowledgeable about and experienced in the transportation of oil or gas or both, as applicable.

(3) HEARING.—An arbitration hearing shall be held within 20 calendar days following the selection of the third arbitrator. At the hearing, each party shall submit a proposed transportation rate and evidence to support such rate as it sees fit.

(4) DECISION.—The panel of arbitrators shall determine which of the rates submitted by the parties shall be the transportation charge used. The arbitrators shall render a written decision within 10 calendar days after the hearing under paragraph (3) based on a majority vote of the 3 arbitrators. Such decision shall be final and binding on the United States, the qualified marketing agent, and the lessee and its affiliate, and shall be enforceable in any court having jurisdiction.

(5) EXPENSES.—Each party shall bear its expenses of prosecuting its own case in any arbitration, and the parties shall share equally any other expenses of the arbitration, including compensation for the third arbitrator at a rate that is fair and reasonable to the United States.

(6) USE OF EMPLOYEE OF PARTY AS ARBITRATOR.—(A) Any arbitrator named by the parties may be permanent or temporary officer or employee of the Federal or State Government, or an employee of any party to the dispute, if all parties agree that the person may serve.

(B) In implementing this paragraph, the qualified marketing agent on behalf of the Secretary may use the services of one or more employees of other agencies to serve as arbitrators to be named by the qualified

marketing agent. The Secretary may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial costs of the services of such an employee.

(7) LIMITATION ON DISCLOSURE.—Any party (including the United States and its qualified marketing agent) to an arbitration proceeding shall keep confidential and shall not disclose the results of the arbitration or any facts, evidence, or information related thereto provided in confidence to the arbitrators.

(8) INTERIM RATE.—(A) The royalty oil and royalty gas shall be transported at the dispute rate during the interim period, subject to an obligation to refund if the rate is later reduced as a result of arbitration.

(B) Any refund under subparagraph (A) shall be made with interest at the average short-term rate as specified in section 6621 of the Internal Revenue Code of 1986.

(9) DELAY OR CURTAILMENT OF PRODUCTION PROHIBITED.—At no time during such arbitration or dispute shall lease production be delayed or curtailed.

SEC. 6. IMBALANCES.

(a) REQUIREMENT TO RESOLVE IMBALANCES.—

(1) IN GENERAL.—If the amount of royalty oil or royalty gas production taken by the United States from a lease premises during a calendar month differs from the amount of royalty oil or royalty gas production attributable to that lease premises for that calendar month, and the difference results from the circumstances described in paragraph (2), the difference (in this section referred to as a ''royalty share imbalance'') shall be resolved in accordance with this section.

(2) CIRCUMSTANCES.—The circumstances referred to in paragraph (1) are the following:

(A) A force majeure event at the delivery point that prevents the United States transporter from receiving royalty oil or royalty gas;

(B) A failure by the United States or its qualified marketing agent to receive, transport, and market its royalty oil or royalty gas tendered for a one-time occurrence of not more than 3 consecutive days in any calendar quarter; or

(C) A difference between the amount made available to the United States at the delivery point by the lease operator on behalf of the lessee and the United States royalty share of total production.

(b) IMBALANCE ACCOUNTS.—

(1) MAINTENANCE OF INFORMATION.—Each lease operator shall maintain information on the quantity of royalty oil and royalty gas produced from or attributable to each lease premises and the amount of royalty oil or royalty gas production taken by the United States from each lease premises. The information shall include—

(A) the quantities of royalty oil and royalty gas taken in kind by the United States at the delivery point;

(B) the quantities of royalty oil and royalty gas produced from and attributed to the lease premises; and

(C) the current month and cumulative royalty share imbalances.

(2) REPORT.—(A) Each lease operator shall—

(i) submit a royalty share imbalance report to the qualified marketing agent for the United States with respect to the lease no later than 60 days after the expiration of each month of production from the lease; or

(ii) if all information for the report is not available by such date, file or cause to be filed with the qualified marketing agent a report that contains estimated quantities, and file a revised final report showing actual quantities no later than 60 days after information on all actual quantities is received.

(B) The royalty share imbalance report submitted under subparagraph (A) to the qualified marketing agent shall constitute formal notice of a royalty share imbalance, which shall be remedied in accordance with subsection (c).

(c) MANAGING IMBALANCES.—

(1) IN GENERAL.—If a royalty share imbalance occurs during any calendar month, the lease operator shall work with the United States (through its qualified marketing agent) to settle the royalty share imbalance in a manner consistent with the existing production balancing agreements or practices among operating rights owners.

(2) ROYALTY OIL IMBALANCE.—In the case of a royalty share imbalance with respect to royalty oil, and in the absence of multiple operating rights owners, additional quantities of oil may be taken by either a lessee or the United States through its qualified marketing agent to expeditiously settle such royalty share imbalance as soon as is reasonably practicable, as determined by the lease operator.

(3) ROYALTY GAS IMBALANCE.—(A) In the case of a royalty share imbalance with respect to royalty gas during any calendar month and in the absence of multiple operating rights owners, the lease operator shall work with the United States (through its qualified marketing agent) to arrange for increased or decreased quantities of gas to be taken beginning the month after receipt of such notice by qualified marketing agent, to expeditiously settle such royalty share imbalances as soon as is reasonably practicable.

(B) Additional quantities taken in a month by either a lessee or the United States to reduce a royalty share imbalance with respect to royalty gas shall not exceed 25 percent of that month's royalty gas.

(C) Until final settlement pursuant to subsection (d), royalty share imbalances with respect to royalty gas shall be reduced chronologically in the order in which they were created.

(d) FINAL IMBALANCE REPORT AND FINAL SETTLEMENT.—

(1) FINAL IMBALANCE REPORT.—Upon permanent cessation of production from a lease, the lease operator shall file a final imbalance report that—

(A) contains the information described in subsection (b); and

(B) states that the lease premises has permanently ceased production and that a royalty share imbalance exists.

(2) FINAL SETTLEMENT.—The parties to a royalty share imbalance shall settle such royalty share imbalance using the same final settlement procedures as set forth in the existing production balancing agreement between the operating rights owners, if any. In the absence of such an agreement, within 60 days of the final imbalance report, each party that received excess quantities shall, at its option, make delivery of the excess quantities or make a cash payment, to the parties who received insufficient quantities. The cash payment shall be based on the net proceeds (in terms of actual value received) from the sale of such excess quantities for value at the lease premises or the lessee may make delivery of the imbalance volume. No interest shall accrue, prior to the date of any settlement, on any imbalance.

SEC. 7. ROYALTY-IN-KIND FOR TRUCKED, TANKERED, OR BARGED OIL OR GAS.

(a) APPLICATION.—This section shall apply to royalty oil or royalty gas produced from onshore or offshore lease premises for which there is no pipeline connection at the well such that the royalty oil and royalty gas is transported by truck, tanker, or barge from the lease premises.

(b) SELECTION OF TRANSPORTER.—

(1) IN GENERAL.—To further the efficient and cost-effective taking of royalty oil or royalty gas in kind from such lease premises, the qualified marketing agent shall select and utilize a transporter who is transporting oil or gas for a lessee from the lease premises, or for the operator of the lease premises.

(2) EXCEPTION.—Royalty oil or royalty gas taken in kind may be transported in any other manner agreed to by the qualified marketing agent and the lessee or lease operator.

(c) RELATIONSHIP TO OTHER LAWS.—

(1) LAWS REGARDING OIL OR GAS TRANSPORTATION.—This section shall not alter or abridge any State or Federal law regulating the transportation of oil or gas by truck, tanker, or barge.

(2) FEDERAL ROYALTY PREPAYMENT PROVISIONS.—Nothing in this Act shall modify, abridge, or alter the provisions of section 7(b) of the Federal Oil and Gas Royalty Simplification and Fairness Act (30 U.S.C. 1726) with respect to the prepayment of royalty.

SEC. 8. LIMITATIONS ON APPLICATION.

(a) LEASE ROYALTY CLAUSES AND ROYALTY PAYMENTS.—This Act does not apply to royalty payments of the following types:

(1) Compensatory royalties.

(2) Minimum royalties.

(3) Net profit share lease royalties prior to payout.

(b) PRIOR ROYALTY RATE REDUCTION DETERMINATIONS.—This Act shall not modify or alter any royalty rate reduction determination made by the Secretary before or after the date of enactment of this Act. The amount of royalty oil and royalty gas taken in kind by the Secretary shall be the amount calculated by such reduced royalty rate.

(c) AUDIT OF ELIGIBLE SMALL REFINER.—The Secretary shall have the right to audit the reports of eligible small refiners related to the volume of royalty oil received as are required under the provisions of this Act during normal business hours, at reasonable times, to verify the accuracy of such reports.

SEC. 9. REPORTING.

(a) REPORTING BY LEASE OPERATOR.—A lease operator on behalf of the lessee shall provide or cause to be provided all volume reports required under the oil and gas lease to the United States, but shall be relieved of the obligation of providing any royalty related and all royalty-in-value reports for any royalty oil or royalty gas taken in kind by the United States required pursuant to the oil and gas lease terms or applicable statutes. A lease operator on behalf of the lessee shall make available or cause to be made available such information as is customarily provided to third party sellers of lease production on a timely basis.

(b) REPORTING BY QUALIFIED MARKETING AGENT.—A qualified marketing agent shall provide or cause to be provided to the United States any valuation or related royalty reports required by the Secretary.

SEC. 10. AUDIT.

(a) AUDIT OF LEASE OPERATOR.—The Secretary shall have the right to audit the reports the Lease Operator files on behalf of lessees related to the volume of oil and gas produced as are required under this Act during normal business hours, at reasonable times to verify the accuracy of such reports.

(b) AUDIT OF QUALIFIED MARKETING AGENT.—The Secretary shall have the right to audit the reports of qualified marketing agents required under this Act during normal business hours, at reasonable times, to verify the accuracy of such reports. Any information and records regarding sales of royalty oil and royalty gas shall be obtained, where necessary, from a qualified marketing agent.

SEC. 11. LEASE TERMS NOT AFFECTED.

In accordance with the terms of oil and gas leases issued by the Secretary, the Secretary shall exercise the right to be paid oil and gas royalties in amount pursuant to this Act and lessee shall pay such oil and gas royalties in amount pursuant to provisions of this Act. Nothing in this Act shall alter or abridge the rights of a lessees under an oil and gas lease, including the right to explore for, operate, drill for, or produce oil and gas or to otherwise operate the lease. The rights, duties, or obligations that exist between the United States and a lessee which arise under an oil and gas lease with respect to oil or gas used on the lease premises or gas unavoidably lost prior to the delivery point shall not be affected, abridged, or altered by this Act. When oil or gas is used on, or for the benefit of, a lease premises at a facility handling production from more than one lease premise, or at a facility handling unitized or communitized production, the proportionate share of each lease's production (actual or allocated) necessary to operate the facility may be used royalty-free.

SEC. 12. ELIGIBLE AND SMALL REFINERS.

(a) SALE OF ROYALTY OIL TO ELIGIBLE SMALL REFINERS.—(1) The Secretary shall direct qualified marketing agents to offer for sale to eligible small refiners the eligible small refiner portion in accordance with the provisions set forth in this section.

(2) The sale of royalty oil from the eligible small refiner portion to an eligible small refiner is intended for processing, or trading for equivalent barrels for processing, in the eligible small refiner's refineries located in the United States and not for resale in-kind or value.

(3) The Secretary shall annually review and recertify or withdraw the continuing eligibility of previously certified eligible small refiners.

(4) The eligible small refiner portion shall be offered to eligible small refiners from royalty oil volumes to be sold by each qualified marketing agent. The Secretary shall maintain a current list of all Eligible Small Refiners. Upon the selection of a Qualified Marketing Agent by the Secretary, the Secretary shall promptly notify all Eligible Small Refiners of the selection of the Qualified Marketing Agent. The notification shall contain the name and address of the Qualified Marketing Agent as well as a brief description of the federal leases and lease products to be marketed by that Qualified Marketing Agent. Within 15 days after notice by the Secretary, any Eligible Small Refiner who is interested in receiving Royalty Oil from the leases of the Qualified Marketing Agent, shall submit a Notice of Interest to the Qualified Marketing Agent. The Notice shall generally state the volumes location and quality of Royalty Oil desired by the Small Refiner. When marketing Royalty Oil, the Qualified Marketing Agent shall contact the Small Refiner(s) who has (have) submitted a Note of Interest and shall offer to sell the 40% portion to the Small Refiner(s) who submitted a Notice. The Small Refiner shall purchase such Royalty Oil at the weighted average price for the remaining volumes of like quality at the same location sold by the Qualified Marketing Agent.

(5) Nothing in this section shall preclude any eligible small refiner from participating in any open and advertised or negotiated sale by qualified marketing agents. Royalty oil volumes obtained by any eligible small refiner in any open and advertised or negotiated sale shall not be included in calculating limitations on eligibility as defined in subsection (b).

(b) LIMITATIONS ON ELIGIBILITY.—No eligible small refiner may purchase royalty oil from the eligible small refiner portion for delivery at a rate that exceeds 60 percent of the combined crude oil and condensate distillation capacity of that eligible small refiner's currently operating refineries located in the United States unless the Secretary determines that it is in the public interest to allow all eligible small refiners to purchase royalty oil at a greater rate. The Secretary shall promulgate rules and regulations to determine an eligible small refiner's current operating capacity.

(c) FEES, CREDITWORTHINESS, AND SURETY REQUIREMENTS.—(1) The purchase of royalty oil from the eligible small refiner portion pursuant to this section shall not be subject to any fees or charges not required of all purchasers of royalty oil.

(2) The Secretary shall establish conditions for each eligible small refiner's creditworthiness at the time of determining and reviewing eligibility.

(3) Creditworthiness requirements for eligible small refiners shall not exceed standard industry requirements governing non-Federal crude oil purchasers, and the Secretary may not require surety in excess of the estimated value of 60 days anticipated deliveries of royalty oil from the eligible small refiner portion to individual eligible small refiners.

(d) ELIGIBLE SMALL REFINER ADVISORY PANEL.—The Secretary shall convene an eligible small refiner advisory panel to assist in developing policies and procedures to implement the provisions of this Act. The eligible small refiner advisory panel shall be comprised of representatives from 3 small refiners, 3 qualified marketing agents and 3 lesses who have participated in the small refiner program established pursuant to section 36 of the Mineral leasing Act (30 U.S.C. 192) or section 1353 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(e) Pursuant to the recommendations of the Small Refiner's Advisory Group, the Secretary shall develop and implement procedures to ensure a fair and equitable opportunity for interested eligible small refiners to purchase royalty oil from the eligible small refiner portion.

(f) REPORTS ON RIK.—The Secretary may require any eligible small refiner to submit a report demonstrating the eligible small refiner's compliance with subsection (a)(2).

(g) REPEAL OF EXISTING ROYALTY-IN-KIND AUTHORITY.—Section 36 of the Mineral Leasing Act (30 U.S.C. 192) and section 1353 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353) are repealed.

SEC. 13. APPLICABLE LAWS.

(a) MOVEMENT, DISPOSITION, AND SALE OF ROYALTY OIL AND ROYALTY GAS.—In arranging for the movement, disposition and sale of royalty oil and royalty gas, the United States and its qualified marketing agents shall be subject to all laws that apply to the movement, disposition, and sale of oil and gas.

(b) NO ADDITIONAL PRIORITY OF SERVICE OR MOVEMENT.—In any pipeline, truck, barge, railroad, or other carrier downstream of the delivery point, royalty oil and royalty gas shall not be afforded a priority of service or movement, nor assigned a capacity right which is superior to that identified in—

(1) the contract for carriage of royalty oil and royalty gas entered into by the transporter with the United States or the qualified marketing agent, or

(2) the tariff applicable to such carrier, if any.

(c) MEANING OF TERMS USED.—The meaning of the terms used in this Act shall be supplemented by reference to generally accepted accounting principles and prevailing industry practices and procedures.

(d) LAWS APPLICABLE TO STRIPPER OR MARGINAL PRODUCTION NOT AFFECTED.—Nothing in this Act shall modify, abridge or alter the provisions of the Deep Water Royalty Relief Act of 1995 (43 U.S.C. 1337), or any other Federal law applicable to stripper or marginal production.

SEC. 14. INDIAN LANDS.

This Act shall not apply with respect to Indian lands.

SEC. 15. EFFECTIVE DATE; REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become no later than effective 18 months after the date of enactment of this Act, and shall apply with respect to the production of oil and gas on or after the first day of the month following the effective date of this Act.

(b) REGULATIONS.—The Secretary shall issue all regulations required for implementation of this Act within one year after the date of enactment of this Act.

Mr. DOMENICI. Mr. President, the current royalty system is an elaborate after-the-fact game of ''Gotch ya.''

Producers are put in the unenviable position of being second-guessed, some times years later, by the Minerals Management Service (MMS). This current system is unfair to oil and gas producers. It is expensive and inefficient for the federal government.

Under the current system, only the lawyers benefit. It results in a lot of law suits and big legal bills.

The MMS tried to fix the system by proposing a ''producer is always the loser rule.''

Under the proposed rules, (now abandoned) the producers would have always lost. The MMS tried a rule tying the fair market value to the NYMEX.

If producers sold their production for less than the NYMEX price, they would have had to pay the royalty on the ''phantom'' income i.e. the difference between the price they actually received and the NYMEX price. If, on the other hand, they sold their production for more than the NYMEX, they would have had to pay the royalty on the amount they actually received. This would have been a very unsatisfactory approach.

Fortunately, most independent producers don't have to use that approach. However, the existing valuation formula for calculating fair market value is complicated, fraught with exceptions, and hard to administer.

The question: What is fair market value for oil is not as simple as it sounds.

Some of the variable factors include the quality or refinery value of crude oil; the transportation costs necessary to move that oil to a refiner; relative access to various refineries or markets which may value a particular type of crude oil differently; the supply, vis-a-vis, the demand for certain types of oil or alternative supplies, and whether the contract is a long-term or short-term commitment made by either the refiner or the producer.

Other factors that influence value include: the volume of the crude oil produced at the lease. This could affect the unit logistical costs; seasonality; and service requirements of the producer.

Another question more complicated than it sounds is this: What are the appropriate, allowable, deductible expenses?

Under the current system it costs the MMS about $60 million annually to debate this question and to administer our royalty collection program. It takes several hundred employees, many of them auditors, to oversee the current royalty program. In contrast, royalty-in-kind programs in Canada need only 33 employees to administer their approach.

With a royalty-in-kind system, the producer would give some of its production from the federal lands as a royalty-in-kind payment.

A royalty-in-kind program is an accurate way to determine a fair market value. The federal government would sell its share of the oil on an open and competitive market. What you can sell it for is, per se, fair market value. That is the essence of what the ''Royalty-in-Kind'' Program, along with the use of the Qualified Marketing Agents (''QMA''), would allow.

The goal should be treating the producers fairly, maximizing revenues for the federal government, and distributing an accurate amount of royalties to the states.

The bill being introduced today by Senator NICKLES, MURKOWSKI, HUTCHINSON and I would provide a better way for the federal government and the Minerals Management Service (MMS) to collect, with certainly, a fair value for its crude oil.

PROVISIONS OF THE BILL

The federal government would take its royalty ''in kind'' at the applicable delivery point for each federal onshore and offshore lease.

Title of the royalty share taken in-kind would be in the name of the federal government.

The U.S. would contract with qualified marketing agents (QMAs).

The federal government would select a QMA for each lease on a competitive bid basis.

States entitled to revenues under the net receipts sharing provisions of the Mineral Leasing Act or Section 8(g) of the Outer Continental Shelf Lands Act would be allowed to elect to select the QMA.

In selecting a QMA, the State would act for the mutual benefit of the State and the federal government. The payment from the federal government to any State for its share of royalty taken in-kind from federal leases within a State's boundary would not be subject to cost deductions under the net receipts sharing provisions of the applicable statutes.

The lessee must tender the royalty share at the delivery point. This would completely satisfy the lessee's royalty obligation.

The lessee would bear the costs of place royalty oil and royalty gas in a merchantable condition at the delivery point. The lessee would be responsible for gathering costs. Transportation costs would be borne by the federal government.

Mr. President, this is an excellent approach. My only concern is that the final legislative product adequately address the problem of the marginal well that produces a few barrels a day and is in an isolated area. The legislation needs to make sure that there is a workable mechanism for these isolated wells.

I also note that some, including the New Mexico state lands commissioner, have suggested a multi-state pilot program prior to moving to the nationwide royalty-in-kind program. I respect those views.

I hope, that as we move through the hearing process the Committee can take testimony on whether to proceed with a multi-state pilot program or whether existing pilots have provided sufficient information for us to implement a national program.

I want to recognize Senator NICKLES for his leadership on this issue and look forward to working with him, Senator MURKOWSKI and Senator HUTCHISON on moving this legislation through the process so that we can start a royalty-in-kind program in the near future.

ADDITIONAL COSPONSORS

S. 364

At the request of Mr. LIEBERMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 364, a bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.

S. 414

At the request of Mrs. HUTCHISON, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 414, a bill to amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States imports and exports, and for other purposes.

S. 597

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 597, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of medical nutrition therapy services furnished by registered dietitians and nutrition professionals.

S. 1069

At the request of Mr. MURKOWSKI, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1069, a bill entitled the ''National Discovery Trails Act of 1997.''

S. 1251

At the request of Mr. D'AMATO, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1325

At the request of Mr. FRIST, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 1325, a bill to authorize appropriations for the Technology Administration of the Department of Commerce for fiscal years 1998 and 1999, and for other purposes.

S. 1334

At the request of Mr. BOND, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availablity of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1360

At the request of Mr. ABRAHAM, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1360, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify and improve the requirements for the development of an automated entry-exit control system, to enhance land border control and enforcement, and for other purposes.

S. 1406

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1406, a bill to amend section 2301 of title 38, United States Code, to provide for the furnishing of burial flags on behalf of certain deceased members and former members of the Selected Reserve.

S. 1680

At the request of Mr. DORGAN, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1680, a bill to amend title XVIII of the Social Security Act to clarify that licensed pharmacists are not subject to the surety bond requirements under the medicare program.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1873

At the request of Mr. COCHRAN, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 1873, a bill to state the policy of the