it in the committee, and I will vote for it on the floor.

The notion of having a Visa Waiver Program is a good and honorable notion that I think all of us support. But I think we would be less than fair with our constituents if we did not bring to the front that the criteria which is currently being used for countries to get into the Visa Waiver Program are not the right criteria.

Right now we are letting countries into the Visa Waiver Program based on the visa refusal rate that countries have experienced. And, unfortunately, there are a number of instances where that refusal rate is colored by considerations that ought not go into the evaluation: the race of applicants, the economic status of applicants, various biases that people who are considering whether to grant a visa or not are being taken into account. This is not the correct criteria.

The criteria which should be being used is whether people who come to our country overstay their visa authority in our country. We are trying to move to a system that evaluates that, and we do not have that system in place.

Now, the gentleman from Texas (Chairman SMITH), said 14 years is a long time to have a pilot program. The reason we have had a pilot program for 14 years is we have been working on this system, the valid reliable system that we ought to be using to determine whether our countries are included in the Visa Waiver Program, for 14 years; and we still do not have the system in place.

The problem that I have with calling this a permanent program is that we, in effect, then are sanctioning the process or implicitly sanctioning the process of considering visa denials, which then sanctions the biases that are in that whole denial and approval process. And that is troubling to me.

So I do not support this bill. It is with the express understanding that we are moving to a system of evaluating visa overstays which ought to be the criteria for determining whether a country gets into this program or not, not some arbitrary race bias or economic bias or other biased process that quite often is the basis for refusing a visa in a source country in the first place.

That having been said, this is a program which is worthwhile. We hope we get the criteria right at some point, and I do encourage my colleagues to vote for the program even though I still have reservations about the criteria that we will be using on a short-term basis.

Mr. JACKSON-LEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply say that I associate myself with the comments of the distinguished gentleman from North Carolina (Mr. WATT) and acknowledge that we must continue to work through these issues that play into the discriminatory aspects of the law.

I would hope that, as we have cleared up discrimination in the United States with legislation and not cleared it up in totality but cleared it up with at least a statement of being in opposition to discrimination on race, sex, sexual orientation, disability, that we would find the ability to do so and carry through on this issue of visas.

I would hope that we will continue the discussion on this legislation and, as well, that we will see the implementation of this program as a permanent program and we will economically to the United States as well as to increase the very positive relations that we have with many of those nations who are on this visa list.

I would see us improving relations even more with our friends in the Caribbean, with our friends in Africa, and our friends additionally in South America and other parts who have not had this privilege if we can make determinations on overstays along with the issues.

With that, I would ask my colleagues to support this legislation.

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

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as may consume.

Mr. Speaker, I just want to acknowledge the legitimate point made by our colleague, the gentleman from North Carolina (Mr. WATT), a minute ago. We need to find a better program to determine the visa overstay rates.

Mr. McCOLLUM. Mr. Speaker, I rise today to support the travel and tourism industry and to support legislation to make permanent the Visa Waiver Pilot Program. I am fortunate to represent one of the most popular tourist destinations in the country, Orlando, Florida. Over 38 million people visit the Orlando area each year, creating a total economic impact of more than $17 billion. Nearly 3 million of these visitors are from overseas, coming to Florida from Western Europe, the East. Those visitors are essential to the local economy and well-being of the state of Florida.

Travel and tourism is one of the nation's top three industries providing jobs spanning across our communities, from employees at theme parks, museums, airlines, car rental companies, food service and hotels. The Visa Waiver Program, which encourages international travel to the United States by waiving the visitor visa requirements for 29 countries, has added an estimated $100 million to the local economy and also adds security enhancements to crime victims.

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is subject to forfeiture, the government shall—

1. be made under oath, subject to penalty of perjury.
2. A claim need not be made in any particular form. Each Federal agency conducting a forfeiture proceeding shall make claim forms generally available on request, which forms shall be written in easily understandable language.

A government that is being held in the custody of a Federal law enforcement agency under a civil forfeiture statute may file a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

Not later than 90 days after a claim has been filed, the Government shall file a claim for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

The Government files in the appropriate United States district court a complaint for forfeiture of property, any person who has standing to contest the forfeiture may file a claim asserting such person’s interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims. The claim may be filed not later than 30 days after the date of service of the Government’s complaint or, if applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

A person asserting an interest in seized property, in accordance with subparagraph (A), or before the time for filing a complaint has expired—

(i) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(ii) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

The Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

In lieu of, or in addition to, filing a civil complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the court shall set the commission of the property shall be governed by the applicable criminal forfeiture statute.

The burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture pursuant to regulations promulgated by the Attorney General.

The claimant shall have the burden of proving by a preponderance of the evidence that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, and shall not be forfeited under any civil forfeiture statute.

The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for representation under section 3006A of this title.

The burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The court may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

If the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

An innocent owner defense—

(i) the person’s standing to contest the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(ii) A person is not required by this paragraph to establish, by a preponderance of the evidence, that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, and shall not be forfeited under any civil forfeiture statute.

(iii) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for representation under section 3006A of this title.

If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation, the court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall consider such factors as—

(i) the person’s standing to contest the forfeiture; and

(ii) the property appears to be made in good faith.
**(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate, except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest to the property subject to a lien in favor of the Government to the extent of the forfeitable interest, or any nonjudicial civil forfeiture proceeding would be deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest therein as to which another is the holder of the entire legal title, the court shall order the Government to pay the innocent owner an appropriate order

(A) transferring the property to the Government with a provision that the Government compensates the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(B) paying the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term 'owner'—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in the property or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property in addition to the general interest.

(c) Motion To Set Aside Forfeiture.—

(1) Any person entitled to receive notice in any civil or criminal proceeding involving a claim for forfeiture of property, other than a request for a declaratory judgment, may apply for a declaration of forfeiture respecting with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2) (A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) is entitled to immediate relief of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial; and

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functional equivalency of a bailee from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (g) applies.

(3) (A) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(B) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(4) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(E) none of the conditions set forth in paragraph (g) applies.

(5) (A) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(B) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(F) The court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(G) none of the conditions set forth in paragraph (g) applies.

(6) If—

(A) the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(B) If the court finds that the property is grossly disproportionate to the value of the forfeited property, the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(F) The court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(G) none of the conditions set forth in paragraph (g) applies.

(7) If the court grants a petition under paragraph (6), the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(8) If the court grants a petition under paragraph (6), the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(E) none of the conditions set forth in paragraph (g) applies.

(9) If the court grants a petition under paragraph (6), the court shall order the Government to return the property to the claimant and all dependents residing with the claimant.

(G) none of the conditions set forth in paragraph (g) applies.

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(G) none of the conditions set forth in paragraph (g) applies.
Controlled Substances Act (21 U.S.C. 888) is re-

eral criminal forfeiture law.''.

property was subject to forfeiture under a Fed-

eral criminal offense;

than as a sentence imposed upon conviction of

goods, merchandise, or other property, while in

apply to any claim based on injury or loss of

``law enforcement''; and

28, United States Code, is amendedÐ 

stances Act (21 U.S.C. 881(a) (4), (6) and (7)) are

scope of employment.

``983. General rules for civil forfeiture pro-

lowing:

``(4) FORFEITURES IN CONNECTION WITH SEXUAL

``specifically授权 by this sub-

benefits nor make any other payments to the

Treasury Bill, for any period during which no

interest for wrongful seizure; attorney fees, costs, and interest

SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.

(a) IN GENERAL.—Section 2465 of title 28, United States Code, is amended to read as fol-

``2465. Return of property to claimant; liabil-

ity for wrongful seizure; attorney fees, costs, and interest

``(a) Upon the entry of a judgment for the

claimant in any proceeding to condemn or for-

feit property, the property shall be returned, or the

proceeds of an interest-bearing account or instru-

ments, or the proceeds of an inter-

locutory sale—

``(i) interest actually paid to the United States

from the date of seizure or arrest of the property

resulted from the investment of the prop-

erty in an interest-bearing account or instru-

ment; and

``(ii) post-judgment interest, as set forth in

``(A) reasonable attorney fees and other litiga-

tion costs reasonably incurred by the claimant;

``(B) post-judgment interest, as set forth in

section 1920 of title 28; and

``(C) in cases in which the claimant is

liable to suit or judgment on account of such

cause for the seizure or arrest, the court shall

claimant not specifically authorized by this sub-

section.

``(2) if it appears that there was reasonable

interest was paid (not including any period

when the property reasonably was in use as evi-

dence in an official proceeding or in conducting

scientific tests for the purpose of collecting evi-

dence), commencing 15 days after the property

was seized by a Federal law enforcement agen-

cy, or was turned over to a Federal law enforce-

ment agency by a State or local law enforcement agency

as required by law.

``(2)(A) The United States shall not be re-

quired to disgorge the value of any intangible

benefits nor make any other payments to the

claimant specifically authorized by this sub-

section.

``(B) the provisions of paragraph (1) shall not apply if any provision of Federal law

providing for the forfeiture of property other

than as a seizure imposed upon conviction of a

criminal offense;

``(2) the interest of the claimant was not for-

feited;

``(3) the interest of the claimant was not re-

mitted or mitigated (if the property was subject to

forfeiture); and

``(4) the claimant was not convicted of a crime for

which the interest of the claimant in the

property was subject to forfeiture under a Fed-

eral criminal forfeiture law.''.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that

cannot be settled under chapter 71 of title 28, United States Code (the Attorney General may

settle, for not more than $50,000 in any case, a

claim for damage to, or loss of, privately owned

property caused by an investigative or law en-

forcement officer (as defined in section 2608(h)

of title 28, United States Code) who is employed

by the Department of Justice acting within the

scope of his or her employment.

(2) PROCEDURE.—The Attorney General may

not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it accrues; or

(B) is presented by an officer or employee of the Federal Government and arose within the

scope of employment.

SEC. 5. SEIZURE WARRANT REQUIREMENT.

(a) IN GENERAL.—Section 981(b) of title 18, United States Code, is amended to read as fol-

``(b)(1) Except as provided in section 985, any

property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation of the Sec-

retary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be

made pursuant to a warrant obtained in the

same manner as provided for a search warrant

under the Federal Rules of Criminal Procedure, except that a seizure may be made without a

warrant if—

``(A) a complaint for forfeiture has been filed in the United States district court and the court

issued an arrest warrant in rem pursuant to the

Supplemental Rules for Certain Admiralty and

Maritime Claims;

``(B) there is probable cause to believe that the

property is subject to forfeiture and—

(i) the seizure is made pursuant to a lawful search or seizure;

(ii) another exception to the Fourth Amend-

ment warrant requirement would apply; or

``(ii) another exception to the Fourth Amend-

ment warrant requirement would apply; or

property under this subsection.''.

SEC. 6. USE OF FORFEITED FUNDS TO PAY RES-

TITUTION TO CRIME VICTIMS.

(a) IN GENERAL.—Section 981(e) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

``(6) to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense
constituting the underlying specified unlawful activity; or”.

SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.
(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

“§ 985. Civil forfeiture of real property

“(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures;

“(b) (1) Except as provided in this section—

“(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

“(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action;

“(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

“(c) (1) The Government shall initiate a civil forfeiture action against real property by—

“(A) filing a complaint for forfeiture;

“(B) posting a notice of the complaint on the property; and

“(C) serving notice on the property owner, along with a copy of the complaint.

“(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

“(A) is a fugitive;

“(B) resides outside the United States and efforts are not made to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

“(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

“(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

“(d) (1) Real property may be seized prior to the entry of an order of forfeiture if—

“(A) the Government notifies the court that it intends to seize the property before trial; and

“(B) the court—

“(i) issues a notice of application for warrant, causes the notice to be served on the property owner, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

“(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

“(2) For purposes of paragraph (1)(B)(i), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government’s interests in preventing the sale, destruction, or continued unlawful use of the real property.

“(e) The Government shall not authorize a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity by dispositive motion or at the time of trial to establish the basis for the seizure.

“(f) This section—

“(1) applies only to civil forfeitures of real property and interests in real property;

“(2) applies to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

“(3) is subject to the availability of the court to enter a restraining order relating to real property.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

“§ 985. Civil forfeiture of real property.”

SEC. 8. STAY OF CIVIL FORFEITURE CASE.
(a) IN GENERAL.—Section 981(g) of title 18, United States Code, is amended to read as follows:

“(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that—

“(A) the claimant is the subject of a related criminal investigation or case;

“(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

“(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

“(2) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order that would protect the interest of 1 party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow 1 party to pursue discovery while the other party is substantially unable to do so.

“(3) In this subsection, the terms ‘related criminal case’ and ‘related criminal investigation’ mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is ‘related’ to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring an identity with respect to any 1 or more factors.

“(4) In requesting a stay under paragraphs (1) and (2), the Government may, in appropriate cases, submit evidence ex parte in order to avoid dispositive motions that may adversely affect an ongoing criminal investigation or pending criminal trial.

“(5) Whenever a civil forfeiture proceeding is stayed under this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of liensholders or other persons with an interest in the property while it is in effect.

“(6) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection.

“(7) The Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

“(b) DRUG FORFEITURES.—Section 511(i) of the Controlled Substances Act (21 U.S.C. 881(i)) is amended to read as follows:

“(1) The provisions of section 981(g) of title 18, United States Code, relating to the stay of a civil forfeiture proceeding shall apply to forfeitures under this section.”.

SEC. 9. CIVIL RESTRAINING ORDERS.
(a) IN GENERAL.—Section 983 of title 18, United States Code, as added by this Act, is amended by adding at the end the following:

“(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.

“(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to secure, maintain, or preserve the availability of property subject to civil forfeiture—

“(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

“(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

“(i) there is a substantial probability that the United States will prevail on the issue of forfeiture; and

“(ii) failure to issue the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

“(iii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

“(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension. A stay requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

“(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.”

SEC. 10. COOPERATION AMONG FEDERAL PROSECUTORS.
Section 3232(a) of title 18, United States Code, is amended—

“(1) by striking ‘civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title’ and inserting ‘any civil forfeiture provision of Federal law’; and

“(2) by striking ‘concerning a banking law violation’.

SEC. 11. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE ACTIONS.
Section 6261 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by inserting ‘, or in the case of forfeiture, within 2 years after the time when the court has been informed that the alleged offense was discovered, whichever was later’ after ‘within five years after the time when the alleged offense was discovered’.

SEC. 12. DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.
Section 2232 of title 18, United States Code, is amended—

“(1) by striking subsections (a) and (b); and

“(2) by inserting ‘(e) FOREIGN INTELLIGENCE SURVEILLANCE.—Before ‘Whoever, having knowledge that a Federal officer’; ‘, a property description is subsection (d); and

“(4) by inserting before subsection (d), as redesignated, the following:

“(a) IN GENERAL.—Chapter 46 of title 18, United States Code, as amended by this Act, is amended by inserting after the item relating to section 984 the following:

“§ 985. Civil forfeiture of real property.”
any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government’s lawful authority to take such property into its custody or control or to confound, subvert, or otherwise take any action, for the purpose of impairing or defeating the court’s continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) IMPAIRMENT OF IN REM JURISDICTION.—Whoever, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, or upon an ex parte proceeding or petition from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court’s continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

"(c) NOTICE OF SEARCH OR EXECUTION OF SEIZURE WARRANT OR WARRANT OF ARREST IN REM.—Whoever, having notice that any person authorized to make searches and seizures, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorization of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, knowing that such notice or attempt to give notice will prevent the person authorized to make such search or execution from coming within the United States to seize such property, shall be fined under this title or imprisoned not more than 5 years, or both."

SEC. 13. FUNGIBLE PROPERTY IN BANK ACCOUNTS. (a) In General.—Section 986 of title 18, United States Code, is amended—

(1) by inserting subsection (a) and redesignating subsections (b), (c), and (d) as subsections (c), (d), respectively;

(2) in subsection (a), as redesignated—

(A) by striking "or other fungible property" and inserting "or precious metals"; and

(B) in paragraph (2), by striking "and inserting "subsection (c)" and inserting "subsection (b)";

(3) in subsection (c), as redesignated—

(A) by striking paragraph (1) and inserting the following:

"(1) any person, or to the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or confiscation proceeding is fungible property, attributable to any claim or to the ability of the Government to seize, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorization of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, in order to prevent the person authorized to make such search or execution from coming within the United States to seize such property, shall be fined under this title or imprisoned not more than 5 years, or both."

SEC. 14. FUGITIVE DISENITLEMENT. (a) In General.—Chapter 163 of title 28, United States Code, is amended by adding at the end the following:

"§ 2466. Fugitive disentitlement

"(a) PURPOSE.—A judicial officer may disallow a person from an action upon a finding that such person—

(1) after notice or knowledge of the fact that a warrant for his arrest has been issued for his apprehension, in order to avoid criminal prosecution—

(A) purposely leaves the jurisdiction of the United States;

(B) declines to enter or reenter the United States to submit to its jurisdiction;

(C) otherwise obstructs the jurisdiction of the court in which a criminal case is pending against the person; and

(2) is not confined or held in custody by any other jurisdiction or other formal international agreement in effect providing for mutual assistance and—

(A) to forfeit property involved in or traceable to the commission of such offense.

(b) CERTIFICATION OF REQUEST.—(1) A certificate of request to an officer of the Attorney General or the designee of the Attorney General required by section 413(n) of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, shall be in accordance with the Federal Rules of Criminal Procedure.

(2) A certificate of request shall be in accordance with the Federal Rules of Criminal Procedure and shall include—

(A) the name of the defendant or other person entitled to receive notice or other information in connection with the case to which the certification relates;

(B) the nature of the forfeiture or confiscation proceeding or other civil proceeding against the defendant or other person entitled to receive notice or other information in connection with the case to which the certification relates;

(C) the party of the second part; and

(D) the date of the certification.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any case pending on or after the date of enactment of this Act."

SEC. 15. ENFORCING FOREIGN FORFEITURE JUDGMENT. (a) In General.—Chapter 163 of title 28, United States Code, is amended by adding at the end the following:

"§ 2467. Enforcement of foreign judgment

"(a) DEFINITIONS.—In this section—

"(1) the term ‘foreign nation’ means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the ‘United Nations Convention’) or a criminal jurisdiction of the United States or any other formal international agreement in effect providing for mutual assistance and—

(A) to forfeit property involved in or traceable to the commission of such offense.

(b) REVIEW BY ATTORNEY GENERAL.—(1) IN GENERAL.—If the United States shall be the applicant in an interbank account unless the information in accordance with the Federal Rules of Criminal Procedure.

(b) CERTIFICATION OF REQUEST.—The Attorney General or the designee of the Attorney General shall include in the certificate of request—

(A) the facts of the case and a description of the property that resulted in the forfeiture or confiscation judgment;

(B) certified copy of the forfeiture or confiscation judgment;

(C) an affidavit or sworn declaration establishing that the defendant received notice of the proceedings in sufficient time to enable him or her to defend; or

(D) the judgment was obtained by fraud.

(b) CERTIFICATION OF REQUEST.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

(b) FINALITY OF FOREIGN FINDINGS.—In enforcing orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

"(c) JURISDICTION AND VENUE.—(1) IN GENERAL.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States for the registration or deposit of a sum of money submitted for registration.''

"(2) PROCESS.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

"(3) JURISDICTION AND VENUE.—(1) IN GENERAL.—Upon conviction, the court shall order the forfeiture of the property in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section."

SEC. 16. ENCOURAGING USE OF CRIMINAL FORFEITURE AS AN ALTERNATIVE TO CIVIL FORFEITURE. Section 2461 of title 28, United States Code, is amended by adding at the end the following:

"(c) If a forfeiture of property is authorized in connection with a violation of any Federal law, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the Government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section."

SEC. 17. ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS. Section 896 of title 18, United States Code, is amended by adding at the end the following:

"(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—(1) IN GENERAL.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) to a defendant’s ability to establish the forfeitability of the property; and

"(2) The court may order the holder of any financial records located in a foreign country to produce such records.
“(B) it is within the capacity of the claimant to waive the claimant’s rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available not-withstanding judicial action (a) by the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available not-withstanding judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

SEC. 18. APPLICATION TO ALIEN SMUGGLING OFFENSES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended to read as follows:—

“(b) SEIZURE AND FORFEITURE.—

(1) IN GENERAL.—Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 161 of such title, except that such civil forfeiture proceedings may be commenced at any time, even though the person who has committed the violation has left the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS.—In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien’s status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

“(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien’s status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(4) IN GENERAL.—The Attorney General shall transmit to Congress and the public any report on total deposits of the Fund by State of deposit.

(b) TECHNICAL CORRECTIONS TO EXISTING CRIMINAL FORFEITURE AUTHORITY.—Section 981(a)(3) of title 18, United States Code, is amended by inserting before “1425(a)” the following:

“(B) by striking ‘this subparagraph’ and inserting ‘subsection’.

SEC. 19. ENHANCED VISIBILITY OF THE ASSET."
April 11, 2000

CONGRESSIONAL RECORD — HOUSE

H2047

have become a reality had the cause not been adopted by Orrin Hatch, the chairman of the Senate Committee on the Judiciary; and Pat Leahy, the committee's ranking member. I owe a debt of gratitude to the Senators and their staffs for drafting a bill that both reforms our forfeiture laws and yet leaves civil forfeitures as an important crime-fighting tool for Federal, State, and local law enforcement.

I must thank Senators Sessions and Schumer and their staffs for negotiating in the utmost good faith in helping craft a bill that both reforms our forfeiture laws and yet leaves civil forfeitures as an important crime-fighting tool for Federal, State, and local law enforcement.

Similar thanks must go to Attorney General Reno and Assistant Attorney General Robert R. Ray. They all can share in the pride that they helped to accomplish.

I also thank our former colleagues Bob Goodlatte and Marcy Kaptur for their long and dedicated work on behalf of forfeiture reform, and Chicago Tribune columnist Stephen Chapman for first alerting me to the great abuses of forfeiture laws.

And no less should we thank David Smith, who has been there since the beginning. David helped me draft my first forfeiture reform bill, the Civil Asset Forfeiture Reform Act of 1993, and helped draft Senators Leahy and Hatch's reform bill and helped draft the Senate-passed bill we are considering today. This bill is truly his accomplishment.

And finally, George Fishman of our Committee on the Judiciary staff has been tireless in helping shepherd this legislation through the House and Senate.

Let me briefly outline the main points of H.R. 1658 as passed by the Senate. The bill makes eight fundamental reforms:

1. The bill requires the Government to prove by a preponderance of the evidence that the property is subject to forfeiture. Currently, when a property owner goes to federal court to challenge a seizure of property, all the Government needs to do is make an initial showing of probable cause that the property is subject to civil forfeiture. The owner then must establish that the property is innocent.

2. The bill provides that if the Government proves that property is subject to forfeiture, the Government must show that the property was used to commit or facilitate the commission of a crime or was involved in the commission of a crime, the Government must show that there was a substantial connection between the property and the crime.

3. The bill provides that property can be released by a Federal court pending final disposition of a civil forfeiture case if continued possession by the Government would cause the property owner substantial hardship, such as preventing the functioning of a business or leaving an individual homeless, and the likely hardship outweighs the risks that the property will be destroyed, damaged, lost, concealed, or transferred if returned to the owner.

4. The bill provides that property owners who substantially prevail in court proceedings challenging the seizure of their property will receive reasonable attorney fees. In addition, the bill requires the government to provide counsel for indigents if they are represented by appointed counsel in related criminal cases. Currently, property owners who successfully challenge the seizure of their property almost never are awarded attorneys' fees. In addition, indigents have no right to appointed counsel in civil forfeiture cases.

5. The bill eliminates the cost bond requirement, under which a property owner must post a bond of the lesser of $5,000 or 10 percent of the value of the property seized merely for the right to contest a civil forfeiture in Federal court. The bill provides that if a court finds that a claimant's assertion of an interest in property was frivolous, the court may impose a civil fine.

6. The bill creates a uniform innocent owner defense for all Federal civil forfeiture statutes. Importantly, the defense protects property owners who have given timely notice to the police of the illegal use of their property and have in a timely fashion revoked or made a good faith attempt to revoke permission to use the property from those engaging in the illegal conduct.

7. The bill allows property owners to sue the Federal Government for compensation for damage to their property when they prevail in civil forfeiture actions. Currently, the Federal Government is exempt from liability for damage caused during the handling or storage of property being detained by law enforcement officers.

8. The bill provides a uniform definition of the forfeitable proceeds of criminal acts. In cases involving illegal goods or services, unlawful activities, and the proceeds of Justice Department, Treasury, or local law enforcement.

The CBO staff contacts are Lanette J. Keith (for federal costs), who can be reached at 226-2860, and Shelley Finlayson (for the state and local impact), who can be reached at 225-3220.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE


Summary: H.R. 1658 would make many changes to federal asset forfeiture laws that would affect the processing of about 60,000 civil seizures conducted each year by the Department of Justice and the Department of Treasury. The Treasury Department makes an additional 50,000 seizures annually that would not be affected by this act. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1658 would cost $9 million over the 2001-2005 period to pay for additional costs of court-appointed counsel that would be authorized by this legislation. In addition, enacting the legislation would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

Because CBO expects that enacting H.R. 1658 would result in fewer civil seizures by DOJ and the Treasury Department, we estimate that governmental receipts (i.e., revenues) deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decrease by about $115 million each year beginning in fiscal year 2001. Under current law, both forfeiture funds are authorized to collect revenues and spend the balance without further appropriation. Thus, the corresponding direct spending and receipts would also decline, but with some lag. CBO estimates that enacting this provision would decrease projected surpluses by a total of $46 million over the fiscal years 2001 and 2002 (the difference between lower revenues and lower direct spending over those years).
but that by fiscal year 2003 the changes in receipts and spending would be equal, resulting in no net budgetary impact thereafter.

H.R. 1658 also would require the Legal Services Corporation (LSC) to represent certain claimants in civil forfeiture cases and would require the federal government to reimburse LSC for its costs. CBO estimates that this provision would increase direct spending by $5 million over the 2001-2005 period.

In addition, H.R. 1658 would make the federal government liable for any property damage, attorney fees, and prejudgment and post-judgment interest payments on certain assets awarded to prevailing parties in civil forfeiture proceedings. CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation.

H.R. 1658 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO expects that enacting this legislation would lead to a reduction in payments to state and local governments from the Assets Forfeiture Fund and the Treasury Forfeiture Fund.

Description of the Act’s major provisions: H.R. 1658 would make various changes to federal laws relating to the forfeiture of civil assets. In particular, the act would:

- Establish a short statutory time limit for the federal government to notify interested parties of a seizure and to file a complaint; Eliminate the cost bond requirement, whereby claimants have to post bond in an amount of the lesser of $5,000 or 10 percent of the value of the seized property (but not less than $250) to preserve the right to contest a forfeiture;
- Permit federal courts to appoint counsel for certain indigent claimants;
- Require the federal government’s burden of proof to a preponderance of the evidence; and
- Establish the federal government’s liability for payment of attorney fees and prejudgment and post-judgment interest; and authorize the use of forfeited funds to pay restitution to crime victims.

Estimated cost to the Federal Government: As shown in the following table, CBO estimates that implementing H.R. 1658 would increase discretionary spending for court-appointed counsel by $9 million over the 2001-2005 period, assuming appropriation of the necessary funds. (For the purposes of this estimate, CBO assumes that spending for this purpose would be funded with appropriated amounts from the Defender Services account.) In addition, we estimate that over the 2001-2005 period, the reductions in direct spending of funds from forfeited assets would be smaller than the reductions in revenues expected to occur as a result of enacting H.R. 1658, resulting in a net cost of $46 over the five-year period. Finally, CBO estimates that additional payments to the Legal Services Corporation would be about $1 million each year. The costs of this legislation fall within budget function 750 (administration of justice).

Changes in revenues and direct spending

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   Basis of estimate: For purposes of this estimate, CBO assumes that H.R. 1658 will be enacted by the end of fiscal year 2000 and that the necessary amounts will be appropriated for each fiscal year. We also assume that outlays for defender services and the use of forfeiture receipts will continue to follow historical patterns.

Proposing changes to H.R. 1658 would allow for court-appointed counsel for certain parties contesting a forfeiture who have already been appointed counsel in a related criminal case. The act also would eliminate the requirement that claimants post bond before the case is tried in federal court. Consequently, CBO anticipates that enacting H.R. 1658 would make it easier for people whose assets have been seized to challenge the forfeiture of such assets. Based on information from DOJ, we estimate that the percentage of seizures that would result in contested civil cases would increase from 5 percent annually to at least 20 percent in fiscal year 2001. As the defense bar becomes more familiar with the provisions of H.R. 1658, CBO expects that the percentage of contested civil cases would increase to about 30 percent each year.

While the decision to appoint counsel would be at the discretion of the judge assigned to each case, CBO expects that judges would not want to encourage litigation in many cases. Moreover, CBO expects that many of the contested cases would involve larger assets, and such cases usually do not involve multiple claimants who would need court-appointed counsel. Based on information from DOJ, CBO estimates that a small number of indigent claimants in civil forfeiture cases would also have a criminal case pending. Specifically, we estimate that court-appointed counsel would be provided in about 5 percent of contested civil cases. In addition, because forfeiture cases involve property, the courts might have to appoint more than one attorney to represent multiple claimants in the same case. Historical data suggest an average of 1.5 claims per case.

While H.R. 1658 does not specify a level of compensation paid to court-appointed counsel for a civil forfeiture case, CBO expects such payment would be equivalent to amounts paid in criminal cases. Based on information from the Administrative Office of the United States Courts, CBO estimates that court-appointed counsel would be paid about $3,000 per claimant per case. In total, we estimate that additional defender services related to civil asset forfeiture proceedings would cost about $9 million over the next five years.

In addition, other discretionary spending could be affected by this act. On the one hand, the federal court system could require additional resources, and such resources would not be reflected in the above estimates. On the other hand, some savings in law enforcement resources could be realized if fewer seizures and conducted each year.

Revenues and direct spending

Based on information from DOJ and the Treasury Department, CBO estimates that about 23,000 seizures that would otherwise occur each year under current law would be eliminated under H.R. 1658. (Such seizures primarily involve assets whose value is less than $25,000.) The various changes to civil forfeiture laws under this act would make pursuing cases more efficient and less time-consuming for the federal government. In many instances, law enforcement agencies, including the state and local agencies that work on investigations jointly with the federal government and then receive a portion of the proceeds generated from the forfeitures, many determine that certain cases, especially those with a value less than $25,000, may no longer be cost-effective to pursue.

While the federal government and other law enforcement agencies would take a few years following enactment of the legislation to realize the full effects of its provisions on the forfeiture and claims process, CBO expects that the total number of seizures would decrease by nearly 40 percent. CBO estimates that such a reduction in seizures would reduce total forfeiture receipts by about $115 million in fiscal year 2003 and by $575 million over the 2001-2005 period.

The receipts deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund are used to pay for all costs associated with the operation of the forfeiture program, the payment of equitable shares of proceeds to foreign, state, and local law enforcement agencies, and other expenses not directly associated with a forfeiture case, such as payment of awards to informants.
Estimated impact on state, local, and tribal governments: H.R. 1658 contains no intergovernmental mandates as defined in UMA. However, because CBO expects that the seizure of assets would decline under the act, CBO estimates that payments to state and local agencies from the Sale of Assets Forfeiture Fund and the Treasury Forfeiture Fund would decline by about $230 million over the 2001–2005 period. State and local law enforcement agencies receive, on average, about 40 percent of the receipts in these forfeiture funds either because they participate in joint investigations that result in the seizure of assets, or because they turn over assets seized in their own investigations to the federal government, which conducts the civil asset forfeiture case. In both cases the receipts from a seizure are accumulated in the funds and a portion is distributed to state and local agencies according to their involvement.

Estimated impact on the private sector: This act would impose no new private-sector mandates as defined in UMRA. Previous CBO transmitted a cost estimate for H.R. 1658 as reported by the House Committee on the Judiciary on June 18, 1999. While the two versions of the legislation are similar, we estimate they would have different costs. CBO estimates the House version would result in a greater loss of forfeitures, by $25 million annually, than the Senate version would. CBO does not estimate the Senate estimate on the Judiciary because the House version would place the burden of proof in assets forfeiture cases more heavily on the federal government.

In addition, the House version of H.R. 1658 would not require payments to the Legal Services Corporation for representation of certain claimants whose principal residence is seized. Finally, CBO estimates that the Senate version of the legislation would authorize less spending than the House version for the legal representation of indigent claimants because it restricts the eligibility requirements for this service more than the House legislation. We estimate this representation would cost about $2 million annually under the Senate version and about $13 million annually under the House version.

registers, cash drawers, wallets, and counting machines. If, in fact, a substantial part of the currency in this country will cause a trained dog to alert to tobacco, then the alert obviously has no evidentiary value.

Smith, 1 Prosecution and Defense of Forfeit types Cases sec. 4.03, p. 42–82 (footnotes omitted). The author cites experts finding that 70–97% of all currency is contaminated with cocaine. Id. at sec. 4.03, p. 42–82.2.

Many federal courts have agreed as to the low predictive value of dog alerts. See, e.g., $506,231 in U.S. Currency, 125 F.3d at 453; Muhammed v. Drug Enforcement Agency, 92 F.3d 648, 653 (9th Cir. 1996) ("the fact of contamination, alone, is virtually meaningless and gives no hint of when or how the cash became so contaminated."); U.S. v. $5,000 in U.S. Currency, 40 F.3d 846, 849 (6th Cir. 1994) ("[The evidential value of narcotics dog's alert is minimal.") (footnote omitted); U.S. v. U.S. Currency, $30,060, 39 F.3d 1039 (9th Cir. 1994) ("[The continued reliance of dog's alert is minimal.")."") (footnote omitted); U.S. v. $5,000 in U.S. Currency, 40 F.3d 846, 849 (6th Cir. 1994) ("[The evidential value of narcotics dog's alert is minimal.") (footnote omitted); U.S. v. U.S. Currency, $30,060, 39 F.3d 1039 (9th Cir. 1994) ("[The continued reliance of dog's alert is minimal.") (footnote omitted). The author cites experts finding that 70±97% of all currency is contaminated with cocaine. See U.S. v. U.S. Drug Enforcement Administration, 819 F. Supp. at 1467. See also 21 U.S.C. sec. 881(a)(6), and "[a]ll real property...which is used, or intended to be used, in any manner, or part, to facilitate the transportation, sale, receipt, possession, or concealment of [controlled substances]...21 U.S.C. sec. 881(a)(4).") They also make subject to forfeiture "[a]ny money, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter..." 21 U.S.C. sec. 881(a)(6), and "[a]ll real property...which is used, or intended to be used, in any manner, or part, to facilitate the commission of a violation of this subchapter punishable by more than one year's imprisonment..."") 21 U.S.C. sec. 881(a)(7). Also, federal law make subject to civil forfeiture "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of...money laundering laws..." 18 U.S.C. sec. 981(a)(1)(A).

How strong need the connection be between the "facilitating" property and the underlying crime? As to 881(a)(6), courts have interpreted its legislative history as requiring there to be a "substantial connection" between the property and the crime. See Psychotropic Substances Act of 1978, Joint Explanatory Statements of Titles II and III, Ninth Cong., 2nd Sess., reprinted in 1978 U.S. Code Cong. & Admin News 9518, 9522. As to 881(a)(7), courts require there to be a substantial connection. See, e.g., U.S. v. Parcel of Land & Residence at 28 Emery St., 914 F.2d 1, 3±4 (1st Cir. 1990); U.S. v. Bruton, 781 F. Supp. 2d at 58. See also U.S. v. $639,558 in U.S. Currency, 955 F.2d 712, 714 n.2 (D.C. Cir. 1992). Dog alerts of little value in meeting a standard of probable cause, and are of even less value in meeting a standard of preponderance of the evidence. Adding the above factors together, "[the government must come forward with more than a 'drug-courier profile' and a positive dog alert to [meet the standard of probable cause]." Funds in the Amount of $9,800, 952 F. Supp. at 1261." As the court ruled in U.S. v. Certain Lots in Virginia Beach, 657 F. Supp. 1062, 1065 (E.D. Va. 1987). But, courts have not always felt this way in applying section 881(a)(7). In U.S. v. $639,558 in U.S. Currency; 739 F. Supp. 120, 124 (W.D.N.Y. 1990), the court found a home forfeitable because the owner grew 17 stalks of marijuana in his backyard of home for personal use (standard used was unclear). See also U.S. v. One Parcel of Real Property, 960 F.2d 200, 205 (1st Cir. 1992). The court in 916 Douglas Ave. found a home forfeitable on the basis of three phone calls made to or from it regarding the sale of two ounces of cocaine. "The loss of one's home for the sale of a small amount of cocaine is undoubtedly a harsh penalty", but that there was no evidence that other homes were involved (494 (no substantial connection needed). In U.S. v. Plescia, 48 F.3d 1452, 1462 (7th Cir. 1995), one phone call to set up a large drug deal resulted in the forfeiture of a home (no substantial connection needed). See also U.S. v. Zuniga, 835 F. Supp. 622 (M.D. Fla. 1993). (Under a "substantial connection" or lesser test, ten calls involving drug offenses resulted in the forfeiture of a house (under a criminal forfeiture statute with an "identical" burden as 881(a)(7)).). None of these cases would meet the substantial connection test provided in H.R. 1568.

Under the substantial connection test, should an entire bank account be forfeitable because some of its assets were involved in money laundering? In U.S. v. Ali Monies ($477,448.62 in account #509-3657-3-745 F. Supp. 1467 (D.Haw. 1991), the court ruled that under sec. 881(a)(6) and 18 U.S.C. sec. 981(a)(1)(A), the government showed probable cause that an entire bank account worth approximately $477,000 was forfeitable for being involved in faciliated drug and money laundering offenses. In United States v. $242,000 in the account representing the proceeds of a drug crime. The court found that "both the legitimate and tainted money in the
account aided [the laundering of drug proceeds]. The account provided a repository for the legitimate money could provide a ‘cover’ for those proceeds, thus making it more difficult to trace the proceeds.” Id. at 1475–76 (substantive connection required).

Such a doctrine can quickly lead to unfair and disproportionate results. The 10th Circuit presents the proper limitation:

[T]he mere pooling or commingling of tainted and untainted funds in an account does not, however, render the entire contents of the account subject to forfeiture. . . . [F]orfeiture of legitimate and illegitimate funds commingled in an account is proper as long as the government demonstrates that the . . . [owner] pooled the funds to facilitate, i.e., disguise the nature and source of, his scheme. * * *

U.S. v. Bornfeld, 145 F.3d 1123, 1135 (10th Cir. 1998) (criminal forfeiture under 18 U.S.C. sec. 982(a)(1)) (enhancement was unclear). See also U.S. v. Contents of Account, 847 F. Supp. 329, 335 (S.D.N.Y. 1994) (“The facilitation theory is appropriate in the present case where [the owner] established and controlled the [accounts], and commingled legitimate and illegitimate funds in those accounts, for the purpose of disguising the nature and source of the proceeds of [the scheme].”) (forfeiture under 18 U.S.C. sec. 981(a)(1)(A)) (standard used was unclear).

Under H.R. 1658’s substantial connection test, in order for an entire bank account composed of both tainted and untainted funds to be forfeitable, a primary purpose of its establishment or maintenance must be to disguise a money laundering scheme. This rule should also apply when the government seeks to forfeit an entire business because tainted funds were laundered in a firm bank account. For the business to be forfeitable, a primary purpose for the establishment or maintenance of the entire business must be to disguise a money laundering scheme. See U.S. v. Any and All Assets of Shane Co., 816 F. Supp. 388, 401 (M.D.N.C. 1991) (Business that pool’s money laundering was unconstitutional.) (forfeiture under 18 U.S.C. sec. 981(a)(1)(A) (substantial connection required).

The provision should not be read as extending the statute of limitations in cases that are already time-barred as of the date of enactment of the bill.

UNIFORM DEFINITION OF PROCEEDS (SECTION 20)
S. 1931’s uniform definition of proceeds is self-explanatory. However, it is important to note Congress’ disapproval of the ‘ink drop’ test for enhancement developed by the Eleventh Circuit. In U.S. v. One Single Family Residence, 933 F.2d 976, 981 (11th Cir. 1991) (proceeds forfeiture under 21 U.S.C. sec. 881(a)(6)), the court ruled that “[a]s to a wrongdoer, any amount of the invested proceeds traceable to the wrongful use of that property is the entire property. We have never held that as to a wrongdoer only the funds traceable to illegal activities may be forfeited.” To the contrary, that portion of a piece of property purchased with tainted funds is forfeitable.

DESTRUCTION OR REMOVAL OF PROPERTY (SECTION 12)
18 U.S.C. sec. 2232 is amended to expand the scope of conduct which constitutes an offense for damaging or removing property which is subject to a lawful search or seizure. Subsection (a), which makes it a crime to damage or remove property which has not yet been seized, should be interpreted in a commonsense manner. Individuals who had knowledge that a law enforcement agency is attempting, has attempted, or was about to attempt to seize the property. Subsection (b), which has been added to this section, makes it an offense to remove or destroy property which is already the subject of the in rem jurisdiction of a United States District Court.

EFFECTIVE DATE (SECTION 21)
For purposes of the effective date provision, the date on which a forfeiture proceeding is commenced is the date on which the first administrative notice of forfeiture relating to the seized property is sent. The purpose of this provision is to give the Justice Department and the U.S. courts four months from the date of enactment of the bill to educate their employees as to the bill’s changes in forfeiture law.

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, this legislation has been long in coming. I know on behalf of the gentleman from Michigan (Mr. Conyers), Ranking Member of the Committee on the Judiciary from Illinois (Mr. Hyde) because this is legislation that the gentleman from Illinois has worked on extensively and without rest. The gentleman from Illinois has worked in a bipartisan manner. We have had disagreements sometimes rally around this legislation because in every single one of our districts we found someone’s mother, someone’s wife, someone’s sister, some innocent person who has been law abiding but because we are part of a system that allows drugs in our communities — a family member outside of the law who has brought down the heavy hand of the law on hardworking people who have retained, if you will, or worked hard for the properties that they have.

I want to pay tribute to the gentleman; and I know the gentleman from Michigan would, as I just heard a few moments ago, this is truly bipartisan bill. I want to mention the fact that this is on the suspension calendar because we have had some vigorous debates here just earlier this morning about the process of suspensions, by-passing the committee, and I would not want this legislation to be defined accordingly.

This bill has been worked and worked and worked and your staff, George, we thank you, we know you have been on this battle line working hard to make sure that this comes together. I want to acknowledge Perry Apelbaum and Coral Flom likewise and say that we rise in support of this legislation, a bipartisan bill that is a result of extensive research and discussions with our colleagues in the Senate, Senators Hatch, Leahy, Sessions and Schumer as well as the Department of Justice. I might do a slight editorial note and say that out of the bipartisan effort to create this bill from the go not be the exact same and I might have wanted the bill from the House maybe because I am a House Member but we are gratified that we finally resolved it and it has come back for a vote.

Mr. Speaker, the Civil Asset Forfeiture Reform Act makes common sense changes to our civil asset forfeiture laws to make these procedures fair and more equitable.

H.R. 1658 strikes the right balance between the needs of law enforcement and the right of individuals to not have their property forfeited without proper safeguards. I recall that we actually had hearings on this, and I recall some of the drug dealers, some of the unions losing their only house, their only source of income because of this law.

Would you believe that under current law, the government can confiscate an individual’s private property on the showing of probable cause? That is under current law. Then even though that person has never been arrested, much less convicted of a crime, the government requires a person to file action in a Federal court to prove that the property is not subject to forfeiture just to get the property back. Well, that is true.

We can imagine that the gentleman from Michigan enthusiastically embraced and worked with the gentleman from Illinois on this legislation. There is no question that forfeiture laws can, as Congress intended, serve legitimate law enforcement purposes. My own police department, a simple and small example, has used civil forfeiture laws as relates to drug intervention and drug crimes. But they are currently susceptible to abuse. That is why the bill makes reforms to the current civil forfeiture regime.

To highlight a few examples, the bill places the burden of proof where it belongs, with the government agency
Mr. HYDE. Mr. Speaker, I yield my time.

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

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Speaker, I thank the distinguished chairman of the Committee on the Judiciary for yielding me this time. I would like to commend the gentleman from Illinois for his tremendous work over many years' time on reforming Federal asset forfeiture laws which, as we all know, are an important tool for Federal law enforcement and indirectly for local law enforcement which frequently becomes a cause of the participation in these cases of innocent owners being seized, and the property being forfeited once they are once they are forfeited.

Many of us, including myself as a former United States attorney, while having tremendous respect and support for our civil asset forfeiture laws and what an important tool they are for law enforcement also recognize they are subject to abuse and have been misused. This legislation on which the gentleman from Illinois has been working for many years and which will be one of the most important hallmarks of his tenure as both chairman of the Committee on the Judiciary and his service as a Member of the House of Representatives will go a long way towards bringing back into balance a system that has become sorely out of balance. I commend the gentleman for his work, and I commend both of the aisle for bringing this forward in a bipartisan manner. I urge its adoption.

Mr. Speaker, I also rise today with the chairman of the Committee on the Judiciary to discuss the intent of section 1055(c) which states, 'A claim shall state the claimant's interest in such property and provide customary documentary evidence of such interest if available and state that the claim is not frivolous.'

Mr. Speaker, I interpret this language to require only prima facie evidence to establish such an interest. I assume the gentleman from Illinois concurs with my representation but would like to hear the record to clarify what type of documentation would be necessary to establish this interest in the seized property, sufficient to make a claim under this legislation.

This documentary evidence should be fairly easy to obtain while still establishing the claimant has a legitimate, nonfrivolous interest in such property. This interest can be established by documents including but not limited to a copy of an automobile title, a loan statement from a bank for a monetary account. For property such as cash in which no documentary evidence is normally available, this provision would be loosely applied and there would be an assumption that the claimant's interest in such property by simply making a claim and asserting its nonfrivolous nature.

Mr. HYDE. Mr. Speaker, if the gentleman will yield, I thank the gentleman from Georgia for bringing this issue to the attention of the House. The gentleman's explanation is accurate and reflects the intent of the legislation. There was a need for such an explanation and I appreciate the gentleman from Georgia's clarification of this provision.

Mr. BARR of Georgia. I thank the gentleman for engaging in the colloquy.

Mr. HYDE. Mr. Speaker, I yield myself 30 seconds. I want to thank the gentleman from Texas and others who have done a tremendous job to ease those concerns.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. Sweeney).

Mr. SWEENEY. Mr. Speaker, I thank the gentleman for his cordial remarks. I want to particularly thank the gentleman from Michigan and his staff and make a point. This Committee on the Judiciary in this House of Representatives can work together in a bipartisan fashion to turn out good legislation. This is one example. There are many others. This bill has its genesis in a newspaper article written by Steve Chapman of the Chicago Tribune several years ago. When I read what was going on under civil asset forfeiture, I thought it was more appropriate for the Soviet Union than the United States, and it has taken 7 years but we are there today and it is a great moment.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding me this time. I want to say, a year ago I rose on this floor with my colleagues the gentleman from Arkansas (Mr. Hutchison) and the gentleman from New York (Mr. Weinquig) in opposition to this bill. I come today in support of this particular provision. I rose in opposition a year ago because I was concerned about the effects on criminal justice and specifically the effects on law enforcement, but I have to point out that the chairman and the Committee on the Judiciary, as has been noted, in a bipartisan manner has done a tremendous job to ease those concerns.

They have provided us great improvements on the bill. The compromise provides important procedural protections to the alleging property. The compromise out compromises law enforcement's ability to shut down criminal enterprises. Specifically the bill shifts the burden of proof in forfeiture cases from...
Mr. Speaker, I yield 3½ minutes to the gentleman from New York (Mr. Weiner), a distinguished member of the Committee on the Judiciary. Mr. WEINER. Mr. Speaker, I rise in support of the Senate amendments to H.R. 1658, and I want to commend the gentleman from Illinois (Chairman Hyde), our chairman, for his year-long effort to reform our asset forfeiture laws. The gentleman quite literally wrote the book on the subject. When the history is written of his prodigious work in this House, this certainly warrants mention.

Last year, a somewhat divided House considered H.R. 1658. While it garnered the support of the majority of our colleagues, it was adamantly opposed by the administration, as well as by every major law enforcement group. Because of this opposition, I offered, along with the gentleman from Arkansas (Mr. Hutchison) and the gentleman from New York (Mr. Sweeney), a substitute version of H.R. 1658 on the floor of the House.

The substitute would have made needed reforms by placing the burden of proof on the Government to prove by a preponderance of the evidence that property seized was used in an illegal activity. It would have allowed for counsel to be appointed in those proceedings. It would have protected innocent owners, and it would have allowed property to be returned to claimants in instances of hardship.

It was, I thought, a balanced approach that supports the support of all major law enforcement organizations, as well as 155 of my colleagues. That amendment failed, although it had some support, and many of us voted against the base bill for that reason.

Mr. Speaker, today's amendment, today's bill I am pleased to vote in favor of. It puts the burden of proof where it should be, on the Government; and it rightfully protects the owners and spouses and children, if they can show their innocence.

Perhaps, most importantly, today's bill has the approval of the men and women of law enforcement. Like our substitute, today's bill allows civil asset forfeiture to continue to be used as a tool by police and prosecutors across the country to shut down crack houses and seize drug-running speedboats.

Mr. Speaker, I applaud the authors of this compromise and my colleagues who voted in favor of reform originally. Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume, merely to point out in the collogoy between the gentleman from Georgia and the gentleman from Illinois (Mr. Hyde), the distinguished chairman of the committee, that I stand in agreement about the interpretation given by the chairman of section 983A(2)(c)(2), with which the claimant's interests in such property and provide customary documentary evidence of such evidence, if available, and state that the claim is not frivolous.

Mr. Speaker, I just wanted to join in a clarification of the intent that, for example, a person should not be barred from challenging an improper forfeiture if he or she has misplaced a receipt or if the person does not have the evidence on hand. I think that response is consistent with the gentleman from Illinois (Mr. Hyde) and the gentleman from Georgia, and I just wanted to weigh in on that.

This has taken quite awhile, but it is an important measure, and my compliments are out to the gentleman from Illinois (Mr. Hyde), the chairman of the committee, and to all of the Members who have gone through a rethinking process to bring the bill to the kind of support that I believe it is enjoying on the floor this afternoon.

Mr. Speaker, I believe this matter from the Old Government Operations Committee, and I was very pleased to learn that the gentleman from Illinois had, indeed, studied the matter, had put together his thoughts on the matter, and he led us to bringing forth a bill jointly that now has the imprimatur, I believe, of most of the Members in both bodies.

It is in that spirit that we will want to make sure that it is implemented fairly and that it adds to the good body of law that comes out of the House Committee on the Judiciary.

Mr. Speaker, with those remarks, I reserve the balance of our time.

Mr. HYDE. Mr. Speaker, I yield myself the remainder of my time.

Mr. Speaker, I wish to express my gratitude again to the gentleman from Michigan (Mr. Conyers) and his staff and everyone who worked on this bill. We did not mention Jon Dudas and Rick Filkins. I just want to say, George Fishman who is sitting here, he was the single most indispensable element of this bill, and I am grateful to him.

Mr. BARR of Georgia. Mr. Speaker, I would like to thank Mr. Hyde for working rigorously to come to a reasonable agreement with the Senate on civil asset forfeiture reform. The compromise is fair and will restore fairness to this process.

Civil asset forfeiture is a mechanism allowing law enforcement authorities to seize assets such as homes, property, cash, and cars that are used in furtherance of criminal activity. However, in recent years, the laws have been used overly broadly, and have been cited by civil libertarians as excessive and oppressive.

One of the most important challenges Congress faces is balancing individual liberties against the need for effective law enforcement. Generally, our laws do this fairly well.
However, our civil asset forfeiture laws are tilted too far in one direction. Current civil asset forfeiture laws allow police to seize a person's assets, regardless of whether the person has been, or ever is, convicted of a crime, if police have nothing more than probable cause to believe the property was used for criminal purposes. You are presumed guilty until you can prove yourself innocent.

In effect, our current asset forfeiture system targets both criminals and law-abiding citizens, takes their cars, cash, homes, and property away, forces them to prove they are innocent in order to get their assets back. The goal of this reform legislation is to change a system that sometimes violates the rights of the law-abiding, while retaining those provisions that allow law enforcement to target criminals, and hit them where it hurts—in their pocket books.

As I know from my service as a federal prosecutor, the majority of jurisdictions in America use asset forfeiture laws sensibly and fairly. Unfortunately, in some cases, law enforcement deliberately targets innocent citizens and seizes their assets, because they know proving innocence under the constraints of the current law is extremely difficult if not impossible. The burden of proof for the government is minimal; they only have to live a defense, and they have to post a bond even though the government has seized their assets.

H.R. 1658 was introduced to address this matter of allowing law enforcement to use this important tool of asset forfeiture, while still requiring them to be more mindful of due process and individual rights.

This legislation enjoys wide bi-partisan support, and passed the House on June 24, 1999 by a vote of 417-1. Currently, the 65,000 member Law Enforcement Alliance of America supports it, as do many other line officers and retired police chiefs from across America. It returns balance and fairness to an area of law that has been abused to violate the rights of innocent citizens for too long.

This reform legislation does not deny law enforcement the ability to seize and forfeit assets that truly are used for criminal endeavors. It does, however, more properly balance those powers against civil liberties.

Mr. Speaker, I strongly support this measure. Passage of this bill is long overdue, and I urge all Members to support it, as do many other line officers and retired police chiefs from across America. It returns balance and fairness to an area of law that has been abused to violate the rights of innocent citizens for too long.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The motion to reconsider is laid on the table.

SENSE OF CONGRESS THAT MIAMI, FLORIDA, SHOULD SERVE AS PERMANENT LOCATION FOR SECRETARIAT OF FTAA

Mr. CRANE. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 71) expressing the sense of the Congress that Miami, Florida, and not the permanent site of the Free Trade Area of the Americas (FTAA), should serve as the permanent location for the Secretariat of the Free Trade Area of the Americas (FTAA) beginning in 2005.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The motion to reconsider is laid on the table.

WHEREAS deliberations on establishing a "Free Trade Area of the Americas" (FTAA) will facilitate greater cooperation and understanding on trade barrier reduction throughout the Americas;

WHEREAS the trade ministers of 34 countries of the Western Hemisphere agreed in 1998 to create a permanent Secretariat in order to support negotiations on establishing the FTAA;

WHEREAS the FTAA Secretariat will employ persons to provide logistical, administrative, archival, translation, publication, and distribution support for the negotiations;

WHEREAS the FTAA Secretariat will be funded by a combination of local resources and institutional resources from a tripartite committee consisting of the Inter-American Development Bank, the Organization of American States (OAS), and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC);

WHEREAS the FTAA Secretariat will be located in Miami, Florida, from 1999 until February 28, 2001, at which point the Secretariat will rotate to Panama City, Panama, until February 28, 2003, and then rotate to Mexico City, Mexico, until February 28, 2005; and

WHEREAS by 2005 the FTAA Secretariat will have international institution status providing jobs and tremendous economic benefits to its host city;

THEREFORE, by 2005 the FTAA Secretariat after 2005 will likely be selected from among the 3 temporary host cities;

WHEREAS the city of Miami, Miami-Dade County, and the State of Florida has long served as the gateway for trade with the Caribbean and Latin America;

WHEREAS trade between the city of Miami, Florida, and the countries of Latin America and the Caribbean totaled $36,793,000,000 in 1998;

WHEREAS the Miami-Dade area and the State of Florida possess the necessary infrastructure, local resources, and culture necessary for the FTAA Secretariat's permanent site;

WHEREAS the United States possesses the world's largest economy and is the leading proponent of trade liberalization throughout the world; and

WHEREAS the city of Miami, Florida, the State of Florida, and the United States are uniquely situated among other competing locations to host the "Brussels of the Western Hemisphere"; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should direct the United States representatives to the "Free Trade Area of the Americas" (FTAA) negotiations to use all available means in order to secure Miami, Florida, as the permanent site of the FTAA Secretariat after February 28, 2005.

The SPEAKER pro tempore (Mr. Ose). Pursuant to the rule, the gentleman from Illinois (Mr. Crane) and the gentleman from Michigan (Mr. Levin) each will control 20 minutes.

Mr. CRANER. Mr. Speaker, I ask unanimous consent that all Members may be considered as voting for the resolution.

The Chair recognizes the gentleman from Illinois (Mr. Crane).

WHEREAS the city of Miami, Miami-Dade County, and the State of Florida have long served as the gateway for trade with the Caribbean and Latin America;

WHEREAS trade between the city of Miami, Florida, and the countries of Latin America and the Caribbean totaled $36,793,000,000 in 1998;

WHEREAS the Miami-Dade area and the State of Florida possess the necessary infrastructure, local resources, and culture necessary for the FTAA Secretariat's permanent site;

WHEREAS the United States possesses the world's largest economy and is the leading proponent of trade liberalization throughout the world; and

WHEREAS the city of Miami, Florida, the State of Florida, and the United States are uniquely situated among other competing locations to host the "Brussels of the Western Hemisphere"; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should direct the United States representatives to the "Free Trade Area of the Americas" (FTAA) negotiations to use all available means in order to secure Miami, Florida, as the permanent site of the FTAA Secretariat after February 28, 2005.

The SPEAKER pro tempore (Mr. Ose). Pursuant to the rule, the gentleman from Illinois (Mr. Crane) and the gentleman from Michigan (Mr. Levin) each will control 20 minutes.

Mr. CRANER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. Con. Res. 71 is a non-controversial resolution which would express the sense of the Congress that the USTR should use all available means to make Miami, Florida, the permanent site of the Secretariat for the Free Trade Area of the Americas, FTAA, after the year 2005. The resolution passed the Senate by unanimous consent last November.

The FTAA facilitates open cooperation and the reduction of trade barriers throughout the Americas. Right now the Secretariat is rotating among various cities until 2005. The permanent host site is important because the host country gains international institution status and economic benefits. This legislation would send an important signal to the administration and to our