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# Senate

The Senate met at 8:15 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

## PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Eternal and dependable Creator, giver of the abundant harvest, the refuge of all who flee to You the helper of those in need and the one sure resource in times of trouble. Thank You for harmonizing the world with seasons and climates, sowing and reaping, color and fragrance. We praise You, for You are the substance that sustains us in each of life's seasons. In time's rapid passing, remind us of life's brevity and teach us to number our days

Lord, thank You for all the beauty in our world, for the loveliness of earth and sea and sky. Thank You for great music and great books, for prose and poetry. Thank You for the nobility You have placed in human hearts, for our military people who love their country until even self is forgotten. Thank You for Senators who struggle with complex issues and labor for a world at peace.

Thank you for loved ones without whom life would never be the same. Lord, thank You also for obstacles, delays, challenges, trials, and even enemies that make us stronger. Above all, thank You for Your gift of salvation.

Accept this our sacrifice of thanksgiving and praise, for the sake of Your glorious name. Amen

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

**NOTICE**

If the 108th Congress, 1st Session, adjourns sine die on or before December 9, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

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



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SCHEDULE

Mr. FRIST. Mr. President, this morning there will be 1 hour of debate prior to the vote on adoption of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act. That vote will occur at 9:15 this morning. I will have more to say about the bill on this important occasion just prior to the vote. I thank all Members for their cooperation and participation throughout this debate.

I also announce that we are continuing our efforts to act on the remaining appropriations bill. This morning, I will continue my discussions with the Democratic leadership as to the possible consideration of that bill. I will have more to say about this and the final schedule after the vote on final passage.

Having said that, we are prepared for the final closing remarks on this landmark legislation.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 1, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany H.R. 1, an act to amend title XVIII of the Social Security Act to provide a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

The PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, the majority manager is not here. I have been designated to be the opposition manager for the half hour that we have. In a short time, I will delegate that time to the senior Senator from Massachusetts.

As we begin this half hour on our side and half hour on the other side, I extend my appreciation and that of the whole Democratic caucus to Senator KENNEDY for leading the opposition, literally, to this measure. He has had a lot of help. I have sat through days of speeches on this matter and I have been impressed with the quality of the speeches, really, on both sides. Especially on our side, I have been impressed with Senator KENNEDY, and I will mention a number of names who I thought did such a wonderful job: Senators BAYH, BOXER, CANTWELL, CLINTON, DAYTON, DODD, HARKIN, PRYOR, NELSON of Florida, and GRAHAM of Florida. What a loss it is going to be to this institution and our country that this fine man is going to no longer be part of the Senate after 1 year.

I believe there is no one who has a better grasp of this legislation than the Senator from Florida. He has done such an outstanding job of articulating his views.

Of course, I add a congratulatory note to Senator STABENOW who has worked on this measure long and hard.

Senator DURBIN has always done such a good job of expressing his views. He was never any better than on this issue.

Mr. President, I reserve the last 5 minutes for Senator DASCHLE. I delegate the rest of our time to the senior Senator from Massachusetts.

The PRESIDENT pro tempore. Under the previous order, the last 5 minutes is reserved.

Mr. KENNEDY. Mr. President, on the question of time, we have the last 5 minutes. That will probably be leader time. The leader, obviously, ought to have whatever time he needs.

Mr. REID. Mr. President, we have 23 minutes on our side; 23 minutes on the other side.

The PRESIDENT pro tempore. The Chair advises the Senator from Massachusetts that the final 5 minutes of the first half of the time is for the minority leader, and the final 5 minutes of the debate time is for the majority leader.

Mr. KENNEDY. I thank the Chair.

Mr. President, I bring to the attention of the Members a picturesque description of what the reaction is to this proposed legislation. It is written in a very explicit article this morning in the Boston Globe. I want to share the article with the Members.

The title is ''In Dorchester, Seniors Weigh Changes Against Their Needs.''

It reads:

Thomas Lombardi dropped his private health insurance a few years ago when the price rose steeply. Then he switched from Coumadin, a prescription anticoagulant he took for heart disease, to half an aspirin to save about $15 a month. Living on Social Security and a bit of savings, Lombardi, 75, says he frequently has ''to cut corners to stay alive.''

But over lunch at the Kit Clark Senior Center in Dorchester, he said he doesn't support the $400 billion Medicare drug benefit that is about to become law and provide coverage to millions of seniors like him. Echoing the comments of many others at the center yesterday, he said it's far too complicated and probably won't go far enough to help him because of gaps in the coverage designed to keep down the cost of the new benefit. Besides, many said, it will be two years before the full benefits kick in.

''I don't believe it's good for me,'' said Lombardi, who owned a welding business in Dorchester.

''This is part of the Bush strategy to . . . destroy programs put in place years ago,'' Said Richard Schultz, who qualifies for Medicare at 60 because he is disabled. ''I understand that it would benefit some low-income people in the short term, but combined with huge tax cuts, this is going to drive the deficit up. Then they're going to decide they don't have the money, and, in the long run, the program will be dissolved''. . . .

Barbara Burke, who operates the switchboard at the senior center, disparagingly called the new benefit ''a Band-Aid.''

It's not enough with the high cost of medicines,'' said Burke, who said she's still working at 66 because she won't be able to afford her prescriptions if she retires. The center does not pay health benefits for retirees, she said, and she has chronic lung disease that costs her more than $200 a month for inhalers alone.

''People that can't afford to buy medications should get it at a minimum charge,'' she said. . . .

An Kim Hoang, 67, said she can't afford a copayment of $3 for a brand-name drug, which will be required under the new plan for those below the poverty level. Those with incomes from $8,980 to $12,123 will face copayments up to $5 per prescription. Seniors currently getting drug coverage through the MassHealth, the state-federal Medicaid program for the poor, would be shifted to the federal program.

In fact, that is going to be eliminated in terms of coverage. That is part of the 6 million low-income seniors who will pay more.

Hoang, speaking through a translator, said she borrows from friends to cover the $2 copayment required by Medicaid for each of the eight prescriptions she takes to treat mental illness. ''$1 is OK,'' she said, ''but $2 is too much.''

This is the real world, Mr. President. This is putting a face and name on the 6 million low-income seniors who will pay more.

''$1 is OK,'' she said, ''but $2 is too much.''

That was put in here to save some $12 billion to $15 billion put into a slush fund to provide additional benefits to the HMOs.

Because of the Medicaid copayment, her friend Quy Nguyen, 71, said she limits herself to four prescriptions she needs most and tries to get by without several others. She said she envisions that choice becoming more difficult under [this program.]

Josephine DeSantis said the new benefit would help her immensely, since she struggles to scrape together the $157 she spends every three months for drugs to prevent ulcers and dizziness. But at 78, she said, she's upset that the benefit won't start until 2006.

''In two years,'' she said, ''I'll probably be dead.''

There you have it, Mr. President, reaction in a working class community in Dorchester. We have the reaction in real life about what the low-income seniors pay.

When we talk and bring out these charts, as we have in the past few days, this is the very instance about which we are talking. It did not have to be this way. This is just an illustration of the overall challenges of this legislation and a reason that it should not pass the Senate.

How much time do I have, Mr. President?

The PRESIDENT pro tempore. The Senator has 15 minutes remaining.

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Florida.

The PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. GRAHAM of Florida. I thank the Chair.

Mr. President, I thank Senator KENNEDY. We have had a long and quite illuminating debate over the past week on one of the most important issues that our Nation faces; that is: Shall we turn a program which for 40 years has protected older Americans and disabled Americans against illness into a program which promotes wellness?

In order to do that, we understand that fundamentally we will have to make access to prescription drugs affordable, comprehensive, universal, and reliable because prescription drugs are now fundamental to a preventive health care policy.

There is much to criticize about this legislation, and I intend to vote no. We have heard that at great length in recent days. Let me take a slightly different approach. I am assuming that this legislation is going to pass. The challenge will then be before us: What do we do next?

Let me suggest three things that we ought to do next. One is that we have to look realistically at the cost of this bill. As Senator ENSIGN said during last night's debate, the $400 billion figure is a mirage. This bill is going to cost substantially more than $400 billion. The Congressional Budget Office is estimating that in the second 10 years, it will be over $1 trillion.

What are the suggestions of how to deal with this reality? One of those suggestions is to reduce benefits. Another one is to set some type of a formula relating Medicare expenditures to general revenue, and then scaling back Medicare expenditures when they break through that barrier.

Of course, one of the things that we ought to have done in terms of cost is not start this year by passing a massive tax cut which added substantially to the Federal deficit and narrowed the range of realistic options that we have today.

This has been truly an amazing year for the Congress and the President. We started the year with a proposal for almost a $1 trillion tax cut. We reasserted our commitment to fight and win a war against terror in Afghanistan. We started a war in Iraq. We have seen surging Federal Government expenditures in the nondefense area, and now on what will likely be the last day of the session, we conclude by passing a $400 billion unfunded new entitlement.

My answer to the question of cost, at least a significant part of it, lies in the fact that in this bill we are failing to sanction the use of the tremendous marketing influence which the Federal Government, through the Medicare Program, can have over the cost of prescription drugs.

Just as we did over 10 years ago—and the Presiding Officer's colleague, Senator MURKOWSKI, was a prime sponsor of this legislation—we authorized the VA to negotiate to get the best prices it could for American veterans. I think the high priority for 2004 should be to give to the administrator of the Medicare Program similar authority.

Second, I think we need to pass a Patients' Bill of Rights. If we are going to be herding millions of older Americans into various forms of health management, we have a responsibility to give them some assurance as to what the standards of that access to health care will be.

Third, we have a strange provision in here for the distribution of prescription drugs. That is, we use private insurance programs rather than traditional Medicare. It would be like having to get a private insurance program to get anesthesiology or any of the other services that have traditionally been provided through Medicare.

Then, in order to encourage—I would say more than encourage—mandate the maximum number of Americans participating in that program, we say there has to be at least one prescription-only insurance provider in the region and, second, then a preferred provider organization, essentially a variant of an HMO, in the region. It is only if both of those fail, there is not one or more drug-only insurance plan or a PPO, only under those circumstances will a person be able to consider using standard fee-for-service Medicare as the means of getting their prescriptions.

It is ironic that in another part of this bill, which is going to create a demonstration project on the totality of Medicare, we line up all of the choices side by side, including staying in traditional fee for service, which over 85 percent of Americans are electing to do, and then choose on an equal basis, as we do in the Federal health insurance program. We do not have to wait until all of the other choices have been rejected, because they are not being provided, and then drop back into a Blue Cross/Blue Shield-type fee for service.

We ought to do the same thing with prescription drugs. If we are going to have what I think is a rather irrational program—incidentally, the prescription drug-only proposal is not in existence in any other area of American health care. A person cannot buy that through the Federal health care system. A person cannot buy it through their employer system. The reason they cannot buy it is because no insurance company is providing it. That ought to tell us something about what they think of the management and fiscal implications of providing a drug-only prescription plan.

At least we should not require our oldest citizens to go through a so-called fallback process. We should allow older citizens to assess all of the options at the same time and make the decision they consider to be in their best interest.

As I conclude this long debate, I urge that the agenda of cost, patients' rights, and providing the more rational process for elderly determinations as to how they will receive their drugs be the starting point of the agenda for reform next year.

The PRESIDENT pro tempore. The Senator's time has expired.

Who yields time?

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

First, I very much appreciate the passion of the opposition. Hopefully, they will look back on this day and come to the conclusion that we have not only provided prescription drugs for seniors as the first improvement in Medicare in 38 years and the strengthening of Medicare that follows it, but that we are also in the process of giving baby boomers an alternative Medicare Program, if they would so choose.

The basis of such legislation is the right to choose for seniors. No one is forced to do anything. We will give those baby boomers a program that is much closer to the health insurance they have in the places from which they retire.

Regardless, there are two classes of people covered today or not covered today with prescription drugs that we are emphasizing. For low-income people, too often our seniors are choosing between heat and prescription drugs, particularly in the cold areas of the country, or between food and prescription drugs. This legislation is going to lessen the chances that low-income people are going to have to make such choices.

The other group of people are those who have catastrophically high prescription drug costs. There is heavy subsidy and help in this bill for those two categories of people. Those are significant categories of people.

Also, we are doing something for everybody in this legislation from the standpoint that for the first time there will be in place mechanisms to dramatically negotiate down the price of drugs. That is obviously going to help the people who voluntarily choose to go into these plans, but the extent to which that is going to have an impact on everybody, old or young, is very important because all I hear from opponents of this bill is that we do not do anything to help cut down on the costs of drugs.

We do it through the subsidy. We do it through negotiations. We do it through getting generic drugs on the market much sooner than before.

Also, this bill is about enhancing quality of life, because none of us think the quality of life is enhanced by putting people in the hospital if they do not need to go to the hospital.

Remember when Medicare was enacted 38 years ago, the practice of medicine was to put everybody into the hospital. Today, the practice of medicine—and a lot of the thanks can go to prescription drugs—is to keep people out of hospitals and out of operating rooms. So people who cannot afford drugs, who go to the doctor very sick,

are going to not only end up in a place they do not want to go, because people would rather not go to hospitals, rather not go to operating rooms. It is going to save our programs a lot of money, both private and public payment programs, for doctors and hospitals, when we can have people go into programs where they can get prescription drugs and keep their health up so they do not go to the hospital.

So we are bringing Medicare and the practice of medicine into the 21st century. In strengthening and improving Medicare, we are doing today exactly what we would be doing if we were writing a Medicare Program in the year 2003 as opposed to the year 1965.

I hope the opponents, in a few years, can look back and say this is the day we have done the right thing for seniors, for their economic life, for the quality of their life; we have done the right thing for our hospitals and our doctors; we have done the right thing for America.

I would like to spend just a little bit of time counteracting the arguments that are used against this bill by those who say we are not doing enough for low-income people. In fact, this bill is coming back from conference doing better for low-income people than when it went into conference.

One of those major changes that were made, not only at the behest of the House of Representatives but also at the behest of a lot of people in this body, probably more prominent in the Democratic Party than in the Republican Party, was to make sure the category of people we call dual eligibles—those low-income seniors who are already on Medicare but also qualify for Medicaid—is to put all of those into the Medicare Program so we didn't have an inequality. Maybe it was not a very big inequality but at least there was some inequality from one State to another State because of the Federal-State partnership in Medicaid that enables the State legislatures in some States to maybe set up a little different program—a little more rich, a little less rich—than what might be done in another State.

So dual eligibles are in this bill because of the demands of mostly Democrat Senators and people in the House of Representatives. That is something I didn't believe should be done, but I supported it because that was a necessary compromise. But now I find people who were advocating that position complaining about the legislation. So I want to tell them how wrong they are or how, if they are right just a little bit, they are right in such an insignificant way that it is immaterial because that ought to be seen as something that results from something they wanted us to do in this legislation.

This conference report, then, contains a generous drug benefit for these dually eligible seniors. There is, first of all, no donut hole for low-income Medicare beneficiaries. Let's get this clear. Let me make it clear. People on that side of the aisle are complaining about a donut hole. But for low-income people there is no donut hole. The bill guarantees all 6 million dual eligibles access to prescription drugs.

Under our conference report, dual eligibles will have better access through Medicare, especially since State Medicaid programs are increasingly imposing restrictions on patients' access to drugs, and that is what brings about greater inequity from State to State. Since States are in a budget crunch, forced to do that, some dual eligibles might be treated less generously in one State as opposed to another, but when they are all under the Federal Medicare Program, that will not be the case.

Further, States have the flexibility to provide coverage for classes of drugs, including over-the-counter drugs, that are not now covered by the Medicare Program. This bill ensures appeal rights for dual eligibles. Under the agreement, dual eligibles will maintain appeals rights like those in the Medicaid Program. The dual eligibles are a fragile population and I think, because of the conference report as opposed to either bill in its original form, they are taken care of better in this bill. The conference report recognizes and provides generous coverage to these 6 million people.

I hope we can take the summation of the AARP when they said this bill ''is a historic breakthrough and [an] important milestone in the Nation's commitment to strengthen and expand health security for its citizens. . . .'' I hope that will be conceived or considered as a toning down of the partisan opposition to this legislation.

I reserve the remainder of my time just in case some colleagues come over. I have more to say, but I will say it later if other colleagues don't show up, so I yield the floor.

TITLE XI

Mr. KENNEDY. Mr. President, I oppose the Medicare bill before the Senate, but I want to express my understanding of the refinements of the Hatch-Waxman Act found in Title XI of the Medicare bill now before the Senate. I was deeply involved in the negotiations of these provisions in the conference. The Hatch-Waxman Act, which passed in 1984, reflects efforts by the Congress to promote two policy objectives: to encourage brand-name pharmaceutical firms to make the investments necessary to research and develop new drug products, and to enable competitors to bring cheaper, generic copies of those drugs to market as quickly as possible.

The Hatch-Waxman Act has worked very well for almost 20 years. It has provided the incentives necessary to bring the many medicines to market that have so transformed the shape of modern medical practice. And it has brought generic drugs to market faster than ever, saving consumers billions of dollars.

As the Federal Trade Commission has shown, however, in recent years both brand-name and generic drug companies have exploited certain aspects of the Hatch-Waxman Act to delay generic competition. The changes to the Hatch-Waxman Act found in Title XI represent refinements to the present system that will stop these abuses, will restore the original balance the law intended, and will ensure Americans more timely access to affordable pharmaceuticals.

Most significantly, the Hatch-Waxman provisions in this bill limit brand-name drug companies to only one 30-month stay of approval of generic drugs. This change will stop the multiple, successive 30-month stays that the Federal Trade Commission identified as having delayed approval of generic versions of several blockbuster drugs and cost consumers billions of dollars.

It also restructures how the 180-day generic exclusivity provisions work. The 180-day exclusivity gives a generic company 180 days during which it is the only generic competitor to the brand drug. The exclusivity is a very valuable incentive for generic companies. The exclusivity encourages generic companies to challenge patents that are likely invalid or not infringed and, because it goes to the first generic applicant to challenge a brand-name drug patent, it encourages challenges of those patents as soon as possible. These incentives mean that consumers will be able to enjoy the lower prices provided by generic companies sooner rather than later.

The Federal Trade Commission reports that the exclusivity has at times been parked through collusive agreements between brand and generic companies. Parking the exclusivity has blocked other generic companies from getting to market and has cost consumers billions of dollars. The Hatch-Waxman provisions in this bill are intended to prevent parking of the exclusivity. It does this by providing for several situations in which a generic company with the exclusivity forfeits the exclusivity, clearing the way for other generic companies to bring their products to market.

The Hatch-Waxman provisions in this bill also make the exclusivity available only with respect to the patent or patents challenged on the first day generic applicants challenge brand drug patents, which makes the exclusivity a product-by-product exclusivity rather than a patent-by-patent exclusivity, and the exclusivity is available to more than one generic applicant, if they all challenge patents on the same day.

Mr. SCHUMER. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes, I will yield to my friend from New York.

Mr. SCHUMER. Thank you, Mr. President. Let my just say, before I ask my question, that I want to thank the Senator from Massachusetts, and the senior Senator from New Hampshire, for their leadership on this issue. The

Senator from Massachusetts, as chair of the HELP Committee last year, took up the generic drug bill authored by the senior Senator from Arizona and myself, saw it through the HELP Committee, and managed its passage by the full Senate. This year, the senior Senator from New Hampshire approached me to work together to come up with the generic drug bill that served as the basis for what is in this bill, and he brought it through the HELP Committee, offered it as an amendment to the prescription drug bill in the Senate, where it was accepted 94–1, and defended it very ably in conference with the House. So, again, I would like to thank both distinguished chair and ranking member of the HELP Committee for their leadership on this issue.

Of course, I also want to thank the senior Senator from Arizona, without whose leadership over the past several years we would not be where we are today on such an important consumer issue.

As for my question, I understand that a generic applicant that has the 180-day exclusivity will forfeit the exclusivity if it has failed to market its product 75 days after certain events have happened with respect to itself or another generic applicant and with respect to each of the patents that gives the generic applicant its generic exclusivity. Is that correct?

Mr. KENNEDY. That is correct.

Mr. SCHUMER. And am I correct that one of these events is when ''a court enters a final decision'' that the patent is invalid or not infringed by the drug of the generic applicant?

Mr. KENNEDY. The Senator is correct.

Mr. SCHUMER. And am I correct that a final court decision under this provision includes the kind of court decision recognized in the Teva v. Shalala opinion?

Mr. KENNEDY. Yes, I very much appreciate your question on this point. We do intend that a court decision like the one in the D.C. Circuit's 1999 decision in Teva v. Shalala—a decision dismissing a declaratory judgment action for lack of subject matter jurisdiction because the patent owner has represented that the patent is not infringed—will count as a court decision under the new ''failure to market'' provision. Under the failure to market provision, the conditions for forfeiture are intended to be satisfied when a generic company has resolved patent disputes on all the patents that earned the first-to-file its exclusivity. After a court decision such as that at issue in Teva v. Shalala, the patent owner is estopped from suing the generic applicant in the future and the patent dispute is resolved. So these sorts of decisions should be recognized as court decisions under the failure to market provision.

I'd also like to point out the importance of the declaratory judgment provisions that are in the Senate bill and are retained in modified form by the conferees in the conference report now before the Senate. Amendments made by this bill to both the Federal Food, Drug, and Cosmetic Act and Title 35 clarify that generic applicants may bring declaratory judgment acts to ensure timely resolution of patent disputes. These provisions authorize a generic applicant to bring a declaratory judgment action to obtain a judicial determination that a listed patent is invalid or is not infringed if the applicant is not sued within 45 days of having given notice to the patent owner and brand-name drug company that it is challenging the patent. This clarification of a generic applicants right to bring a declaratory judgment action is crucial to ensuring prompt resolution of patent issues, which is essential to achieve our goal of speeding generic drugs to market.

It's worth pointing out that the Hatch-Waxman Act has always provided that patent owners and brand drug companies can bring patent infringement suits against a generic applicant immediately upon receiving notice that the generic applicant is challenging a patent. The declaratory judgment provisions in Title XI of this bill simply level the playing field by making it clear that the generic applicant can also seek a prompt resolution of these patent issues by bringing a declaratory judgment action if neither the patent owner nor the brand drug company brings such a suit within 45 days after receiving notice of the patent challenge.

Mr. MCCAIN. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes, I will yield.

Mr. MCCAIN. Will the Senator please explain for me and our colleagues the purpose of the provision in Title XI that amends Title 35 to say that courts must hear declaratory judgment actions brought by generic applicants?

Mr. KENNEDY. Certainly. The provision in Title 35 is intended to clarify that Federal district courts are to entertain such suits for declaratory judgments so long as there is a ''case or controversy'' under Article III of the Constitution. We fully expect that, in almost all situations where a generic applicant has challenged a patent and not been sued for patent infringement, a claim by the generic applicant seeking declaratory judgment on the patent will give rise to a justiciable ''case or controversy'' under the Constitution. We believe that the only circumstance in which a case or controversy might not exist would arise in the rare circumstance in which the patent owner and brand drug company have given the generic applicant a covenant not to sue, or otherwise formally acknowledge that the generic applicant's drug does not infringe.

The mere fact that neither the patent owner nor the brand drug company has brought a patent infringement suit within 45 days against a generic applicant does not mean there is no ''case or controversy.'' The sole purpose of requiring the passage of 45 days is to provide the patent owner and brand-name drug company the first opportunity to begin patent litigation. Inaction within the 45-day period proves nothing, as there are tactical reasons why a patent owner or brand drug company might refrain from bringing suit on a patent within 45 days.

For example, the brand drug company might have several patents listed in the Food and Drug Administration's Orange Book with respect to a particular drug. It could be in the company's interest to bring suit within 45 days on one patent and to hold the others in reserve. The suit on one patent would automatically stay approval of the generic application until the lawsuit is resolved or the 30 months elapses. Holding the other patents in reserve would introduce uncertainty that could discourage generic companies from devoting resources to bring the generic drug to market and that would give the brand drug company a second opportunity to delay generic competition by suing the generic company for infringement of the reserved patents after the resolution of the initial infringement suit.

Or for patents on which no 30-month stay is available, the brand drug company could sit back to create uncertainty and similarly delay generic entry by delaying resolution of those patents. Or when generic applicants are blocked by a first generic applicant's 180-day exclusivity, the brand drug company could choose not to sue those other generic applicants so as to delay a final court decision that could trigger the ''failure to market'' provision and force the first generic to market.

In each of these and in other circumstances, generic applicants must be able to seek a resolution of disputes involving all patents listed in the Orange Book with respect to the drug immediately upon the expiration of the 45-day period. We believe there can be a case or controversy sufficient for courts to hear these cases merely because the patents at issue have been listed in the FDA Orange Book, and because the statutory scheme of the Hatch-Waxman Act relies on early resolution of patent disputes. The declaratory judgment provisions in this bill are intended to encourage such early resolution of patent disputes.

Mr. MCCAIN. Mr. President, will the distinguished Senator yield?

Mr. KENNEDY. Yes, I will yield.

Mr. MCCAIN. Mr. President, I'd like to ask the Senator if it is the intent of this legislation that the declaratory judgment provisions in this bill, in particular, the change to Title 35, will be available immediately to help generic drug applicants who are now in federal court seeking declaratory judgments that listed drug patents are invalid or are not infringed by their product?

Mr. KENNEDY. I agree with the distinguished Senator from Arizona. It is clearly our intent that, under these

provisions, courts considering jurisdictional challenges to declaratory judgment actions brought by generic drug companies should apply the standards set forth in this bill to such challenges in any case pending (either in the trial court or on appeal) at the time of enactment in order to resolve patent issues as soon as possible and to clear the way for quicker generic entry.

Mr. MCCAIN. I thank the Senator for his answer and for his leadership on these issues. His experience and technical expertise have been invaluable. I would also like to thank my friend, the senior Senator from New York, who has worked with me these many years on this legislation. His dedication to American consumers and his commitment to restoring fairness to the drug industry must be commended. The senior Senator from New Hampshire must also be recognized for leadership on this issue in his committee, in the Senate, and in the conference on this bill. I would also like to thank the staffs of all three of these Senators, who have worked tirelessly on behalf of this issue. I ask unanimous consent that a letter from Chairman Muris of the Federal Trade Commission about the value of the declaratory judgment provision in Title 35 be printed in the RECORD.

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

FEDERAL TRADE COMMISSION,
*Washington, DC, October 21, 2003.*

Hon. JUDD GREGG,
Hon. EDWARD M. KENNEDY,
*Senate Committee on Health, Education, Labor, and Pensions, Washington, DC.*

DEAR CHAIRMAN GREGG AND RANKING MEMBER KENNEDY: In written testimony submitted to the Senate Judiciary Committee on August 1, 2003, for a hearing entitled, ''Examining the Senate and House Versions of the 'Greater Access to Affordable Pharmaceuticals Act,''' the Federal Trade Commission commented on both the Senate and House-passed bills that reform the Hatch-Waxman generic drug approval process. The reforms are nearly identical to recommendations contained in the FTC's July 2002 study entitled, ''Generic Drug Entry Prior to Patent Expiration.''

I understand that one particular provision contained in the Senate-passed version is of particular interest now on the bills proceed through the conference process. Specifically, the Senate bill adds a provision clarifying that if a brand-name company fails to bring an infringement action within 45 days of receiving notice of an abbreviated new drug application (ANDA) containing a paragraph IV certification, the generic applicant can bring a declaratory judgment action that the patent is invalid or not infringed. Without commenting on the provision's constitutionality, the Commission has stated that ''the Senate provision may help ensure that a federal court has subject matter jurisdiction to resolve the patent issues.''

While I defer to others as to the constitutionality of the Senate provision, I note that a court's dismissal of a declaratory judgment action for lack of controversy may resolve uncertainty concerning whether a generic product infringes a brand-name company's patent. It also can reduce the incentives for the brand-name company and the first generic applicant to park the 180-day exclusivity. Without the right to seek a declaratory judgment, a subsequent generic applicant that develops a clearly non-infringing product cannot trigger the first generic applicant's exclusivity because the subsequent generic applicant will not be sued for patent infringement by the brand-name company. If the brand-name company and the first generic applicant agree that the generic will not begin commercial marketing, then the 180-day exclusivity becomes an absolute bar to any general entrant. Moreover, speedier resolution of patent infringement suits will redound to the benefit of consumers by resolving any possible uncertainty that prevents a generic applicant from marketing its products. If also will allow for the simultaneous running of the periods for FDA approval and for the resolutions of patent infringement issues.

For these reasons, I believes the declaratory judgment provision in the Senate-passed bill would be a useful mechanism to reduce uncertainty in the Hatch-Waxman process and potentially could speed access of generic drugs to consumers.

Sincerely,

TIMOTHY J. MURIS.

Mr. BAUCUS. Mr. President, one of the criticisms that some have raised about the conference report is the provision that prevents the Department of Health and Human Services Secretary from interfering in the negotiations between private prescription drug plans, drug manufacturers, and pharmacies.

Mrs. FEINSTEIN. Yes, we have heard this criticism often during the debate. And I believe it is important to clarify that this bill will ensure that seniors pay less for prescription drugs than they pay today.

Mr. BAUCUS. I also believe it is important that we clarify the purpose of the non-interference language. This language is not intended to pad the pockets of drug manufactures. It is not intended to pad the pockets of the insurance companies.

Mr. GRASSLEY. The purpose of this bill is to ensure that Medicare beneficiaries get the benefit of negotiated discounts that the private sector is able to achieve. We want seniors, who today pay the highest prices, to have access to discounted prices. And we also don't want to see the situation we have today with Part B covered drugs. Isn't it true that the Federal Government dramatically overpays for the drugs that are currently covered under Medicare today?

Mr. BAUCUS. Yes, that is true. The HHS Inspector General has been urging Congress to end these overpayments for years. The conference report addresses these overpayments, while ensuring fair reimbursements for oncologists and other affected physicians to ensure that patient care remains unaffected. Moreover, I think it is important that members of Congress understand the strong consumer protections that are in place to ensure that they receive access to an affordable drug plan, one that provides access to the prescription drugs that they need.

Mrs. FEINSTEIN. Isn't it also true that if a plan chooses to use a formulary, it must include at least two drugs in each therapeutic category or class, unless the category or class only has one drug and that the plan must use pharmacy and therapeutic committees that consist of practicing physicians and pharmacists to design their formularies?

Mr. BAUCUS. Yes, this is true. It is also true that the Secretary is prevented from approving a drug plan that charges too high of a premium. The premium must reasonably and equitably reflect the costs of the benefits.

Mr. GRASSLEY. Isn't this requirement the same standard that applies to the Federal Employees Health Benefits Plan?

Mr. BAUCUS. Yes, the same one. And I think it is also important to note that conference report has a requirement for a Government-backed fallback plan if fewer than two plans are available. This Government-backed plan is required to negotiate prices with drug manufacturers. And if the fallback plan is unable to negotiate good discounts on its own, then the Secretary will be able to intervene as appropriate to negotiate to achieve lower prices.

Mrs. FEINSTEIN. In addition, I also think it is important to note that the Congressional Budget Office has estimated that the net price increase for prescription drugs under this bill will be 3.5 percent. CBO also found that drug plans bearing full statutory risk levels are estimated to produce an overall higher cost savings of 20 to 25 percent for prescription drugs under this bill, as compared to the 12 to 15 percent that CBO believes is achieved by private prescription benefit managers today. According to CBO, prescription drug prices would be cheaper under this bill. I would like my colleagues to know that should CBO's estimates of the higher savings by drug plans in this bill prove to overestimate prescription drug savings to seniors, I intend to introduce legislation that will provide seniors with lower drug prices.

Mr. GRASSLEY. Yes, CBO estimates that under the conference report seniors will be offered average greater savings under the Senate bill. The price for prescription drugs will almost certainly be lower than the prices seniors who do not have drug coverage pay today.

COMPANY-OWNED LIFE INSURANCE

Mr. CONRAD. Mr. President, I rise to engage the chairman of the Finance Committee in a colloquy regarding pending committee action with respect to the tax treatment of company-owned life insurance, COLI. Let me again express my appreciation for the efforts the chairman made on October 1 in securing the committee's unanimous consent to conduct a hearing on issues surrounding COLI and to mark up a COLI provision shortly thereafter.

Mr. GRASSLEY. I thank the Senator.

Mr. CONRAD. I welcomed the opportunity the chairman provided in the committee hearing on COLI that occurred on October 23. By the end of

that hearing, I believe committee members had a solid grasp of the legitimate problems that still remain after the numerous legislative reforms of COLI over the last 20 years.

Mr. GRASSLEY. I agree. The hearing was informative and prepared the committee to come to an agreement on the reforms that ought to take place.

Mr. CONRAD. Since the hearing, the chairman and I have worked toward the development of a COLI proposal that would garner the support of the broadest possible consensus in the committee and in the full Senate. I believe that last week we were close to an agreement on a proposal that responded to every legitimate criticism of COLI heard during the course of the October 23 hearing.

I regret that the crush of Finance Committee legislation on the Senate floor in October and November has so far prevented the chairman from scheduling a markup. Unfortunately, it is now clear that the markup agreed to on October 1 cannot before the end of this session of Congress.

Mr. GRASSLEY. I share this regret. Let me pledge to have this markup on a COLI provision at the Finance Committee's first opportunity in 2004. I look forward to completing the action we began in October.

CANCER CARE REIMBURSEMENT

Mrs. FEINSTEIN. Mr. President, the Medicare conference report, which includes a reform of the Part B drug payment system, includes significant payment reductions to providers of cancer care. I understand that Senator GRASSLEY does not intend for these payment reductions to force efficient cancer clinics to close, jeopardizing access to care for thousands of cancer patients.

Mr. GRASSLEY. That is correct, Senator. The Medicare conference agreement contains a number of significant reforms, which will save billions of dollars in overpayments from Medicare covered drugs, while also substantially increasing payments to physicians. I intend to preserve continued access to high-quality cancer care.

Mrs. FEINSTEIN. Many physicians depend on overpayments on Part B drugs to make up for inadequate practice expenses. Is it the intent of the Senator from Montana that physicians' practice expenses will be increased sufficient to ensure access to care?

Mr. BAUCUS. Yes, that is my intent. And I am committed to monitoring this new payment system as it is implemented, in order to ensure access to high-quality cancer care.

Mrs. FEINSTEIN. Is it the intent that if this new payment system does not suffice to ensure access to care, that you will revisit the system and revise the payment methodology?

Mr. BAUCUS. That is correct.

Mrs. FEINSTEIN. Finally, it is my understanding that practice expense increases for oncology are expected to be about $500 million in 2004, $600 million in 2005, and $560 million in 2006, as shown in the summary which I will submit for the RECORD. Is it your understanding that the payment expense increases will allow efficient cancer care providers to continue serving cancer patients and not close their doors?

Mr. GRASSLEY. Yes. I would also note that the Senator from Kansas, Mr. BROWNBACK, has some concerns over this issue. He has been a forceful advocate for the oncology community. And while I think the package for cancer care is a fair one, I understand that he has some concerns.

Mr. BROWNBACK. I thank the chairman, both for his commitment to this legislaiton and for keeping my staff and me informed throughout the drafting of these provisions. I would note that from the time he first spoke on this issue during consideration of the tax bill the chairman has expressed his intent to, ''ensure that seniors and their caregivers have adequate payment for, and continued access to, important cancer therapies.'' I would ask of the chairman, is it his intent that the changes to outpatient drug reimbursement in Sections 303 and 304 of this bill will not have a significantly adverse impact on access to cancer treatment?

Mr. GRASSLEY. The Senator from Kansas is correct. My commitment to cancer patients has not changed. Indeed, according to estimates from the Congressional Budget Office, this bill is expected to actually increase net payments to oncologists in 2004. Also, CBO estimates that the new Average Sales Price Reimbursement model, when coupled with the changes in practice expense reimbursement, will amount to net reductions to cancer care of $4.2 billion over the next 10 years.

Mr. BROWNBACK. I would like to thank my friends for the progress that was made in the conference. The bill passed by the Senate several months ago contained a net cut of $16 billion as a result of Part B drug payment reforms. The reduction in the Conference report before us is now $11.4 billion.

However, I would also note to my friend from Iowa that the Secretary of Health and Human Services is given the discretion to reduce reimbursements further based on studies preformed by the Inspector General of the Department. I would ask my friend if it was the intent of the conferees that any future adjustments to the reimbursements be based on average of prices available to and paid by a wide range of physicians in the marketplace.

Mr. GRASSLEY. The Senator is correct.

Mr. BROWNBACK. I thank my friends.

Mrs. FEINSTEIN. I ask unanimous consent to print the following in the RECORD.

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

MEDICARE CONFERENCE REPORT CANCER CARE CHANGES

Payments for Part B drugs are currently based on Average Wholesale Price (AWP). The difference between the AWP and the actual sales price often results in a profit to providers when they administer such drugs. For example, an oncologist may buy a chemotherapy agent, called doxirubicin, for about $10.00, while Medicare's reimbursement for that same dose was approximately $42.00, resulting in a profit to the physician of $32.00. Because beneficiaries must pay 20% co-payments on Medicare covered drugs, beneficiaries are paying $8.40 for a dose of doxirubicin. That is 20% of the $42.00, rather than 20% of the $10.00 that the oncologist paid for the drug, which is $2.00. The HHS Inspector General estimated that inflated AWPs caused beneficiaries to pay an extra $175 million in coinsurance in 2001.

The Medicare conference agreement reforms the Part B drug payment system, saving $4.2 billion from the oncology specialty over the 10-year period 2004–2013. This reform is effected mostly by using an Average Sales Price (ASP) system, which accounts for the true costs of these drugs. An additional $7.3 billion is saved by applying these reforms to other physician specialities. Most of these savings occur in the later years of the budget window. Under the Medicare conference agreement, oncologists will recieve an approximate $100 million increase in payments in 2004, net of reductions in reimbursement for Part B drugs.

Following is an estimated overview of what oncologists will receive in increased practice expense payments, starting in 2004.

2004: Approximately $500 million increase in practice expense (increase to oncology in 2004, net of drug payment reductions, is about $100m).

2005: ASP+6%; approximately $600 million increase ($200m for Average Sales Price+6%, $400m increase in practice expense).

2006 and thereafter: ASP+6%; approximate $560 million increase ($200m for Average Sales Price+6%, $360m increase in practice expense).

FORMULARIES FOR MEDICARE BENEFICIARIES LIVING WITH HIV/AIDS

Mrs. FEINSTEIN. Mr. President, I am concerned about the impact the Medicare conference report will have on low-income Medicare beneficiaries who are living with HIV/AIDS. I have heard a lot of opposition to this bill from the HIV/AIDS community. My concern is with their access to drug treatment therapy under the Medicare prescription drug benefit. Is it your understanding that the Medicare conference report will not prevent low-income Medicare beneficiaries who are living with HIV/AIDS from getting all the drugs they need through Medicare Part D?

Mr. BAUCUS. That is correct, Senator. One of the things I am particularly proud about in this bill is the strong beneficiary protections that will ensure that all Medicare beneficiaries get access to the appropriate medicine they need. You know, Senator GRASSLEY, that there are certain diseases and conditions—like AIDS, and epilepsy—where having access to just the right medicine is especially important.

Mr. GRASSLEY. I did know that, and I know that certain mental illnesses also fall in that category. This bill contains a number of protections for people who need exactly the right medicine for them.

Mrs. FEINSTEIN. Victims of HIV/AIDS are somewhat unique since the

treatment for HIV/AIDS varies with the individual. To be clear, no low-income Medicare beneficiaries who have HIV/AIDS will be denied access to the drugs they need in Medicare Part D?

Mr. BAUCUS. Exactly. The bill asks the US Pharmocopeia to develop model formularies with therapeutic classes that can't be gamed. Then we require drug plans to offer at least two drugs in each therapeutic class. And for drugs that treat AIDS, epilepsy, or mental illness, we would expect that plans would carry all clinically appropriate drugs.

Mr. GRASSLEY. I agree. And I am pleased with the backup protections in this bill. That if a plan doesn't carry or doesn't treat as preferred a drug needed by, say, a person with AIDS, a simple note from a doctor explaining the medical need for that particular drug could get that drug covered.

Mrs. FEINSTEIN. Will that apply to all covered drugs required by a person with HIV/AIDS and in all cases?

Mr. BAUCUS. That is correct. These beneficiary protections are crucial for these vulnerable Medicare beneficiaries. I would expect that the Secretary will take into account their special medication needs when he writes regulations on this provision and when he is evaluating plan bids. If a plan can't adequately ensure all of the proper medication for beneficiaries living with HIV/AIDS, epilepsy, and certain mental illnesses, that plan should not be doing business with Medicare.

Mr. GRASSLEY. I agree with my good friend.

Mrs. FEINSTEIN. I would like to quote from a letter I received from Secretary of Health and Human Services Tommy Thompson, the full text of which I will include for the RECORD. Secretary Thompson says, ''I would not approve a plan for participation in the Part D program if I found that the design of the plan and its benefits, including any formulary and any tiered formulary structure, would substantially discourage enrollment in the plan by any group of individuals. If a plan, however, complies with the USP guidelines then it would be considered to be in compliance with this requirement. Thus, if a plan limited drugs for a group of patients (individuals living with HIV/AIDS) it would not be permitted to participate in Part D.'' Secretary Thompson goes on to say, ''Under the Conference Report, the beneficiary protections in the Medicare drug benefit are more comprehensive than the protections now required of State Medicaid programs. This will ensure access to a wide range of drugs. For example, there are extensive information requirements so that beneficiaries will know the drugs the plan covers before they enroll in the plan. Beneficiaries can also appeal to obtain coverage for a drug that is not on their plan's formulary if the prescribing physician determines that the formulary drug is not as effective for the individual as another drug, or if there are adverse effects. As a result, access to all drugs in a category or class will be available to a beneficiary when needed.''

Is this your understanding as well?

Mr. BAUCUS. Absolutely.

Mr. GRASSLEY. I agree.

Mrs. FEINSTEIN. I thank the distinguished Senators from Montana and Iowa.

I ask unanimous consent to print the above-referenced letter in the RECORD.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION,
*Washington, DC.*

Hon. DIANNE FEINSTEIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: Recently, you have expressed concern with the Conference Report over access to drugs for individuals living with HIV/AIDS. Your major concern appears to be whether or not individuals living with HIV/AIDS will have access to all drugs within a therapeutic class under the Conference Report and whether or not a Prescription Drug Plan (PDP) could limit the number of drugs that are covered within a therapeutic class. You also expressed concern that dual eligible individuals will lose the coverage that is currently available to them in Medicaid if they enroll in any of the new Medicare drug plans.

Let me assure you that in the Conference Report there are significant safeguards in place for the development of PDP formularies to ensure a wide range of drugs will be available to Medicare beneficiaries. These plans will have the option to use formularies but they are not required to do so. If a plan uses a formulary, it must include at least two drugs in each therapeutic category or class, unless the category or class only has one drug.

I will be requesting the U.S. Pharmacopoeia (USP), a nationally recognized clinically based independent organization, to develop, in consultation with other interested parties, a model guideline of therapeutic categories and classes. In designing this model it is essential that categories and classes be established to assure that the most appropriate drugs are included on a plan's formulary. I am confident they will design the categories and classes to meet the needs of patients; USP's work in clinically based and patient oriented.

Plans will also use pharmacy and therapeutic committees that consist of practicing physicians and pharmacists to design their formularies. The committees will be independent and free of conflict with respect to the plan. They will have expertise in care for the elderly and in individuals with disabilities. The committees will also use both a clinical and scientific basis for making its decisions relating to formularies.

Further, I would not approve a plan for participation in the Part D program if I found that the design of the plan and its benefits, including any formulary and any tiered formulary structure, would substantially discourage enrollment in the plan by any group of individuals. If a plan, however, complies with the USP guidelines then it would be considered to be in compliance with this requirement. Thus, if a plan limited drugs for a group of patients (individuals living with HIV/AIDS) it would not be permitted to participate in Part D.

Under the Conference Report, the beneficiary protections in the Medicare drug benefit are more comprehensive than the protections now required of State Medicaid programs. This will ensure access to a wide range of drugs. For example, there are extensive information requirements so that beneficiaries will know the drugs the plan covers before they enroll in the plan. Beneficiaries can also appeal to obtain coverage for a drug that is not on their plan's formulary if the prescribing physician determines that the formulary drug is not as effective for the individual as another drug, or if there are adverse effects. As a result, access to all drugs in a category or class will be available to a beneficiary when needed.

On the other hand, because of the optional nature of the Medicaid drug benefit today, States can drop their drug benefit entirely, as well as restrict access to their drug plan through preferred drug lists or prior authorization processes. According to the IG, from 1997 to 2001, Medicaid expenditures for prescription drugs grew at more than twice the rate of total Medicaid spending. This has put extreme pressures on state budgets and has led to Medicaid coverage restrictions for drugs and the use of cost control measures that will not be used in the Part D program.

For example, eighteen States contain Medicaid drug costs by limiting the number of prescriptions filled in a specific time period, limiting the maximum daily dosage or limiting the frequency of dispensing a drug. Some states also limit the number of refills. In addition, six States have pharmacy lock-in programs, which require beneficiaries to fill their prescriptions in one designated pharmacy.

The new Medicaid benefit will not result in a loss of coverage for dual eligibles. In fact, the Conference Report provides generous coverage to dual eligibles. The Report preserves the universality of Medicare for all eligible beneficiaries including those dually eligible for both Medicare and Medicaid. Unlike Medicaid, the new Medicare Part D benefit will provide a guaranteed benefit to all eligible seniors—a benefit they can count on without fear of loss of benefits when State budgets become tight.

Dual eligibles, who currently have full Medicaid benefits, will automatically be given generous subsidies and will pay no premium, no deductible and only minimal cost-sharing regardless of their actual income, even though it can be higher than 135 percent of the Federal poverty level in many cases.

In addition, full dual eligibles with incomes under 100 percent of poverty will pay no premiums, no deductibles, and reduced copayments of $1 for generic and other multiple source preferred drugs, and $3 for all other drugs. Note under current Medicaid regulations, States can choose to increase coinsurance to 5%. This is clearly more than what will be permitted for dual eligibles under the new Medicare benefit.

Finally, dual eligibles residing in nursing homes and other institutions only have a small personal needs allowance. Under Medicare, they will be exempt from copayments altogether.

I hope that this addresses all of your concerns. I look forward to continuing to work with you on this and other issues related to Medicare and Medicaid. Please call me if you have any further concerns.

Sincerely,

TOMMY G. THOMPSON.

Ms. LANDRIEU. Mr. President. I have been listening to the debate over the past few days, and I think that a common theme on both sides of the aisle has been this is not a perfect bill. There are those on this side of the aisle who rightly say that this bill does not go as far as it could; that it doesn't

focus enough of the assistance on low-income seniors and could do more to keep employers from reducing or eliminating benefits for their employees. Others have raised concerns about the fact that there is a $1,400 ''doughnut hole'' and an overly restrictive assets test that will mean less help for too many Americans. There are those on the other side of the aisle that have rightly said that this bill does not do enough to address the long-term solvency issues facing Medicare. They contend that this $400 billion expansion, without making additional structural reforms, puts Medicare on an unsure footing for the future. It is for these reasons that Members on both sides of the aisle have said they will vote against this bill.

Many maxims have been used over the past few days to describe the choice before us. Some have said, ''A bird in the hand is worth two in the bush.'' Others have said, ''Let us not make the perfect be the enemy of the good.'' Still others have said, ''Something is better than nothing.'' I have spent the last 25 years in public service, and if there is one thing I have learned, it is that a true compromise is one from which no one side walks away completely happy. If there is anyone who knows that lesson better than I, it is the senior Senator from Louisiana, Senator BREAUX. I have often said that if there is a deal to be had, Senator BREAUX will find it. He has an amazing talent for bringing two sides together in a way that preserves the key principles of both. I think he has succeeded in doing that again here.

Going into the conference, Democrats insisted that the final bill must include the following: meaningful assistance to low income beneficiaries; providing Federal assistance to Medicare seniors on Medicaid, dual eligibles; strong Government fallbacks; and real incentives for employers to retain coverage. The conference agreement represents major victories in all four of these key areas.

First, and perhaps most importantly, beneficiaries with low incomes will get immediate assistance in paying for their drugs. The premium, deductible and coverage gap would be waived for people earning up to $12,123 a year, $16,362 per couple. Those making up to $13,470, $18,180 per couple will not have to pay a premium or be subject to a coverage gap and would only have a $50 deductible. What this means in real terms is that one-third of all Medicare beneficiaries, over 200,000 of which are from my State, will get immediate assistance to drugs at little to no cost to themselves. These are people who today have no help.

This bill also provides $88 billion in tax incentives to employers to encourage retaining existing retiree drug coverage. CBO estimates those incentives will greatly diminish the number of employers who will reduce or eliminate their coverage because of passage of this bill. It ensures that all beneficiaries will have access to drug coverage by providing a strong government fallback in the event that private plans do not provide adequate coverage in any particular region. Finally, it provides meaningful support to Medicare providers so that they can continue to care for our Nation's elderly.

These are major victories. I am, however, disappointed by some of the provisions that were ultimately included in this bill, most especially the asset test. I understand that the asset test in this bill is fashioned after asset tests used to determine a person's eligibility for Social Security Income (SSI) and Medicaid. I understand that it is, in fact, three times as generous as the asset tests used by those programs. Yet, in my view, further restricting eligibility for vital Government programs so as to separate out the near poor from the poor is a precedent that should be abolished, not furthered. I think the American public would be shocked to learn how restrictive these asset tests are.

In this bill, if a senior whose income is less than $12,123 a year has more than $6,000 in assets, they will no longer qualify for assistance with their premiums or deductibles. The proponents of the asset test claim that they are necessary to ensure that a person doesn't claim to have an income of $12,123 and at the same time have a vacation home in Florida and $50,000 in stocks. But these are not the people that these asset tests affect. Who they end up affecting is a widow who is living on her husband's $600 a month Social Security check, but just so happens to have a $10,000 life insurance policy or home full of furniture valued at $3,000. That is just not fair. While I am not able to change this policy here, I do intent to work to change it later.

Ten years have passed since this body was first presented with the need to reform Medicare. We have long recognized that the ways of medicine have changed. Medications and outpatient services have taken the place of intrusive surgeries and long-term hospitalization. We know that Medicare has not keep pace with those changes nor does it reflect the current needs of our seniors. Over the past 10 years, we have assembled task forces, engaged in numerous studies, held countless hearings and drafted several legislative proposals, but we have never gotten to where we are today, at the brink of passing a bill that will put us on the path of making reform a reality.

I think we must act now. In a time of rising deficits, it is unlikely we will have $400 billion or the political will to make these improvements any time in the near future. The seniors in my State are tired of waiting for the perfect bill. If we do not pass this bill this year, who knows how much more time will pass before we get to this point. It certainly won't be next year. If we had not reduced our surpluses by giving out tax cuts, perhaps we could have done more, but there is no sense in wondering what could have been. What we need to focus on now is what can be.

One year ago, I was in Louisiana running for re-election and I promised the people of Louisiana that while I would be with the President some of the time and I would be with the Democratic caucus some of the time, no matter what, I would be with the people of Louisiana 100 percent of the time. This bill is good for Louisiana. Ultimately, that is why I support it.

In Louisiana, one out of every two seniors has no prescription drug coverage. Today, 72-year-old Ethel Cernigliaro of Homer is one of them. With only her $727 a month Social Security check to depend on, Mrs. Cernigliaro finds a way to pay her utilities, buy groceries and still cover the $300 and more she pays each month for prescriptions. At this point, Mrs. Cernigliaro doesn't know all of the details of how this Medicare reform will help her, but she is certain of one thing: It has got to be better than what she has now. ''I've been following it closely, and it is certainly encouraging to know someone is trying to do something,'' she said. This bill means seniors like Mrs. Cernigliaro will no longer be without assistance for the drugs they need to maintain their quality of life and health. She and the 200,000 seniors like her will, in most cases, pay no more than $5 a prescription for their medications. Because of this reform, no senior citizen in our State will be without some level of coverage for prescriptions.

What's more, this bill will deliver $551 million over the next 10 years in emergency assistance for Louisiana's hospitals, most of which are struggling to keep their doors open. It will provide $156 million in much needed assistance to Louisiana's doctors. Without this assistance, these doctors could no longer afford to care for Medicare patients. It will provide $25 billion in help for our Nation's rural communities, many of which are in Louisiana. This represents the largest, most comprehensive rural package ever passed by Congress. Finally, this bill provides for much-needed prevention services, including screening for heart disease and diabetes, which could have helped to save the lives of the nearly 10,000 Louisiana seniors who died of these diseases last year.

If this bill does not pass, the people of my State will go yet another year without these important interventions. I, for one, cannot ask them to wait. Since Medicare was first passed into law in 1965, it has been amended and modified hundreds of times. This comprehensive reform package is not the first, nor will it be the last. I look forward to working with my colleagues in the months and years to come to ensure that the Medicare program, and this new prescription drug benefit, will be all that it promises to be and more.

Mr. DORGAN. Mr. President, a vote in favor of this legislation, which is designed to add a prescription drug benefit to Medicare, is a very close call for

me. There are some positive elements of this bill, and there are also some flaws about which I am very concerned. In weighing the good and the bad, however, I have decided to support this bill.

The final legislation will provide very generous prescription drug coverage for about one-third of the lowest income senior citizens and disabled Medicare beneficiaries who live in North Dakota. For those Medicare beneficiaries whose incomes are below 150 percent of the poverty level, they will receive a benefit that will cover nearly 95 percent of their drug costs.

However, for senior citizens with incomes above 150 percent of the poverty level, this prescription drug benefit will not be very attractive at all, in my judgment. There is a $35 per month premium that will increase over time, a $250 deductible that will grow to $445 by 2013, and a period of time when seniors' drug expenditures reach $2,250 and seniors will still be paying premiums but have no drug coverage at all. Only after spending a total of more than $5,100 would Medicare beneficiaries receive catastrophic coverage of 95 percent for prescription drugs.

If this prescription drug benefit was a mandatory program, I would vote against it. Because it is optional, I think many senior citizens with incomes above 150 percent of poverty will take a look at the benefit and decide it is not worth it. The one-third of our senior citizens with the lowest incomes will benefit from it.

In addition to providing generous coverage for the lowest income senior citizens, the other feature of this bill that I strongly support are the steps it takes to offer some fairness in Medicare's payments for rural hospitals, doctors and other health care providers.

Hospitals and physicians in rural States have found that their reimbursement rates under Medicare have put them at a serious disadvantage. If these lower reimbursement rates were to continue, the quality and access to health care delivered to rural citizens would diminish. Rural hospitals have to compete for the same doctors and nurses and use the same sophisticated medical equipment as urban hospitals, and yet their reimbursement rates have been dramatically lower. As a result, many of our North Dakota hospitals are in real financial trouble. This legislation begins the process of establishing some fairness in those reimbursement rates, and I strongly support that.

But there are also a number of provisions in this bill that I think are a mistake. First of all, this bill lacks provisions that would begin to contain the rising costs of prescription drugs. That is a dramatic failure. For most senior citizens, the problem with prescription drugs is the steep rise in the prices of those prescription drugs. Unfortunately, the majority party bowed to the pressure of the pharmaceutical industry and failed to put any real cost containment in this bill. That is a serious mistake.

In addition, this bill includes provisions that have nothing to do with adding a prescription drug benefit to the Medicare program but that have the potential to do harm. The Health Savings Accounts established by this bill are at best a costly tax shelter for the wealthy and at worst could drive up costs for the traditional insurance market. Likewise, this bill is cluttered up with subsidies to private insurers and a phony demonstration program that adds additional costs to Medicare and could undermine the Medicare program itself if these provisions are not adjusted in the future.

As I sifted through all of these provisions, I concluded that providing nearly total prescription drug coverage for one-third of our senior citizens with the lowest incomes is a very important objective to achieve. Add to that the improvement in the reimbursement rates to strengthen rural hospitals and health care providers, and I believe that these two features warranted support for the bill.

Again, this bill is a close call because I think those who have written it have created an optional program that is sufficiently unattractive to many senior citizens that they will elect not to sign up for this program.

My hope is that we can lock in the support in this bill for the nearly one-third of the senior citizens with the lowest incomes, address the reimbursement inequity for rural hospitals and doctors, and then come back in future legislation and do what should have been done with the rest of this bill.

That is, we need to add some real cost containment, fix the drug benefit so that senior citizens aren't paying premiums while they're getting no coverage, and dump the extraneous provisions that have nothing to do with adding prescription drug coverage to Medicare.

In summary, I am not pleased with this choice, but I know that if we do not commit the $400 billion that we have now set aside for Medicare prescription drug coverage in the coming 10 years, that funding may not be available in the future. And I know that we may not get another opportunity to fix the reimbursement rates for rural hospitals in the near future.

So I will vote for this bill, but I do so with some real regret because this bill could have been so much better.

Mr. HOLLINGS. Mr. President, I oppose the Medicare Prescription Drug and Modernization Act.

I remind my colleagues that we have a national debt that exceeds $6.9 trillion. The legislation currently before us is part of a budget resolution and economic plan that will cause our debt to double over the next 10 years. Make no mistake about it, we will borrow every penny to pay this $394.3 billion bill. How ironic—we are going to borrow money from Social Security to pay for seniors health care. And what do we get in return? Spotty drug coverage for senior citizens, millions of Americans who will lose their existing coverage, massive subsidies for HMOs, the first step toward the destruction of Medicare as we know it, and a larger fiscal noose around the neck of future generations. We can do much better and should go back to the drawing board.

Instead of providing seniors with the stable and affordable benefit they deserve, this bill forces seniors to maneuver a complex maze of premiums, deductibles and copayments for benefits that contain huge gaps in coverage. On top of their premiums, which will vary from region to region and plan to plan, seniors will get no help for the first $250 of their drug costs, pay 25 percent of costs from $251 to $2,250, pay all the costs from $2,251 to at least $5,100, and then pay a fifth of costs above $5,100. With a breakeven point of $810, many healthier Medicare beneficiaries will opt not to participate. Because of the $2,850 coverage gap, many of the sickest patients will have to ration care for months because even though they continue to pay premiums, they receive no government assistance. Furthermore, seniors better not get too comfortable with their prescription drug coverage. Nearly 3 million of them with retiree coverage, including 39,000 residents of South Carolina will lose their coverage. This bill could force those who participate in the new Medicare drug benefit to move in between three separate plans, with three separate formularies, in 3 years.

It should come as no surprise that the authors of this convoluted mess and Karl Rove have decided to wait until after the 2004 election before this new benefit starts up and Medicare beneficiaries see what they are in for. Conferees could have taken a number of steps to address these deficiencies. Instead, they denied the government the ability to negotiate lower drug prices on behalf of all Medicare beneficiaries. This will impose a higher cost on both the taxpayers who foot this bill and the Medicare beneficiaries who will have to make higher copayments. They also created a $12 billion slush fund the government can use to entice private plans to participate against traditional Medicare and diverted $6.7 billion from the amounts saved by companies that will drop retiree coverage to create tax shelters for wealthy individuals. These funds could have been more appropriately spent providing incentives for companies to continue retiree coverage or reducing the size of the ''doughnut.''

I also believe this bill is the first step toward the dismantling of Medicare. The ''premiums support'' demonstration contained in this legislation opens the door to the privatization of Medicare. Seniors in at least six parts of the country will be forced to either pay higher premium to remain in the traditional Medicare system or move into

an HMO. This is unacceptable. Furthermore, this legislation provides an uneven playing field between traditional Medicare and private plans. I have always felt that if a private plan can offer a better benefit package to a beneficiary at an equal or lower cost, then beneficiaries should have the choice of which plan they want to participate in. This bill dramatically slants the playing field in favor of private plans. In addition to a 9 percent higher payment, private plans will have access to a $12 billion fund to further underwrite their costs. These actions undermine the traditional Medicare system generations of our seniors have come to depend on.

The flimsy prescription drug benefit and long-term damage done to Medicare contained in this legislation does not warrant its high price tag. I encourage my colleagues to defeat this bill, take up and pass S. 1926 to improve reimbursement for doctors, hospitals and rural providers, and continue to work toward a meaningful drug benefit.

Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million Americans, including 35 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to create a 21st century Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Projected savings from cards for consumers would range between 10 to 25 percent. A $600 subsidy would be applied to the card, offering additional assistance for low-income beneficiaries defined as 160 percent or below the Federal poverty level. Effective January 1, 2006, a new optional Medicare prescription drug benefit would be established under Medicare Part D.

This bill has the potential to make a dramatic difference for millions of Americans living with lower incomes and chronic health care needs. Low-income Medicare beneficiaries, who make up 44 percent of all Medicare beneficiaries, would be provided with prescription drug coverage with minimal out-of-pocket costs. In Pennsylvania, this benefit would be further enhanced by including the Prescription Assistance Contract for the Elderly, PACE, program which will work in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

For Medical services, Medicare beneficiaries will have the freedom to remain in traditional fee-for-service Medicare, or enroll in a Health Maintenance Organization, HMO, or a Preferred Provider Organization, PPO, also called Medicare Advantage, These programs offer beneficiaries a wide choice of health care providers, while also coordinating health care effectively, especially for those with multiple chronic conditions. Medicare Advantage health plans would be required to offer at least the standard drug benefit, available through traditional fee-for-service Medicare.

We already know that there are many criticisms directed to this bill at various levels. Many would like to see the prescription drug program cover all of the costs without deductibles and without co-pays. There has been allocated in our budget plan $400 billion for prescription drug coverage. That is, obviously, a very substantial sum of money. There are a variety of formulas which could be worked out to utilize this funding. The current plan, depending upon levels of income has several levels of coverage from a deductible to almost full coverage under a catastrophic illness. One area of concern is the so-called ''donut hole'' which requires a recipient to pay the entire cost of drug coverage.

As I have reviewed these projections and analyses, it is hard to say where the line ought to be drawn. It is a value judgment as to what deductibles and what the co-pays ought to be and for whom. Though I am seriously troubled by the so-called donut hole, it is calculated to encourage people to take the medical care they really need, and be affordable for those with lower levels of income. Then, when the costs move into the catastrophic illness range, the plan would pay for nearly all of the medical costs.

I am pleased that this bill contains a number of improvements for the providers of health care to Medicare beneficiaries. Physicians who are scheduled to receive cuts in 2004 and 2005 will receive a 1.5 percent increase over that time. Moreover, rural health care providers will receive much needed increases in Medicare reimbursement through raises to disproportionate share hospitals and standardized amounts, and a decrease in the labor share in the Medicare reimbursement formula. Hospitals across Pennsylvania will benefit from upgrades to the hospital market basket update and increase in the indirect medical education. Furthermore, the bill will provide $900 million for hospitals in metropolitan statistical areas with high labor costs due to their close proximity to urban areas that provide a disproportionately high wage. These hospitals may apply for wage index reclassification for three years staring in 2004.

I would not that I do have concerns with this legislation with regard to oncological Medicare reimbursement and the premium support demonstration project for Medicare Part B coverage. Proposed reductions in the average wholesale price for oncological pharmaceuticals may have a grave effect on oncologists' ability to provide cancer care to Medicare Beneficiaries. Every Medicare beneficiary suffering from cancer should have access to oncologists that they desperately need. I will pay close attention to the effects that this provision has on the quality and availability of cancer care for beneficiaries and oncologists' ability to provide that care. Further, the premium support demonstration project for Medicare Part B premiums poses a concern. Some metropolitan areas may face up to a five percent higher premium for fee-for-service care than neighboring areas. While these provisions remain troublesome, we cannot let the perfect become the enemy of the good with this piece of legislation.

The Medicare Prescription Drug legislation has been worked on for many years. I believe this bill will provide a significant improvement to the vital health care seniors so urgently need. I congratulate the members of the conference committee including majority leader FRIST, Senator GRASSLEY, Chairman of the Finance Committee, and the ranking member, Senator BAUCUS, for the outstanding work which they have done on an extraordinarily complex bill.

Mr. LEAHY. Mr. President, seniors need and deserve a stronger prescription drug bill than this one.

The creation of the Medicare program in 1965 was a tremendous accomplishment. With Medicare, older Americans would never again have to face a terrifying future with no health care coverage. And since that time, millions of elderly and disabled citizens have come to know and trust the quality health care that Medicare ensures them. But Medicare's success is marred by one significant factor: the lack of coverage for prescription drugs. When Medicare was created, prescription drugs did not hold the pivotal role that they now have in health care treatment and maintenance. Medical science has advanced since Medicare's charter was enacted, and senior and disabled Americans have been waiting a long time for Congress to remedy this gaping hole in coverage.

We need a meaningful prescription drug benefit under Medicare, and many of us have been pushing for years to accomplish that. This movement has steadily grown, and for 6 years we in this body have been debating and working toward this goal. In June of this year the Senate passed a bi-partisan prescription drug bill that I supported. I supported that bill—even though I thought it was weaker than what we need—because it was a solid start. And that is why it gives me grave concern to see the direction this conference report has taken.

We have before us eleven hundred pages—which we have had little more than 3 days to examine—that run far afield of the goal of adding a prescription drug benefit to Medicare. It concerns me that some of the provisions in

this bill—provisions which were never a part of the bill I supported in June—will do more harm than good. I know that many of my colleagues worked long and hard to produce this bill. I respect their efforts and their best intentions, but Vermonters and Americans need and deserve far better than this. We passed a decent bipartisan bill once before this year. I know that we can do better than this compromise before us, and that is why I will be voting no. Instead of trying to rush through eleven hundred pages so that we can go home for Thanksgiving and adjourn for the year, I think that we need to keep working on this important issue until we get it right.

I am concerned that the measure before us moves Medicare down the road of privatization and does not adequately protect the access to the prescription drug benefit of rural seniors in traditional Medicare. I am concerned that fewer low-income seniors will be helped with their costs, and it troubles me that the need to bring down the ever-escalating costs of prescription drugs has not been addressed in this bill.

Under the conference agreement, a significant amount of money—$12 billion—is set aside in a slush fund for the Secretary of Health and Human Services to entice insurance companies into Medicare. The conference agreement also includes a proposal to experiment with privatization of the Medicare program in at least six areas of the country. This troubling provision could impose increased premiums for millions of seniors in traditional Medicare, potentially forcing them to leave the program that they know and trust. And making this experiment even worse, the Federal Government will overpay private plans—putting Medicare at an unfair disadvantage—to offer the same benefits that traditional Medicare covers for less. Why are all of these extra payments necessary? If the private insurance model is so effective and efficient, why do we need to pay them more than we pay for traditional Medicare? No one can credibly argue that doing this makes sense.

The reason that we needed Medicare in 1965, and the reason that we will continue to need Medicare in the future, is because the insurance model fails elderly and disabled people. It is not all that complicated. As we get older we inevitably get sick and we need to take more trips to the doctor and to the hospital to manage and maintain our health. This costs money, and the insurance companies know that they lose money when the bills have to be paid not occasionally, but frequently. Instead of sending billions of dollars to insurance companies, it is far better to use those resources to strengthen Medicare and to create a stronger and more reliable prescription drug benefit run directly by Medicare.

In the earlier Senate bill, I accepted that we could try this private delivery model for the prescription drug benefit because rural seniors in traditional Medicare—this is all of the seniors in Vermont, by the way, because private plans have chosen not to operate in our rural state—would be assured of having a choice of two stand-alone drug plans. And if those two plans did not exist in Vermont's region, then Vermonters in traditional Medicare would be guaranteed access to a standard government fall back plan. Unfortunately, this essential protection was weakened in the conference agreement. Instead, Vermonters will be considered to have adequate choice—and therefore no access to the government fallback plan—if there is only one stand-alone plan and one managed care plan. What kind of choice is that? The choice that Vermonters in traditional Medicare will have under that scenario is either to sign up for that one stand-alone plan that happens to be offered, or to forgo the new prescription drug benefit altogether. That doesn't sound like much of a choice at all.

I am also concerned about the impact that this bill will have on low-income Medicare beneficiaries. It is true that the bill provides generous subsidies to low-income seniors, but the earlier Senate bill covered more people: almost one million Americans who would have had access to a subsidy under that bill will not receive help with their premiums, deductible, and cost sharing under this bill. Three million more Americans will not qualify for help because they have minimal savings and other assets. In Vermont, that amounts to about seven thousand people who will be worse off under this agreement than under the Senate bill. Furthermore, thousands of Vermonters who currently have prescription drug coverage under the Medicaid program could end up with less generous coverage under this plan.

The real winner under this agreement is the drug industry. Many express concern over the high cost of creating a Medicare prescription drug benefit. I would suggest that we could have done something very simple to bring down the cost: We could have used Medicare's market power to negotiate lower prices for the medicines the program will be buying. Instead, this compromise agreement actually prohibits this common sense approach to cost containment. Thanks to objections by the drug industry, provisions designed to speed low-cost generic drugs to market were weakened in the conference agreement. And last, but certainly not least, the drug industry prevailed in their efforts to block a provision to allow Americans access to lower-priced medicines from Canada. This is unacceptable. A majority in the senate voted to allow re-importation and the House of Representatives overwhelmingly supported a strong re-importation provision. Somehow, the conference agreement is weaker than either provision passed in either body. How long do we intend to force Americans to continue to pay the highest prices in the world for their indispensable medications?

It is wrong to have hijacked this bill as a locomotive to pull the drug industry's baggage. House leaders have taken the industry's side over consumers' interests on issue after issue. They have given the industry a veto over giving Medicare the market leverage to bring down costs. They have done the drug industry's bidding by blocking drug reimportation. It is wrong to pad the drug industry's wallets at the expense of the seniors of Vermont and the Nation.

I remain concerned that cuts in payments for cancer drugs and services—estimated to be in excess of $11 billion over the 10-year budget window—threaten access to cancer care across the nation and particularly in rural area. And though the conference agreement does reduce the number of retirees likely to lose their employer-based coverage as a result of passing this bill from the Senate level, the Congressional Budget Office still estimates that close to three million retirees will lose their coverage. That number is still far too high and could affect thousands of Vermonters.

Finally, I question why we set aside $6 billion—money that could be spent to reduce the troubling gaps in coverage under the prescription drug benefit—to create Health Savings Accounts that have nothing to do with Medicare and that many analysts predict will boost the costs of comprehensive employer-based health insurance across the country.

I do credit this bill with some good provisions to provide increased payments to doctors and hospitals, particularly in rural areas. I fully support these provisions, but their inclusion cannot overcome the problems in the rest of the bill.

I hope that I am proven wrong about the impact that this bill will have on the Medicare program and on the help, or lack thereof, it will provide to Medicare beneficiaries. I think we can do better and that we must do better. As seniors learn over the course of the next 2-years what kind of coverage they will be getting—as they see how complex the system ad the benefits are—I predict that they will agree and that we will be returning to the drawing board very soon on prescription drugs.

Mr. DOMENICI. Mr. President, thank you for recognizing me and letting me speak for a couple minutes.

I wish to thank one individual. We wonder from time to time about a bill of this magnitude. We want to be careful when we mention Senators we want to thank and are grateful toward. But I don't have any reluctance on this one, having been part of the process, having been part of our distinguished majority leader's life in the Senate before he was majority leader. There is no doubt in my mind when he came to the Senate and learned about Medicare, he made a commitment that he was going to be part of fixing it.

I watched this fantastic, talented man devote his energy and his enthusiasm, put the best people one can imagine around him, and I watched him lead the maneuvering, the activities, and the thinking, and I watched him learn the intricacies of this bill.

I believe if it is done right, history will have a lot of people we can thank for the Medicare modernization bill and the prescription drug bill for our seniors, but I think there will be one person who will stand out, and it will be the distinguished senior Senator from Tennessee, the majority leader.

He has not been here very long. I remember when he arrived. He joined the Budget Committee, the committee that I chaired, and he was at the very end of the committee because he was the least senior of all members. He moved up gradually, and then all of a sudden we all recall what happened, and he became majority leader.

He carried into that majority leadership, on his shoulders, in his brain, and in his ability to make commitments, the idea that there has to be a way to modernize Medicare and provide prescription drugs.

I do not want to let this record on this day close without the Senator from New Mexico—who knows a little bit about this man, who served with him, worked with him, and understands him and is appreciative of the great talent he brought to the Senate when he joined us—thanking him and recognizing his particular involvement in getting this job done.

It just seems as if we go months and years without any good news, and then good news comes in bushels. Today we have a bushel of good news. We passed this bill that our seniors have been asking for. It is amazing, the AARP supports it, and then the other side of the aisle, the Democrats who used to just crave having the AARP on their side, because the AARP found a bill that the Democrats don't like—and I don't know whether they don't like it because it isn't theirs or it isn't good. I would say it is a tossup from what I can tell. Part of the Democrats don't think it is good, but part of them don't think it is good because it isn't theirs. They chose now even to blame the AARP; that there was something nefarious involved in the passage of this bill.

I hope the millions of people in the AARP understand what the Democrats are saying. They are truly accusing the AARP of having a conflict of interest that would cause them to support legislation that is not good for the senior citizens of America. That is it in a nutshell. It is an absolutely ludicrous accusation, but it has been done. It has been done because they saw the tide, and the tide was going in the direction they didn't like but the AARP liked.

Somehow or another, under the leadership of people such as BILL FRIST, Republicans started coalescing around it. Because of the ability of people such as CHUCK GRASSLEY and our leader, Democrats joined in and we had some very exciting Democratic support. That is one great big basket of news sitting on the floor.

Mr. JEFFORDS. Mr. President, I have listened closely to the debate over providing prescription drugs and improving other benefits under the Medicare Program. This debate has not been limited to the last few days, as we all well know. This debate has been waged for 38 years.

Providing Americans with access to prescription drugs at an affordable cost has been one of the most vexing issues facing Congress in recent years. Many ''solutions'' have been offered to ''fix'' the problems of high cost and lack of access, and Congress has explored and debated various approaches. Of these approaches, providing a Medicare prescription drug benefit is the most important and perhaps the most challenging to accomplish.

For years, progress has been delayed over significant policy differences, not the least of which was the question of whether or not the Government could even afford to create a new and expensive entitlement program. But that question shifted and our debate this week wasn't focused on the question of whether the Government should provide a prescription drug benefit but rather on the details of how to structure a prescription drug benefit.

Last Congress I had the privilege to work with several of my Republican and Democratic colleagues in the Senate to develop a Medicare drug benefit program that became a key option in the ''how to'' debate. Our proposal, which became known as the tripartisan effort, embodied the principles that I believed must be part of a Medicare drug program.

First, the program must make a universal benefit available to all Medicare beneficiaries. It would be unfair to use much needed medicines as a carrot to lure seniors into managed care programs they don't want. We should also avoid providing a benefit only to the poorest of the poor and those with catastrophic costs. Virtually all seniors, regardless of income, need help to make their medicines either outright available or more affordable, and most have indicated a willingness to pay their fair share to support the program.

Second, the program must be comprehensive so that elders would have as generous a benefit as possible, from their initial spending to their catastrophic costs, and they shouldn't have to forego the best medicines for the cheapest ones just in the name of budget savings.

Third, a Medicare drug benefit must be affordable for both beneficiaries and the Government. Seniors should be able to get the best medicine available at the best possible price and the Government must derive the best cost savings through open competition. We should expect to realize as much savings in our pharmaceutical purchase for Medicare as foreign governments realize today.

Finally, for a drug benefit to be truly successful it must be sustainable. It will do little good to repeat the catastrophic failure of years past by beginning a program that we cannot carry on. That is why this must be a shared responsibility of beneficiaries and the Government. A program that combines seniors' contributions with a Government guarantee will have the best chance of enduring into the future.

Since last year, I have listened to the concerns of my colleagues, and I have weighed those concerns seriously. In the last few days of debate, I have given great consideration to the points raised by my colleagues and good friends in this body. I acknowledge their sentiments and I agree that this is not the bill I would have written if I had infinite resources to do it. This bill is not perfect. However, 38 years is just too long for American seniors to wait.

Turning this legislation away would have been a missed opportunity to provide seniors with the most significant modernization of their Medicare benefits since the program's inception in 1965. I believe this bill meets these four standards: It is universal, comprehensive, affordable, and sustainable. Could it be improved? Certainly. But this plan is a good compromise. It offers a respectable and responsible plan within the budget limitations we faced. It is a good compromise. I support this bill.

The conference report includes many significant features for the citizens of my home State of Vermont. It provides a sustainable, universal, and comprehensive prescription drug benefit to all 93,000 Medicare beneficiaries in Vermont.

For 40,000 seniors in Vermont with limited savings and incomes below $13,470 for individuals and $18,180 for couples, the Federal Government will cover most of their drug costs.

In addition, Medicare, instead of Medicaid, will now assume the prescription drug costs of 21,767 Vermont beneficiaries who are eligible for both Medicare and Medicaid. According to the Centers for Medicare and Medicaid Services, this will save Vermont $76 million over 8 years on prescription drug coverage for its Medicaid population.

This bill recognizes the high cost of providing quality care in rural settings and finally puts an end to years of unfair reimbursement gaps between rural providers and their urban counterparts. Specifically, this Medicare package provides $25 billion for rural providers, netting $41 million in additional funds for Vermont hospitals over the next 10 years and $18 million for underreimbursed physicians over the next 2 years.

I am also glad Chairman GRASSLEY and Ranking Member BAUCUS have worked with me to address another inequity in the system. Critical access hospitals provide care in the some most underserved regions of Vermont as is the case throughout rural America. These hospitals are small yet serve

as critical resources to their communities.

I am very pleased to see that the conferees retained a provision from the Senate measure that will allow critical access hospitals, like the Mount Ascutney Hospital in Windsor, VT, to expand access to psychiatric and rehabilitative services to the most vulnerable citizens in that community.

This bill contains a provision that will allow us to better understand how to provide quality health care, culminating several years of work in concert with Dr. Jack Wennberg at Dartmouth to measure care by the quality of patient outcomes rather than utilization of resources.

In closing, I especially want to salute the efforts of Senator BAUCUS, Senator GRASSLEY, and Senator BREAUX and the other without whose hard work and commitment to working through an agreement we would not have accomplished passage of this legislation and they deserve our accolades. I also thank several of my other colleagues who have contributed so much to this debate over the years. I have worked for more than 3 years with my good friends, Chairman GRASSLEY and Senators SNOWE, BREAUX and HATCH. In many meetings over many months, we delved into the details of what came to be called the tripartisan bill. This has been one of the finest experiences of my many years in Congress. I am very proud to have been a part of that group and that our efforts led the way to our success today.

A bill such as this is the result of great effort on the part of many different people who are not elected to this body but upon whom we all rely. I would like to recognize the staff members who have worked so hard on this bill and deserve much of the credit for its successful passage.

On Senator GRASSLEY's staff: Ted Tottman, Linda Fishman, Colin Roskey, Mark Hayes, Jennifer Bell, and Leah Kegler, and on Senator BAUCUS' staff Jeff Forbes, Liz Fowler, Jon Blum, Pat Bousliman, Kate Kirschgraber, and Andrea Cohen deserve considerable recognition for their tireless efforts. Catherine Finley, Tom Geier, and Carolyn Holmes from my friend Senator SNOWE's staff; Patricia DeLoatche and Patricia Knight of Senator HATCH's office; and most especially Senator BREAUX's legislative director Sarah Walters and his staff Michelle Easton and Paige Jennings deserve enormous credit for this bill.

On my own staff, I particularly want to recognize the contributions of Sherry Kaiman, Eric Silva, and especially Sean Donohue who took up the effort on the tripartisan bill and who has continued to see it through to today's success. Each and all have worked tirelessly to gather the input, analyze the issues, and build a consensus toward achieving this final product.

Mrs. SNOWE. Mr. President, today, we stand at the precipice of opportunity. Culminating a decade of work, we have before us legislation that will forever change the face of Medicare—providing every senior in America with a prescription drug benefit under a Medicare program that will experience the largest expansion in its 38-year history.

We would not have arrived at this day without the exceptional commitment made by Finance Chairman GRASSLEY to advance this issue and meld the considerable political and policy differences that have marked the development of this bill. His efforts were nothing short of Herculean from the outset, and guided us through a challenging conference. He, as well as Ranking Member BAUCUS, have remained committed to the bipartisan principles that forged the Senate legislation, which garnered the support of 16 members of the Finance Committee, and a remarkable 76 members of the full Senate.

I want to recognize the outstanding leadership of the President—who in 2001 challenged Congress to enact the Medicare Prescription drug benefit . . . propounded a set of principles . . . and has provided strong impetus during this ''home stretch'' for Congress to complete our work and send to his desk legislation he can sign this year. I know firsthand from my conversations with the President that this is a cornerstone of his agenda and absent his driving force we wouldn't be here today.

So, too, has the Majority Leader redoubled his longstanding and unflagging commitment to enacting into law a bipartisan bill, moving us ever closer to that goal. Thanks to the unique confluence of his skills . . . his unparalleled knowledge and grasp of the issue . . . and his single-mindedness of purpose, more than three quarters of the Senate came together to support S. 1, the Senate's prescription drug bill. And in bringing us to the eve of final passage of this conference report, he has been typically respectful of—and responsive to—all the wide-ranging concerns and recommendations voiced to him, and I thank him for his leadership and for guiding and shaping this process to its ultimate and successful conclusion.

I also want to extend my appreciation to my colleagues Senators HATCH, BREAUX, and JEFFORDS, with whom I've worked so closely on a prescription drug benefit over the past 3 years—they have been stalwarts in this fight and together we developed the template for the ''tripartisan'' proposal that helped frame the proposal before us. And certainly no one has more fiercely championed the cause than another colleague I've joined with in this battle in the past—Senator KENNEDY—who I recognize does not support this conference report, but whose early, longstanding involvement and passionate policy advocacy unquestionably built momentum for this issue in Congress.

Finally, I want to thank my good friend and colleague, RON WYDEN, with whom I began my ''prescription drug coverage journey'' almost 6 years ago, when we developed the first bipartisan prescription drug coverage bill in the Senate, which established the principles that I believed were critical to shaping this bill.

We reached across the party isle because we recognized that only a bipartisan plan could ever ''see the light of day''. And we joined forces as members of the Budget Committee to establish in the 2001 budget a $40 billion, 5-year reserve fund. Well, look how far we've now come—from the $370 billion tripartisan plan developed last year, to the historic passage of S. 1 in the Senate this past June.

But I can tell you from my own personal and professional experience that Congress' journey along this road has never been easy—although it has been infinitely more arduous for America's seniors. The process has borne witness to a multiplicity of goals and philosophies across the spectrum.

Some have wanted to add a drug benefit to the existing Medicare program to leverage the purchasing power of 40 million seniors, while others have sought to use the issue either as a vehicle for the wholesale privatization of Medicare, or full-scale, Government administered benefits.

Some have said we are providing too great an incentive for people to enroll in private plans, while others argue we are starving those very same plans.

And some have argued the benefits provided in a particular bill are inadequate, while others submit that they are, in fact, too generous and should be limited to a low-income catastrophic plan.

Yet, today, we essentially all agree we are well beyond one question—the question of need. Therefore, it is imperative we acknowledge the reality that, just as the journey thus far has been imperiled by the ''slings and arrows'' of those on all sides of this issue, it will not become easier with the passage of time—not when you're debating the creation of the largest domestic program in nominal terms ever.

Not when you're attempting the largest expansion in the history of the third largest Federal domestic spending program.

And not when significant challenges loom on the horizon such as strengthening Social Security and Medicare as 77 million baby-boomers begin to retire in 2013—all while we face record-setting Federal deficits.

We did have an optimal window for positive change just 2½ years ago when the Congressional Budget office was projecting surpluses ''as far as the eye could see''—about $5.6 trillion through 2011. Now, next year's deficit alone is projected at nearly $500 billion. That is how quickly the tide can turn. That is how quickly opportunities can be lost.

Just think—a little over a year ago, the Senate was presented with a choice between a ''tripartisan'' plan that ensured coverage would be available to

all seniors . . . was comprehensive, with the maximum benefit possible for lower-income seniors . . . and was a permanent part of the Medicare program—and the alternative, which was temporary and would have ''sunset'' . . . and would have statutorily restricted access to drugs. Talk about lost opportunities! Indeed, those who are dissatisfied with what we have before us today should fondly recall that tripartisan bill, and lament its unfortunate demise.

So here we are. The conference report before us is the result of an attempt to balance the competing viewpoints not only among Members, but between the stunningly disparate House and Senate legislation. The simple truth is, while I continue to prefer the Senate bill, it is this conference report upon which we will vote. And after careful review, I have concluded that while it isn't everything it could be, it isn't everything it should be. In the end, millions of seniors will benefit over the stagnation of the status quo.

To quote AARP, ''Enactment of this legislation is essential to strengthening health security for all Americans. This is an important step toward fulfilling a longstanding promise to older and disabled Americans and their families. While this legislation is not perfect, it will help millions of people, especially those with low incomes and high drug costs.''

Margaret Thatcher once said, ''You may have to fight a battle more than once to win it.'' Well, some of us have been fighting this battle now for nearly 6 years. The bottom line is, we cannot hold hostage our seniors' futures to a political unwillingness to compromise. And this bill provides us with our best available opportunity to secure, for the first time, a legislative foothold that honors the same basic principles I have expounded upon since I first came to this issue—

That, in keeping with the basic tenets of Medicare, the prescription drug benefit must be universal, comprehensive, affordable, voluntary, permanent, and provide equal benefits across all plans. And that—like the Senate bill and the tripartisan proposal before that—it directs the most assistance toward those seniors with the lowest incomes . . . includes a reliable Government fallback of last resort . . . and continues to ensure seniors access to, and the stability of, the traditional Medicare program. In its totality, this conference report fulfills all of these principles.

In evaluating the individual components of the package, Mr. President, we should be mindful of how we arrived at this destination. As the Senate passed a bill with overwhelming bipartisan support, the House passed its bill with the most razor thin margin of just one vote—and as we witnessed it passed the conference by a mere five vote margin, after an historic three hour vote held open to secure the necessary votes.

And we see the result in the starkest terms, reflected in the nature of the benefit designed out of necessity by the conferees. It includes aspects modeled after each bill—the deductible was set at the House's lower level of $250 and the conferees worked to improve this proposal by offering a benefit with an actuarial value higher than the benefit from both bills. However, in providing these improvements concessions had to be made—in doing so the Senate's $4,500 benefit cap was lowered to $2,250. But in the same respect the cost sharing provided under this cap was lowered from 50 percent provided for in the Senate bill to 25 percent. So as you can see, while not perfect this benefit represents the art of compromise.

Recognizing that this bill is not perfect, I find it imperative to note I was disappointed to see two provisions that I oppose are included in the conference report—means testing of the Part B premium and indexing of the Part B deductible. The Senate-passed bill did not include language to means test the Part B premium and I successfully fought to defeat efforts on the Senate floor to add it. Unfortunately, the House bill did contain this concept and the conferees chose to include in it the conference report. And while the Senate bill did contain language to index the Part B deductible, I opposed this provision in the Finance Committee and had hoped it would be removed by the conferees.

But in recognizing the flaws of this proposal, at the same time, the conference report will at least get the federal ''foot in the door'' in providing a significant level of assistance to the one-out-of-four Americans who right now have no coverage whatsoever. Most seniors—for a $35 monthly premium—will save 50 percent on their cost of prescription drugs. For example, a senior who spends $3,600 will realize $1,714 annually in savings.

And in examining the assistance provided to the lowest income, I am relieved to know that the conferees utilized the model set by the Senate bill. Most critically, in keeping with the Senate bill, seniors with incomes below 150 percent of poverty who qualify for one of the low income categories will not experience a gap in coverage—and will receive a generous level of assistance. This means that in Maine over 93,450 beneficiaries, or more than 40 percent of the Medicare population, will receive a generous benefit with no gap in coverage.

And while the Senate bill may have extended this coverage to a greater number of seniors, unlike the Senate bill, this proposal ensures that all seniors, even the so-called ''dual eligibles''—those who qualify for both the Medicare and Medicaid programs—receive a Medicare drug benefit. This will ''federalize'' 47,100 beneficiaries in Maine and approximately 6 million nationally. This results in a savings of $161 million over eight years to the State of Maine. So, while this benefit does not achieve all that I would like, it has laid the foundation from which we can and must build in the future.

Yet, not only do seniors deserve a subsidy to help make prescription drugs more affordable, they should also have the benefit of choice when it comes to the coverage they purchase.

Because seniors shouldn't be limited in their options for coverage, we ensure that all seniors will have a choice of at least two privately delivered drug plans. Furthermore, all drug plans are required to offer access to two drugs from each therapeutic class and category. Not only does this provide seniors with options, it helps ensure they will receive the drug their doctor determines is the most appropriate.

And let us not forget, there was a time when it was proposed that if seniors desired prescription drug coverage, they would be obligated to enter an HMO. Well, thankfully—and appropriately—this conference report shuns the ''one size fits all'' philosophy of placing all seniors into managed care and maintains the critical protection of choice of ensuring seniors can remain in the Medicare program. Seniors absolutely should have the option of staying where they're comfortable—without sacrificing guaranteed and equal prescription drug benefits.

Still others on the opposite end of the spectrum have said that the privately delivered stand-alone drug coverage option is doomed to fail—that this type of plan doesn't exist in nature and insurance companies won't participate. However, this conference report includes key principles developed in the Senate bill—including risk corridors, reinsurance and stabilization accounts—which are intended to build a stable, productive model that I believe will attract and keep companies in the program.

Ultimately, however, there is no way to guarantee private companies will deliver services in every region of the country. Therefore, as we were developing the Senate bill, many of us who represent the 12 rural States in which no Medicare+Choice programs operate included a fall back of last resort—which I'm pleased to say is sustained in this conference report. This key provision will serve to provide security to beneficiaries by knowing that no matter where they live, they will be assured of coverage even when private plans choose not to participate.

Throughout this debate, concerns have been voiced that with the enactment of a Medicare prescription drug benefit some employers will be provoked into reducing coverage that they offer to their former employees. Indeed, I have expressed concern about this issue throughout my six years of involvement in developing Medicare prescription drug legislation. And while I have concluded that we can take steps to mitigate the problem of employers ending coverage, I do not believe we can eliminate it.

That is because this bill is not causing employers to cease coverage—in fact, from 1999 to 2002—prior to the enactment of a Medicare prescription

drug benefit—almost 10 percent of employers stopped offering retiree coverage. So this bill cannot be held responsible for this problem that exists regardless of the enactment of this bill. But we most definitely should use this bill as an opportunity to help reverse the trend of the last decade and offer incentives that will prompt employers to maintain their retiree benefits.

This conference report takes important steps toward alleviating the problem. Looking back to the development of the Senate bill, the Congressional Budget Office estimated that S. 1 would prompt 37 percent of employers to reduce the drug coverage they offer to their former employers. In comparison, the conference report includes a combination of options—both policy and tax incentives—that CBO, and most importantly employers, believe will provide incentives strong enough to encourage the maintenance of private sector coverage. It reduces the expected drop rate from the Senate bill's 37 percent to 16 percent; this means an additional 1.6 million seniors will retain their employer-sponsored coverage—seniors who might have lost this coverage regardless of the outcome of this bill.

This proposal also takes vitally important steps to create better balance within the Medicare program to ensure that all providers, regardless of where they are located, receive adequate and appropriate payments. For too long, States like Maine, which ranks number 47 in Medicare reimbursement, have been underfunded simply because they are rural. This bill, thanks to the leadership and persistence of Chairman GRASSLEY, finally brings Medicare payments into equilibrium.

This proposal provides an additional $25 billion over ten years to help States, like Maine, receive more equitable Medicare payments. Hospitals in Maine stand to gain an additional $125 million through payment improvements for our Disproportionate Share Hospitals (DSH), teaching hospitals, critical access hospitals and rural hospitals. Further, Maine's rural home health care providers will see increases to their reimbursement rates, along with rural ground and air ambulance providers to name just a few. And let us not forget our physicians. This bill reverses the 4.5 percent reimbursement cut expected for 2004 and provides an additional increase to payment rates for rural doctors, which together total more than $22 million.

I was especially pleased to have been able to work with the Chairman to add, in the Senate Finance Committee, a provision that would ensure the continuation of the country's rural health care residency training programs. This provision reiterated the Congress' intent to allow physicians to volunteer their time as supervisors of residents, and allowed programs to use Medicare funding to support these residents instead of utilizing funding provided by the community.

I added this provision in an effort to protect policy that I worked to include in the 1997 Balanced Budget Act, which, for the first time, allowed residency training programs to place their trainees outside of hospitals, most often in rural communities, and receive Medicare reimbursement. Unfortunately, the Centers for Medicare and Medicaid Services (CMS) recently tried to regulate around that law and prohibit programs from utilizing this option by making it so onerous that programs instead choose to move the residents back into the hospital instead of complying with the agency's new rules.

While I was able to include the corrective policy in the Senate-passed Medicare bill, some of the House conferees refused to maintain this critical Senate provision. But, working with the Chairman, who recognized the importance of this provision to rural States, I was able to secure support to provide a one-year moratorium that prohibits CMS from taking action against programs that allow physicians who supervise residents to volunteer their time. the provision also calls on the Secretary of Health and Human Services to perform a review of this issue and report to Congress on the impact to rural training programs if physicians are not allowed to volunteer their time as a supervisor.

Though the moratorium is helpful, it does not resolve the issue, and I, therefore, will continue to fight on behalf of these vital programs. I have introduced as a separate bill, S. 1897, which contains the language from the Senate-passed Medicare bill that will in fact protect these programs and ensure their continued viability.

This bill also includes a key provision that corrects an inequity that has disadvantaged millions of Medicare beneficiaries who suffer from cancer. This bill directs the Secretary to establish a 2 year transitional benefit in 2004 and 2005 utilizing at least $200 million to allow Medicare to cover all available oral anticancer treatments.

Currently, Medicare provides coverage of a limited number of oral anticancer drugs that originally were available in intravenous, IV, form. However, since Congress first expanded coverage to this limited type of oral anti-cancer treatments, the technology has advanced and many of the most innovative and effective drugs do not qualify for coverage because they did not evolve from the IV form. By including in the conference report authority for CMS to extend coverage to all oral cancer treatments, we ensure that in 2004 and 2005, prior to implementation of the comprehensive prescription drug benefit, seniors will have access to the best treatment options available.

The conference report before us, includes another noteworthy improvement to the Medicare program, one that will help make an important tool in the fight against breast cancer more accessible for women—diagnostic mammography. This year alone, 211,300 women in the U.S. will be diagnosed with invasive breast cancer, and almost 40,000 will die from the disease. Yet, the FDA reports that the number of mammography facilities closing now number over 700 nationwide. These closures have led to longer waiting periods for women scheduling annual and follow-up mammography visits which could lead to delayed diagnosis and delayed treatment. This is not acceptable.

The bill before us includes provisions closing the gap between the Medicare reimbursement and the actual cost of diagnostic mammography by removing the reimbursement of diagnostic mammography performed in a hospital setting from the Ambulatory Payment Classification and placing the procedure in the Medicare Fee Schedule. This would bring the hospital technical number closer to the actual cost of the procedure, thus reducing the financial disincentive for hospitals to continue these services.

Having been the lead Republican cosponsor of this bill for a number of years, I am pleased the conference report before us today seeks to turn the tide on these closures as too many imaging facilities can no longer afford to offer these procedures due to low Medicare reimbursement.

One million additional women become age-eligible for screening mammography each year. This action will help ensure that these women will have access to the screening they need to detect and combat this disease earlier and, hopefully, with less invasive procedures. This inexpensive provision in the Medicare conference report could save countless lives, and I am pleased that it will be enacted into law along with the rest of this bill.

Finally—and fortunately—this conference report unquestionably represents the end of the House bill's open-ended efforts to move Medicare toward a national, privatized system through an untested, untried policy known as ''premium support'' that could have led to the patchwork delivery of health care that existed prior to the creation of Medicare in 1965.

This approach would have fostered wild fluctuations in premiums for the traditional Medicare program. Whereas, incredibly, Medicare now provides all seniors the same benefit for the same premium, under this proposal premium variations would have occurred not just from State to State, but within a State and even within a congressional district!

And you don't have to take my word for it. According to the Centers for Medicare & Medicaid seniors living in Miami, FL, would pay $2,100 a year for traditional Medicare, compared to $900 that seniors would pay in Osceola for the same benefit. And when you compare this to North Carolina, the variation from State to State grows even wider with Rowan County, North Carolina paying just $750 for traditional Medicare. So let there be no mistake,

this House-backed provision was a full frontal assault on traditional Medicare. Yet, according to CBO, this proposal that supporters touted as the savior of the program ultimately would have saved Medicare less than $1 billion.

I happen to believe that prescription drug legislation should be about providing seniors with a drug benefit. And while we certainly can consider and incorporate new policies that improve and enhance the underlying program. The drug benefit should not be used as what someone appropriately described as a ''Trojan Horse'' to open the door to the privatization of Medicare.

I ask unanimous consent that this letter, as well as another letter my colleagues and I sent in October, and an editorial from the Bangor Daily News be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
WASHINGTON, DC, NOVEMBER 13, 2003.

Hon. BILL FRIST,
*Majority Leader, U.S. Senate, Washington, DC.*

DEAR LEADER FRIST: It has come to our attention that leadership is considering the inclusion of a new version of the policy model known as premium support. As you know, this policy places the traditional Medicare program and private plans into direct competition and according to the Centers for Medicare and Medicaid Service (CMS) will lead to dramatic increases in the annual premium for the traditional Medicare program.

We are extremely concerned about the inclusion of this policy proposal in a Medicare bill. Though some may consider this a demonstration project, we disagree. This appears to be a veiled attempt to institute this policy into law. According to CMS data this proposal could capture up to 10 million seniors, 25 percent of Medicare beneficiaries. Further, it will require them to bear the burden of cost increases associated with the demonstration project.

This policy also unfairly targets some seniors simply based on their geographic location and mandates their participation. The likely result will be significant increases in traditional Medicare premiums for seniors living in the affected areas and could destabilize the Medicare program for all seniors.

We understand that leadership and some conferees may be considering possible changes to this latest proposal. We urge you to remove this policy from the bill. We believe there are other possible options that will encourage private plan participation in the Medicare program that do not negatively impact the traditional Medicare program.

Thank you for your consideration of this vitally important issue.

Sincerely,

44 MEMBERS OF CONGRESS.

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U.S. SENATE
*Washington, DC., October 23, 2003.*

Chairman CHARLES E. GRASSLEY and Ranking Member MAX BAUCUS,
*Senate Finance Committee, Dirksen Senate Building, Washington, DC.*

Chairman WILLIAM M. THOMAS and Ranking Member CHARLES B. RANGEL,
*House Ways and Means Committee, Longworth House Building, Washington, DC.*

Chairman W.J. (BILLY) TAUZIN and Ranking Member JOHN D. DINGELL,
*House Energy and Commerce Committee, Rayburn House Building, Washington, DC.*

DEAR CONFEREES:

The Medicare conference has reached a critical junction in its effort to craft a conference agreement to develop a Medicare prescription drug and modernization bill. The time is fast approaching when final agreements must be made if a proposal is to be developed prior to the November 7 target-adjournment date. However, many key issues remain unresolved, which will determine whether this bill can garner strong bipartisan support and ultimately become law. As you progress into this critical stage, we urge you to remain committed to the bipartisan principles contained in the legislation developed and passed by the United States Senate.

First, the Senate bill takes strong steps to provide every senior and disabled American, no matter where they live, with choices in coverage. Notably, this is done in a manner that preserves the traditional Medicare program as a viable option. This balance was achieved by providing all seniors with access to the same level of drug coverage no matter the coverage option chosen. Further, the Senate bill assures this choice will be a fair one that will not disadvantage senior citizens who remain in traditional Medicare. Accordingly, we urge you to remain committed to principles that provide a level playing field between the private sector and Medicare and reject proposals that would unduly raise Medicare premiums or otherwise advantage private plans.

Second, the Senate bill assures affordable, comprehensive coverage to those with incomes below 160 percent of the federal poverty level or $15,472 for an individual in 2006. Generous and affordable coverage for this population is essential, given that most presently do not have access to a prescription drug benefit. The conference must assure that the generous assistance provided to low income beneficiaries is maintained and reject measures that would reduce the benefits presently accorded Medicaid recipients.

Third, we urge the conferees to include a mechanism that will ensure that all seniors have access to a prescription drug benefit, no matter where they live. The Senate bill assures that private plans interested in providing this benefit can do so and will be the preferred mechanism of delivery in every geographic locality; however, it is not possible to guarantee their participation. Therefore, it is necessary that the final proposal include a fallback mechanism, as we included in the Senate bill, that will ensure that beneficiaries will have access to the drug benefit in the event that private plans are not available in a region.

Finally, we caution the conferees against including provisions that will circumvent established congressional procedures or delegate responsibilities for establishing the benefit and cost-sharing requirements to the Secretary of Health and Human Services (HHS). The responsibility for developing and overseeing benefits included in the Medicare program rests with the Congress, and this bill should not violate that principle.

Enactment this year of a bill that adds a Medicare prescription drug benefit and improves the program is a top priority for each of us. America's seniors have waited too long for comprehensive drug coverage and the addition of market-based options. However, to achieve this goal, we must continue to work together to develop agreements that will receive bipartisan support in each chamber. In 1965, the original Medicare bill garnered this level of support and a change to the program of this magnitude should be no different.

We remain ready to help you address these and other issues that will impact the final proposal, and hope you will work with us to develop bipartisan proposals that we can support.

Sincerely,

OLYMPIA J. SNOWE,
ARLEN SPECTER,
MIKE DEWINE,
EDWARD M. KENNEDY,
JEFF BINGAMAN,
BLANCHE L. LINCOLN,
JAMES M. JEFFORDS.

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[From the Bangor Daily News, Nov. 21, 2001]

HOBSON'S MEDICARE

Never have so many dollars been put to so little use. The $400 billion Medicare bill before Congress establishes what all sides agree is necessary—a prescription drug benefit—but blasts away at much of Medicare's foundation. It is a deal that makes all previously rejected Medicare reform look wise and generous by comparison. It is also the best deal the current Congress is likely to get.

The difficult calculation is this: Is a badly flawed bill that contains a needed drug benefit worth passing when the alternative is to reject it without the chance to enact improved legislation? The $400 billion has been set aside for funding this legislation; should it fail, the money would disappear and given the extent of the deficit for the next decade or more, would not be available next year; even in the unlikely chance a bill could be passed in an election year, or perhaps after that.

Much of the debate this week has focused on the plan's intent to establish privatization pilot projects—subsidized private insurers would offer Medicare in six metropolitan areas in competition with traditional Medicare—but other aspects of it are equally important and equally troubling. The means-testing provision in the bill, for instance, raises costs for middle-class seniors; reimbursements for medical residents harm clinic work; those who remain in traditional Medicare for the pilot program will see increases in their costs; states that could negotiate for their Medicaid-Medicare clients lose much of their bargaining power while also losing their federal support for the program. The fear remains strong among health care advocates that the entire reform is an attempt to cap the federal contribution to Medicare and shift future costs to seniors. Several of these problems are being debated now—Sen. Olympia Snowe has been in the middle of negotiations all week; imagine the time and argument that would have been saved had she been put on the conference committee. Some of these issues may be resolved but several are likely to remain as the House and Senate vote.

Some members of Congress do not support the bill for these many reasons; some don't support it because of its cost and relatively small nod toward privatization. But for those who believe a drug benefit is important and will become more important in the coming years, the choice is to vote yes and immediately set about chipping away at some of the worst aspects of the bill. This is a terrible way to build a health care safety net for the nation's seniors, but lamenting the process is not an excuse for allowing this opportunity to pass by without approving the drug benefit.

At 1,100 pages, the Medicare bill is too long and complex to describe it merely as a sop to industry (though pharmaceutical manufacturers should love it), an ideological document (though its medical-savings accounts are a GOP crowd-pleaser) or a broad expansion of entitlements (though the drug benefit is exactly that). It is fair to say the bill is a poor version of what should have been passed years ago and now that Congress is out of time and out of money, it is about as much as the public can expect.

Ms. SNOWE. In a letter that 43 colleagues sent, we expressed our strong opposition to this ideological venture.

It is rewarding to note that significant changes were made that transformed the full-scale national premium support proposal into a limited bona-fide demonstration project, as seen in this chart.

Where once efforts centered on the wholesale national privatization of Medicare under a proposal that offered seniors zero protections from premium fluctuations, conferees shifted to crafting a bona-fide demonstration project.

Notably, this proposal exempts seniors from the demonstration who have incomes below 150 percent of poverty.

This bill includes a sunset that ends the demonstration project after six years, limits premium increases to 5 percent annually; and because the demonstration is phased in over 4 years, the actual impact to premiums is significantly less than 5 percent. In fact, the true cap on premiums during the first 4 years of the 6 year demo is only one-quarter of the five percent increase.

Further, under the initial proposal the premium increases would have compounded annually, which could have resulted in a net increase in the traditional Medicare premiums of over 30 percent during the 6 year project. But we worked with the conferees and even this component was removed so that the increases are not compounded.

Finally, we were able to secure support to include selection criteria that identifies qualifying MSAs. Sites must have at least 25 percent private plan participation and seniors living within the MSA must have access to at least two local private plans. Further, the demo must include—one of the largest MSAs—one with low population density—one multi-State MSA—and all must be from different parts of the country. Under this criteria, Maine will not qualify as a demonstration site.

According to CBO this criteria serves to limit the scope of the project to between 650,000 and 1 million seniors, as opposed to the proposal we addressed in our letter, which would have captured 10 million seniors.

Looking back it is remarkable how far this provision has come. Where discussion back in October once focused on the House-passed provisions that created a national premium support program, we now are considering a limited, bona-fide demonstration project that is a legitimate avenue for exploring new ideas to ensure the future of Medicare.

Looking back on the development of the Senate bill, many notions existed about how best to encourage private plans to participate in Medicare. But as we discovered, expectations about the impact and results produced by these proposals often were in conflict. With one proposal, while CMS predicted 43 percent of seniors would participate in private plans, CBO estimated only two percent. Yet at a later point, in considering a measure to establish a payment system for the MedicareAdvantage program, CBO estimated it would cost hundreds of billions of dollars, while CMS predicted it would save Medicare money.

Clearly, it is imperative that we first test proposals before sending Medicare down a path of change. To do otherwise would be to potentially imperil the very health care system seniors have come to reply upon.

So I am pleased that in the final analysis the premium support proposal that once threatened to unravel the very thread of Medicare has been reduced to a limited, focused, true demonstration project, which starts in 2010; is limited to 6 years; is limited to 6 MSAs that according to CBO captures only 1 million seniors; limits premium increases to 5 percent per year without a compounding affect; terminates the financial incentives offered to private plans under the MedicareAdvantage program; and protects seniors whose incomes are below 150 percent of poverty by holding them entirely harmless.

There is one place where this conference report fails to hold seniors harmless, and that is in the skyrocketing costs of prescription drugs which are increasing at a rate seven times higher than the rate of inflation and grew 16 percent between 1999 and 2002.

One effective means to reduce the cost of prescription drugs is through importation. Regrettably, this conference report perpetuates the status quo by insisting on maintaining the safety certification requirements that have to date made it impossible for either the former or current Secretary of Health and Human Services to certify the integrity of imported drugs. Yet one in eight American households already use imported prescription drugs, and according to William Hubbard, senior associate commissioner at the FDA, in his testimony before the House Government Reform Committee in June, there is ''no evidence that any American has died from taking a legal drug from another country.''

The FDA has a critical role to play in the Secretary's ability to certify the safety of imported drugs—and they're not fulfilling that responsibility. Rather than expending the resources to develop the tools necessary to improve safety, and thus open access to this medications, the FDA is instead directing their efforts to threaten consumers. This is astounding because we know we have the ability to improve safety. For a few pennies, anti-counterfeiting packaging can be used. We use it on a twenty dollar bill—a lifesaving prescription deserves no less. Further, drug manufacturers were mandated back in 1992 to track their products using a ''pedigree'', something which has yet to be enforced.

I challenged the FDA to commit itself to improve packaging and require better tracking to protect consumers, and maintain high confidence in the products of our pharmaceutical industry. The public cannot be held hostage to the seemingly never-ending increase in the cost of prescription drugs, and this a fight that will continue to be waged in the halls of Congress, our citizens deserve no less.

So taken in its totality, while I am disappointed with aspects of this legislation, passage of this legislation will be looked upon as a transformational moment in the history of the Medicare program, because now there will be no going back.

There will be no returning to the days when Medicare lived in the dark ages, oblivious to the fact that remarkable drugs were available to save lives, prevent disease, and halt the progression of disease.

There will be no returning to the days when many needed to be convinced that prescription drug coverage was even a topic worthy of serious debate in the United States Congress.

There will be no returning to the days when a quarter of our Nation's seniors struggled without any assistance whatsoever in paying for the prescription drugs that can be the difference between a decent quality of life—and life itself.

With this bill, we will finally pass the point of no return—and thankfully so. This bill—while far from perfect—is the new baseline, the new benchmark which future progress will be measured—and attained. To paraphrase Winston Churchill, in viewing this legislation, it is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.

For all of these reasons, I will support this conference report, and I encourage my colleagues to do likewise.

Mr. MCCAIN. Less than 5 months ago, I stood before the Senate and spoke at length of my concerns that such a package would be detrimental to the future solvency of our Nation, and leave future generations with a reckless and unjust financial burden. Since that time, members engaged in conference committee negotiations produced a voluminous package which represents the single largest expansion of Medicare since its creation, offering enormous profits and protections for a few of the country's most powerful interest groups, paid for with the borrowed money of American taxpayers for generations and generations to come.

Everyone here is well aware that Medicare faces enormous long-term fiscal challenges. In recent years, the program's financial state has worsened. The most recent Trustee's Report hastened the year Medicare will reach financial insolvency by four years to 2026. Adding a prescription drug benefit to an already failing Medicare, is like putting a band-aid on a patient that needs surgery.

Earlier today I mentioned several statistics which I believe are worth repeating. Today, our Nation has an accumulated deficit of $7 trillion—which

translates into $24,000 for every man, woman and child in the United States. Making our bad financial condition worse, the Federal Government is estimated to run a deficit of $480 billion in fiscal year 2004.

Passing this bill continues our reckless spending. Although this package is estimated to cost just under $400 billion over 10 years, I guarantee you, $400 billion is merely a down payment. I don't believe there is one person here who honestly believes that $400 billion is the maximum we will pay in the next 10 years.

Additionally, this new package will substantially increase existing unfunded liabilities. The Office of Management and Budget estimates the current unfunded liabilities of Medicare and Social Security at $18 trillion. This new benefit will add an estimated $7 trillion in additional unfunded liabilities.

By 2020, Social Security and Medicare, with a prescription drug benefit, will consume an estimated 21 percent of income taxes for every working American. Adding a new unfunded entitlement to a system that is already financially insolvent, is so grossly irresponsible that it ought to outrage every fiscal conservative.

The American people deserve some straight talk. Passing this package, without implementing the necessary reforms to ensure that the Medicare system is solvent over the long-term, will simply expedite its failure. Clearly, it should be incumbent upon us to include comprehensive, free market reforms, into any Medicare prescription drug package in order to ensure that Medicare is financially sound for current beneficiaries as well as future generations. Unfortunately, this conference report represents a missed opportunity.

Medicine has changed substantially since the creation of the Medicare system in 1965. Advances in medical technology and pharmaceuticals have lead to more prescription-based treatments, and Americans now consume more prescriptions than ever before. In 1968, soon after the enactment of Medicare, American seniors spent about $65 a year on a handful of prescription medications. Today seniors fill an average of 22 prescriptions a year, spending an estimated $999.

The conference report before us represents one of the largest enhancements to Medicare since its creation—setting up an entirely new bureaucracy and establishing a sizable new entitlement program. I believe this bill attempts to addresses a real problem, but falls perilously short. We must have no illusions. There are dangers, complexities, and potential unintended consequences associated with this bill.

This legislation is without a doubt an enormous fiscal and social train wreck. Long after this Congress and this administration have left office our children and our grandchildren, and a future Congress and administration, will be left here to clean up the mess we have created with this bill.

I believe we have an obligation to future generations to start exorcizing some fiscal restraint. While our national debt rapidly mounts, we continue to increase the financial burden our grandchildren will have to bare, without reigning in costs. Unfortunately, this problem is exacerbated by our inability to put a stop to our excessive and wasteful spending, particularly egregious porkbarrel projects which Congress has become addicted to.

We are on a shopping spree with borrowed money. The extraordinarily large new entitlement package before us substantially increases the already enormous burden of current and future taxpayers. We have to stop living in denial, eventually the money has to come from somewhere and none of the options are desirable. The reality is, this new benefit will be funded by raiding other entitlement trust funds, through increasing our national debt, reducing benefits or through increased taxes. An expansion such as this is simply not sustainable.

For the enormous cost of this bill, the most alarming fact is that it won't even provide adequate prescription drug coverage or enact many of the significant measures needed to reform the Medicare system and ensure its long-term financial solvency. To save this system, we must enact true free market reforms and bring Medicare into the 21st century. Some provisions in this bill, including means testing Part B and expansion of health savings accounts, are a good start toward long-term reform. Unfortunately, these minor reforms do not outweigh the burden of the new unfunded drug benefit.

With future generations of American taxpayers funding the purchase of prescription drugs under Medicare, we have an obligation to ensure some amount of cost containment against the skyrocketing cost of prescription drugs. Unfortunately, however, this package explicitly prohibits Medicare from using its new purchasing power to negotiate lower prices with manufacturers. The Veterans' Administration, VA, and State Medicaid Programs use market share to negotiate substantial discounts. Taxpayers should be able to expect Medicare, as a large purchaser of prescription drugs, to be able to derive some discount from its new market share. Instead, taxpayers will provide an estimated $9 billion a year in increased profits to the pharmaceutical industry.

Prescription drug importation is another lost opportunity for cost containment. American consumers pay some of the highest prices in the developed world for prescription drugs, and as a result, millions of our citizens travel across our borders each year to purchase their prescriptions. In Arizona, bus loads of seniors depart from Phoenix and Tucson every week, heading south to Mexico to purchase lower cost prescription drugs. The story is similar across the northern border where seniors make daily trips to Canadian pharmacies.

Throughout the country an increasing number of seniors are looking to online pharmacies selling reduced-priced prescriptions imported from other countries, oftentimes with questionable safety. In all, Americans spend hundreds of millions of dollars on imported pharmaceuticals not because they don't want to buy American, but because they simply can't afford to. Although the conference report does contain language on drug importation, it has been successfully weakened to the point of guaranteeing that implementation will never take place.

The only provision contained in this package that has any potential to help rein in the cost of prescription drugs is a negotiated version of a bill Senator SCHUMER and I have championed for the last several Congresses. Regrettably, it is weakened from its original form. But, this language still represents a partial victory for consumers. It closes loopholes in current law that have allowed brand name drug companies to unfairly delay generic market entry, empowering generic firms to challenge patents and obtain certainty before risking market entry.

Given the difficult budgetary realities in which we live, this package should have been targeted to the most needy. Today, approximately 75 percent of seniors have some form of prescription drug coverage, but the package before us is a universal benefit, not one that targets those poor seniors who we all know make difficult decisions between life sustaining medicines and other basic needs. One of the ludicrous facts is that this new plan will spend an estimated $100 billion to cover the people who already have coverage. Goldman Sachs analysts estimate that this bill shifts a total of $30 billion a year in U.S. health care spending to the Federal Government.

Despite our differences of opinion over this legislation, virtually everyone involved agrees that in this country, there exists a serious crisis for lower and middle income seniors and the disabled. I believe it is an outrage that in a country as wealthy as ours, seniors across the country are struggling to afford the high cost of prescription drugs.

Here is some straight talk to America's seniors: For those of you who think this bill will solve your financial problems I am here to tell you, there are substantial limitations to the proposed legislation. This new prescription benefit will not be available immediately. In fact, it will take several years just to establish the new bureaucracy which will administer the prescription benefits.

Once this program is in place, an estimated 20 percent of seniors who are currently covered by former employers—2.7 million individuals—will lose

that coverage. Over the summer, the Wall Street Journal quoted one analyst who called this bill the ''automaker enrichment act,'' because companies will see huge reductions in unfunded liabilities and annual drug spending. It is unconscionable that our grandchildren will be shouldering the burden of legacy costs of big business.

Despite the enormous sums of money we are spending on this package, far too many seniors will find themselves with a benefit that is mediocre, at best. And far too many others will find themselves worse off than they are today. Many other seniors, might not even get out of the system what they will pay in deductibles and premiums.

I am concerned that we are about to repeat an enormous mistake. I have been around long enough to remember another large Medicare prescription drug entitlement program we enacted in 1988, Medicare catastrophic. The image of seniors angered by the high cost and ineffectiveness of that package attacking Rostenkowski's car, should be a cautionary tale to all of us.

The American people must be aware that this new package has substantial cost to seniors, to taxpayers and to the future generations who will bare the majority of the financial burden. We must be realistic, there will be unintended consequences of our actions. Moreover, we must be honest about the cost of this measure—$400 billion is merely a down payment for what we are creating. If we as a body decide to support this bill, we must also commit to fiscal responsibility.

Despite my concern for the overall package, several provisions will provide good fixes to the existing program and a better quality of life to many Americans. Several provisions benefitting our Nation's hospitals, will provide much needed assistance to hospitals in my State, particularly teaching hospitals, those in rural areas and those which suffer from the crippling burden of uncompensated care of undocumented immigrants.

I am, however, disappointed that the Immigrant Children's Health Improvement Act was dropped from the conference report. This bill would have reversed a 1996 law that prohibited States from extending State Medicaid and SCHIP Programs to legal immigrants.

The Wall Street Journal has called this bill ''an awfully high price to pay for expanded Health savings Accounts,'' but I would call it legislative malpractice.

After much thought and careful deliberation, I regret that I cannot vote for this conference report. I have reached this conclusion, not because I believe our seniors and disabled do not need or deserve prescription drug coverage, but because I do not believe our country can sustain the cost of this package and because I fear that our actions will not provide adequate assistance to most beneficiaries.

Mrs. CLINTON. Mr. President, this is a sad day for seniors and a sad day for America. I have long fought for a prescription drug benefit, and I am truly disappointed that this bill fails to adequately address this need. Seniors deserve a comprehensive, reliable prescription drug plan. This is no such bill. It is a weak benefit meant to cover the true intentions of its authors—privatizing Medicare. In short, the bill Republicans are passing today is a wolf in sheep's clothing.

This bill, over time, will bring about the unraveling of the Medicare system, breaking a promise we made to our seniors. It does all this under the cloak of a prescription drug benefit that is far too small and far too weak to justify the negative side effects.

To illustrate how this bill begins the demise of Medicare and sets our Nation back in its effort to care for seniors, we need only to look at the years before Medicare, when the private market failed to adequately serve the elderly. This sicker, costlier population was an unprofitable group for private insurers to cover. It was impossible to take care of this pool and still keep premiums affordable. Before we passed Medicare in 1965, 44 percent of seniors were uninsured. Now 1 percent of seniors are uninsured—a lower rate than any other age group. Medicare does this by being able to spread the per-person costs across a large number of people to pool the risk.

This bill, however, fragments the risk pool and allows private plans to ''cherry-pick'' the healthiest seniors. Left behind will be a group of Medicare applicants that are far more expensive per person. This will create a two-tiered system and start an insurance cost death spiral that will unravel Medicare's financing. Medicare is a promise we made as a nation to guarantee seniors the health care they need in their golden years. This bill betrays that promise. And it does so under the false pretense of a prescription drug benefit. While promising negligible prescription drug coverage, this bill immediately puts benefits at risk for millions of seniors, including retirees, members of state prescription plans and those who are dual-eligible for Medicare and Medicaid—the poorest and the sickest. I voted against this bill for these reasons, and because these flaws will particularly harm New Yorkers.

This bill contains little to prevent employers from dropping retiree coverage. That will disproportionately affect New York, which has a higher percentage of seniors with retiree health than other States. In New York State, 36.5 percent of Medicare beneficiaries have retiree coverage compared to a national average rate of 31.8 percent. Over 200,000 Medicare beneficiaries in New York will lose their retiree health benefits under this bill.

This bill will also reduce drug coverage for the lowest-income and sickest Medicare beneficiaries—those dually eligible for Medicare and Medicaid. In a cost-savings provision, this bill will ban Medicaid from filling in the gaps in coverage by prohibiting Medicaid dollars from covering prescription drugs not covered by the new Medicare drug plan. This could hurt 6 million nursing home residents, people with disabilities, and truly indigent seniors nationwide, and over 400,000 in New York alone.

This bill also fails to protect seniors who hope to stay in state prescription drug plans, like New York's EPIC. Unless corrected, this bill will force EPIC to comply with private drug plans preferred drug list, hampering EPIC's ability to ''wrap around'' Medicare and supplement the drug coverage. The state legislature will be forced to change the law and the design of EPIC to continue to program.

Retirees, dual-eligible and state plan participants are not the only losers in this bill. The premium support provision will also hurt seniors in various regions selected for this experiment. These seniors will incur a surcharge in their Medicare premiums others will not have to pay. The seniors who want to stay in traditional Medicare but fall in a metropolitan area chosen for the premium support ''demonstration'' will have a 5 percent surcharge over their counterparts in other States. In the future that surcharge could spike to 88 percent if the ''demonstration'' is expanded to a full-premium support privatization effort. New York seniors in Rochester and Buffalo are at risk of being treated in that discriminatory manner. New York State also has two other Metropolitan Statistical Areas—Albany-Schenectady-Troy, and Glen Falls—that face the possibility of being chosen and whose seniors are therefore at risk of having to pay more in Medicare part B premiums than other seniors in the U.S.

The bill also hurts seniors and individuals with disabilities by raising every Medicare beneficiary's deductible for physician services immediately, before seniors and people with disabilities even receive any benefits. Yet it fails to deal with the rising price of prescription drugs. It guts re-importation, weakens the generic provisions, and goes through the most unimaginable contortions to undermine government bargaining power, or any other checks on skyrocketing prescription drug prices. At the same time it places a 45 percent general revenue trigger on overall Medicare spending. This puts existing non-drug benefits in jeopardy by placing an arbitrary lid on spending and allowing drug-related spending to grow uncontrollably. That means other Medicare benefits will get squeezed into tighter and tighter fiscal constraints. If they can't fit those constraints, this bill forces those existing benefits onto the chopping block year after year.

I and many of my colleagues have expressed concerns, not just with aspects of this bill, but with the appalling process with which it was thrust upon us. As complex and confusing as this

bill is, the senate discussed it for less than a week now. We have not been given ample time to understand this bill, and our constituents have not been given adequate time to discern how it will affect their lives.

Fortunately, there are some provisions included that I support. I am very glad to see that this bill stops the damaging cuts to physician payments and provides a small increase to physicians instead. I am pleased that the bill includes between $300 and $400 million for rural and small community hospitals and health providers in New York, while also providing additional funds for public and other hospitals who serve a disproportionate number of uninsured or Medicaid patients. And while I would have liked to see all teaching hospital cuts averted, I am pleased that at least some improvements were made for graduate medical education, since New York State trains many of the graduate physicians in the nation. This bill also includes a version of Senator SCHUMER's proposal, which provides greater market competition for generic drugs. And finally, this bill contains a proposal that I offered as an amendment on the Senate floor—the comparative effectiveness research provision. This will assure that we spend money on drugs that are most effective, not just the ones that are most advertised.

These positive provisions, however, should have been attached to a good bill. They are not enough to justify undermining the promise of Medicare. I believe New York deserves a better bipartisan alternative than the one that passed today, and I will continue fighting this year, as well as in years to come, to correct the deficiencies I've described today so that Congress might deliver on the long-awaited promise of a simple, affordable, comprehensive prescription drug benefit for all seniors.

Like so many other pieces of legislation we have witnessed in the past two and a half years, this bill is designed to please special interest and not the public. It will be a benefit to drug manufacturers. And it will be an benefit to private insurance providers. They are the big winners here, and that's not right.

We need a bill that will benefit seniors. They deserve a benefit that is comprehensive, wide-ranging, and reliable. Today's bill is mainly a bill to privatization of Medicare. And it's not only seniors who will be harmed. All Americans, young and old, will deal with the financial and medical consequences of this bill for years to come. This is a bad bill for seniors and a bad bill for America.

Mr. JOHNSON. Mr. President I rise today, conflicted about the conference report now before this body. Shortly, my colleagues and I will be faced with making a very important decision regarding whether or not we think this Medicare conference report is good enough for America's seniors. This is not a simple task as there are so many moving parts, each with its own implications.

The Senate bill, which I supported was not perfect. While it had its flaws, it represented a bipartisan effort and a first step towards providing the kind of prescription drug coverage seniors need. With the conclusion of that vote, I remain cautiously optimistic that conferees would be able to deal with some of the inherent problems in that bill. I was hopeful that conferees would find a way to eliminate or come very close to eliminating the employer-sponsored retiree coverage drop problem. I was hopeful that conferees could maintain the level playing field between traditional Medicare and private plans. And I was optimistic that progress could be made on reducing the high cost of prescription drugs that Americans pay compared to the rest of the world.

I was hopeful and confident, but I must unfortunately report today that those feelings are now all but entirely lost. I am discouraged that my colleagues on the other side of the aisle abandoned the bipartisan spirit of the conference committee. Senator DASCHLE, who has always been a strong leader on this important health care access issue, as well as many other Democratic members, had been completely shut out of the conference committee. This is a very unfortunate circumstance, and the result today is obvious.

It is obvious because now we are faced with a conference report that does not represent a fair balance between the strong Senate bill and the bill passed by a 1-vote majority in the House. Rather, today we have a conference report that moves to privatize Medicare, actually prohibits the government from negotiating lower drug prices, and puts rural and chronically ill seniors at risk of suffering higher premiums than their urban and healthier counterparts. All of these things weigh on my mind as I think about this very important vote.

And I am especially frustrated that the majority has intentionally held the rural provider package hostage. This package should have been passed with the tax bill, but President Bush made a convenient promise to our Republican friends to address this issue in the context of the Medicare prescription drug bill and they have now created the illusion that a no vote for this bill equates to a lack of support of rural provider payment equity. Well, this is simply not true. Many of my colleagues on the Rural Health Caucus have worked tirelessly over many years to achieve payment equity for our providers. I would like to thank all members of our caucus, and especially Senator HARKIN for his hard work on this issue. I have long supported these important provisions, which were all contained in the better Senate-passed bipartisan bill.

And while I am pleased that the Senate bill's rural provider package has made it into the conference report, I am very concerned about the actual drug benefit. While the conference report appears to do a pretty good job of addressing the prescription drug needs of many low-income beneficiaries, most seniors, especially those above 150 percent of poverty will be expecting much more than what they will receive under the program. This will be a shocking wake up call for many around the country when the plan finally reaches them in 2006.

Not only will seniors across the country experience varied premium rates and benefits, but many seniors will not break even under the plan, spending more in premiums, copayments and deductibles than the value of the drugs they need in a given year. In South Dakota, about 16.6 percent of the Medicare population will fit in this category. This is not what seniors are expecting and they should know this right away—up front.

Additionally, many beneficiaries will hit the coverage gap and remain there for a long period of time in any given year. In my home State, approximately 24.4 percent of seniors will hit the coverage gap of $2,250 but never reach the catastrophic level of $5,100, meaning they wind up paying 100 percent of their drug costs or $2,850 while continuing to pay a monthly premium to their PPO or drug-only plan. I know that South Dakotans will be saying to me in the fall of 2006 that rather than pay for a deal like that, they might as well just take a bus trip up to Canada to get their drugs for a much cheaper deal.

In addition to these less than ideal benefits, I am angered that this bill does almost nothing to constrain the rising cost of prescription drugs. I am pleased that provisions have been included to speed access to lower priced generics, however beyond that, it is blatantly obvious that many have gone to great lengths to establish roadblocks against real price reform. The conference report disallows the Secretary any real authority to negotiate for lower priced drugs for the 41 million seniors that will be eligible for this program. This is the real tragedy in this conference report of which people across America must be made aware.

Disturbing are the estimates that the pharmaceutical industry will experience windfall profits of at least $139 billion dollars over eight years as a result of this new program. Our friends on the other side of the aisle talk of ''free market'' and ''fiscal discipline'' but went far beyond turning the other cheek when they struck the Senate's reimportation provisions that disallowed drug manufacturers to restrain their exports to other countries. This is not free market colleagues and such excess will eventually threaten the viability of the Medicare Part D prescription drug benefit.

I am also concerned that while conferees have provided some dollars in the final report to address the loss of

employer-sponsored retiree drug coverage, we have only partly addressed this problem. I was pleased to see that conferees allotted funds to address this issue in part. And while the conference report reduced the drop rate by about 14 percent, 23 percent of seniors will still lose the generous retiree coverage they now enjoy. Additional dollars were available in the budget to further reduce this number. Unfortunately, conference leadership chose to spending billions on health savings accounts, which have nothing to do with Medicare or the prescription drug benefit, and only serve to help healthier and wealthier Americans save money on the costs of their health care. I find this very disappointing and, frankly, unacceptable.

There are countless others in my State and across the country that are left out under the so called ''agreement'' before us. In South Dakota, 14.1 percent of Medicare beneficiaries are also eligible for Medicaid. These ''dual eligibles'' were protected under the Senate bill by maintaining their generous Medicaid coverage. Under the final version, those individuals will suffer higher copayments and will run the risk of losing access to important life-saving medications if a particular drug is not covered on their new Medicare drug formulary. Additionally, in my State thousands fewer seniors will not qualify for the low-income protections because the conference report reduced the poverty threshold from 160 percent as was in the Senate bill to 140 percent, as well as instituted a strict assets test for low-income benefits.

Of most concern to seniors in rural South Dakota will be the proposal's heavy reliance on managed care. In my home State, currently there are no beneficiaries enrolled in the Medicare+Choice program. If we take lessons from that fact, one that is mirrored in many rural states, we must conclude that the managed care options in this conference report are not likely to have much success in those areas.

The Senate bill did contain a strong fallback provision which would have provided real choices to rural seniors. Under the bill I supported, if two ''prescription drug only plans'' of PDP's were not available in a given region, seniors would have the choice to select a government-run fallback option. It is my understanding that under the conference report that guaranteed fallback trigger is restricted because only one PDP and one managed care plan are required to prevent the fallback from being made available.

This scenario means that a senior in South Dakota has to choose between two bad options: be forced into a managed care plan and lose the choice of their doctor to achieve affordable drug prices, or join the only PDP plan in the region that enjoys a captive market which allows them to charge whatever premium they desire. The managed care plans under this conference report will be able to achieve lower prices for seniors because they will enjoy over $12 billion in slush fund money from a so called ''stabilization fund'' that is included in the conference report language. These are not options or choices nor do they represent a level playing field for traditional Medicare, and I fear they will hurt rural America and represent the first steps in a scheme being pushed by this Administration to fully privatize the Medicare program.

With a budget allocation of $400 billion this year for a new Medicare drug benefit, Congress had a great opportunity to reach a long awaited goal. The bill I supported in the Senate was the start in the right direction towards meeting that goal and I am so disappointed that what is before us today has taken far too many steps in the wrong direction. Colleagues, seniors deserve better than this and I deeply regret I cannot support this conference report.

Mr. KYL. Mr. President, today I discuss the energy conference report, and begin by commending the Chairman of the Senate Energy and Natural Resources Committee for his tireless work to pull together such a comprehensive measure. The energy conference report attempts to improve our Nation's energy supply and reliability, and for that it should be praised. Unfortunately, it also contains numerous provisions that will distort competitive markets for energy through subsidies, tax breaks, special projects, mandates and, last but not least, outlandish amounts of Federal spending.

Mr. President, I have been particularly interested in the provisions in the electricity title that are designed to restructure our electricity markets. Some of my colleagues have been tempted to move immediately to completely unregulated electricity markets; others favored imposing a more stringent regulatory regime as a result of problems in California.

Representing Arizona, I was well aware of the problems stemming from the California energy crisis, but cannot agree with those who say the solution is to return to a command-and-control regulatory structure. I continue to believe that the most efficient way to allocate resources is through competitive markets. The chairman has done an admirable job of trying to encourage competitive markets while making sure that consumers continue to pay the lowest possible price for energy resources.

There are several provisions in this bill that hit the right balance for our electricity policy. The legislation repeals the Public Utility Holding Company Act of 1935. As we all know, our energy markets have evolved significantly since the era of the Great Depression. State regulators are smarter, more well-equipped, and able to protect consumers from the ills that gave rise to the Public Utility Holding Company Act of 1935 nearly 70 years ago.

I am also pleased that the conference report has found the right balance with respect to delineating the jurisdictional reach of the Federal Energy Regulatory Commission, FERC. As a Senator from the West, I've been frustrated by FERC's effort to impose a mandatory ''Government knows best'' one-size-fits all standard electric market design, or SMD, on all regions of the Nation. This proposal has drawn severe criticism from the West and other regions of the country, as being unworkable and potentially disruptive to the functioning of our vital electricity infrastructure, all to the detriment of consumers. This criticism comes from a broad spectrum including State regulators, industry representatives and consumer groups, all of whom express concerns about the inflexibility of the SMD requirements, the untested nature of many of them in regions without a history of RTO operations, and the potential cost burdens on electricity consumers.

Normally, one would have expected an agency like FERC to respond to such comments at a minimum by delaying its SMD proposal, or proposing a more measured approach, both in scope and mandatory application. Instead, FERC has indicated it will proceed with the fundamentals of SMD. As a result, Congress has been forced to take the unprecedented step of mandating a pause in SMD, through 2006, to enable those involved in this critical industry to assess how to proceed. It is unfortunate that Congress must, in effect, admonish a Federal agency in this way; but we have an obligation to see that an agency Congress created proceeds in the deliberate and thoughtful manner that the issue demands.

I hope that FERC follows both the spirit and the letter of this law. The Senate will be watching to make sure that FERC does not move forward on SMD by changing its name to WMP, or using a different legal basis, such as just and reasonable rates, rather than discrimination. Change your agenda, FERC. Don't waste our time by forcing us to save the electrical industry from your zeal to regulate, whether with a standards of conduct rulemaking, a supply margin assessment test, or a yet to be designed mistake.

For example, the standards of conduct rule, as proposed during the SMD development period, represents a direct attack on the internal organization of vertically integrated utilities. Before the proposed rule is finalized, it must be amended to eliminate elements that parallel the SMD proposal. The assertion of jurisdiction over retail sales of vertically integrated utilities is clearly within the scope of SMD.

We understand that FERC has and will continue to have matters before it that may also involve issues raised in the SMD NOPR. We have proposed savings provisions in the bill that are intended to permit FERC to resolve those issues when they arise. However, the savings provisions do not detract from the clear mandate that FERC not act prior to the end of 2006 on SMD or

any rule or order of general application within the scope of the proposed SMD rulemaking.

I have often expressed my concern with what some industry officials have termed a jurisdictional reach by the Federal Energy Regulatory Commission into the delivery of power to retail customers. The service obligation amendment that I worked on with the chairman has been included in this package, and I believe it provides a commonsense way to promote competitive markets while preserving the reliability that retail electric consumers expect and deserve. In its actions governing access to transmission systems, FERC has not adequately ensured that the native load customers, for whom the system was constructed, can rely on the system to keep the lights on. The bill adds a new section 217 to the Federal Power Act to ensure that native load customers' rights to the system, including load growth, are protected.

It is also worth noting that the conference report expands jurisdiction over those stakeholders in electric markets that were previously unregulated by the FERC. The FERC-lite provision that addresses the Federal Energy Regulatory Commission's efforts to provide open access over all transmission facilities in the U.S. again, in my mind, strikes the right balance. It requires FERC to ensure that transmission owners—whether they are municipal utilities, power marketing administrations, or electric cooperatives—deliver power at terms that are not discriminatory or preferential. However, this provision is limited and does not give FERC the ability to begin regulating the rate-setting activities of these organizations. If FERC finds fault with the transmission rates of such an organization, the bill provides that FERC will remand the rates to the local rate-setting body for reconsideration. FERC-lite does not confer further authority to FERC over public power systems. FERC cannot order structural or organizational changes in an unregulated transmitting utility to comply with this section. For example, if an integrated utility providing a bundled retail service operates transmission distribution and retail sales out of a single operational office, the commission cannot require functional separation of transmission operations from retail sales operations.

I would also like to mention the new refund authority provision in the bill. I understand that the purpose of the new section 206(e) of the Federal Power Act is to permit FERC to order refunds where a governmental entity voluntarily enters the wholesale market and acts egregiously. Section 206(e) gives FERC authority to order refunds where a governmental entity voluntarily enters a FERC-regulated market, makes short-term wholesale sales and violates FERC's substantive rules of general applicability governing other sellers into that market. Section 206(e) provides a means to correct market abuse; it is not meant to be a back door to full FERC jurisdiction over governmental entities.

The chairman should also be commended for what is not in this bill. I note that there are some who wanted to include a renewable portfolio standard. I commend the chairman and the Chairman of the Budget Committee for convincing fellow conferees that a renewable portfolio standard would be costly and yield few benefits. I am also pleased that the chairman saw the wisdom of not including a climate-change provision.

Gratifying, as well, is that the conference report has not pursued a command-and-control approach with respect to regional transmission organizations, or RTOs. I believe the best approach, which is captured in this conference report, is for FERC to provide incentives to encourage membership in RTOs and independent system operators. As lawmakers, we need to be sensitive to the policy changes we propose and how the laws we draft will affect Wall Street and the markets, and we must make sure we promote the investments that are needed. This is a prime example of how the conference report has sought to advance policies to which the investment community can respond favorably.

Related to the need to give clear signals to the investment community, I believe that the participant-funding provisions have placed FERC in the appropriate role of providing incentives to invest in transmission infrastructure. As a member of the Energy Committee, I have heard countless hours of testimony on the Nation's transmission grid being woefully underfunded, and the urgent need for significant upgrades to meet energy demands in the future. The provision on participant funding address this need and gives FERC the appropriate instructions to adapt methodologies for particular regions.

As I have said, some important provisions of this conference agreement have much to recommend them. Still, I find the bill's many tax subsidies—most in the form of tax credits—to be irresponsible, unnecessary, and inefficient. There are just too many of them to permit me, in good conscience, to vote for this bill.

My overarching concern has to do with the use of tax credits by the government. The Federal Government uses tax credits to induce individuals or businesses to engage in favored activities. This can distort the market and cause individuals or businesses to undertake unproductive economic activity that they might not have done absent the inducement. Tax credits are really appropriations that are run through the Internal Revenue Code, the Code, and are a way to give Federal subsidies, disguised as tax cuts, to favored constituencies. It is something we should do sparingly—very sparingly. While tax credits can be effective in encouraging activities we consider laudable for one reason or another, I believe that, as stewards of the taxpayers' money, we must only support those credits that provide broad benefit to all taxpayers and that are worth the revenue they will cost the Federal Treasury.

I do not believe that any of the tax credits in the conference agreement meet these tests. Let me highlight three particular provisions. The conference agreement extends and expands the credit provided in section 45 of the Code. This credit is available on a per-kilowatt-hour basis for energy produced from wind, solar, closed-loop biomass, open-loop biomass, geothermal, small irrigation, and municipal solid waste. I believe that the credit for wind energy should have sunset several years ago. Wind energy has been provided this credit since 1992 and if it is not competitive after a decade of taxpayer subsidies, it will never be competitive. In 2001, the wind industry was in fact touting its great success and competitiveness with other forms of energy, but here we are extending the wind credit for 3 more years. All of the credits I just mentioned, except wind and closed-loop biomass, are eligible for the credit for the first time in this bill. I wager that we will still be paying for the ''temporary'' advantage being given to these new energy forms a decade from now.

Let me point out that it's good that the conference agreement calls for a study of the section 45 credits. If we are going to spend more than $3 billion on these credits, we should at least know whether they are having a positive effect and whether these forms of energy will ever be able to survive without a taxpayer subsidy. A 2002 Cato Institute study suggests that section 45 is not worth the expense; some economists estimate that the cost is double the benefit.

Another of the credits provided in the agreement is the tax credit for biodiesel fuel. In addition to questions I have about the need for this credit, I have heard concerns from companies located in Arizona that this credit might have unintended results, including affecting market prices for tallow and glycerin, which are byproducts of biodiesel production. I strongly encourage the Finance Committee staff to closely monitor whether and how the biodiesel credit affects the market prices for these products.

Finally, the conference agreement provides tax credits for the purchase of a new qualified fuel cell, hybrid, or alternative fuel motor vehicles. I have grave concerns about this provision and I refer my colleagues to Arizona's disastrous experience with its alternative fuel vehicle tax incentives. The program could have cost Arizona half a billion dollars—11 percent of the State's budget—if it had not been repealed. When proposed, the cost of the program was projected to be only between $3 million and $10 million—less

than 10 percent of its true cost. The Joint Committee on Taxation estimates that the provision in this conference agreement will cost $2.23 billion over 10 years. While I appreciate that the Finance Committee incorporated several changes to reflect lessons learned from Arizona's experience, I seriously doubt we can be confident about the revenue estimate for these provisions of the conference agreement. That's why I am particularly disturbed that it deletes a requirement that was in the Senate bill for a study of the credits. Such a study could have given Congress important information about how much the credits are costing, how effective they are at encouraging the purchase of alternative fuel vehicles, and how long the credits will be needed.

Beyond the issue of tax credits, I would also like to say a word or two about the tax provisions that were included in this legislation that I believe have merit. These generally have to do with assigning more realistic depreciation recovery periods to various energy-related investments. For example, the agreement assigns a 7-year life to natural gas gathering pipelines and a 15-year life to natural gas distribution lines. I strongly believe that the Code requires a great many investments to be depreciated over too long a time period, so I am pleased the agreement begins addressing this problem.

Next, I want to discuss an issue that I had hoped would be addressed in the conference report that will accompany the agreement, but that was not included. I had hoped that one aspect of the transmission issue would be addressed in the conference with some simple report language. That issue has to do with the electricity supplied in the evolving marketplace by publicly owned utilities. Unfortunately, the conference report does not address this issue and I raise it now as something I hope the Treasury Department will address.

A significant goal of this bill is to foster open access to the greatest extent possible. However, in recognition of the limitations imposed by section 141 of the Code, the electricity title provides that States and municipalities may not be ordered to provide transmission services in a manner which would result in any bonds ceasing to be treated as obligations the interest on which is excluded from gross income.

As my colleagues may know, the applicable Treasury regulations are flexible in applying section 141 where transmission facilities are operated by an independent transmission operator, ITO, approved by FERC. The Treasury regulations, however, are significantly less flexible for other open access transmission where the facilities are not operated by an ITO. In addition, the conferees are aware that final regulations relating to the allocation of private business use to facilities and portions thereof financed with funds other than tax-exempt bond proceeds prior to allocating such private business use to tax-exempt bond proceeeds—the ''Equity First'' rules—have not been issued, although an advance notice of proposed rulemaking has been issued.

Accordingly, in recognition of the purposes of the act, I would ask the Treasury Department to strongly consider: (1) Amending the regulations or providing other general guidance relating to the use of transmission for open access to provide the same degree of broad flexibility whether or not the facilities are operated by an ITO, and (2) issuing proposed and final regulations relating to Equity First for output facilities as expeditiously as possible, taking into account the public comments submitted.

Fleixible guidance on both these points would greatly assist the Nation's publicly owned utilities in contributing to the reliability in the electricity grid that this bill seeks to implement.

Now for ethanol. The ethanol provisions of the conference report are truly remarkable. They mandate that Americans use 5 billion gallons of ethanol annually by 2012. We use 1.7 billion gallons now. For what purpose, I ask, does Congress so egregiously manipulate the national market for vehicle fuel? No proof exists that the ethanol mandate will make our air cleaner. In fact, in Arizona, the State Department of Environmental Quality has found that more ethanol use will degrade air quality, which will probably force areas in Arizona out of attainment with the Clean Air Act. Arizonans will suffer. Furthermore, according to the Energy Information Administration, this mandate—costing between $6.7 and $8 billion a year—will force Americans to pay more for gasoline. Nor is an ethanol mandate needed to keep the ethanol industry alive. That industry already receives a hefty amount of Federal largesse. CRS estimates that the ethanol and corn industries have gotten more than $29 billion in subsidies since 1996. Yet, this bill not only mandates that we more than double our ethanol use, but provides even more subsidies for the industry—as much as $26 billion over the next 5 years.

Professor David Pimentel, of the College of Agriculture and Life Sciences at Cornell, has studied ethanol. He is a true expert on the ''corn-to-car'' fuel process. His verdict, in a recent study: ''Abusing our precious croplands to grow corn for an energy-inefficient process that yields low-grade automobile fuel amounts to unsustainable, subsidized food burning.'' It isn't efficient. The fuel is low-grade. And what is more, Congress, by going in for ''unsustainable, subsidized food burning,'' will impede the natural innovation in clean fuels that would occur with a competitive market, free of the Government's manipulation. These ethanol provisions, alone, dictate that I vote against the bill.

So, in conclusion, while this bill includes several meritorious provisions, especially those negotiated by Chairman DOMENICI, I must vote against it because of the $24 billion in tax subsidies and the bill's irresponsible manipulation of the energy markets through an ethanol mandate.

Mr. CONRAD. Mr. President, I support the Medicare conference report that is before us.

This was not an easy decision, because the conference report is far from perfect, but I believe it is the right decision for three reasons.

First, most basically, the bill provides $400 billion to add a voluntary prescription drug benefit in Medicare. Prescription drugs are an integral part of modern medicine. Yet they are not covered by Medicare today. No other health insurance program in this country today fails to cover prescription drugs. It is long past time to add drug coverage to Medicare.

The bill before us creates a voluntary prescription drug benefit in the Medicare program starting in 2006. Here's how it would work. Those beneficiaries who choose to sign up for this benefit will pay a premium estimated to average $35/month starting in 2006. Beneficiaries would then have to meet a deductible of $250 in out-of-pocket spending on prescription drugs. Above $250, Medicare will pay 75 percent of the next $2000 in drug costs. Then, the benefit cuts off. Medicare will pay nothing until the beneficiary has paid an additional $2850 out-of-pocket. Beyond this gap in coverage, Medicare will then pay 95 percent of all additional drug costs.

Obviously, this is not a perfect drug benefit. It is not the drug benefit I would have designed. And it is going to fall short of many seniors' expectations. The simple reality is that one cannot produce a comprehensive drug benefit that looks like the private health insurance coverage most Americans are used to for just $400 billion.

But the $400 billion in drug benefits provided by the conference report will mean a significant improvement in health coverage for millions of seniors across the country. It will provide a meaningful—if imperfect—benefit to seniors who currently have no coverage, and it will offer more comprehensive coverage and catastrophic protection to seniors who currently rely on medigap plans. This is a step forward. If we do not pass the bill before us today, seniors could be forced to wait years before we get another opportunity to update the Medicare Program. In my view, we need to take this opportunity to lock in a prescription drug benefit now. We can come back later to fill in the gaps in coverage and fix the other troubling provisions of this bill.

Second, the bill provides a very generous benefit for low income seniors—those with incomes below 150 percent of the Federal poverty level, or about $13,470 for singles and $18,180 for couples. Seniors in this category—about 40 percent of the seniors in my State—

will not face a gap in coverage. They will get the vast majority of their drugs covered, with minimal out-of-pocket costs. In addition, they will get a $600 annual credit toward their drug costs in 2004 and 2005 before the main drug benefit takes effect. These low income seniors by definition are the ones who most need help paying prescription drug costs.

In particular, all seniors with incomes below the Federal poverty level—about $8,980 in annual income for singles and $12,120 for couples—will pay no premium. They will pay no deductible. They will have no gap in coverage. They will pay just $1 for generic prescriptions and $3 for brand-name drugs.

Those with incomes up to 135 percent of the poverty level and less than $6,000 in countable assets will also pay no premium. They will pay no deductible. They will have no gap in coverage. And they will pay only $2 for generic drugs and $5 for most brand-name medications.

Those seniors with incomes above these thresholds, but still below 150 percent of the poverty level, will pay a sliding scale premium based on income. They will pay a $50 deductible. And they will pay 15 percent coinsurance on all their medications, until their drug costs reach $3600. After that, they will pay only 5 percent coinsurance. Seniors who qualify for any of these low income benefits will get an extremely generous drug plan. In my view, this benefit alone is a very significant achievement.

Third, the bill includes a whole host of rural provider provisions that I authored or coauthored. Currently, rural areas face huge payment disparities. For example, Mercy Hospital in Devils Lake, ND, gets paid just half as much as Our Lady of Mercy Hospital in New York City for treating exactly the same patient with exactly the same illness. Yet hospitals in North Dakota don't pay half as much for equipment as their urban counterparts. And rural hospitals have much smaller patient loads over which to spread their costs. As a result, rural hospitals are on the brink of financial failure. These hospitals are critical economic anchors in their communities. Other rural health care providers, from clinics to home health to ambulance services, face similar payment inequities. This bill will go a long way to eliminating some of the Medicare funding inequities that have hurt rural health care. It will help make sure rural Medicare beneficiaries continue to have adequate access to health care.

Specifically, this bill will close the gap in standardized payment rates, which will ensure rural hospitals' base payments are equal to those of urban providers. The legislation also takes important steps to address inequities in the wage index system, which is intended to account for labor costs. And it provides a new, low-volume adjustment payments for facilities serving the smallest communities in the state. In addition, the Medicare bill includes important provisions to improve the Critical Access Hospital Program. Today, about 28 hospitals in my state have this designation. This bill will place them on sounder financial footing.

Along with the provisions to assist North Dakota hospitals, the Medicare bill will also address payment inequities experienced by our physicians and will ensure they do not face payment cuts in the coming years. There are also new adjustments for home health care providers and ambulance services. I hope these provisions will make a real difference in their ability to continue providing quality care across our state. In total, this part of the bill is a very significant victory for rural America.

For these three reasons, I have concluded that we should pass this bill, but we should not oversell it either. As I noted at the outset, this bill is—in many respects—very disappointing. Quite simply, it could and should have been a much better bill.

Democrats in the last Congress put together a prescription drug bill that I was proud to sponsor. It provided a good drug benefit to all seniors. It did not have any gaps in coverage, where seniors would continue to pay monthly premiums but get no assistance from Medicare with their drug benefits. It did not rely on creating a whole new type of insurance plan to meet the drug needs of seniors. Instead, it used the delivery mechanism that the private sector uses to provide drug coverage. It was a bill that would have provided much more comprehensive prescription drug coverage to seniors at a reasonable price. Compared to what we have before us today, it was simple and easily understandable for seniors. It did not have a complex scheme of differing copayments, coverage gaps, and premiums. But that bill was blocked by Republicans.

This year, the leadership on the other side appears to have put ideology and special interests ahead of the interests of seniors in crafting many of the details of this drug bill. As a result, seniors will be facing an untested delivery model that may not provide the advertised benefits at the advertised prices. The simple fact is that there is no such thing as a private, drug-only insurance plan in the commercial insurance market anywhere in this country. They just do not exist. By contrast, we have a proven, successful delivery model in the traditional Medicare program. It works just fine in providing medical and hospital coverage to seniors today. Yet, in drafting this bill, the authors insisted that the plan rely on untested private, drug-only insurance plans. However, it is possible that no such plans will materialize. Or they may be highly unstable—entering a region one year, just to turn around and leave the next year if they are not making a profit.

In my view, it is a serious mistake to set up a system that could force seniors to change drug plans every year. Under this approach, each year seniors could face a different premium, different coinsurance charges, and different lists of covered drugs. I think seniors will be very surprised to learn that they will not have the same benefit from year to year. During consideration of the Senate version of this bill, I fought to correct this plan. My amendment would have allowed seniors to stay in a government-sponsored back-up plan if they liked it. But that effort was rejected by those who insist—in a triumph of hope over experience—that private drug-only plans will work even though they do not exist today.

In the conference, the option was further scaled back to make it even less likely that seniors can choose a stable, government sponsored backup. The Senate bill required that seniors be given the option of enrolling in the so-called fallback plan if they did not have at least two private drug-only plans to choose from. But the conference report will not give seniors the fallback option if there is just one private drug only plan available, so long as there is also a managed care Preferred Provider Organization plan in the region. I fear that this will give seniors an unpalatable choice if they want access to drug benefits. Either they will have to join a PPO that restricts their access to health care providers of their choice, or they will have to join the one private drug-only plan even if it charges excessive premiums.

That brings me to another area that I think will be a surprise to seniors: the variation in premiums. The authors of this bill like to talk about how the premiums will be $35 a month. But what they don't tell seniors is that $35 a month is just an estimate. Individual drug plans will have premiums that can vary substantially. If the drug plan's projected cost for delivering the benefit is only slightly higher than the national average—a real concern in many areas—the premium would be substantially higher than $35 a month. I think seniors will be very surprised to learn that their premiums may actually be as much as $45 or $50 a month instead of the $35 that has been advertised. These differences will be compounded because monthly premiums will increase each year in line with the increase in prescription drug costs.

The thing about this bill that might be the biggest surprise for seniors will be the coverage gap, sometimes called the donut hole. The authors of the bill understandably don't want to advertise this gap in coverage. Many seniors probably don't even know that it exists. But when they hit this gap in coverage, they are going to be mighty surprised. The will discover that Medicare isn't covering one penny of their drug costs even though their monthly part D premium keeps coming out of their Social Security checks. And they're

going to be doubly surprised when they find out that the gap isn't a little more than $1000 wide, but is closer to $3000.

The authors of the bill like to talk about a coverage gap from $2250 in drug costs to $3600 in drug costs. When you read the fine print, you learn that the real gap is from $2250 to $5100. That's because the $2250 counts all drug costs, by both Medicare and the beneficiary. But the $3600 counts only spending by the beneficiary. When total spending hits $2250, the beneficiary has paid $750—the $250 deductible and 25 percent coinsurance on the amount from $250 to $2250. So Medicare won't pay another dime until the beneficiary has paid an additional $2850 out-of-pocket.

Some who are watching might ask, Who in their right mind would design a drug benefit that starts, then stops, then starts again, the way this one does? Why does the benefit have this gap in coverage? The answer is simple: money. It would cost tens of billion of dollars to close this gap. The folks on the other side of the aisle made tax cuts for the wealthy a higher priority than a prescription drug benefit for middle income seniors. As a result, they didn't have enough money left over to provide a drug benefit without this gap in coverage. By most estimates, about one third of all seniors will reach a point at some time during the year when Medicare just stops paying any part of their drug bills. They will keep paying premiums, but Medicare will not pay another dime until and unless they reach the catastrophic spending threshold.

Finally, I am concerned about the effect of this contorted benefit structure on retiree drug coverage. Millions of seniors currently have retiree health coverage that provides more generous prescription drug coverage than this bill will provide. When the Senate passed its bill last June, the Congressional Budget Office estimated that one third of those with retiree drug coverage would lose that coverage because spending by an employer plan does not count toward reaching the catastrophic coverage threshold. In other words, if you have employer coverage, no drug spending by your employer plan counts toward the $3600 you have to spend out of your own pocket before the catastrophic coverage kicks in. This provision creates a clear incentive for employers to cut back or drop coverage so that a beneficiary will more quickly reach the catastrophic coverage threshold and Medicare—not the employer—will pay the remaining costs.

When this bill passed the Senate, I said it was not a Cadillac drug plan. It wasn't even a Chevy drug plan. Instead, it was a bare bones plan. To stretch that analogy, in conference, some of the bones got fractured, leaving the plan even weaker, and some of those bones were replaced with untested artificial substitutes that may not work the way they have been advertised.

The conferees did not just widen the coverage gap and decrease the stability of the fallback drug plans that will be important in many rural and other areas of the country. They also loaded down those weak old bones with a new, heavy load: This bill now is carrying a number of provisions that, in my view, will harm the Medicare program and our health care system.

For example, the bill requires demonstration projects to privatize the Medicare program, taking the first steps in turning it from a defined benefit entitlement to a voucher program. I am pleased that this demonstration has been limited to just six areas. I am hopeful that even these few demonstrations may not get off the ground. I, nonetheless, strongly oppose this effort. This policy will allow private plans to cherry-pick younger, healthier beneficiaries, leaving older, sicker beneficiaries to face higher premiums in the traditional Medicare program. This is terrible health policy, and I hope we will succeed in reversing it in the future.

The bill also contain a $10.5 billion ''stabilization fund'' that allows the Secretary of HHS to make additional payments to managed care plans. This slush fund will just add to the substantial overpayment of managed care plans that already exists in the Medicare plan. To me, it makes no sense to talk about managed care saving money for Medicare when it costs Medicare more to move people into managed care. Why should we pay managed care billions and billions of dollars more than we would pay in traditional Medicare to provide the same benefit? That money could have been put to far better use in other ways, either by improving the drug benefit or by devoting money to chronic care disease management in traditional Medicare.

The fact is that about 5 percent of Medicare beneficiaries account for roughly 50 percent of total Medicare spending. These beneficiaries often have a number of conditions, but they don't get coordinated care because they see different doctors for different problems. This can result in adverse drug interactions, the failure to treat underlying causes rather than symptoms, and higher spending than necessary. Yet Medicare does nothing today to coordinate care in the traditional Medicare program that serves nearly 90 percent of all beneficiaries. Spending a little money up front in this bill could produce significant cost savings over time for the Medicare program. I hope we will be able to find money to expand the chronic care demonstrations in the bill.

The bill also expands health savings accounts that are both bad tax policy and bad health policy. These accounts will allow both untaxed contributions and untaxed withdrawals, a terrible precedent. If it is copied for other tax-preferred savings accounts, this policy could have devastating consequences for the future of our tax base. Moreover, like the privatization voucher program, health savings accounts fragment the health insurance market, undermining the fundamental principle of spreading risk that allows insurance markets to work. Health savings accounts will pull wealthier, healthier workers out of the insurance pool, giving upper income taxpayers significant tax savings. Those who remain in traditional insurance plans—average workers who would gain little in tax benefits from the HSAs and those with significant medical costs—will then face higher premiums. This is the first step toward creating a two-tiered health system in this country. I oppose this policy. The money spent on these tax giveaways could have been far better spent to help ensure that existing retiree health coverage is not eroded.

Finally, the bill fails completely to impose any restraint on the costs of prescription drugs. One of the chief complaints I hear from North Dakota seniors is that drugs cost far too much. I had hoped that Medicare—which has been more successful in holding down health care cost increases than the private sector—could use its enormous market clout to negotiate lower costs for prescription drugs. Unfortunately, the bill does not do that. In fact, the bill contains language that specifically prohibits Medicare from using its market clout to negotiate with pharmaceutical companies.

In addition, the conference failed to include a strong provision on drug reimportation that was passed by the House of Representatives. As a result, Americans will not be able to access lower cost medications from other countries. Reimportation will not serve as a brake on rising drug costs in this country. As a result, the Congressional Budget Office tells us the bill will accelerate increases in the costs of prescription drugs.

These are serious flaws. I wish many of the provisions were far, far better. I wish other provisions had never been included. But at the end of the day, we are faced with the question: Is this bill, with all its flaws, better than doing nothing?

For me, the answer is yes. For millions of seniors who do not have access to any kind of prescription drug coverage at any price, this will give them a new option to have a portion of their drug costs covered. Millions of low income seniors will be significantly better off, with a new generous drug benefit that they do not now have. Rural health care facilities that are now on the brink of closure because they are underpaid for their services will get a new life from the rural Medicare reimbursement provisions in the bill.

Even with these significant victories, if I thought this bill fundamentally threatened the existing Medicare program, I could not support it. I know that there are some who sincerely believe that the privatization demonstrations will fundamentally undermine the program. Although I share their view that these demonstrations are bad policy—perhaps even terrible policy—I

do not believe that six demonstration projects affecting less than 5 percent of all Medicare beneficiaries will destroy Medicare.

Although this bill is far from perfect, I have concluded that we should pass it. On balance, this bill is a step in the right direction. We do not know when we will have another, better bill that can pass the Congress and be signed into law. In my view, it would not be fair to those seniors—including tens of thousand of North Dakota seniors—who have no access to drug coverage of any kind at any price to deny them this first step in the uncertain hope that we might be able to do better at some point in the future. Rather, we must take the $400 billion opportunity that is on the table today and start providing prescription drug coverage to America's seniors. Then we can and we will go to work to improve the prescription drug benefit provided by this bill.

Mr. BIDEN. Mr. President, I voted against this bill today because I would never do anything that risks the future of Medicare, and I fear this bill takes the first steps toward the breakup of the traditional Medicare Program. In addition, this administration's misplaced priorities put enormous tax cuts first and left us little room to provide the comprehensive and fair drug benefit that seniors deserve. We should have done this right and provided a better drug benefit without jeopardizing the Medicare Program that has given seniors health security for 38 years.

My vote today was one of the more difficult decisions I have faced in my Senate career. For starters, let me note that not all of this bill is bad. Some people will get help with their drug costs. We in Delaware are fortunate to already benefit from unique programs that have long helped low-income seniors with their prescription drug costs, and this bill should build upon that foundation. It also offers some coverage to many middle class seniors and disabled citizens. All in all, these aspects of this bill are not enormously different from those in the Senate-passed bill that I voted for earlier this year.

This bill also includes sorely needed payment adjustments for hospitals, doctors, and other health care providers, which will ensure that Medicare patients get quality care and continued access to important medical services.

On the downside, however, this legislation still has a large gap in coverage—forced by budget constraints—in which the Government provides no subsidy for prescription drugs. I know that many people will find this gap confusing, disappointing, and burdensome. I am also very concerned that this bill does not sufficiently protect millions of retirees who currently receive good health care benefits from their former employers.

If we had done this the right way, we would have held back on some of the excessive tax cuts pushed through over the last three years and allocated more of our resources to meeting our obligation to provide a complete prescription drug benefit. Instead, the administration's misplaced priorities tied our hands.

If this legislation were just limited to the prescription drug benefit and the provider payment modifications, it would probably have my vote as being about as good as could be done under the current budget circumstances. But I have very serious concerns about other provisions tacked onto this bill that will take the Medicare Program and the health care benefits for 40 million Americans into uncharted and hazardous waters. This bill takes the first step toward monumental changes in the very foundation of how Medicare operates, beginning a push toward the breakup of the entire program.

The strength of the Medicare system has been its broad coverage, its simplicity, and the open choices patients enjoy. This bill sets in motion a new system that could tear down each of these advantages.

On balance I cannot support this legislation. To me, the negative features have such damaging potential that they overwhelm the benefits. Had the negotiations on this bill been done in the open, with the full participation of both parties, I think we could have crafted a better bill. I cannot vote for a bill that sets us on the path toward undermining the traditional Medicare Program that has worked so well for decades.

Mr. BREAUX. Mr. President, today we passed historic Medicare legislation. Getting here was not easy. Behind the scenes, for months and even years, staff has worked incredibly hard to help produce this complex and comprehensive bill.

In particular, I would like to thank Senator BAUCUS' Finance Committee staff who put in countless hours and remained dedicated to this legislation during long and difficult late-night and weekend sessions. Dr. Elizabeth Fowler lead the Finance health team. Dr. Fowler's expertise, even-handedness, and professionalism were critical in getting us to where we are today. Other professional staff, including Jon Blum, Pat Bousliman, Andrea Cohen, Bill Dauster and Daniel Stein, all served the entire U.S. Senate and served us well. The Minority Staff Director, Jeff Forbes, was also instrumental in seeing this legislation through until the end. We were able to achieve many Democratic priorities in this bill because of their hard work and dedication.

I would also like to thank Senator GRASSLEY's staff on the Senate Finance Committee for the critical role they played in passing this historic legislation. Linda Fishman, Ted Totman, Colin Roskey, Jennifer Bell, Mark Hayes and Leah Kegler worked tirelessly for many months to get a bill drafted, through the Senate Finance Committee, passed on the Senate floor and out of tough conference negotiations with the House. The majority staff director of the Senate Finance Committee, Kolan Davis, also played an integral role in getting this conference report passed.

Our Nation's senior citizens owe the whole Senate Finance Committee team a debt of gratitude for making this Medicare legislation possible. I yield the floor.

Mr. SARBANES. Mr. President, I cannot support the Medicare prescription drug conference report before us. I share in the disappointment of the many seniors, advocacy groups, providers, and colleagues in Congress who have fought so long to provide Medicare beneficiaries with prescription drug coverage. Drug coverage should be an integral part of any meaningful health care insurance and it is certain that if Medicare were created today, no one would imagine excluding drug coverage. Unfortunately, the bill before us now has wasted an opportunity to give Medicare beneficiaries the affordable and comprehensive coverage they deserve. The conference report provides inadequate coverage while at the same time undermining Medicare, a program that has served our seniors for over 37 years.

Under this bill, Medicare beneficiaries will pay an estimated premium of $35 per month although that premium level is not guaranteed and it could be higher. After meeting a $250 annual deductible, 75 percent of a beneficiary's drug costs are covered up to $2,250. A beneficiary receives no coverage for drug costs between $2,251 and $3,600, though they are still required to continue paying monthly premiums during this coverage gap. Once drug costs exceed $3,600, the drug plan would cover 95 percent of a Medicare beneficiary's drug expenses. This drug benefit is insufficient and much less than many retirees receive through existing coverage.

Those opposed to offering a more substantial prescription drug benefit claimed there are insufficient resources to pay for it. This argument comes from the very people who have pushed through the Congress tax-cut programs that tilt heavily in favor of the wealthy. Over the last several years, the administration has squandered a surplus and left the Nation facing a deficit already approaching half a trillion dollars. These valuable resources could have been used to provide our Nation's seniors the real drug coverage they deserve.

During consideration of the Senate bill, we missed an opportunity to provide Medicare beneficiaries with a substantial, reliable and straightforward prescription drug benefit. I cosponsored and voted for an amendment offered by my colleague from Illinois, Senator DURBIN. His alternative would have provided a Medicare-delivered drug benefit that would have allowed the Medicare program to employ negotiating strategies used by the Veterans

Administration—VA—and other government entities to bring down drug prices. Senator DURBIN's plan would have begun as soon as practicable, unlike this legislation that leaves beneficiaries waiting until 2006 for the drug benefit to begin.

Under Senator DURBIN's plan, seniors would have not paid a deductible, would have paid 30 percent of costs, and would have no coverage gap. Once drug costs reach $5,000, 90 percent of their costs would be covered. In addition, employer contributions would count toward out-of-pocket limits so there would be much less risk of employers dropping retiree coverage. This was the proposal we should be acting on today.

As I emphasized during debate on the conference report, this bill contains a number of provisions that would undermine Medicare. For the first time in history, Medicare beneficiaries will pay more for their Part B premiums based on their income, thereby eroding the universal nature of the program. Medicare enjoys widespread support since everyone pays the same monthly premium for the same service, thereby giving us a social insurance program in which everyone has an equal stake.

The bill before us does not deal effectively with the rising costs of drugs. This legislation does not allow the Federal government to bring its weight to bear to lower drug costs. Medicare is not allowed to bargain on behalf of the millions of beneficiaries who would receive drug benefits. We know that drugs purchased through the VA program cost substantially less than those purchased at retail value. Furthermore, under this bill drug reimportation is completely at the discretion of the Administration. This is the same Administration that has repeatedly expressed its opposition against drug reimportation even if safeguards can be taken to ensure the safety of the reimported drugs.

This bill has the serious potential to cause a number of retirees to lose existing employer-sponsored prescription drug coverage. CBO estimates that 2.7 million retirees would lose existing coverage. This is an unacceptable consequence of legislation that is supposed to make life better for seniors. This serious deficiency has prompted many constituents to call my office to express concern about this bill.

Congress began this debate focused on the best way to provide Medicare beneficiaries drug coverage and efforts to keep those drugs affordable. We now have legislation before us in which the drug benefit appears to be an afterthought. I think a deeply troubling aspect of the bill is that it takes steps toward privatizing Medicare. This legislation relies on private plans to deliver the drug benefit; seniors could be forced to shift from plan-to-plan, year-to-year as they did when Medicare+Choice HMOs pulled out of the Medicare program a few years ago. In my own State of Maryland, insurance companies left the Medicare program, abandoning more than 100,000 seniors.

In addition, the bill includes a six-year premium-support ''demonstration project,'' which would be established in six metropolitan areas. Medicare recipients in these areas would choose between traditional Medicare and private health plans; if the cost of the selected form of coverage exceeded a benchmark level set for the area, the individual pays increased premiums to cover the difference. This bill also contains $12 billion in subsidies for private plans. This funding gives private plans an unfair advantage by enabling them to provide benefits that traditional Medicare does not cover. If private plans were more efficient than Medicare, they would not need this money to compete. This $12 billion should have been used to improve the drug benefit for all Medicare beneficiaries, not to underwrite the private plans.

The inclusion of tax savings accounts to pay out-of-pocket medical expenses further underscores how far the focus of the bill has strayed from providing Medicare beneficiaries prescription drug coverage. The bill makes health savings accounts that are currently a limited demonstration project universally available. These accounts could be used with high-deductible health policies giving healthy, affluent workers a strong incentive to opt out of comprehensive health insurance plans in favor of the new accounts. If large numbers of these workers opt out of comprehensive plans, the pool of people left in comprehensive plans would be older and sicker, causing premiums for comprehensive insurance to rise significantly.

I have long been a strong supporter of providing older Americans and disabled individuals who rely on Medicare an affordable, comprehensive, reliable and voluntary prescription drug benefit. However, I want to ensure we do so in a way that does not worsen the situation in which many seniors find themselves as they face rapidly rising drug costs. As we consider proposals to expand our Nation's major health entitlement programs, it is appropriate to follow a guiding principle in the practice of medicine—do no harm. Our seniors deserve a drug benefit that is a real improvement, not a complex experiment that may cause more trouble than it's worth. We must not enact a law intended to help that might eventually harm millions. The American people deserve better.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to use the 5 minutes reserved for the leader. That has been cleared on both sides.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. I yield 7 minutes to the Senator from Connecticut. How much time remains on each side?

The PRESIDENT pro tempore. There remain 11 minutes 41 seconds on the majority side, 12 minutes 40 second for the minority. The source is the minority leader's time.

Mr. KENNEDY. So we have 12 minutes. I yield 7 minutes to the Senator from Connecticut.

The PRESIDENT pro tempore. Yes, 11 minutes 41 second plus the 5 minutes.

Mr. DODD. Mr. President, in the limited time we have I would like to go back over and reiterate some points. In the very first instance, looking at the Medicare portion of this bill, right off the bat there are almost 9 million seniors who are going to be disadvantaged by this legislation. Almost one-quarter of the 41 million seniors who benefit from Medicare are going to be disadvantaged by this bill. There are 2.7 million seniors, according to the Congressional Budget Office, who are going to lose health benefits currently offered by their former employer. In my State, that is 40,000 people right off the bat. Those are CBO numbers; those are not mine, not made up by the minority.

Second, 6.4 million low-income seniors will have to pay more for the drugs they need. In my State, that is 74,000 people. The combined numbers are 9 million people, before anything else happens, who are going to be disadvantaged. This is a fact. If you are on Medicare and Medicaid you currently don't have to have a copay when it comes to prescription drugs. Now, under this bill, you will. It may not seem like a lot to people, but if you are making $13,470 or less than that, believe me, even a slight increase in these drug costs can be very harmful. That is just a fact.

Let me say to my friend from Iowa, I have respect for him and I admire his tenacity and his tremendous effort on behalf of this bill. I say to my friend, $13,470 is not a lot of money for Americans, and if you make $13,471, you are going to pay $420 in premiums, a $250 deductible, and you have to pay 25 percent of the cost of your prescription drugs. If you make $13,471, that is what you are going to be burdened with. I appreciate the fact that the very low income get some help, but I do not know anyone in this country who thinks $13,471 is a lot of money. But if you hit that number, then you are going to pay those kinds of costs, and that is going to be tremendously burdensome to many people.

Second, of course, if you look at chart 2 quickly here, you will see that this bill creates an unlevel playing field. We are told about free competition and choice. But the fact is, under this bill private plans get a 9 percent higher reimbursement than the Medicare plan, and they get $12 billion. If you have two competitors trying to appeal to a consumer and one side gets a 9 percent increase in reimbursement rates, plus $12 billion to help them get into the market, I don't know how you call that a level playing field. That is not level at all, in my view.

If we examine the so-called premium support demonstration programs, seniors effected by this experiment are going to be put in situations where they have less choice. If you end up being pushed into a private plan—and you can be under this bill—then your ability to choose your own doctor is gone. Talk about choice, there is no more fundamental choice to most Americans than the right to choose the physician who will take care of you, particularly for a senior. But under this legislation, if you are pushed into those plans, you lose the right to make that choice, the opportunity to choose your own doctor.

I hardly consider that a step forward or an improvement in the Medicare system. It is a major setback.

With regard to prescription drug costs, this issue has been made very clear by the Senator from Florida. I commend him for it. We are not saying in this legislation that you can go out, as the VA does, and consolidate your membership and then negotiate for prices. As the Senator from Florida pointed out, in the case of a couple that has been married for many years, the price of a drug for the husband, who is a veteran who served in Korea and World War II, is going to be substantially less than the price of the same drug for his wife, who wasn't a veteran. How can you explain that to a couple? Why can we not do with Medicare what we do with the VA? It is a logical choice. This bill prohibits that from happening.

I don't understand, for the life of me, why we are endorsing a proposal that doesn't allow the collective buying power of 41 million Americans to go out and lower the cost of prescription drugs. Yet this legislation would prohibit us from doing that.

When you look at those issues in this proposal, again I say to my friends who have crafted the prescription drug benefit, there are certainly stated advantages of moving forward with something here. But as the lead editorial in my State newspaper pointed out the other day, we can do a lot better with this legislation. It says:

They deserve better than scrambled eggs that Congress, AARP, and other special interests want to dish out in the guise of ''reform.''

The centerpiece of this faux reform is prescription drug coverage. Here is the math: A beneficiary who has prescription drug bills totaling $2,250 a year would have to pay premiums of $420, a deductible of $250 and 25 percent of the cost of medicine.

For someone in that category, that adds up to $1,252 out of pocket in their bills. Once the beneficiary's drugs reach $2,250, then they will have to pay the entire bill up to $3,600. Again, I realize you can't take care of everyone here, but that is a tremendous disadvantage.

I ask unanimous consent that the editorial from the Hartford Courant be printed in the RECORD.

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

MEDICARE REFORM: TRY AGAIN

It's not perfect, but it's a start. That's the gist of the multimillion-dollar marketing campaign launched by AARP in support of the Medicare bill that passed the House by a 220 to 215 vote early Saturday. The organization that purports to represent Americans who are at least 50 years old pledges to fix the bill's flaws in future years.

Beware of such promises. Americans are not looking for a perfect system. They yearn for improvements in Medicare that they can comprehend. They know that Rome wasn't built in a day and prescription drug coverage won't be guaranteed overnight.

But Medicare beneficiaries have waited for at least a decade for such coverage. They deserve better than the scrambled egg that Congress, AARP and other special interests want to dish out in the guise of ''reform.''

Is it any wonder why shares of health care businesses, particularly drug companies, skyrocketed on Wall Street after the congressional conferees announced the details of the agreement? Lawmakers listened to lobbyists far more attentively than they listened to Medicare beneficiaries.

The centerpiece of this faux reform is prescription drug coverage. Here is the math: A beneficiary who has prescription drug bills totaling $2,250 a year would have to pay premiums of $420, a deductible of $250 and 25 percent of the cost of the medicine. That adds up to paying $1,252 out of pocket.

Once a beneficiary's drug bills reach $2,250, the beneficiary would have to foot the entire drug bill up to $3,600. Only after drug costs exceed this amount would the prescription plan pay 95 percent of the bills.

This package contains little to cheer about. Some provisions deserve jeers. The elderly who had hoped to buy less expensive prescription drugs from Canada and Mexico are out of luck. Those who have paid Medicare payroll taxes would have their benefits linked—for the first time in Medicare's history—to their retirement income. For those who earn more than $80,000 a year, the premiums for Medicare Part B (doctors' bills and other costs not covered by basic Medicare) would increase substantially. So much for relying on government to honor its pledge to treat everyone equally under Part B.

Why is AARP aiding and abetting GOP lawmakers in selling such reform under false pretenses? The organization is a big-business operation, with revenue of $608 million last year from its insurance-related operations.

''It's almost unimaginable that—AARP—wouldn't stand to gain'' as a result of this legislation, said David Himmelstein of Harvard Medical School. Alan Simpson, a former GOP senator, hit the bull's-eye when he noted, ''If there was a sublime definition of conflict of interest, it would be AARP from morning to night.''

AARP's members should make themselves heard as they did in 1988, when the organization successfully lobbied for a flawed catastrophic insurance benefit. The ensuing uproar by elderly people forced Congress to repeal the legislation.

On the subject of lobbying, why is AARP still designated as a tax-exempt nonpartisan organization? It shouldn't be.

Mr. DODD. Mr. President, I urge our colleagues to reject this bill and come back in January and rework it. Forty-one million Americans deserve a lot better than this bill is going to give them.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do we have remaining?

The PRESIDENT pro tempore. There are 7 minutes remaining.

Mr. KENNEDY. I yield 1 minute to the Senator from Illinois.

The PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Massachusetts.

America's parents and grandparents are the losers today, and special interest groups are the winners. America's senior citizens deserve better. This bill does nothing to reduce drug prices, and it starts our Nation down the road toward privatizing Medicare and endangering America's lifeline program that has been a bright beacon for seniors across our country for more than four decades. The pharmaceutical companies and the HMOs will give thanks for this turkey, but America's seniors will get stuffed.

I am going to vote no on this. I hope my colleagues will join me.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDENT pro tempore. The Senator's side has 7 minutes 1 second. The other side has 11 minutes 41 seconds.

Mr. KENNEDY. I withhold our time.

The PRESIDENT pro tempore. Who yields time?

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I consume and I invite proponents of the legislation to come over so I can yield some time to them.

One of the issues that has been badmouthed by the other side, the opponents of this legislation, is that we have not done enough to help retiree coverage; in other words, the problem they would suppose is that a lot of corporations will be dumping their plans on the Government.

First of all, Congress can't pass a law telling any corporation X, Y, or Z that they can't do that. If they decide it is in their interest, they are going to do it. The point is they have been doing it for years and years.

I had a chart up here 2 days ago that showed how we have gone down from about 89 percent to 60 percent over the last 10 years of the corporations that had retiree health plans. What we are doing is putting in place a program so that if a corporation does that, there is at least something for people who have zilch when it comes to prescription drugs.

One of the things we have done to encourage corporations not to do that is we have put $89 billion in this bill to protect retiree health coverage. This funding makes it more likely—not less likely—that employers will continue their retiree benefits. We do that for two reasons. Obviously, it is better for people to keep what they have. So there is an incentive for that. That will help keep a good drug benefit. Second,

if this is dumped on the Medicare Program, it is going to be much more costly than to keep it in the corporation plan. We did it for those two reasons.

The opponents of this bill have been saying retirees are going to be dropped—that they will be left without coverage because of this bill. It is easy to make very clear that these retirees will not be left without drug coverage. That is, obviously, because one of the motivations behind this 3-year effort to get prescription drugs in Medicare is to take care of or at least offer a plan to people who don't have anything. That is about 35 percent of the people today. It is better for those who do not have as good a plan as we are putting on the books. These retirees will still be better off than they are today because today, when their employers drop their coverage, they are left with nothing—no coverage at all.

Because of this bill, these retirees will be getting drug coverage from Medicare, and their former employer will likely pay the monthly premium for that.

This is a bipartisan bill. This bill addresses the problem we saw as a very serious problem. According to the Congressional Budget Office, we have addressed it in a very responsible way and by reducing very much the possibility that these corporate retirees will be dumped onto this plan.

This bipartisan bill protects retirees' benefits. That has been our goal, and we have accomplished it. The time has come strengthen and improve Medicare with this historic bipartisan agreement. It is the culmination of years of work by Republicans and Democrats who have come together to get this done.

As the AARP has made clear when providing its strong endorsement, this bill ''helps millions of older Americans and their families,'' and is ''an important milestone in the nation's commitment to strengthen and expand health security for its citizens. . . .''

This bill offers an affordable, universal prescription drug benefit that will cover about half the cost of prescriptions for the average senior.

It offers generous coverage for 14 million lower income seniors. It expands coverage for lower income seniors far beyond what is offered today. They will have access to drug coverage with lower or no premiums, no coverage cap, and coverage of 85 percent to 95 percent of the cost of prescription drugs.

And the new Medicare drug benefit is voluntary—no one is forced to enroll in this benefit. Seniors can stay in traditional Medicare just like they have today and have full access to prescription drugs.

There is also a guaranteed government fallback. It is a guarantee that seniors will be able to get prescription drug coverage.

This bill also invests $89 billion to protect retiree health coverage. This funding makes it more likely, not less likely, that employers will continue their retiree benefits.

This bill also creates new coverage choices for beneficiaries in a newly revitalized Medicare Advantage program. And this is voluntary too—no one will be forced to join an HMO.

The bill lowers drug costs by speeding the delivery of new generic drugs to the marketplace, lowering costs for all Americans, not just those on Medicare.

The bipartisan bill includes long overdue improvements to Medicare's complex regulations.

It also revitalizes the rural health care safety net with the biggest package of rural payment improvements Congress has ever seen.

I urge my colleagues to put the interests of our seniors first and give them more choices and better benefits by voting for this historic bipartisan prescription drug bill.

We cannot let this opportunity pass.

Mr. President, it has been a long and arduous process to get us to where we are today. This is a process that didn't start this year, or even last year, but many years ago, on the foundation of what we then called the ''tripartisan bill.'' Through many years of discussions and negotiations in the Finance Committee, we have taken the foundation of that first bill and crafted comprehensive Medicare policy that will vastly improve the health and overall well being of our nation's seniors.

Our critics will say it is not enough or that it lacks one provision or another. My response is that no other Finance Committee membership and no other Congress has been able to produce a bill of this magnitude. We have worked tirelessly in the Finance Committee and with our colleagues in the House to try to make this bill as perfect as possible.

The reality is the Medicare program itself is not perfect.

And I challenge those in opposition to this bill, to show me perfect legislation. It is impossible because we're adding layers on a system that has been in place for nearly 40 years. But everyone involved in this process has worked their hearts out to make this bill the best bill that it can be. It has been a sacrifice for all involved. Missed dinners with family, missed weekends with the kids, little sleep, and intense emotions and intellectual energy—to make this bill what it is.

We've all given 150 percent to get this bill done. And I will admit we did not reach ''perfection'', but we reached excellence. And America's seniors will benefit from the commitment that was made by all of us involved. We did it for them. And it will make a positive difference in their lives. To me, that is the closest thing to perfection that we could achieve.

Let me close by thanking my colleagues on the committee, in the Senate, the House, CMS, HHS and the White House. Dedicated individuals across the Congress and the Executive Branch have worked tirelessly, night and day, to make this happen, and they deserve our thanks for their true commitment to this bill and their commitment to this country.

For my part, I want to thank my own current Finance Committee staff: Ted Totman, my Deputy Staff Director who shepherded staff and members through this arduous process; Linda Fishman, my Health Policy Director who led the committee's consideration of this bill and who captained a team of talented analysts, including Colin Roskey, whose daughter, Rose, was born while negotiations played out in the Finance Committee in March; Mark Hayes, who balanced multiple titles of this legislation while attending law school at night; Jennifer Bell, whose dedication to the needs of rural Americans played an instrumental role in the success of our rural healthcare package; Leah Kegler, who managed many of the complex low income and Medicaid policies in the bill; Alicia Ziemiecki, who provided crucial assistance and support to all on this staff and to individual Committee members throughout the year; and Mollie Zito, who joined the staff just this year and immediately made important contributions to the overall effort.

Still other former members of my Finance Committee staff who are not with me on the floor today have been instrumental in the development of this legislation. They include: Monica Tencate, Tom Walsh, Rebecca Reisinger, Hope Cooper, and Jeannie Haggerty, each of whom helped to shape the original Tripartisan proposal, whose imprint on this legislation is unmistakable. Each of these individuals contributed creatively, analytically and energetically to the successful completion of this legislation.

Beyond the health staff of the Finance Committee, I want to recognize other committee staff who played important roles in resolving the many interwoven, complex tax, health and trade policies within this legislation. Mark Prater and Diann Howland helped navigate many of the health savings account and employer-related issues in the bill. Steven Schaefer and Everett Eissenstadt along with Rita Lari of my Judiciary Committee staff helped conferees reach consensus on difficult pricing, importation and generic drug policies. Steve Robinson assisted in budgetary matters, and Dean Zerbe and Emilia DiSanto provided good counsel on matters relating to Medicare program integrity. Jill Kozeny, Jill Gerber, Beth Levine and Dustin Vande Hoef provided cogent and concise outreach and explanation to the media. Leah Shimp, Cory Crowley and Mary Gross kept in close touch with Iowans on the legislation. And Kolan Davis, my Chief Counsel on the committee, provided important oversight and advice throughout the process.

Beyond my own staff, I want to recognize Senator BAUCUS's staff, with whom I have enjoyed an excellent working relationship over the last few years and with whom my own staff has

worked especially closely: Jeff Forbes, Russ Sullivan, Judy Miller, Bill Dauster, Liz Fowler, Jonathan Blum, Pat Bousliman, Andrea Cohen, Mike Mongan, Kate Kirchgraber and Dan Stein. Senator BAUCUS's team have shown a sincere commitment to balanced, fair bipartisan legislation and have been consummate professionals throughout.

The staff to my Senate colleagues on the conference are also deserving our thanks. Each contributed to a collegial working environment under enormous time and political pressures: Pattie DeLoatche, Mark Carlson, and Bruce Artim with Senator HATCH; Stacey Hughes, Hazen Marshall and Bini Zomer with Senator NICKLES; Don Dempsey, Diane Major, Elizabeth Maier and Lisa Wolski with Senator KYL; Dean Rosen, Elizabeth Scanlon, Craig Burton and Eric Ueland with Senator FRIST; and Sarah Walter, Michele Easton and Paige Jennings with Senator BREAUX.

Finally, all of us were extremely well served by the hard work of our Congressional support agencies, including the able work of our Senate Legislative Counsels who toiled longer into the night than most: Ruth Ernst, John Goetcheus and Jim Scott. Technical and analytical support was provided by experts at the Congressional Research Service, including Richard Price, Jim Hahn, Chris Peterson, Hinda Chakind, Jennifer O'Sullivan and Jennifer Boulanger and many others who assisted in the completion of the Conference Report. At the Congressional Budget Office, Doug Holtz-Eakin, Steve Lieberman, Tom Bradley, Chris Topileski, Phil Ellis, Rachel Schmidt, Jeannie De Sa, Eric Rollins, Shinobu Suzuki and many others played crucial roles in developing cost estimates for policies large and small in this conference agreement.

Each of these dedicated individuals is deserving of our thanks for their commitment to improving Medicare and making affordable access to prescription drugs a reality for America's seniors.

If the other side says it is OK, I would like to yield 3 minutes to the Senator from Texas.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Texas is recognized for 3 minutes.

Mrs. HUTCHISON. Mr. President, I have been here for 10 years now. There are many in the Chamber who have been here longer than I. But I know one thing. Anytime we do something that is very major and very complicated, it is easy to pick it apart. It is easy in 30 seconds to say why you are not going to vote for something that has so many facets. That is much more politically feasible and it is much easier. It is harder to vote yes on something that isn't perfect.

How can you ever expect a bill this complicated to suit every person in this body perfectly? Of course, you can't. That is why we have 100 Senators from 50 States. It is why we go back and forth and compromise. Yes, there is compromise in this bill. But let me tell you in a few minutes why I am voting yes.

I am voting yes because senior citizens do not have benefits for prescription drugs. We must start. No one would say this is perfect. Who could expect a perfect bill that is this comprehensive? This is the bill. Of course, you don't agree with every word in it. But are we going to throw it away and not even start? I hope not. Those who have been around here longer than I know that we will come back and we will adjust where adjustment is necessary, as we do in every major piece of legislation that is far-reaching.

I am voting for this bill because for the first time everyone in our country will have the chance to put aside money in a health savings account to build up for their copays and for their premiums on health care insurance. It will be a tax-free buildup, and it will be tax free when you take it out for your health care needs.

I am voting for this bill because it increases the reimbursement for our people who give medical services. Our rural hospitals are dying all over our country and they will have a better reimbursement rate, something Senator KENNEDY and I worked on very hard. This is not what I wanted in totality, but we are going to increase the teaching hospital reimbursement because the teaching hospitals are the ones that treat our poor. Our teaching hospitals are where our up-and-coming physicians and nurses learn how to treat patients. We are increasing the reimbursement. Senator KENNEDY and I worked very hard on that.

It is not everything we wanted but we can come back and we will make it even better. There will be millions of dollars going into our teaching hospitals and every State in our country has a teaching hospital.

The reimbursement to physicians is going to increase. How many physicians have said, I am not taking Medicare patients anymore; I cannot afford it. We want physicians to take our Medicare patients. We also want a freedom to choose, which our Medicare patients do not now have and which we will have in the future.

That is why I am voting for this bill. It is the harder vote. I urge my colleagues to step up to the plate and help us start.

Mr. KENNEDY. How much time is on the other side?

The PRESIDING OFFICER. The majority has 3 minutes 16 seconds and the minority has 6 minutes 3 seconds.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

Mr. President, my friend from Iowa talked about what is happening to the retiree programs. This is the most recent study. Firms offering retiree health benefits dropped 40 percent in the last 8 years. With this legislation, it will go right down through the cellar, make no mistake. We brought that out in this debate.

My friend from Connecticut has talked about what will happen in his State, about the retirees. It happens in Connecticut, it happens in Massachusetts, it is happening in every State of this country, the losing of retirees. The low-income elderly and disabled will pay more. Thousands are going to fail the assets test. That is what is happening in the bill.

In my early years of service in the Senate I was privileged to participate in the final stages of the long debate that culminated in the enactment of Medicare.

Today, Medicare is so much a part of the essential fabric of our society that it is hard to remember the harsh reality the elderly faced before its enactment. Too often, their lives were blighted by the fear of a costly illness that would swallow the savings of a lifetime and leave them impoverished. Too often, their lack of access to affordable medical care made a mockery of the dignified and secure retirement that should be the birthright of every American. Private health insurance had failed the elderly, and Medicare was the response.

Today, Medicare and Social Security are the most beloved and successful government programs ever enacted. They form the cornerstone of our nation's retirement system. But they are also under assault from a heartless right-wing ideology that ignores the lessons of the past.

This ideology views health care as just another commodity. It sees Medicare as another potential profit center for HMOs and insurance companies, not as solemn commitment between government and its citizens. It says senior citizens should be subject to the sink or swim economics of the marketplace—and if they sink, it is their failure, not our society's.

The legislation we are debating today started as an important down payment on the comprehensive prescription drug coverage the elderly have long needed to complement the coverage of hospital and physician care that Medicare provides. That was the essence of the bipartisan bill that passed the Senate by an overwhelming majority. But that bipartisan bill is not the one we are debating today.

Instead, the legislation before the Senate is a partisan document that embodies this administration's right-wing ideology and its desire to fuel the profits of the wealthy and powerful who support it. It cynically uses the elderly's need for prescription drugs as a Trojan horse to reshape Medicare. The Republican majority has hijacked this conference.

Their program draws its essential inspiration from the President's original program to limit prescription drug benefits to senior citizens who join an HMO. That plan was too crude and obvious to withstand public scrutiny, so the House of Representatives—and now

this conference committee—has crafted a more subtle but no less destructive approach. That is why this legislation had to be rammed through the House of Representatives in the dead of night, with the support of only one party, and only after the rules of the House were bent and broken. That is why this legislation is being rammed through the Senate after only 3 days of debate, and only after the Senate waived its own rules in a very close and narrow vote.

This bill is a cold, calculated program to unravel Medicare, to privatize it, to voucherize it and to force senior citizens into the unloving arms of HMOs. It is the first step in the Administration's campaign to reshape America to fit its right-wing ideology. And the White House has already announced that if they are successful in enacting this first step, the privatization of Social Security will be the next step. Today, big HMOs, insurance companies, and pharmaceutical companies are the winners. Tomorrow, when Social Security is privatized, it will be the big banks and brokerage houses. And, in both cases, senior citizens and their families will be the losers.

The bill uses a triple threat to unravel Medicare.

It creates a new program called premium support. They call it a demonstration, but it is really a vast social experiment using millions of senior citizens as guinea pigs. It is designed to raise Medicare premiums, so that seniors will be forced to join HMOs to get affordable care. They call it competition, but it's not competition, it's coercion.

It raises Medicare payments to HMOs so that Medicare can't compete—a 25 percent overpayment. They use the elderly's own Medicare money to undermine the Medicare program they depend on.

It creates a $12 billion slush fund for private insurance plans to make Medicare even more competitive.

The assault on Medicare is the worst aspect of this bill, but that's not the end of the dishonor roll of this bill.

Three million retirees with good coverage through a former employer will lose it as the result of this legislation.

Six million of the poorest of the poor elderly and disabled people will face higher costs for the drugs they need and less access to medical care the day this legislation is effective.

The government will be prohibited from bargaining to obtain reasonable drug prices for senior citizens.

The bill imposes a cruel and demeaning assets test that disqualifies millions of the lowest income elderly from the special help they need.

The bill provides $6 billion in tax subsidies for health savings accounts, a program that has nothing to do with Medicare but everything to do with benefiting the healthy and wealthy while driving up insurance premiums for other Americans.

Rejecting this misbegotten legislation is not a rejection of our senior citizens' needs for prescription drugs. It is an affirmation of their need for Medicare and of their right to choose the doctors and hospitals they trust. If this legislation is rejected today, the pending business before the Senate will be the good, bipartisan prescription drug program we passed in July. Let us make the vote today, a new start to do the right thing rather than a conclusion to do the wrong thing.

In its own way, this is as historic as the debate that enacted Medicare. Medicare is the heart and soul of our society's commitment to compassion and fairness. Today, the Senate will decide whether that commitment will be abandoned for other values—the values that are measured in the cold coins of profit and power rather than on the scales of humanity and justice.

The Senate should reject this mistaken choice. It should stand with the elderly and their families, not with HMOs and insurance companies and pharmaceutical industries. It should reject this legislation.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield the remainder of my time to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 3 minutes.

Mr. HATCH. I have been listening to the rather remarkable remarks from the other side, that this legislation has been rammed through the Congress, that it is partisan, when it is bipartisan. It has taken us 15 years to get here. It could take another 15 years if we do not support this bill right now.

We have been working on Medicare prescription drug legislation for 15 solid years. We have worked day in day out, hours, weeks, and months in order to get to this point. It is bipartisan. It was bipartisan in the House; when it passes today it will be bipartisan in the Senate.

The opponents of this bill keep saying that seniors will be worse off if this Medicare bill becomes law. Give me a break. We are going to put $400 billion out there for senior citizens so they will have a Medicare drug benefit. We are giving seniors a choice in coverage. Medicare beneficiaries may stay in traditional Medicare or they may choose to participate in one of the new Medicare Advantage plans.

We are improving health care for rural communities, something our friends on the other side have ignored for years. The fact is, it is time to realize that we are going to have to pass this legislation because it is the right thing to do and it will be a bipartisan vote.

We are devoting close to a quarter of this bill's funding to retiree health coverage. CBO told us that 37 percent of retirees could have lost their coverage if S. 1, the bill approved by the Senate earlier this year, had become law. This bill reduces that number to under 20 percent. I don't know how anyone can say this bill is going to be harmful to retirees when we are devoting $89 billion towards retaining retiree health coverage.

We also are improving access to less expensive, generic drugs by improving Hatch-Waxman.

The real reason our colleagues do not like this bill is that it is not an $800 billion bill. Our bill is $400 billion which provides for some private sector competitive models. The reason our opponents do not like our legislation is because they do not believe in the private sector.

With regard to their argument that some of the big companies are going to benefit from this legislation, of course they will benefit. The argument I find most amusing is the claim this bill will lead to increased drug company profits.

The reason the bill is so desperately needed is because beneficiaries with low incomes are unable to afford their prescriptions today. They have to choose between food, rent, and taking their medicines. When this prescription drug benefit goes into effect, low-income beneficiaries will finally be able to get their prescriptions filled. This legislation includes generous subsidies so the low-income will be able to receive their prescription drugs without worrying about how to pay for them.

Of course, this is going to lead to increased drug sales. Surely this is no surprise to anyone. Any prescription drug bill that works is going to lead to increased drug sales. Where are the medicines supposed to come from, except from the manufacturers of those medicines? Every single Medicare prescription drug bill introduced by these naysayers also would have increased drug sales, and they know it.

This bipartisan conference report has the same basic drug benefit structure that passed the Senate by a vote of 76 to 21—the same one—and we are hearing these arguments here today? My distinguished friend from Massachusetts voted for that bill, and the legislation before us has the same drug benefit structure contained in S. 1 earlier this year.

The Congressional Budget Office has concluded that the competitive approach of this bipartisan drug benefit will be better at controlling drug costs than other proposals.

To suggest that no one support a Medicare drug benefit because it will lead to increased drug sales turns logic on its head.

If this were our basic principle, then we should not have food stamps, because that would lead to increased profits of grocery stores and farmers. What about housing subsidies? This might lead to profits by construction companies, utility companies and increased sales of lumber, bricks and nails! So, this is just an absurd issue and it is easy to see why.

I am here to tell you that this bill will strengthen and improve the Medicare program. The spending in this bipartisan prescription drug bill goes toward more improved health benefits for

America's seniors and the disabled. This is a good bill and I urge my colleagues to support it.

The PRESIDING OFFICER. The time has expired.

The minority leader.

Mr. DASCHLE. Mr. President, I will use my leader time because I know we are out of the allotted time.

I'm told that when Medicare was passed 38 years ago, the House and Senate galleries were filled with senior citizens who felt a great deal of hope, optimism and excitement about what that bill meant for them and for future Americans.

I don't see any senior citizens in the galleries today. And I think that is a real reflection on what this bill really means.

Why are there no senior citizens in the galleries for this vote? Why isn't there the hope and excitement and enthusiasm and optimism that we saw so vividly 38 years ago?

Mr. President, I think we all know the reason: because there is no excitement. There is no enthusiasm. There is no optimism. There is no real confidence that what we are doing today will help the vast majority of senior citizens. They are not optimistic. They are watching with dismay at the vote we are about to take.

I'll tell you what rooms are filled—not the galleries but the lobbies. The drug companies and the insurance companies are out there in droves. The highly paid representatives of these companies couldn't be happier about this bill. Their job is done for now.

I heard a report on the radio this morning that the final vote was going to be taken early today. Well, that report was wrong, Mr. President. This is not the final vote on prescription drugs for seniors or on Medicare. This is only the beginning, not the end. We will see many, many more votes.

I predict that we will be back within the next 12 months. Seniors will demand that we correct the many deficiencies in this bill, and they will not rest until we do.

This may be the end of this debate. But I predict that a longer debate will begin tomorrow as senior citizens start to fully understand the magnitude of the problems this legislation creates for them.

This bill is deeply flawed. There is a poll in this morning's South Dakota Rapid City Journal. The poll simply asked the question, Do you think the legislation the Senate is about to pass is adequate? Mr. President, 64.5 percent of those who responded said no, it is not adequate. Those of us who have been working on this legislation should not be surprised.

Senior citizens with private coverage already know they could lose those benefits as early as tomorrow as the result of this bill. Seniors on Medicaid already know that they are going to have to pay more for drugs, and may even be refused some of the drugs they need. Seniors in South Dakota already know they may be coerced into an HMO they disdain and out of a Medicare plan they now count on.

Seniors already know they are about to be subjected to a scheme for benefits they cannot even understand, much less afford.

Taxpayers already know they are going to be giving huge handouts to insurance companies, drug companies, and special interests, even though our country is faced with deficits unlike we have ever known.

Many Senators know this is lousy legislation, that we may spend the rest of our careers repairing the flaws of this disappointing bill.

We are going to be called upon to vote today.

My father admonished me many years ago never to put my signature on something I was not proud of. Mr. President, I am not proud of this legislation. I cannot put my signature on this bill. And I do not think anyone else should, either.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the majority leader is recognized for 5 minutes.

Mr. FRIST. Mr. President, today is an extraordinary day for 40 million seniors. For too long, our medical and health care advances have raced ahead, especially in the last 10 to 15 years, but Medicare, as a health security program for seniors, has stood still.

But today that will change. And it will change today with overwhelming support. On this chart are 358 organizations who support this change, such as the Seniors Coalition, the AARP, the American Medical Association, the American Hospital Association, the Family Physicians, the American College of Cardiology, the National Alliance for the Mentally Ill, the Rural Hospital Association, the Sickle Cell Foundation, the Society of Thoracic Surgeons—and the list goes on and on.

It has been a long time coming, but it is finally here. With a bipartisan majority, the U.S. Senate will enact prescription drug coverage for the first time under Medicare.

Forty million seniors and individuals with disabilities will finally have the prescription drug coverage they need and the Medicare choices they deserve.

They will finally be able to take full advantage of the tremendous medical advances that have been made in the almost 40 years since Medicare was enacted.

I do not think it can be overstated that today marks a truly historic advance for America.

As a physician, I have written hundreds of prescriptions that I knew would go unfilled because patients simply would not be able to afford them. With this bill, that will change.

As a U.S. Senator, I have watched a decades-old Medicare program operate without flexibility, without comprehensive care, without coordinated care, without preventive care, without disease management and catastrophic protection against out-of-pocket medical costs.

By expanding opportunities for private sector innovation, this Medicare bill offers the possibility of genuine reform that can dramatically improve and strengthen quality of care for our seniors and for those baby boomers who will be seniors in the not too distant future.

At the same time, it preserves traditional Medicare. It strengthens and improves traditional Medicare, and it preserves traditional Medicare for those who wish to choose it.

It combines the best of the public and the private sectors. It improves Medicare for today's seniors and helps, most importantly, lay the foundation for a strong and modern program for seniors today, but also tomorrow's seniors.

The legislation provides all seniors with access to more affordable prescription drugs and targets more substantial assistance to lower income seniors and those with high catastrophic drug costs.

It also dramatically expands health coverage choices for seniors, and improves coordinated care, improves disease management, adds prevention to Medicare, and adds catastrophic coverage both under the traditional Medicare fee-for-service program and under Medicare private health plans.

While it does expand those choices and those opportunities to choose, choices that seniors simply do not have today, it also ensures that those seniors can keep exactly what they have. They do not have to choose that new drug plan. They do not have to choose that new type of health care plan that we might have in the U.S. Senate or that Federal employees have.

They don't have that option today, but they can choose that or they can keep exactly what they have today. All of the options in this legislation, including prescription drug coverage, are voluntary. Beyond increasing competition, we will also take steps to control health care costs both within the Medicare Program and within the broader health care system. For the first time, we will ask those seniors who can afford to do so to pay a higher portion of their Medicare costs. We will increase and index the Medicare Part B deductible for the first time in over a decade. We will make health savings accounts available to all Americans so that they have greater control over their own health care choices and so they can plan and save, tax free, for future health care needs.

We will make other responsible changes such as speeding generic drugs to the marketplace so that seniors will have access to these lower cost prescription drugs.

Indeed, today is an extraordinary day. Today is a fateful day. Today is a red letter day for seniors.

In conclusion, today's historic action is only possible because of the hard work of many dedicated Members of the Senate and the House of Representatives, and the administration.

I would like to take a moment to thank those whose commitment was critical to this effort. First and foremost, President Bush deserves credit for his bold leadership and commitment to improving the health of America's seniors and individuals with disabilities.

Tommy Thompson, the Secretary of Health and Human Services, and Tom Scully, the Administrator of the Centers for Medicare and Medicaid Services, spent hundreds of hours working on this legislation.

In the Senate, Finance Committee Chairman CHARLES GRASSLEY and Ranking Member MAX BAUCUS put partisanship aside and worked tirelessly from beginning to end to deliver on our promise to America's seniors. Senator JOHN BREAUX also deserves credit. He and I have worked together for the better part of 6 years on legislation to improve Medicare. Today, we have finally reached that goal.

All members of the conference committee showed a degree of dedication and resolve seldom seen in either Chamber, especially Senators ORRIN HATCH, DON NICKLES and JON KYL. We would not have reached this point without building on the strong foundation laid by Members who worked so hard on this issue during the past several years, especially Senators SNOWE, JEFFORDS, GREGG, HAGEL, ENSIGN and WYDEN. Senators BUNNING, THOMAS, SMITH, LOTT, and SANTORUM also made major contributions to this legislation through their work on the Senate Finance Committee.

Members of this body who voted against final passage, but nonetheless worked to improve this legislation at every step of the way and help pave the way to final passage also deserve great respect and appreciation.

The House Leadership, especially Speaker DENNIS HASTERT and Leader TOM DELAY, also deserves special recognition, as does the Chairman of the Conference, Chairman BILL THOMAS, and the Chairman of the House Energy and Commerce Committee, Chairman BILLY TAUZIN. We would not be here without them.

Finally, I want to thank my hard working and dedicated staff: Dean Rosen, Elizabeth Scanlon, Rohit Kumar, and Craig Burton. They have put in thousands of hours and poured over thousands of details.

To everyone who has worked so hard and given so much to this effort, I thank you. America thanks you. And, most of all, America's seniors thank you.

I ask unanimous consent that a long list of staff who made major contributions to this legislation be printed in the RECORD.

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

Passage of a Medicare prescription drug benefit would not be possible without the hard work and dedication of the White House staff and the staff at the Department of Health and Human Services. House and Senate staff, as well as House and Senate Legislative Counsels, the Congressional Budget Office and the Congressional Research Service deserve our thanks. At this time, I would like take a moment to recognize the many individuals who have played a central role in this legislation.

We could not do our work without the assistance of our exceptional staffs who have sacrificed time with loved ones in the pursuit of a Medicare prescription drug benefit. I would like to thank them all.

On my staff, Dean Rosen, Elizabeth Scanlon, Craig Burton, Rohit Kumar, Eric Ueland, Lee Rawls, Bob Stevenson, Nick Smith, Amy Call, Bill Hoagland, Bill Wichterman, Allison Winnike, Jennifer Romans, Dr. Susan Goelzer, and Tina Thomas deserve recognition.

Senate Finance Committee Majority Staff, Linda Fishman, Mark Hayes, Leah Kegler, Jennifer Bell, Colin Roskey, Ted Totman, Mark Prater, Dianne Howland and Alicia Ziemecki tirelessly worked on this legislation. On the Senate Finance Committee Minority Staff, Liz Fowler, Jonathan Blum, Pat Bousilman, Andy Cohen, Dan Stein, and Jeff Forbes made important contributions to this effort.

House Leadership staff, Darren Wilcox, Brett Shogren, Joe Trauger, Shalla Ross, Andrew Shore, John DeStefano and Sam Geduldig made the way for House passage of the Conference Report. House Ways and Means Majority staff members, John McManus, Madeline Smith, Joel White, Deb Williams, John Kelliher, and Shahira Knight were invaluable to reaching a bipartisan agreement. House Ways and Means staff, Patrick Morrisey, Kathleen Weldon, Chuck Clapton, Pat Ronan, Jeremy Allen, Bill O'Brien, Eugenia Edwards, Dan Brouilliette and Jim Barnette also deserve recognition.

Additionally, Senator Breaux's staff, Sarah Walter, Michelle Easton and Paige Jennings; Senator Nickles' staff, Stacey Hughes and Hazen Marshall; Senator Hatch's staff, Pattie DeLoatch, Bruce Artim, Patricia Knight, Chris Campbell and Dr. Mark Carlson; and Senator Kyl's staff, Don Dempsey, Diane Major, Lisa Wolski and Elizabeth Maier have all been dedicated to this effort. As have Health Education, Labor and Pensions Committee staff Vince Ventimiglia, Steve Irizarry, Kim Monk and Senate Leadership staff Sarah Berk, Mike Solon, Kyle Simmons, Laura Pemberton, Amy Swonger, Malloy McDaniel, Brian Lewis, and Scott Raab.

The work of Members and staff would have been moot without the support of the House and Senate Legislative Counsels, the Congressional Budget Office and the Congressional Research Service. Those deserving recognition include Legislative Counsels, Edward Grossman, John Goetchus, Pierre Poisson, James Scott, and Ruth Ernst; staff of the Congressional Budget Office, Doug Holtz-Eakin, Steve Lieberman, Tom Bradley, Bob Sunshine, David Auerbach, James Baumgardner, Anna Cook, Sandra Christensen, Philip Ellis, Carol Frost, Samuel Kina, Lyle Nelson, Robert Nguyen, Rachel Schmidt, Daniel Wilmoth, Shawn Bishop, Niall Brennan, Julia Christensen, Jeanne De Sa, Brianne Hutchinson, Margaret Nowak, Eric Rollins, Shinobu Suzuki, Christopher Topoleski, and Robert Murphy; and Congressional Research Service staff, Richard Price, Jennifer O'Sullivan, Sibyl Tilson, Hinda Chaikind, James Hahn, Paulette Morgan, Chris Peterson and Susan Thaul.

Finally, we could not have done this without the leadership of President George W. Bush, Secretary Tommy Thompson, Centers for Medicare and Medicaid Services Administrator Tom Scully and Food and Drug Administration Commissioner Mark McClellan. White House staff deserve recognition including Matt Kirk, Keith Hennesy, Doug Badger, Jim Capretta, David Hobbs, Ziad Ojakli, Amy Jensen and Mike Meece. Department of Health and Human Services staff deserving credit include Jennifer Young, Rob Foreman, Amit Sachdev, Dan Troy, Fred Ansell, Elizabeth Dickinson, Michelle Mital, Megan Hauck, Ann Marie-Lynch, Dan Durham, Andrew Cosgrove, Jim Mathews, Michael Reilly, Rob Stewart, Jim Hart, Susan Levy-Bogasky, Gerry Nicholson, Lynn Nonnemaker, Peter Urbanowicz, Donald Kosin, Robert Jaye, Leslie Norwalk, Don Johnson, Susan McNally, Sharman Stephens, John McCoy, David Kreiss, Ira Burney—a technical guru we could not have done without, Richard Foster, Dennis Smith, Charlene Brown,m Sally Burner, Nancy DeLew, Sue Rohan, Mary Ellen Stahlman, Gary Bailey, Tom Hutchinson, Robert Donnelly, Tom Grisson, Liz Richter, Tom Gustafson, Marty Corry, Teresa Houser, Tim Trysla, Teresa Decaro, Greg Savord and Crystal Kuntz.

To all of those I have acknowledged here, I extend my gratitude and the gratitude of the entire United States Senate. You have helped to seize a historic moment, strengthen the Medicare program and improve the lives of millions. Thank you.

The PRESIDING OFFICER. Under the previous order, the hour of 9:15 having arrived, the Senate will proceed to vote on passage of the conference report to accompany H.R. 1.

Mr. FRIST. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 459 Leg.]

YEAS—54

| | | |
|---|---|---|
| Alexander | Craig | Lugar |
| Allard | Crapo | McConnell |
| Allen | DeWine | Miller |
| Baucus | Dole | Murkowski |
| Bennett | Domenici | Nelson (NE) |
| Bond | Dorgan | Roberts |
| Breaux | Enzi | Santorum |
| Brownback | Feinstein | Sessions |
| Bunning | Fitzgerald | Shelby |
| Burns | Frist | Smith |
| Campbell | Grassley | Snowe |
| Carper | Hatch | Specter |
| Chambliss | Hutchison | Stevens |
| Cochran | Inhofe | Talent |
| Coleman | Jeffords | Thomas |
| Collins | Kyl | Voinovich |
| Conrad | Landrieu | Warner |
| Cornyn | Lincoln | Wyden |

NAYS—44

| | | |
|---|---|---|
| Akaka | Byrd | Daschle |
| Bayh | Cantwell | Dayton |
| Biden | Chafee | Dodd |
| Bingaman | Clinton | Durbin |
| Boxer | Corzine | Edwards |

| | | |
|---|---|---|
| Ensign | Kennedy | Nickles |
| Feingold | Kohl | Pryor |
| Graham (FL) | Lautenberg | Reed |
| Graham (SC) | Leahy | Reid |
| Gregg | Levin | Rockefeller |
| Hagel | Lott | Sarbanes |
| Harkin | McCain | Schumer |
| Hollings | Mikulski | Stabenow |
| Inouye | Murray | Sununu |
| Johnson | Nelson (FL) | |

NOT VOTING—2

| | |
|---|---|
| Kerry | Lieberman |

The conference report was agreed to.

Mr. FRIST. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, this is an extraordinary day for seniors and indeed all Americans. The legislation that we just passed is consequential. It is far reaching for every American. It touches all of us in material ways, in meaningful ways. It is epical in the sense that it modernizes Medicare to provide 21st century care for our seniors, with preventive care, with disease management, and especially with prescription drugs. This bill is notable in its 54-to-44 vote in being a bipartisan bill.

For the information of our colleagues, we will have no more rollcall votes. We currently remain in discussion on the appropriations bills. The bill will not be filed until later today in the House of Representatives. I will be in discussion with the Democratic leadership as to what appropriate time we will be addressing those appropriations bills. There will be no more rollcall votes today. I wish everybody a very happy, enjoyable, and especially safe Thanksgiving.

## ADMINISTRATION EFFORTS TO GUT THE ''COMPETITIVE SOURCING'' COMPROMISE

Mrs. MURRAY. Mr. President, I rise to alert my colleagues and the public to a secret effort by the White House to quash the rights and eliminate the jobs of thousands if not millions of Federal workers.

Right now, the White House is actively working behind the scenes—in closed-door meetings—to reverse a bipartisan agreement that House and Senate appropriators reached just 12 days ago. And I regret to say, the President's operatives appear to be succeeding.

I rise to expose these backroom efforts because I believe all taxpayers should be made aware of the White House's efforts.

If the White House prevails in this scheme, Federal jobs could be contracted out even if it costs taxpayers more money, Federal workers will have to compete to keep their jobs with their hands tied behind their backs, and Federal workers will not be able to appeal a decision to contract out their job while private companies can appeal a decision that doesn't go their way.

If the White House gets everything it wants, Federal workers could actually lose their jobs and see that work shipped overseas. This administration has sent enough good American jobs overseas. It is outrageous that this White House is now questioning our agreements which ensure that the work of the American Government is done by workers here in America.

When it comes to allowing Federal workers to compete to keep their jobs, the White House does not want a level playing field. That's why they're engaging in all these backroom deals, and that's why the White House has seen to it that the bipartisan Transportation/Treasury conference report has never been filed.

What kind of Federal workers am I talking about here? I am talking about people who protect our borders and keep terrorists off U.S. soil; people who purchase and maintain equipment for our troops, both here and overseas; people who help us get the Social Security checks, or price support payments, or unemployment insurance payments that we are eligible for; people who make sure our food is safe; and many, many more.

These are hard-working Americans that serve the taxpayer everyday and deserve a fair shot at keeping their jobs. But, as my colleagues know, for some time the Bush administration has been trying to eliminate Federal jobs through what it calls ''competitive sourcing.'' This policy is highly controversial and with good reason.

Just look at what happened to Federal employees of the Defense Finance Accounting Service in Ohio: Their work was contracted out to a company in Dallas, TX in January 2002; then the Pentagon's inspector general found that the move saved no money and actually cost the taxpayer an additional $20 million; and now that work is being shipped to yet another contractor.

So this entire policy of contracting out Federal work needs much more scrutiny and oversight. But instead of allowing a balanced set of rules to be put in place to avoid the situation I just described, the Bush administration is working to undermine it.

Let me review some of the recent events to show why this effort by the White House is so disturbing. On May 29 of this year, the Bush administration issued revisions to OMB's Circular A–76. This is the circular that dictates the terms and conditions through which executive agencies can privatize activities currently performed by Federal employees.

These revisions were highly controversial and were designed in many ways to undermine the efforts of Federal employees to keep their jobs. The fairness of these revisions was questioned, and not just by Democrats and the Federal employee unions. Several House and Senate Republicans identified flaws, including the chairmen of the relevant authorizing committees and subcommittees.

When the Transportation, Treasury and General Government Appropriations bill was brought to the House Floor, Representative VAN HOLLEN offered an amendment to address these flaws. The Van Hollen amendment was adopted on a bipartisan vote of 220–198. The Van Hollen amendment effectively suspended the President's new OMB circular. It required any contracting out activities to be conducted according to the older A–76 rules. Immediately, the White House threatened a veto, so the Senate took a different approach.

During Senate debate, we adopted an amendment offered by Senator MIKULSKI and Senator COLLINS, the authorizing committee chairman. The Senate also adopted an amendment offered by Senator THOMAS and Senator VOINOVICH, the authorizing subcommittee chairman.

The substance of both amendments centered on putting some basic fairness into the contracting out process—especially the process through which Federal employees and private contractors submit bids to retain Federal work and how those bids are compared. In some cases, the amendments reflected language that the President had already signed into law or that the Congress had already adopted on the Department of Defense and Department of Interior appropriations bills.

When the conference committee convened to reconcile these two very different bills, we all recognized that the Van Hollen amendment could not be included in the conference report because of the President veto threat, so we put together a thoughtful and fair compromise. Our compromise was designed to provide a level playing-field between Government contractors and Federal employees. Our compromise ensured fairness in five ways.

First, the compromise ensured that the rules pertaining to all the Federal agencies would be the same. Second, the compromise ensured that the administration would have to demonstrate that there are real cost savings that would result from a privatization effort before Federal employees lost their jobs to the private sector. Third, the compromise ensured that Federal employees—and not just private contractors—would have the opportunity to appeal a potentially wrongful decision to contract out work. Fourth, the compromise ensured that no jobs that are contracted out would be transferred overseas. And fifth, the compromise ensured that Government employees have the opportunity to put together their best and most efficient bid in order to compete to keep their jobs.

In other words, they do not just need to submit a bid based on the way they currently operate. They could propose new efficiencies to make their bid competitive so that all taxpayers benefit.

As I said, this was a thoughtful, carefully crafted compromise in which neither side got everything they wanted.

Mr. President, I ask unanimous consent that at the conclusion of my remarks, the bill language reflecting this bipartisan compromise be printed in the RECORD.

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

(See exhibit 1.)

Mrs. MURRAY. Mr. President, I am placing this language in the RECORD because I have been given reason to believe that some very different language will appear in the omnibus appropriations act, once it is actually filed.

A lot of credit belongs to Chairman ISTOOK, Chairman STEVENS, and Chairman SHELBY for allowing the conferees on the Transportation/Treasury bill to work through the issues and develop our original compromise.

When I left the Capitol building late in the evening on Wednesday, November 12, all the conferees expected that compromise to be incorporated into the conference agreement on the Transportation/Treasury bill that was to be filed the next day. Each and every Senator, Republican and Democrat, that participated in that conference agreement was content with the compromise and signed the conference report. What has happened since then has been one of the most astonishing and deplorable process that I have ever witnessed in my 11 years in the Senate.

When the Bush White House learned that the conferees decided to insist upon a level playing field and some demonstration of taxpayer benefits for Federal jobs to be contracted out, they began a quiet but relentless campaign to the gut the compromise. Despite the fact that the conference committee adjourned well over a week and a half ago, the White House has seen to it that the bipartisan conference agreement has not been filed in either the House or Senate while they work to emasculate the compromise.

The administration's alternative language makes their true motives clear. One language change that the Bush administration has been promoting would effectively eliminate the requirement that the administration demonstrate any cost savings before throwing Federal employees out onto the unemployment line. Indeed, the loophole language they are promoting would allow them to award Federal work to private contractors even if the contractor's costs are considerably higher than letting Federal employees keep the work.

Could it be that we are seeing yet another attempt by the Bush/Cheney administration to use Federally appropriated resources to reward their friends?

I am told that the administration has even voiced reservations about the language in our compromise prohibiting Federal jobs from being shipped overseas. Where does it stop.

This administration seems to see no problem with senior citizens picking up a phone to call Social Security Administration and the phone being answered by a Federal contractor in India—and it could actually cost taxpayers more. That's absurd.

On another provision, the administration is objecting to language allowing Federal employees to put forward their best and most efficient bid in order to keep their jobs. Why? Because the administration doesn't want Federal employees to retain this work no matter what the benefit to the taxpayer.

This is the first year that I have served as the senior Democrat on the Appropriations Subcommittee overseeing these government-wide procurement issues. Over the course of this year, I have been increasingly appalled by the disrespect and disdain that the Bush administration holds for the thousands of Americans that come to work for our Government every day.

As of today, I regret to inform the Senate that the Bush administration appears to be making meaningful progress in its campaign to gut the bipartisan compromise that was agreed to as part of the Transportation/Treasury conference.

My subcommittee staff was present with language that was intended to be included in the omnibus appropriations bill. That language guts our original compromise in three fundamental ways.

First, the rules included in the Transportation/Treasury bill will no longer apply to all Federal agencies. They will only apply to the agencies funded in the Transportation/Treasury bill. So these provisions will apply only to jobs being contracted out in the Department of Transportation, the Treasury Department, the General Services Administration, the Office of Personnel Management, and a few smaller, related agencies.

None of these protections will apply to the hundreds of thousands of employees in the other major Federal civilian agencies, such as the State Department, Commerce Department, Agriculture Department, Labor Department, and the Health and Human Services Department. There will be a distinctly different set of rules for jobs in the Department of the Interior and still different rules for jobs in the Department of Defense.

This makes a sham of our Federal contracting-out policy, but the Bush administration certainly doesn't seem to care.

The first major change is in the scope of the agreement. Instead of applying to all civilian agencies, it would just apply to a few. The second major change undermines the fairness of our agreement. The language being slipped into the omnibus bill would now deny Federal employees the legal standing to appeal a wrongful decision to contract out their jobs. Under current regulations, only contractors can appeal a decision that doesn't go their way. Federal employees who are losing their jobs have no such right.

The administration obviously does not want its decision to ever face a truly fair appeals process.

The third major change effectively eliminates the requirement that there be any meaningful cost savings to the taxpayer before jobs are contracted out. That is deplorable.

No wonder the Bush administration will only push for these changes in back rooms.

I think this result is bad enough. However, I am now being told that the administration has not given up on weakening our provision even further.

As I stand here today, the conference agreement on the omnibus appropriations bill, including the Transportation/Treasury section, has still not been filed. The back-room dealing continues and the basic principle of fairness and respect for our Federal employees continues to be under attack.

I have to say that in my many years on the Appropriations Committee, I have never witnessed such a cynical effort to undermine a fair and equitable conference agreement.

I want to emphasize that it is not the fault of Chairman ISTOOK, Chairman SHELBY, Chairman STEVENS, Chairman YOUNG, or any of the other members of the Transportation/Treasury conference. Those honorable gentlemen reached a deal at the conference room table and, I believe, had every intention of standing by our compromise.

This attack on Federal workers, on fairness and on taxpayers has only one source—the administration of George Bush. It is the White House that is keeping our compromise from being enacted—or even filed—so that the American public can read and understand it.

Next year, I hope that our Transportation/Treasury Subcommittee will hold hearings with the appropriate administration officials so that they can explain to us why it is so important to them to deny Federal employees even the most basic rights when competing to keep their jobs. I hope they will explain why it is important to the Bush administration that different Federal workers be subjected to a hodgepodge of differing rules depending on where they work. Perhaps they could also explain why they think it is appropriate that only contractors—and not Federal employees—have the right to appeal a ''contracting out'' decision.

This issue will not go away. I can guarantee you that efforts will be made on next year's Transportation/Treasury bill to rectify this situation and restore a government-wide policy based on fairness and savings for the taxpayer.

I only hope the Bush administration will have the decency to articulate its position before the public—and on paper—rather than in the back rooms in the dark of night.

EXHIBIT 1

FINAL A–76 COMPROMISE LANGUAGE FOR CONFERENCE REPORT ON THE TRANSPORTATION, TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS ACT

SEC. 7 . (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the

funds appropriated by this or any other Act shall be available to convert to contractor performance an activity or function of an executive agency, on or after the date of enactment of this Act, is performed by more than ten federal employees unless the

(1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and

(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of—

(A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by federal employees; or

(B) $10,000,000.

(b) EXCEPTIONS FOR THE DEPARTMENT OF DEFENSE.—

(1) This section and subsections (a), (b), and (c) of section 2461 of title 10, United States Code do not apply with respect to the performance of a commercial or industrial type function of the Department of Defense that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);

(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.

(3) Treatment of Conversion—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(c) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress (instead of the report required by section 642) a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include—

(1) the total number of competitions completed;

(2) the total number of the competitions announced, together with a list of the activities covered by such competitions;

(3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;

(4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;

(5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;

(6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;

(7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;

(8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by the next report required under this section; and

(9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

(d) The head of an executive agency may not be required, under Office of Management and Budget Circular A–76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conduced in accordance with the circular.

(e) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget circular A–76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(f) For the purposes of subchapter V of chapter 35 of title 31, United States Code—

(1) the person designated to represent employees of the Federal Government in a public-private competition regarding the performance of an executive agency activity or function under Office of Management and Budget Circular A–76—

(A) shall be treated as an interested party on behalf of such employees; and

(B) may submit a protest with respect to such public-private competition on behalf of such employees; and

(2) the Comptroller General shall dispose of such a protest in accordance with the policies and procedures applicable to protests described in section 3551(1) of such title under the procurement protests system provided under such subchapter.

(3) The person designated to represent employees of the Federal Government shall be either:

(A) the agency tender official who submitted the agency competition proposal; or

(B) a single individual appointed by a majority of directly affected employees; or

(C) in the event of a dispute between the two individuals cited in (A) or (B) above, either of said individuals, to be determined by the U.S. General Accounting Office.

(g) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A–76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously been performed by Federal Government employees outside the United States.

(h) In this section, the term ''executive agency'' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

## MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

## APPROPRIATIONS

Mr. BOND. Mr. President, I commend our leader, Senator FRIST, as well as Senator GRASSLEY, Senator BAUCUS, and Senator BREAUX, for the tremendous work in passing this very difficult bill. This is a tremendous milestone. It is great news for the seniors of our Nation.

I also ask and plead with the leadership and the Members to realize that we have not yet finished work on the vitally important appropriations bills. It is extremely important we get these bills passed this year prior to the start of 2004, because there is so much in these bills that must be passed now.

The Appropriations Committees, under the leadership of Chairman STEVENS and Senator BYRD, have worked long and hard to produce these bills. Senator MIKULSKI and I fought to get an increase in veterans health of $2.9 billion. We did that because of the pressing need for our veterans.

Our high-priority veterans are waiting sometimes 6 months just to get an appointment. We need that money in the VA system now, not sometime next year. We are also seeing more and more veterans coming back from the conflicts in Afghanistan and Iraq with serious injuries, long-term injuries, that are going to require veterans health care. We have to come to some agreement to get these bills passed this year, not sometime next year, not January or February or March. We cannot afford to miss a half a year.

In addition to that, the distinguished Senator from Kentucky and the Senator from Connecticut put in the over $1 billion needed for the Help America Vote Act.

Mr. MCCONNELL. Will the Senator yield for a question?

Mr. BOND. I would be happy to yield.

Mr. MCCONNELL. I ask my friend from Missouri, is it not true that if we do not get this omnibus bill funded, the election reform money, which guarantees that next year it will be easier to vote and harder to cheat, as the Senator from Missouri has said on so many occasions, that that money simply will not be there in time to begin this lengthy process of getting the money out to States and getting the reforms made in time for the 2004 election?

Mr. BOND. The distinguished Senator from Kentucky makes a very valid point. The time is now to get that money into the voting system in every

State. We cannot delay any longer. Every week, every month we delay, means less likelihood that we will make the changes that were promised.

This body overwhelmingly adopted the Help America Vote Act which, as Senator MCCONNELL has said, will make it easier to vote and tougher to cheat. This is a commitment we made to the people of America that we would provide these reforms and we would fund them. If this money has to wait until the approval of these appropriations bills sometime in February and getting the money out in March or April, we are not going to get it done in time. They are not going to be able to implement these vitally important reforms in election.

I know many people want to get their voting machines improved. Frankly, I want to see the end of dogs and dead people voting. They are still trying that in St. Louis. There was a nice 180-count indictment issued by the prosecuting attorney in the city of St. Louis, the circuit attorney. That problem needs to stop and the only way we can get it to stop is by funding the Help America Vote Act.

There are many other good arguments, but I urge the leaders to come together to work on this matter. If we could do it by unanimous consent, that would be the best, but if we have to come back the second week in December, we have an obligation to the people of Missouri to do our job. I plead with the leadership to come to some agreement so we can finish these bills.

I yield the floor.

## PASSAGE OF H.R. 1

Mr. SPECTER. Mr. President, I rise to comment briefly about the legislation which we have just passed and also about the omnibus appropriations bill. I compliment all of those involved in this Medicare bill. It is a long time in coming. It will provide much needed relief to America's seniors on the high cost of prescription drugs. It will eliminate the cuts in Medicare which were supposed to take effect in 2004 and 2005. It will, in fact, give the doctors an increase of 1.5 percent.

There was also a mechanism for changing the wage index classification for metropolitan statistical areas, the MSAs, so that the Secretary will have discretion to make that correction.

## OMNIBUS APPROPRIATIONS

Mr. SPECTER. Mr. President, with respect to the omnibus appropriations bill, the Senator from Missouri is correct that we ought to complete it. He has pointed out the importance of having the increases for veterans. I would add to that the importance of increases in the appropriations bill for Labor, Health and Human Services, and Education, where I chair the subcommittee.

I would like to comment briefly on two points in the appropriations bill for my subcommittee. One of them involves the issue of overtime pay. The Senate passed, by a decisive majority, 54 to 45, a prohibition on any expenditures to implement the regulation on overtime which would cut out overtime for many Americans who really need that compensation, especially in light of the fragility of the economy at the present time.

In the House of Representatives, the regulations stood by three votes. Then on a later vote in the House of Representatives, by 18 votes, the House directed the conferees to strike the regulation, not to fund it until September 30, 2004.

When the omnibus was in the final stages of preparation last week, it was apparent to me that any course of action would leave the regulation in effect. If Senator HARKIN and I had insisted on keeping in the Senate amendment striking funding for the regulation, then our appropriations bill was scheduled to be taken out of the omnibus and our three Departments, Health, Education, and Labor, would be funded on a continuing resolution and the regulation would remain in effect. If we agreed to remove the amendment striking the funding, then of course the regulation would go into effect. So either way, the regulation was going to go into effect. By having our bill included in the omnibus, we had $4 billion more for vital programs in NIH, for Head Start, for education, Leave No Child Behind, and workers' safety. So in effect we did not have a Hobson's choice, we had no choice at all. Either way we went, the regulation would remain in effect. If we agreed to take it out so we would be included in the omnibus, then the prohibition against funding would fall. If we were taken out and made a part of the continuing resolution, then the regulation would stay in effect.

It is my hope, when this matter goes forward, the vote in the Senate will remain and the provision remains in the Senate bill to strike the funding for the regulation. So that battle is not over. We intend to continue to fight it right down to the wire, until the omnibus appropriations bill is adopted.

One other point, and I will be brief. I know my other colleagues are waiting to speak. One other point, and that involves the House language to prohibit funding for patents for human tissue. That provision in the appropriations bill for the Departments of Commerce, Justice, and State is going to cause enormous uncertainty. It is very expensive, and a very long process, to have a patent. There will be many people, who will be interested in proceeding with patents, who will not understand the ramifications of the language on human tissue.

I am against human cloning. I made that point emphatically clear in our conference, where I offered an amendment, a motion to strike the House language, which passed on the Senate side 18 to 8, but the House refused to agree. So the language remained in the bill. But I believe the scientific community in America is going to march on the Congress to stop the meddling with scientific research with vague prohibitions which can only lead to grave difficulties and which impede medical science.

One concluding thought. I thank those on the other side of the aisle who, as I understand it, have removed the holds on all of the pending nominees. Just a word in support of Pennsylvania Attorney General Michael Fisher, who is up for confirmation for the Third Circuit. I have known Attorney General Fisher for the better part of three decades. He has an extraordinary record in the Pennsylvania Legislature and as the State attorney general and as candidate for Governor.

I ask unanimous consent that a full statement of his résumé be printed in the RECORD at the conclusion of these remarks.

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

ATTORNEY GENERAL MIKE FISHER

Mike Fisher, the Attorney General of Pennsylvania since 1997, was nominated on May 1, 2003, by President George W. Bush to serve on the Untied States Court of Appeals for the Third Circuit, which covers Delaware, New Jersey, Pennsylvania and the Virgin Islands. The nomination is subject to a majority confirmation by the United States Senate.

Currently serving his second four-year term, Attorney General Fisher is only the third elected Attorney General in State history. His top priorities have included protecting Pennsylvanians from crime, reducing the use of illegal drugs, stopping the tobacco industry from marketing to children, and expanding consumer protection services.

Attorney General Fisher personally argued major cases in State and Federal appellate courts. In March 1998, he sucessfully argued before the United States Supreme Court a precedent-setting case ensuring that paroled criminals meet the conditions of their release.

Attorney General Fisher has worked to improve the quality of justice in Pennsylvania. He is an active member of the Pennsylvania Bar Association (PBA), serving in its House of Delegates and on various committees. Working with the PBA, he has co-sponsored an innovative violence prevention program in Pennsylvania elementary schools called Project PEACE, which helps young people learn to resolve conflicts without violence. Fisher also encourages PBA participation by the attorneys in his office.

Before his election as Attorney General, Mike Fisher served for 22 years in the Pennsylvania General Assembly, serving six years in the State House and 16 years as a member of the State Senate. He was a member of the House and Senate Judiciary Committees, the Chair of the Senate Environmental Resources and Energy Committee and the Majority Whip of the Senate. During his legislative career, he was a leader in criminal and civil justice reform and an architect of many major environmental laws.

Attorney General Fisher began his legal career in his hometown of Pittsburgh following his graduation from Georgetown University in 1966 and Georgetown University Law Center in 1969. As an Assistant District Attorney for Allegheny County, he handled nearly 1,000 cases, including 25 homicides. He

continued to practice law during his career in the General Assembly and was a shareholder or partner in various firms, including Houston Harbaugh, where he practiced from 1984 to 1997. Fisher's law practice included civil ligation, commercial law, estate planning and real estate.

Mike Fisher was Pennsylvania's Republican candidate for Governor in 2002. During a hard-fought campaign, he raised key issues and helped shape current public debate on matters such as Pennsylvania's growing medical malpractice insurance crisis, the need to improve public education and the necessity of property tax reform.

Attorney General Fisher and his wife, Carol, an education consultant, have two children, Michelle, 27 an attorney in Pittsburgh, and Brett, 24, an information technology sales consultant in the Washington, D.C. area.

Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million Americans, including 35 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to create a 21st century Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription drug plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Projected savings from cards for consumers would range between 10 to 25 percent. A $600 subsidy would be applied to the card, offering additional assistance for low-income beneficiaries defined as 160 percent or below the Federal poverty level. Effective January 1, 2006, a new optional Medicare prescription drug benefit would be established under Medicare Part D.

This bill has the potential to make a dramatic difference for millions of Americans living with lower incomes and chronic health care needs. Low-income Medicare beneficiaries, who make up 44 percent of all Medicare beneficiaries, would be provided with prescription drug coverage with minimal out-of-pocket costs. In Pennsylvania, this benefit would be further enhanced by including the Prescription Assistance Contract for the Elderly (PACE) program which will work in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

For medical services, Medicare beneficiaries will have the freedom to remain in traditional fee-for-service Medicare, or enroll in a Health Maintenance Organization (HMO) or a Preferred Provider Organization (PPO), also called Medicare Advantage. These programs offer beneficiaries a wide choice of health care providers, while also coordinating health care effectively, especially for those with multiple chronic conditions. Medicare Advantage health plans would be required to offer at least the standard drug benefit, available through traditional fee-for-service Medicare.

We already know that there are many criticisms directed to this bill at various levels. Many would like to see the prescription drug program cover all of the costs without deductibles and without co-pays. There has been allocated in our budget plan $400 billion for prescription drug coverage. That is, obviously, a very substantial sum of money. There are a variety of formulas which could be worked out to utilize this funding. The current plan, depending upon levels of income has several levels of coverage from a deductible to almost full coverage under a ''catastrophic'' illness. One area of concern is the so-called ''donut hole'' which requires a recipient to pay the entire cost of rug coverage.

As I have reviewed these projections and analyses, it is hard to say where the line ought to be drawn. It is a value judgement as to what deductibles and what the co-pays ought to be and for whom. Though I am seriously troubled by the so-called donut hole, it is calculated to encourage people to take the medical care they really need, and be affordable for those with lower levels of income. Then, when the costs move into the ''catastrophic'' illness range, the plan would pay for nearly all of the medical costs.

I am pleased that this bill contains a number of improvements for the providers of health care to Medicare beneficiaries. Physicians who are scheduled to receive cuts in 2004 and 2005 will receive a 1.5 percent increase over that time. Moreover, rural health care providers will receive much needed increases in Medicare reimbursement through raises to disproportionate share hospitals and standardized amounts, and a decrease in the labor share in the Medicare reimbursement formula. Hospitals across Pennsylvania will benefit from upgrades to the hospital market basket update and increases in the Indirect Medical Education. Furthermore, the bill will provide $900 million for hospitals in metropolitan statistical areas with high labor costs due to their close proximity to urban areas that provide a disproportionately high wage. These hospitals may apply for wage index reclassification for three years starting in 2004.

I would note that I do have concerns with this legislation with regard to oncological Medicare reimbursement and the premium support demonstration project for Medicare Part B coverage. Proposed reductions in the average wholesale price for oncological pharmaceuticals may have a grave effect on oncologists' ability to provide cancer care to Medicare Beneficiaries. Every Medicare beneficiary suffering from cancer should have access to oncologists that they desperately need. I will pay close attention to the effects that this provision has on the quality and availability of cancer care for beneficiaries and oncologists' ability to provide that care. Further, the premium support demonstration project for Medicare Part B premiums poses a concern. Some metropolitan areas may face up to a five percent higher premium for fee-for-service care than neighboring areas. While these provisions remain troublesome, we cannot let the perfect become the enemy of the good with this piece of legislation.

The Medicare Prescription Drug legislation has been worked on for many years. I believe this bill will provide a significant improvement to the vital health care seniors so urgently need. I congratulate the members of the conference committee including Majority Leader FRIST, Senator GRASSLEY, Chairman of the Finance Committee, and the Ranking Member, Senator BAUCUS, for the outstanding work which they have done on an extraordinarily complex bill.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Nevada.

## OMNIBUS APPROPRIATIONS

Mr. REID. Mr. President, people have to understand the process here. We are being criticized for not agreeing to this omnibus bill.

I first of all want the RECORD to be spread with the fact that the chairman of the Appropriations Committee, Senator STEVENS, has worked tirelessly to get this done. He has worked, not a matter of hours or days but weeks. I have spoken to him on this legislation at least 50 times. So my remarks are not in any way to criticize the distinguished President pro tempore of the Senate.

Here it is, November 25, and there have been no final papers filed. What does that mean? There is no final draft of the legislation. Yesterday was the first day that some selected staff people could look at the proposed bill. But even then there were open items. It certainly does not speak well of the legislative branch of Government, as to what is happening.

What do I mean by that? The Congress has agreed on these appropriations bills. The Congress, the House and the Senate, in conference have agreed on these bills. What has been the problem is the interference—and I say that word purposely—by the executive branch of Government.

What are some of the outstanding items in this bill that are causing problems? We have over here 15 holds on this bill if it ever came to me. Regarding the Federal Communications Commission, the House and the Senate have agreed. We had two votes in both bodies, overwhelming votes that determined what would happen. But the White House is not happy with that. They want that changed. They don't want to change it in the normal process, by having hearings, et cetera; they want to do it in the conference—even

though there have been two overwhelming votes in both the House and the Senate.

Another deals with outsourcing. There were overwhelming votes in the House and Senate dealing with outsourcing, privatizing. The White House doesn't like that, so they want it changed.

There were two overwhelming votes dealing with overtime pay. The White House didn't like the votes of the legislative branch of Government, so they, by fiat, want to change that.

Then we have other issues that are troublesome in this bill, not necessarily to this Senator but to other Senators. We have situations dealing with when the ATF destroys records of the instant check on guns. The legislation called for 90 days. It has been shortened to 24 hours.

There is a situation that has come up that has overtones of the abortion debate. This is dealing with cloning, human cloning. We thought it was so simple in the committee that we—people don't want to do cloning of human beings, but there is a protracted dispute as to how to write that.

This bill may pass when we come back in January. But we can come back next week, the week after—it is not going to happen. It is not going to happen, as important as this legislation is. And no one knows the importance of it more than the senior Senator from the State of Connecticut, Mr. DODD, who has fought for this legislation, making sure that we have fair votes across the country, that we have votes using the same pieces of equipment, basically, so we do not have the problems we had in the last Presidential election.

We understand the importance of this legislation, even though it is not the right way to do things. We would rather do appropriations bills. We accept the omnibus strategy. But here it is, November 25, 1 more day from the eve of Thanksgiving and we don't have a final draft of what they want us to approve, in addition to all of the things that have been interfered with by the White House.

I believe in the Constitution of the United States. Here it is. This is the second one. It was given to me by Senator BYRD. I wore the first one out. He gave it to me. I treasure the other one, although it is worn out. I asked him to give me another one.

The Constitution, among other things, calls for three separate but equal branches of Government. This is not a king's court. This is an Executive led by the President and a Congress that has two branches; the House and the Senate. Then, of course, we have the courts. The President can't just override by dictates what we have done here in a legislative body. I know there are crocodile tears being shed by people saying: Why can't we do the omnibus?

These are only some of the reasons. Some people badly want to pass this omnibus bill, and the reason is quite clear. My friends have come to me and indicated that they agreed to do this in the Energy bill, or in this bill we just passed, because they were told they would get things in the omnibus. I understand the legislative process. I have no qualms about arrangements being made. I believe legislation is the art of compromise. That is how we work with different legislation. There is nothing wrong with that. It is not illegal or immoral doing that. But you have to understand that it will be a difficult time.

I favor the omnibus. I want to get it done. I have worked very hard on the omnibus. The Senator from New Mexico and I added money in our energy and water bill. There was no problem at all. We have worked with Senator BYRD and Senator STEVENS to make sure we were part of the deal. We didn't want to interfere with getting a bill. We were told there were certain things that needed to come out of our bill and which could only come from our part of the omnibus. We agreed to do that.

But I repeat: If we only had appropriations matters in this bill, this thing would whip out of here in a second because the chairmen and the ranking members of the appropriations committees are Members of the Senate who are appreciated and respected. They know we wouldn't jam things into those bills. I speak for all of the other 12 appropriations subcommittees on the Democratic side.

But we don't have that situation. We have a situation that these two legislative bodies agreed to overwhelmingly. But the White House won't leave them alone. That is why the House hasn't given us a bill because the White House won't leave them alone. They keep wanting other things stuffed in it.

When we come back in January, I hope this is the first bill we take up. I hope the second bill we take up is the highway bill. I hope we get to this bill. It is too bad we are not going to do something for the months of December and January. It would be better for the American people, and it would be better for my State. But we can't agree to this because we have so many problems dealing with FCC and outsourcing. We swallow hard and take the across-the-board cuts that Senator STEVENS said we have to do. That is fine. There are issues such as dealing with guns, abortion, and overtime. People don't have to come and tell us what is in this bill. We know what is in this bill. We know how important the bill is. Go down 16 blocks from here and tell them to leave us alone and let us go back to the constitutional basis of this country and have a Congress that does what it wants. If the White House doesn't like it, let them veto the bill. But they have no right, in my opinion, to start stuffing things in the bill that the House has overridden—overtime, FCC, outsourcing, for example.

I want this omnibus bill to pass. We want the omnibus bill to pass. But we are not going to under the constraints we have.

Remember, it is November 25 and they still haven't filed the papers. We are asking for unanimous consent to pass this. A legislator would have to have rocks in their head to agree to something they haven't yet read.

The PRESIDING OFFICER. The Senator from New Mexico.

## THE ENERGY BILL

Mr. DOMENICI. Mr. President, I rise to make a few observations for the Senate and for our people regarding the Energy bill that is still pending as we leave.

First, I hope and pray that during the ensuing months without an Energy bill we don't have high spikes in natural gas prices and the people of our country asking: What have we done about it? Our answer is nothing. I hope that doesn't happen. But I think there is a chance it will happen.

I hope there isn't another blackout. I am not sure there will be but there could be. If there is, the American people are going to ask why and we are going to tell them because we did nothing. There was something that was in that bill that would have solved the problem, according to the experts, and the answer will be, if you have a blackout, we did nothing.

For all of those who have projects that will be finished in wind, energy, solar energy, and renewables, they will be looking around and asking: Where is my next project? The answer will be there is no next project. The question will be: Why? And the answer will be because we haven't provided laws that will give to those kinds of projects the tax relief to which they are entitled and which they have been receiving that will keep wind energy going and solar energy going and geothermal energy going.

When these projects stop and thousands of people who are working in the industry have no jobs, when there are no new projects, the question will be asked: What happened? The answer will be simple. We didn't pass an Energy bill. I can go on with many more such as this.

In closing, I hope the Federal Energy Regulatory Commission does not act with the full power that the Federal Energy Regulatory Commission now has. I hope the Federal Energy Regulatory Commission will understand that we were that close to deciding we did not want the Federal Energy Regulatory Commission to have the single and sole power to regulate electricity interests in this country.

But when the first electric-generating plants and generating systems are mandated by the Federal Energy Regulatory Commission to join in organizations that they don't want to be in, and they ask the question why, the answer is going to be clear.

For those Senators who represent them who are upset because their utilities are being forced to conduct themselves in a manner that the Federal

Energy Regulatory Commission determines singularly and solely, the question will be: How can they do that? My friend, Senator CRAIG from Idaho, knows how they can do that. That is their authority without an Energy bill.

We modified that significantly to take into account the differences in our energy system. That is gone. Between now and the time we get a chance to take another look at this bill, perhaps we will have a few of those mandates that will take place. Then people will ask: Why did that happen? I will say: Well, there was nothing we could do about it. The Senate chose not to pass the bill.

I acknowledge that the Senate worked its will at least temporarily in an interim decision, but I am hopeful that in the next couple of months as we watch things get worse in the energy field we will find a way to come back to this bill and pass it substantially as it is, and if some adjustment has to be made, that we will find ways to do that.

It isn't going to be easy. But neither has it ever been easy to pass an energy policy for this country. We have been looking for it, looking at it, staring at it, watching it evolve and doing nothing for many years. We passed a bill about 10 or 12 years ago. But it wasn't like this bill. It wasn't a dramatic change in the policy of our land in terms of energy production and energy efficiency and energy alternatives. Those are temporary—while the winter season hits. Those are out there with no action. They have a big NA after them—no action—or a big nothing done by Congress after each of those episodes that could occur and that will embarrass us because we didn't do our job.

I yield the floor to the distinguished Senator, Mr. CRAIG.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Idaho.

Mr. CRAIG. I thank my colleague, the senior Senator from New Mexico, for yielding.

Let me first and foremost thank him for the phenomenal time and effort he has put into a national energy policy. We missed getting cloture by just two votes. Again, a majority of the Senate supports your work. It is full, it is comprehensive, it is revolutionary in driving this country toward having reliable energy once again.

As the average American got up this morning and flipped the light switch, the lights came on. They expect that to happen every day. What they do not understand is that there is now a risk in our country that might not happen. Why? Because over the last decade we have not allowed the energy sector to reinvest, to reconnect, to change the way it did business in the past. Government regulation, in almost every instance, stood in the way and created a supertest and sometimes total obstruction in the ability of a company to invest back into the energy sector.

During the decade of the 1990s, if you wanted to generate electricity, how did you do it? You used natural gas because the Clean Air Act said you could do it no other way. So we did. But on the other side, we were not producing more natural gas so we used up the surplus capacity, and a couple of months ago gas spiked—at $5 to $6 per million cubic feet—astronomically high. What happened? The chemical companies shut down and sent their work overseas. Of course, those electrical plants that were built in the decade of the 1990s, that were generating electricity, turned off the switches. They could not afford in the marketplace to be able to generate electricity. The bill we have in the Senate today, that we have been denied passage of, would go a long way toward remedying that problem.

If the American consumer believes you pass a bill tomorrow and the light switch is reliable, they better remember its reliability is based on a decade of investment, that it does not happen just overnight. What the Senator from New Mexico was trying to do is drive that investment forward for decades to come to create reliability.

The other morning I woke up to the announcement that the President of the nation of Georgia had just resigned. What does that mean as it relates to our energy? We want the oil out of the Caspian Sea to flow into the energy markets of this world to drive down overall prices and to create availability. Guess what happened. Companies are building a major pipeline across Georgia. They invested heavily through the politics of this President. He resigned. Georgia is almost in revolution. Yet that $2 billion pipeline that is going to start producing about 1.2 million barrels of oil a day into the world market may not produce.

The significance of the resignation of Shevardnadze, the President of Georgia, is quite simple. He, by that action, created some degree of instability in the world oil market. If we are going to continue to rely on our supply flowing from unstable areas of the world, then the American consumer can expect broad fluctuations at the fuel pump—$1.50, $2, $2.50.

The passage of this legislation would stabilize that kind of action. There is no question. If this Senate thinks we will rely on the nation of Georgia or the Caspian Sea or Saudi Arabia or anywhere else to be a reliable, continual supplier of hydrocarbons into our system to fuel the gas pumps and to fuel our chemical industry, they ought to think once again.

The Senate Energy Committee has fought long and hard about this for the last decade. In the last 5 years we have worked hard, in the last 2 years we have kept the lights burning all night to try to craft a bill.

The Senator from New Mexico got that job done. We missed by just two votes in the Senate. It is the President's No. 1 priority. He thinks like we think, if we do not make a major move in the direction of beginning to supply energy to the country once again, the availability of jobs, our cost of living, our lifestyles, our standards, all that we hold dear as Americans will have to change because so much of what we do today is based on a relatively low cost, reliable supply of energy to all sectors, all segments of our economy.

Shame on this Senate because a little bit was not right or a little bit was not right there. Nobody looked down the road. Nobody got out in front of their headlights to try to understand the implication of failing to move a bill that produces long-term investment in the energy sector.

We just passed an important bill for all citizens of our country. It is an expenditure right out of the general fund of the United States Treasury. While we were criticized on the energy side for some of the tax credits in this bill, there is a fundamental difference.

First of all, the industry has to invest in the economy before they can get the credit out. They have to drive investment. They have to go out and borrow money, pour concrete, build transmission lines, and hire people. These jobs, created by the tax incentives and the investment, is somewhere in the neighborhood of 800,000 over the decade into the energy sector.

There is a fundamental difference in the way both bills ought to be looked at. While what we just voted on is an important expenditure for the well-being of our country and the well-being of our citizen's health, this is an investment in the infrastructure, in the stability, in the light switch reliability.

Tomorrow morning, for anyone who is listening, when you flip that switch for just a moment, think, how did the electricity get there? No one really understands it unless you have studied it. Think a little bit about it. When you go to the gas pump and fill up your car, ask yourself why it is a little higher now than it was a year ago. How did it get there? All of that is part of what makes our country work.

The Energy bill we had before the Senate, the Energy bill we must have before the Senate again when we return, will speak to that, speak to it clearly, and say to the American people, the Congress of the United States has looked out into the future, determined what the fundamental needs are, and is creating an environment of investment that creates reliability, that creates conservation, that creates new technologies, that drives the energy sector in the direction of production as well as conservation for the well-being of this country and future generations.

I thank the senior Senator from New Mexico for all the work he has done in 2004. Early on in the next session of the 108th it is incumbent upon this Congress to finish our work on that issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank the distinguished senior Senator from the State of Idaho, Mr. CRAIG,

very much for his comments and his help on the bill thus far.

He made a great point about the future in terms of investment and the infrastructure. This bill would have encouraged that. That is just one item.

There is an ancient piece of legislation called PUCHA, and it would have been repealed. People have been saying it should have been repealed for decades. It makes it hard to get the kind of investment in this industry that most industries can get. We finally repealed it this year. It was stuck in the mud of an ancient bill. We are scared to let money get invested in utilities and utility investment in business.

Everywhere you looked there were things to be fixed. That is why it is a big bill.

There is an issue, Senator, regarding the MTBE, the substance approved by the United States Government as an oxidizer for gasoline. There is no question Senators brought issues with reference to it to the attention of the Senate. We have to take a look at that with the House because the Senate has many Members who are worried about that issue. We know we get no bill or we take that in conference.

I hope the House will look at that in January because when this bill dies, there is no protection for the producers of MTBE. When it dies, the hold harmless clause that we put in—and we can sit around a table and with enough time we can convince almost anyone that they are not so bad as some implied. That is a major issue that will have to be looked at. I thank the White House for helping us on that—or trying to help. There are those who think it is the most important issue around, and I have an empathy with them.

I call on them to apply their thought process in the next few months. The bill will die if we do not inject life into it. With it will go whatever protections the MTBE industry got in this bill. Maybe that is the way we can look at it when we come back and try to figure out a way to take a frontal attack on that issue. Who knows, there might be enough Senators who may want to take a look at that bill just on that point alone.

I close now by thanking Senators who worked very hard on the bill. It is as difficult an undertaking as you can have. I decided to do that after years on the budget, and it is much more difficult than writing the budget for the United States. We did it, but in a sense we are two votes short. The rule is it requires 50 votes for adoption, but we did not have enough for a filibuster, which would require 60.

So with that, I yield the floor and thank the Senate for listening.

The PRESIDING OFFICER. The Senator from Pennsylvania.

## ACCOMPLISHMENTS THIS YEAR

Mr. SANTORUM. Mr. President, I commend the chairman of the Energy Committee and the Senator from Idaho for their fine work on the Energy bill. While we are not going to get that bill passed before we leave for the holiday break, it is something that I know the Senator from New Mexico and the Senator from Idaho and others are going to work on and diligently try to accomplish for the reasons they outlined.

Mr. President, I wanted to run down and put into the RECORD a summary of some of the things we have been able to accomplish this year.

We go out on the accomplishment of delivering to the American people what has been asked now for several years by our seniors, and not just by seniors but by the children of seniors and the grandchildren of seniors, who see the fiscal strains that have been put on their parents and grandparents as a result of, in many cases, not having prescription drug coverage or having prescription drug coverage that is very expensive. Particularly for lower-income individuals, it can be quite a drain on their resources, as well as diminishing their quality of life in their senior years.

So we go out on somewhat of a high here. And as it should be, because we have accomplished a lot this year.

If you go back to when this session started, and the Senator from Tennessee became the majority leader in the transfer of power, if you will, here in the Senate, the first thing he said we would do was clean up the mess that did not get accomplished last year.

We had no budget last year, which meant we could not really pass any of our appropriations bills. The Government spending was locked into last year's level, and we did not have a whole lot of new initiatives at the time, when we were looking at a whole new Department of Homeland Security, a war on terror, and a war on the horizon in Iraq.

There was a lot of uncertainty going on here, and we did not have the fiscal discipline in place to be able to get our fiscal house in order here in Washington, DC.

So the first thing we said we would do was we would clean up that mess and pass the spending bills, and fight off repeated attempts, in almost $1 trillion in amendments on the other side, of adding spending to these appropriations bills and then subsequently to the budget that we passed after we passed the appropriations bills from the prior year.

So we passed the appropriations bills from the prior year. On top of that, we put a new budget in place, and we passed a budget. We thought that was important. Many here thought another budget could never pass in the Senate because of the practice of last year and the difficulty in trying to get a budget into the framework of seeing really slow growth compared to what we have seen in the past 7 or 8 years.

That was accomplished. It was tough, and a lot of tough votes. We were able to stand tall and fight back amendments from many on the other side of the aisle. And some on the other side of the aisle joined us. I thank those Members who have stood up, just as many did today, to what appears to be, from the Democratic leadership point of view, obstructionist tactics that are used here in the Senate on almost—I almost want to go back and maybe reconsider the term ''almost''—I will say almost everything, but it is almost everything to the point where you think it is everything. But we have had some cooperation from many Democrats, and certainly enough to get some of the more important bills that we considered here done. I thank those who participated in that bipartisan cooperation.

We were able to accomplish a budget. We were able to accomplish, as a result of the budget, a tax plan, again, done in a bipartisan way, here on the floor of the Senate. And the effects of that tax plan have been really some of the most startling economic news we have seen in a long time.

Just today, it was announced for the last quarter growth—which was really the first full quarter that was able to get the impact of the President's tax reduction and jobs growth proposal—we saw it now not at 7.2 percent growth but 8.2 percent growth, the best in 20 years in this country. That is an enormous feather in the cap of this administration's policy of stimulating growth in the economy by reducing taxes, particularly targeted at investors and small- and medium-sized businesses.

We were able to accomplish that because we had a budget we passed in the Senate that allowed for a tax reduction that has been put in place. As a result of that tax reduction, which in part was reducing capital gains tax, but also reducing the double taxation of dividends, it has caused a $2 trillion increase—a $2 trillion increase—in valuations of equities in this country. That is an enormous turnaround.

I was watching the news this morning, and someone was talking about their retirement savings having been eroded, and the impact on seniors, and the impact on those who are approaching those seniors years and their ability to have a stable retirement. When you add $2 trillion back to the value of those equities, you do a lot to stabilize people's retirement and give them the peace of mind they are going to be able to get through their retirement years with a fair—hopefully, good—standard of living.

That was as a result of the budget, the leadership here in the Senate and of the Senate Republicans, and ultimately the tax reduction that was passed as a result of the great leadership of our President.

We were able to provide resources for, obviously, the war on terrorism and homeland security, which is a new appropriation. The Senator from Mississippi, Mr. COCHRAN, who chairs that subcommittee, was just in the Chamber. We passed that bill in a timely

fashion so those increased resources would go out to help fight the war on terrorism here at home, as well as, obviously, provide resources we need for our men and women in uniform in Afghanistan and in Iraq to fight the battle on terrorism on the front line over in the Middle East.

Another historic accomplishment of this Congress, which is yet to be fully realized is the AIDS bill. We were able to pass a bill that authorized money for AIDS. And now we are talking about fulfilling that promise to come up with the money that was in the authorization to fund AIDS in Africa and several countries in the Caribbean that are faced with outrageous, just absolutely incredible suffering and the destruction of the family unit in those countries, with infection rates of double digits in the country, with literally millions of people infected with this disease, and transmitting it, in some cases, to their children.

We need to do something about prevention, and we need to do something about the transmission of AIDS. We also need to do something about treatment. With the appropriations bill that is now going to be filed in the House in about an hour and 20 minutes, we will have the President's AIDS proposal fully funded: $2 billion in bilateral aid and $400 million to meet our obligations under the Global Fund—for every $1 we put up, $2 of international funds. And $400 million will meet that obligation as of this time.

We will have in place the commitment we made to those less fortunate in Africa and in the Caribbean for the needed help on prevention, transmission, and treatment of those who are suffering with AIDS or hopefully will not get AIDS. That is a huge accomplishment for this Senate. Candidly, it is probably one of most important things we can do for humanitarian relief. If you look back in history, there really isn't a humanitarian crisis, a health crisis that will match what is going on today in Africa and sub-Saharan Africa. I am glad to be part of a Senate which on a bipartisan fashion stood up and made a huge financial commitment. It is not an easy thing to do in a country that feels a lot of suffering here at home and wants more resources directed here at home, to be able to set that money aside for those who are literally dying by the thousands each day from this pandemic that has struck sub-Saharan Africa. The commitment of the President, followed up by the commitment here in the Congress, is something of which we should all be very proud.

We passed the partial-birth abortion act. We are stopping this horrendous procedure from occurring anymore. There are those who are taking that bill to court. We expected that, but the Senate, with the President's leadership, has been able to pass this bill that is overwhelmingly supported by the American public and is a real step in the right direction. We haven't had very many steps in the right direction with respect to this culture in America. This is a step in the right direction to put some humanity back in the treatment of those innocent children in the womb.

We passed some antispam legislation. As someone who has young kids and is bombarded daily with e-mails of not the most wholesome nature, pop-up ads and the like, this is a tool we can give to authorities to try to limit the amount of that kind of information falling into the homes of families. It is a very serious problem to have this wonderful tool of the Internet be infected by this disease of pornography and violence and other things that are marketed to our children through e-mails and through other types of advertising. The Senate has begun the slow process. It will be a slow process, as maybe it should be, because we have to balance the rights of free speech. Freedom is something that needs to be used responsibly. No one who wrote the founding documents of this country believed freedom to be an absolute. With rights come responsibilities. That freedom, more properly defined as liberty, is a balancing of those rights and responsibilities. We need to seek to do that in the case of the Internet, which I find to be a wonderful tool but at the same time a very dangerous vehicle for information to flow to people who may not handle it well and may be scarred or changed for life as a result of some of this activity.

As I went down that list, I think you can see it is a list of great accomplishment. Yet at the same time there is so much left to be done and so much that was blocked by the other side. So when you hear, as you will hear, the term ''obstructionism'' about things that could have been—the Senator from Idaho is here and talked eloquently about the Energy bill—could have been, should have been, but for the procedural tactics of raising the requirement to pass this bill by 60 votes instead of an up-or-down vote of 51. That is their right to do. But as the Senator from Idaho and the Senator from New Mexico said earlier, it is going to have severe consequences for the long-term future of our economy.

Energy is not something you turn off and on like we do the stove or the thermostat. It is something that takes a long time to be developed. It takes investment, a lot of people, a lot of steps in the process, as it should, even environmental steps in the process to be able to extract the resources we need. We are not moving in that direction. We are not moving toward energy independence. For a country that is as much dependent upon cheap energy as this country and this economy are, to continue to turn a blind eye towards the needs of our economy and the impact on the quality of life here is a very dangerous thing.

Again, I suggest while I understand the rights of the minority, we need to find a way to get the 60 votes necessary to get this piece of legislation moved forward for our children and for our future economy.

We have the omnibus appropriations bill. One of the victories was the AIDS authorization bill we were able to pass. But more candidly, the most important thing is funding that program. There are a whole host of things: An increase in VA health care, which is in the omnibus appropriations bill, an increase in NIH funding is in the Labor-HHS. There are so many important priorities in this bill. Yet we have been told we are just not going to be able to get to it until January. I know the leader later is going to ask unanimous consent to bring up this bill when the House passes it. The House will pass it first, as it does customarily with appropriations bills. They are coming back December 8. We hope to reconvene the Senate shortly thereafter to bring up this legislation so we can pass it here. Why? Well, because if we don't pass it, those increases in VA health care funding, those increases in AIDS funding, those increases in NIH, and a whole host of other things in this bill simply will not go into effect until at the earliest the end of January.

If you are for those increases and you are for the realignment of budget priorities in these appropriations bills, we should take a little time out of our break, come back here for a day. We will have had several weeks to look at this. The bill will be filed in an hour and 10 minutes. Take a look at it. If you have problems with it, you certainly have the opportunity to voice that opposition and vote no. But that is going to be the up-or-down vote we are going to have. We should take the opportunity to come back and do it in a timely fashion. We have been told by the other side they will object to us coming back. So this bill will sit there for roughly 2 months with a variety of different spending priorities many people in this Chamber agree with and that the American public has asked us for, including increased funding for education, DC choice, allowing students in the District of Columbia to have the opportunity to go to the schools of their choosing. All of those things will be in this bill, and we will not be able to have a vote because of the power—it is a wonderful thing when you are the minority—of individual Senators to stop things from happening. That is another obstruction.

We spent 3 days here on the floor of the Senate 10 days ago, 12 days ago, debating the issue of judges. Here we are again. We have six qualified, terrific nominees—not turkeys, not lemons, not neanderthals. Those were words used here in the Senate to refer to distinguished people who are judges in their own right today, justices of supreme courts today, reelected by overwhelming numbers in their home States, gone through the ABA approval process and were considered to be either qualified or unanimously well

qualified. These folks were referred to by the people here in the Senate as neanderthals, as lemons, and in some respects as turkeys.

I can understand where there may be a difference as to the qualifications of these judges. They have every right to suggest their deficiencies. But to use that kind of terminology to describe people of distinguished legal records and careers calls into question the propriety of the Senators' remarks and whether they don't in fact meet the standard of what is referred to as rule XIX. Rule IX refers to a Senator. I don't think we should be able to refer to nominees, who put themselves out to serve the public, in a way that is as callous and cavalier and disrespectful as that.

So I suggest that there is another area of obstructionism—changing the rules. For 214 years, the rule was that every judicial nomination that came to the Senate floor got an up-or-down vote. Since we put the filibuster in place in the early 1930s, 2,370 nominees have come to the floor of the Senate, and zero were filibustered. None. None were blocked.

Now, there are several on that side of the aisle who have taken to putting a chart up that shows 168 to 6, as if 6 is somehow a good number out of 174, when zero out of 2,370 was the norm. I think the Senator from Georgia, SAXBY CHAMBLISS, suggested the right answer to that. They said they were doing a great job in approving them 95 percent of the time. The Senator from Georgia suggested that if he went home to his wife and said he was faithful to her 95 percent of the time, that would not be adequate in her eyes. It is not adequate, when the Constitution requires an up-or-down vote, for those people who believe in the sanctity of that Constitution to say we are upholding it 95 percent of the time. But that is what is happening on judicial nominations, and it is another case of obstruction.

Mr. SESSIONS. Will the Senator yield?

Mr. SANTORUM. I am happy to yield for a question.

Mr. SESSIONS. Mr. President, during the debate on the judges, the opponents, the Democrats who were obstructing an up-or-down vote, asserted that these judges were ''extreme,'' and they repeated that. They used that word repeatedly. They really cited no specific reason they were extreme. I ask the Senator from Pennsylvania, who has been so eloquent on this issue, how he can explain, in light of the groups we now know are opposing these nominees, who are extreme? I think we can demonstrate, without any doubt, these nominees, such as Janice Rogers Brown of California, who got 76 percent of the vote, and Judge Priscilla Owen, who got 84 percent of the vote are not extreme. Is the Senator from Pennsylvania aware that among the groups blocking these judges, and actually appearing to pull the strings of Members of the Senate, they have views on their Web sites?

For example, they say there should be no pornography laws, even child pornography. They oppose any change in abortion whatsoever, even partial-birth abortion, which 84 percent of the American people believe ought to be dealt with. Some of them believe in legalization of drugs. I ask the Senator, who is extreme here?

Mr. SANTORUM. Obviously, by definition, a Republican who gets 76 percent of the vote in a State such as California cannot be extreme. Certainly, if they are extreme in the State of California, the only chance I would think in my mind that someone could get that high a vote is if they were extremely liberal. California, let's admit, is a fairly liberal State. It is a very heavily Democratic State. So for a Republican ''extremist'' in California to get 76 percent of the vote—I don't think Republican extremists can get 76 percent of the vote in a State such as California. I argue that, by definition, that doesn't wash.

The fact is, what the Senator said is true. When you have these organizations who, in these memos that have leaked out, are sort of giving marching orders to Members of the Senate Judiciary Committee on the Democratic side as to what nominees to hold—and some use the term, referring to Miguel Estrada who was nominated for the second highest court in the land—a great rags-to-riches story of a Hispanic immigrant to this country—that he was ''dangerous'' or a ''threat.'' It was one of those terms. He is a real threat. Why? Because he is a superior intellect? Because he has tremendous qualifications? No, because he is Latino and we cannot have that.

Mr. SESSIONS. If the Senator will yield, does he think it is possible they saw Miguel Estrada as a threat because he is a brilliant mainstream lawyer, a Hispanic, who would make a highly qualified appointment to the Supreme Court?

Mr. SANTORUM. That is exactly what they said. He is all of the things I talked about—highly qualified, very bright, and a great story of integrity and overcoming obstacles. It is a compelling story. As a result of his ethnicity, he would be a threat because he might be elevated to a higher court someday.

This is the kind of activity I think really does debase this institution. We should not be involved in blocking people who, 10 years ago, would have probably not even required a vote on the floor of the Senate to be confirmed. We have gotten to the point where the special interests—you hear so much on the Medicare bill about the special interests that were involved in the Medicare bill. I cannot think of any area where special interests have had more impact that has been contrary to the interests of ordinary citizens in America than what we have seen by the special interests on this judge debate. These organizations support the things the Senator from Alabama just talked about. But they were also the ones supporting the complete removal of God, or any hint of God, in the public square, whether it is in Alabama or in the Pledge of Allegiance out in the Ninth Circuit.

The people who made this decision in the Ninth Circuit to strike ''under God'' from the Pledge of Allegiance—do you think they were nominees who would be considered to be out of the mainstream that President Bush supported or nominated? No. They are nominees of, primarily, President Clinton, who views the Constitution as a document to be ignored, a nice little piece of antiquity that they might want to look to see if it suits their purpose. But if it doesn't, we will set it aside and do what we think is right. That is what they do on a regular basis. It is called activist judges who believe we are a government of men, not laws. That is what many on the other side—particularly members of the Judiciary Committee—would love to see. They don't want judges who take the Constitution and the words in it seriously and feel bound by them. So we had a huge debate.

I think it was an important debate for the Senate on that important issue, and a related issue. There are several issues percolating in the Senate to do something about the huge cost of litigation to our economy—whether it is asbestos litigation, on which there have been tens of thousands of cases filed by people who have been ''exposed'' to asbestos. In the vast majority of the cases, the people who have filed the case, the plaintiffs, are not sick and have no indication that they ever will be sick. But they have been ''exposed.'' They are clogging the courts, consuming huge amounts of resources. I hear colleagues on both sides of the aisle complain about manufacturing and the problems with manufacturing. Well, look at the asbestos liability issue, in light of what we are doing to our manufacturers. Manufacturers are going bankrupt—I won't say every day, but every week or two—because of this litigation going on. It is frivolous. The worst part is, I have people in my State who were infected and have asbestosis, mesothelioma. It is a disease that comes with exposure to asbestos, and a respiratory disease. These people are sick and they are dying and they are not able to get a proper jury award. In fact, they have gotten their awards and it is pennies. The money was eaten up by the trial lawyers. It is a horrible situation.

We need to get the people who are sick the compensation for their disease and the treatment for their disease, and those who are not sick, they need to be set aside. If they get sick, they will be compensated, but we are all exposed to lots of dangerous things in our lives. That doesn't mean you can sue for them. Only if it causes you harm should you be able to sue. That is another area again being blocked.

Class action: I see the Senator from Delaware, Mr. CARPER, here, who is one

of the leaders in trying to get a bipartisan bill together. I give him a lot of credit. It is another attempt like we did with Medicare, on which he was involved, trying to bring the sides together. So far, we have not been able to get to that 60-vote threshold. We need to get that bill done to try to help our economy move forward.

Medical liability, frivolous lawsuits: Again, this is plaguing the system when it comes to health care, driving up our cost of pharmaceuticals and of health care. In Pennsylvania, our doctors are moving to Delaware, moving to other places where the laws are more beneficial, where the legislatures have put caps in place to try to limit the amount of cases where runaway juries end up bankrupting the health care system.

That is another area where we have been blocked over and over.

Another area we have been blocked, something on which I have been working, is assistance to the poor. We are trying to pass a charitable giving bill, a bill in which I have been involved. We are talking about giving $10 billion over the next 2 years in incentives for people to give more money to charities at a time when we are still not completely out of the recession that hit us in 2001 and 2002.

Again, we have not been able to get the cooperation necessary to get a bipartisan bill to help social service providers, to help nonprofit groups meet the humanitarian needs of people.

I can go on. The bioshield bill is being blocked. There are a lot of other issues on which we are being obstructed. I wanted to balance the accomplishments we have been able to achieve in the Senate and this Congress, and they have been substantial. We have a lot to go back home and talk about as to what we have been able to work out in a bipartisan way in the Senate, but there is still a lot of work to be done that the House has accomplished and that is sitting in the Senate not being done. It is very important to our economy and very important to the future of our country.

One further comment. The Senator from Idaho has been very patient. I don't know if the Senator from Idaho or the leader is going to propound momentarily a unanimous consent request to vote on a resolution. This is a resolution having to do with marriage.

As my colleagues know, the Massachusetts Supreme Court handed down a 4-to-3 decision that said there is now a constitutional right in the State of Massachusetts to same-sex marriage, which is a remarkable turn of events, within a few months of a case in the U.S. Supreme Court, the Lawrence v. Texas case, which took an act—which for 214 years in many States has been seen as an illegal act and in the vast majority of the American public's mind certainly not a moral act—an act of sodomy and turned that act into a constitutional right. That is what the Court did. It turned this act that is considered by many to be illegal in States and, by most Americans, immoral with no tradition of acceptance of the history of the United States since our Constitution was written. They have taken that act and turned that into a constitutionally protected act.

Many of us said there would be consequences for doing so. When we said that, we thought it would be years down the line. It has not taken years; it has taken a matter of a few months for the Massachusetts Supreme Court to cite Lawrence v. Texas and say now that this is a constitutionally protected right to engage in this behavior, how can we discriminate two people who engage in this behavior under the equal protection clause, to protect everybody equally, how can we discriminate against these people who are practicing a constitutional right under the rights and privileges of marriage? It would be unequal treatment if we didn't treat these constitutionally protected actions the same way as we treat traditional marriage.

I suggested before Lawrence v. Texas was decided that if it was decided in the way it was, we would be heading down a slippery slope. I was wrong. We are heading off a cliff. This is not a slippery slope; it is a cliff.

If we do not respond to this decision, other States will be forced to accept the dictates of the Massachusetts Supreme Court—the court of appeals in this case. A couple can go to Massachusetts, get married, come back to Pennsylvania, Idaho, Alabama, or Delaware, and say: I demand under the full faith and credit clause of the Constitution that you recognize this marriage.

What is the State to do, because the Constitution demands it. So we are in a situation where de facto, we could have that policy of Massachusetts by an unelected group of judges, by a vote of 4 to 3 being forced on the entire country unless we do something in the Senate to act. That is a constitutional amendment which defines marriage and describes it in the Constitution.

I happen to think we put a lot in the Constitution that are building blocks of society, certain freedoms, certain truths that we establish in the Constitution. I cannot imagine anything more fundamentally important to the stability of our society than having stable families in which to raise stable children, and anything that undermines that, to me, undermines the core of who we are as Americans.

We will ask for a vote on the resolution. I ask unanimous consent to print the resolution in the RECORD.

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

RESOLUTION

Whereas, marriage is a fundamental social institution that has been tested and reaffirmed over thousands of years; and

Whereas, historically marriage has been reflected in our law and the law of all jurisdictions in the United States as the union of a man and a woman, and the everyday meaning of marriage and the legal meaning of marriage as defined in Black's Law Dictionary is ''the legal union of a man and a woman as husband and wife;'' and

Whereas, families consisting of the legal union of one man and one woman for the purpose of bearing and raising children remains the basic unit of our civil society; and

Whereas, in *Goodrige v. Department of Public Health,* the Supreme Judicial Court of Massachusetts ruled four to three that the Constitution of the Commonwealth of Massachusetts prohibits the denial of the issuance of marriage licenses to same-sex couples; and

Whereas, the power to regulate marriage lies with the legislature and not with the judiciary and the Constitution of the Commonwealth of Massachusetts specifically states that the judiciary ''shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men;'' and

Whereas, in 1996, Congress overwhelmingly passed, and President Bill Clinton signed, the Defense of Marriage Act under which Congress exercised its rights under the Effects Clause of Article IV Section 1 of the United States Constitution: Now, therefore, be it.

*Resolved,* That it is the Sense of the Senate—

(1) That marriage in the United States shall consist only of the union of one man and one woman; and that same-sex marriage is not a right, fundamental or otherwise, recognized in this country; and that neither the United States Constitution nor any Federal law shall be construed to require that marital status or legal incidents thereof be conferred upon unmarried couples or groups; and

(2) The Defense of Marriage Act is a proper and constitutional exercise of Congress's powers under the Effects Clause of Article IV Section 1 and that no State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such State, territory, possession, or tribe, or a right or claim arising from such relationship.

Mr. SANTORUM. Mr. President, I won't read the whereases, but I will read the resolved clause:

. . . it is the sense of the Senate—

(1) That marriage in the United States shall consist only of the union of one man and one woman; and that same-sex marriage is not a right, fundamental or otherwise, recognized in this country; and that neither the United States Constitution nor any federal law shall be construed to require that marital status or legal incidents thereof be conferred upon unmarried couples or groups. . . .

Second, because we already passed a statute in the Congress that accomplishes pretty much what I just read—it was the Defense of Marriage Act, supported by 90-some Senators and signed by President Clinton. The resolution says:

(2) The Defense of Marriage Act is a proper and constitutional exercise of Congress's powers under the Effects Clause of Article IV Section 1 and that no state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other state, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage

under the laws of such state, territory, possession, or tribe, or a right or claim arising from such relationship.

In other words, we are going to go back on record in the sense of the Senate—as a precursor, hopefully, to a more full debate—that no State should be forced to adopt the marriage laws of another State such as Massachusetts. It should be, as this constitutional amendment which I will advocate will be, the people's decision. If the people decide, by constitutional amendment or otherwise, we are going to change what marriage is, I will fight against that, but I will respect that decision because that is the way we decide issues in America.

What I am concerned about is that the Commonwealth of Massachusetts and their courts are going to create a new constitutional right; they are going to change the Constitution without going through the rigors of what the Constitution demands for change, and that is a constitutional amendment.

So we will take up that mantle. We will do it the right way. We will try to change the Constitution in the way the Framers intended, not the way it has been practiced recently with the courts taking on that mantle themselves and changing it without the benefit of having any public input on the process.

We will offer an amendment to get the constitutional majority that is necessary to pass it, which is two-thirds of the Members of this body and of the House, and then three-quarters of the States through their legislature, representing the people in those States, to ratify this amendment.

I believe this is a fundamentally important issue, one I guarantee we will be discussing at length next year, and I hope the American public will begin to engage in this debate, not as an attempt to stop anybody from doing anything but as an attempt to solidify what is the basic building block of our society.

This is not being done as against anybody. It is being done for something that we know has intrinsic value and good and is a stabilizing and important element of any successful society, and that is healthy stable families in which children can be raised in that environment, so we can raise the leaders of the next generation.

This is an important debate. I hope we will not be obstructed. I hope we will have an opportunity to have a full and fair debate on this issue, that the public will have an opportunity to see the Senate at its finest on an issue that I believe is at the core of who we are as Americans.

I thank the Senator from Idaho for his indulgence in listening to me go on for a while, as well as the Senator from Delaware, although he had to indulge less than the Senator from Idaho.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I was pleased to sit and wait and listen to the Senator from Pennsylvania. I appreciate his leadership and the accomplishments he has helped guide us through this past year in the first session of the 108th Congress. They are many, and there are yet many to accomplish.

Yes, we have had substantial obstructionism on the part of our colleagues on the other side. Why? It is politics to them in many instances. They see those as defining lines between their party and ours. I do not think objecting to or obstructing judges is that. I think it is an act that is unconstitutional in its character. I think it is now broaching on a constitutional crisis in our country to suggest that it takes a supermajority when any one individual decides to confirm or at least bring to the floor the vote of a judge.

## NOVEMBER, NATIONAL ADOPTION MONTH

Mr. CRAIG. Mr. President, the Senator from Pennsylvania was talking about marriage. I come to the floor to talk about families for just a moment, and I will be brief. The Senator from Delaware has been waiting patiently also.

This is November. This is the month of Thanksgiving. Hopefully, most of us are a few days away from the opportunity and the privilege to go home and sit down with our families and have a Thanksgiving dinner of some proportion; most importantly, to be with our families. That is what this country is all about and certainly that is what Thanksgiving is all about.

November is, in my opinion, another special month. For the last month, I have been wearing on my lapel—and I do not have it on today—a little gold word that says ''adopt.'' November is National Adoption Month. I am a proud parent of three adopted children. I am going home to be with them and our grandchildren for Thanksgiving. We have three children and seven grandchildren now. My wife Suzanne and I are tremendously proud of that.

I became a father through adoption. Well, this month of November is National Adoption Month. It is a time to celebrate special families, the families of more than 2 million children in America who are adopted, according to the U.S. Census Bureau. In fact, it is estimated that more than half of the population of America has been personally touched by adoption, whether they are adopted or have adopted or have a close friend or family member who is adopted or has adopted. In other words, many of us have said adoption is a phenomenally viable option when it comes to forming a family.

Just this past week, we added to those numbers. November 22, this last Saturday, was the fourth annual National Adoption Day. On that day, the courtrooms of the Nation, where volunteers helped, over 3,000 children found permanent, loving homes and new parents through the adoption system of our country. Think what this Thanksgiving is going to be to those 3,000 children who will now sit down at a table to have Thanksgiving dinner with new parents who are offering them permanent love and stability in their life.

While this is wonderful news, there are still far too many children waiting for permanent, safe, and loving homes. Our foster care system provides temporary care for more than 580,000 oftentimes abused and neglected children. Among those children, 126,000 of them are waiting for adoption. For anybody who reads this RECORD or might be watching at the moment, listen up. There are 126,000 kids in America who would love to have one of you as their parent, their mother or their father, who would love to have you offer them a permanent and loving home.

Sadly, every year 25,000 children age out of foster care. What does that mean? They become 18 years of age. They leave the foster care system, never having known a permanent, caring, loving home. Foster parents are caring, but it is not permanent and the child knows that. So they graduate out. They are out on the street at 18 years of age. They do not have the stability of the family unit. Seventy-plus percent of them get in trouble. Seventy-plus percent of them just cannot make it because they do not have a mom or a dad to refer back to, to help them, to give them advice. They are on their own at age 18.

I would not have wanted to be on my own at age 18. Now I might have thought I could have been. But how many times did I go home to mom and dad to ask for their advice, their help, or their counsel? Well, innumerable times.

So I hope Americans will consider opening their homes and their hearts to children through adoption. As an adoptive father, I can say this experience has changed my life, and this Thanksgiving I will be reminded of all of that when I hug those seven grandbabies and try to share a little turkey with them.

Last year, President Bush launched the first Federal adoption Website to help families connect while waiting children across America connect to them. The Web site is www.AdoptUSKids.org. Go online. Find out that you, too, can become an adoptive parent.

MARY LANDRIEU, the Senator from Louisiana, and I have cochaired the adoption caucus on the Senate side for a good number of years. We have passed a lot of laws to make adoption easier, we have provided tax credits, we have created incentives, because we want Americans to go after those 126,000 children who are not yet in permanent, loving homes.

We have also created the Congressional Coalition on Adoption. I have just stepped down as its chairman. MARY LANDRIEU has become its chairman. It is now a freestanding 501(c)(3)

institute. We have had tremendous success with people coming in to help us, to advance the cause of adoption. We hope Americans might look at us also because we are willing to help them break down the barriers so that they can build their family through adoption, if that is what they choose.

Later this week, a lot of Americans, as I have said, will be sitting down at that Thanksgiving table. It is a moment to be thankful for so much, but it is a moment also to recognize that you could give a little more. If it is at that time in your life or at that moment when you and your spouse have decided you want a family, here is one way to do it. There are 126,000 children waiting for you to select them and bring them into your heart and your home for a loving, permanent relationship that in every way will be positive.

So November is National Adoption Month. Choose adoption as an option. If I can be of help, call me, or go online and go to www.AdoptUSKids.org. You will have a happier Thanksgiving.

## PROVIDING FOR SINE DIE ADJOURNMENT OF THE SENATE AND THE HOUSE OF REPRESENTATIVES

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 339, the adjournment resolution.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 339) providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. CRAIG. I ask unanimous consent that the amendment at the desk be agreed to, the concurrent resolution, as amended, be agreed to, and the motion to reconsider be laid upon the table.

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

The amendment (No. 2217) was agreed to, as follows:

On page 1, line 2 strike ''That'' and all that follows through page 3, line 3, and insert:

''That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns at the close of business on any day from Monday, November 24, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered by its Majority Leader or his designee, it stand adjourned sine die, or stand recessed or adjourned until such day and time as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first''.

The concurrent resolution (H. Con. Res. 339), as amended, was agreed to, as follows:

H. CON. RES. 339

*Resolved,* That the resolution from the House of Representatives (H. Con. Res. 339) entitled ''Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.'', do pass with the following amendment:

Page 1, line 2, strike out all after ''*concurring),*'' over to and including line 3 on page 3 and insert: *That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns at the close of business on any day from Monday, November 24, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered by its Majority Leader or his designee, it stand adjourned sine die, or stand recessed or adjourned until such day and time as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.*

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, before my friend and colleague from Idaho leaves the floor, I want to express my thanks on behalf of those 100,000-plus kids who are looking for a home of their own with loving, adoptive parents. Thank you, and my friend Senator LANDRIEU, from Louisiana, for the wonderful leadership you have shown. Not just talking the talk but, in the case of your family, very much walking the walk. Happy Thanksgiving to you.

I certainly express that same sentiment to our colleagues here. As we approach Thanksgiving in 2 days, in spite of our problems in this country, we have much for which to be grateful. I very much appreciate the chance to work here with our colleagues, and am grateful for the staffs who help us serve our constituents back home in Delaware and Alabama and Idaho and Rhode Island and other places. We are thankful for the opportunity our constituents have given us this Thanksgiving and every Thanksgiving and throughout the year to serve them.

Mr. CRAIG. I thank my colleague.

## MEDICARE DEBATE

Mr. CARPER. I don't know that Winston Churchill, one of the great leaders of Britain, ever said anything about Thanksgiving or turkeys. He is somebody we like to quote a lot. He used to say there are two things people should not see made: One of them is sausages and the other is laws.

That could be said of the process we have gone through to modernize Medicare and add a prescription drug benefit. It has been a difficult debate and a difficult process.

Churchill also said democracy is the worst form of government devised by wit of man, except for all the rest. That is also something I would have us keep in mind today as we reflect on this bill.

Mr. President, 38 years ago a Democratic President, Lyndon Johnson, signed into law legislation creating Medicare. At the time it was hailed as a milestone. It was hailed as a landmark in providing a benefit to millions of our senior citizens who did not have access to health care, did not have access to hospitals, did not have access to doctors and nursing care. With the signing of that bill by then-President Johnson, the whole world changed for millions of Americans. Today it continues to change for tens of millions more.

Initially, Medicare, when it was fashioned, was designed to provide access to hospitals for people who needed to get hospitalized to get well. They would have that under Medicare if they were old enough. Similarly, if folks were in need of access to a doctor's care or nurse's care, they would have it under that legislation he signed 38 years ago.

There are a number of things that bill did not provide. It did not provide for home health care. It did not provide for outpatient care. It did not provide for access to prescription medicines or enable senior citizens, those Medicare eligible, to obtain help buying prescription medicine. Over time Medicare has evolved, as we know. Over time we have learned. Today we are a lot smarter. We can keep people out of hospitals and treat them on an outpatient basis. We are far wiser about keeping elderly people out of hospitals and, where it makes sense, treating them in their homes.

We also know today, in 2003, we can prevent a lot of illnesses and we can cure a lot of illnesses. We can enhance the quality of life for senior citizens by making sure they have access to prescription medicines we did not have in 1965, and frankly we did not dream about in 1965.

If we were creating Medicare anew today, this week or this month, it would be a no-brainer. We would have home health care. They would provide for outpatient services and care. It would also include a prescription medicine component.

When I was Governor of Delaware and running for the Senate in 2000, I talked a fair amount about prescription drug programs that were proposed in the Congress, principally one proposed by Senator GRAHAM of Florida. I thought and still think it is a better alternative than what we have adopted here today. Adopting this legislation today is an example of not letting the perfect be the enemy of the good.

There are a number of principles I have said for some time we should attempt to adhere to when putting in place a Medicare prescription drug benefit. Foremost among these is that the program should be voluntary. If senior citizens want to participate, they can. If they choose not to participate, then they will not have to.

Second, I suggested that among the principles we adhere to is the prescription drug plan we adopt be one that would provide help where the help was most needed—for folks who do not have any kind of coverage, those whose incomes were very low, and those whose need for prescription drugs is exorbitantly high.

A third principle I have suggested is that middle-income senior citizens should find some help, some benefit from this legislation.

A fourth principle is we should do our very best to harness competition and market forces, to use those market forces to help contain the dramatic increase in the cost of prescription medicines.

A fifth principle is there should be no gaps and no caps in coverage. We violated that principle in this legislation. We violated one other principle that I have talked about as well, and that is this prescription drug plan should be consistent with a balanced budget.

The unfortunate reality is that a plan with no gaps or caps has become inconsistent with a balanced budget. We find ourselves today as a country in a huge hole, a fiscal hole, because of unwise tax cuts, a war on terrorism, a war in Afghanistan, a war in Iraq, and a slumbering economy that is slow to revive. Because of the size of that budget deficit, we are unable to pass the kind of prescription drug program many of us would like, one that has no gaps and one that has no caps.

I have listened with some fascination to the debate here in the Senate and raging across Capitol Hill and across the country. On the one hand, my friends on the left say the bill we have just adopted here is the end of Medicare as we know it. They say that it is not just the nose of the camel under the tent, it is the camel under the tent.

On the other hand, I have heard folks from the far right, who oppose this with equal vehemence, say there are no changes of consequence to Medicare, that it will be more of the same, that we have adopted a new entitlement program with scarce efforts at serious cost containment.

Both those sides cannot be right. My own view is neither of them are right. For folks old enough to participate in this program, they will have a choice. If they want to participate, they can. If they want to pay $35 a month for a premium, they can participate in this program. If they are poor, that $35 per month premium is forgiven. There is a $250 annual deductible that must be satisfied before the Medicare benefit kicks in. For people who are poor, that $250 deductible will be essentially eased or eliminated.

Between $250 and roughly $2,250, Medicare will pay 75 percent of drug costs for most seniors who participate in this program. Medicare will pay more for those who have low-incomes. I am told the average cost of prescription medicines for people 65 and older in this country is roughly $2,200. That would suggest to me that many who elect to participate in this benefit, including middle-income seniors, will benefit from it.

Between $2,250 and $5100 in drug costs, Medicare continues to provide comprehensive coverage for low-income seniors. However, for middle-class seniors, the benefit does not provide any coverage at all for spending in this range. That is the gap in coverage. I wish it was not there. I hope we can eliminate this gap in coverage as we get our fiscal house in order.

Seniors will have a drug discount card as part of this program. The discounts they will receive may be worth 10 to 20 percent. If someone's prescription use is $4,000 or $5,000 a year, they will fall in the coverage gap, but the benefits from that discount card I think will equal or exceed the cost of their premium. But that is still a very modest benefit for those whose drug needs are between $2,250 and $5,000 a year. On the other hand, for people who have very large prescription drug needs, whose costs exceed $5,000, the catastrophic benefit is generous. Medicare pays for 95 percent of those costs that exceed $5,000.

I have heard any number of concerns about this legislation, raised not just by my colleagues but by folks back home in my State of Delaware. They have raised questions and legitimate concerns that we need to address.

First of all, with respect to cost containment, is there enough in this bill? I don't think so. There are those who suggest we ought to consider the approach adopted by the VA, whereby the Veterans' Administration negotiates with the pharmaceutical industry in order to buy pharmaceuticals for veterans at lower prices. I think that is worth exploring.

We made it easier as part of this legislation for generic drugs to be introduced, to come to market. That will increase competition and push down prices. It is a modest effort. We need to do more in this respect.

But what we have with this bill is an opportunity. I sometimes talk about the glass being half full or half empty. I think we have an opportunity—certainly in my State, and I suspect in other States as well—to take this basic Medicare drug benefit and to build on it. Since I know my State best, I will talk about Delaware. We have a number of employers who provide prescription drug coverage to their retirees. Roughly 40 percent of our employers in Delaware today still provide that benefit. Some of those benefits are provided as a result of collective bargaining agreements. I hope we are smart enough—employers, labor unions, and individuals—to find a way to take those same dollars to provide first dollar of coverage for pensioners. I hope we are smart enough to take those same dollars and perhaps use them to pay the $35 monthly Medicare prescription drug premium for retirees; to pay for the $250 deductible; to pay for some of the costs Medicare will not cover between $2,250 and $5,000.

Similarly, I hope we are smart enough in States such as my State, and in cities and counties and those units of government that have in many cases prescription drug benefits for their pensioners, to have the wherewithal and farsightedness to modify the kind of coverage we now provide to build on the basic Medicare prescription plan offered as part of this legislation—maybe to pay for the monthly premium, or all the deductible, or maybe to reduce the size of that donut hole between $2,250 and $5,000.

But we don't just have to hope that will happen. The legislation includes substantial incentives for employers and States to do just what I have described. For every dollar that a private sector employer provides in qualified prescription drug benefits for their pensioners—benefits that will supplement and enhance the Medicare benefit in this bill—they will realize, as a result of the incentives in this legislation, an after-tax benefit of 50 to 70 cents on that dollar.

Is that going to keep all those employers and all those State and local governments in the game? No, it is not. But in the absence of that kind of incentive, what has happened? Well, go back in time. In 1988, roughly two-thirds of the large companies in America provided health benefits for their pensioners and provided a prescription drug benefit for their pensioners—roughly two-thirds, 15 years ago.

Today, in 2003, that two-thirds is no longer two-thirds. Today, roughly one-third of the larger employers in this country provide a prescription drug benefit for their pensioners. Without this legislation we are adopting today, we have seen a reduction almost by half of those employers that provided a benefit 15 years ago. They have stopped doing so today. If you run it out over the next 15 years, if this trend continues, by the time 2018 rolls around you may have no private sector employers providing benefits.

That would be an awful thing. We need to do something about it. We need to provide the kind of incentives to employers we have provided in this legislation. We desperately need private sector employers to continue to provide a prescription drug benefit for their pensioners. We desperately need States and local governments to do the same with respect to their pensioners.

There is another source of prescription drug benefits I want to talk about. When I was privileged to serve as Governor, I signed into law legislation to create the Prescription Assistance Program in our State. For pensioners

whose incomes go up to 200 percent of poverty, they are eligible for a benefit each year that is worth about $2,500. We also have in our State a wonderful program called the Nemours Program, funded by a trust left by a wealthy family a long time ago. They provide help to children in my State and they also provide assistance to senior citizens in my State. The DuPont Children's Hospital in Delaware is funded by that trust. It is a wonderful institution. It helps kids all over the country and literally all over the world. The Nemours Plan also provides a prescription drug plan for senior citizens whose income runs from 0 to 135 percent of poverty. They also provide eyeglasses and dentures.

We have to be smart enough in our little State of Delaware to make sure the dollars being spent for prescription medicines under the Nemours Plan continue to be spent on prescription assistance for Delaware seniors. It does not need to be spent in the same way it is today, because the Medicare plan will cover literally all of the needs for very low income seniors that Nemours currently assists with. But those same dollars can now be used to help fill in the gaps and make more generous the basic Medicare plan, which will be, at best, modest.

Similarly, the millions of dollars the State of Delaware is spending on the prescription assistance plan that we put in place roughly 4 years ago covers between 135 percent and 200 percent of poverty. If we are smart in our State, we will take those same dollars and redirect them—not necessarily to cover the same people; we will not need to. Some of those people who will be advantaged by virtue of the Medicare plan won't need the kind of help they get under the Delaware Prescription Assistance Plan. But we should take those dollars now being spent through that program and redirect them to fill the gaps, to wrap around and supplement the basic Medicare plan.

Similarly, the dollars spent by private sector employers and by public sector employers should no longer, starting in 2006, be spent exactly in the same way, but to the extent that we are smart and wise and farsighted, we can redistribute those dollars to build around the basic Medicare plan, to fill the gaps that obviously are there that need to be filled, and be able to provide in the end a benefit that we can all feel good about and be proud of.

I close by going back to where I started. If we had gathered here this year and had no Medicare Program, and we said let us start from scratch, we would include a prescription drug plan. In 1965, we didn't have the ability to provide prescription medicines for the sort of things we do today. If we had, a lot of people would have lived a lot longer and healthier and better lives.

A couple of days from now, I will be with my own mother. I look forward to being with her, probably the day after Thanksgiving. She is alive today in part because of the love that surrounds her. She is also alive today, I am convinced, because of prescription medicines to which she has access. She has heart failure and takes medicine for that. She has arthritis. She is able to take medicine for the arthritis that afflicts her. My mom suffers from Alzheimer's disease. She and literally hundreds of thousands of Alzheimer's victims around the country today have access to medicines that are beginning to show great promise in making sure that many of us do not end up living the last years of our lives in a state of dementia. She has a better quality of life today because of prescription medicine. She gets a fair amount of help through the employer that my dad used to work for. They provide a prescription benefit and hopefully will continue to do that. We are thankful for the assistance that she gets. For a lot of people in our country who do not have anything at all, who do not have any kind of prescription benefit, who are elderly and need that help, a lot of them will get this help as a result of the legislation we have adopted here today.

Is this legislation all we would like it to be? No. Is this the end of the road? No. Is this a decent beginning? It is. It is incumbent upon Congress to make it a beginning, a good beginning, but not the end.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

## IN MEMORY OF JUDGE RAYMOND J. PETTINE

Mr. REED. Mr. President, on Monday, November 17, 2003, Rhode Island, the judicial community and the entire Nation lost a great jurist, a great scholar and a great man. United States District Court Judge Raymond J. Pettine passed away leaving behind a legacy of protecting individual liberties and constitutional rights.

Judge Pettine was born July 6, 1912 on America Street in Federal Hill, one of the original Italian neighborhoods in Providence; a fitting place to be born for someone who would champion the Constitution that distinguishes this country, America, from so many others. His father was a wigmaker in Italy who immigrated to these shores to find a better life for his family and to make a better America through his labors and his sacrifice. Judge Pettine was sustained and inspired by the example of these good people, his mother and father. The hard work, the great patriotism, the unwavering decency and integrity, the deep respect for both family and faith, the gracious manners of a true gentleman were learned in that home on America Street.

Early in his life, Judge Pettine became fascinated with the law. As a child of eight, he scrawled a note to the Dean of Harvard Law School and asked him, ''What do you have to do to become a lawyer?'' The Dean wrote in reply ''study hard, be a good boy, always have a dream.'' His dream led him to Providence College and Boston University Law school. Soon after graduation, he enlisted in the United States Army and served on active duty from 1941 until 1946 rising to the rank of major. He later would be promoted to colonel in the Judge Advocate General Corps as a reservist.

After his discharge from active duty and a brief stint in private practice, Judge Pettine began a thirteen year career as a prosecutor in Rhode Island Attorney General's office. Like every task he undertook, he brought great passion and determination to his endeavor. He understood that our adversarial system of justice requires that both the prosecution and the defense must bring the full weight of the facts and the law before the jury so that they may have the benefit of principled and forceful advocacy to make their decision. He was a tough and uncompromising prosecutor determined to enforce the law. His repututation and his record as a prosecutor earned him appointment as the Federal Attorney for the District of Rhode Island in 1961. His service as Federal Attorney won him the praise of U.S. Attorney General Robert F. Kennedy as one of the nation's top three federal prosecutors. And, this prosecutorial experience would help make him a superb judge upon his appointment to the bench in 1966 by President Johnson. Judge Pettine recognized that the role of a judge was different than that of a prosecutor or defense counsel. He was charged with something greater than simply enforcing the law or arguing for a client. He was charged with seeking justice, that delicate balance that rests on fairness and a keen understanding of the nature of people as well as the tenets of the law. He was also charged in a special way with defending the Constitution and the Bill of Rights. He recognized that our democracy, in his words, ''prizes itself in having a Bill of Rights designed to protect us against despotic abuse of authority by the government.''

There was no more courageous, forceful or principled defender of the Constitution than Raymond Petinne. In 30 years on the federal bench, and as chief judge from 1971 to 1982, Judge Pettine staunchly guarded the individual rights enshrined in the Constitution. He said the Constitution should be interpreted in ways that ''give meaning to the heart and soul of what it's all about: a kinder, more understanding Constitution that recognizes the disenfranchised, the poor and underprivileged.''

In his rulings, he repeatedly upheld the Bill of Rights' freedom of speech, of religion and of privacy. Judge Pettine stood by the Constitution and showed courage in the face of controversy when he, a practicing Catholic, ruled that municipalities could not erect Christmas nativity scenes on public

land. As he said, ''I firmly believe this with great conviction: that there has to be a separation between church and state—that one of the saving graces of this country is the fact that we are tolerant of all religions, and even of those who have no religion. And, if we start breaking that down, we are going to be in an awful lot of trouble.''

His wise defense of the Constitution and its protections for individual conscience brought him vicious criticism and personal scorn. But, no amount of criticism or scorn could deter him from his obligation to extend the protections of the Constitution to the poor as well as the powerful, to the maligned as well as the popular. Judge Pettine embraced his judicial duties with remarkable dedication. He became a scholar of the law and, in order to insulate himself from even the appearance of partiality, he led a life focused on his family and the lonely rigors of his judicial responsibilities. Nevertheless, he was a dashing figure in Rhode Island. He was a man of great culture and erudition who exuded style and panache.

Judge Raymond J. Pettine has left a remarkable legacy. His wisdom, his integrity and his selfless devotion to the Constitution made him a judge of extraordinary achievement. His love of family and his compassionate regard for all he met made him a man of singular worth. I admire him greatly. He has given us the example and the confidence to carry on. And, his presence will continue to be felt whenever we stand up in defense of the Constitution and in defense of those who are ''disenfranchised, the poor and underprivileged.''

My deepest condolences go out to his family and friends, especially his daughter, Lee Gillespie, his granddaughter, Lauren Gillespie and his son-in-law, Thomas Gillespie.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I note on the floor the distinguished senior Senator from the State of Montana. I am sure he has a desire to speak and fill other appointments. I ask the Senator, without losing my right to the floor, how much time does the Senator desire?

Mr. BAUCUS. My guess is I will consume a maximum of 10 minutes.

Mr. BYRD. Mr. President, I have the floor; do I not?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I yield the floor to the distinguished Senator from Montana not to exceed 10 minutes, with the understanding that upon the completion of his remarks I retain my right to the floor.

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

Mr. BYRD. I ask that the Senator from Montana be limited to 10 minutes.

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

The Senator from Montana.

## THANKING STAFF FOR HARD WORK ON MEDICARE

Mr. BAUCUS. Mr. President, I thank my good friend, Senator BYRD, from West Virginia.

There have been many comments about the Medicare bill that just passed, all the time and effort, and the controversies that surround it. My personal view is that it is not just a good bill, it is a very good bill. It will help senior citizens and a lot of others who need help.

I understand some of the criticisms made against the bill. Some of them are overdrawn and exaggerated. But I understand the core points some critics have made. As with all legislation, and as with all things human, there is some truth all the way around. I pledge my time and effort to work to correct any imperfections in this legislation that may arise. But all in all, we have to make decisions. We have made a decision; and that is, to pass this legislation. I think it is a good bill that is going to help a lot of people. It is a major advance to the Medicare Program.

The Medicare Program, which was enacted 38 years ago and signed by President Lyndon Johnson in Independence, MO, has been a tremendous success for our senior citizens.

This bill represents the next major advancement. It is a new entitlement for prescription drug benefits for our seniors not contained in the original Medicare Act that passed 38 years ago.

There are a lot of people to thank. And my point here today is not to dwell on the bill but, rather, to thank people who worked so hard and who ordinarily receive so little credit.

The most noble human endeavor is service. It is service to church, to community, to family, to spouse, to children. It is service in whatever way makes the most sense for each one of us. There are many people who served to the maximum in helping to write good legislation, and I shall mention their names.

Members of the House and the Senate who serve get the benefit of their names in newspapers and shown on TV—usually it is a benefit, sometimes it is not—but at least they get the credit or the blame. But there are other people who work very hard behind the scenes. That is, the staff, who probably work even harder and receive little or no recognition. So I would like to recognize a few of those people who played a central role in this legislation.

First, my Finance Committee health care team, led by the wonderful Liz Fowler. Those of you who have worked with Liz Fowler know what I mean. There is none better. She works so hard, she is so smart, and she has a wonderful disposition, working hard to help provide better health care for Americans.

Jon Blum. He was the ace numbers guy. I think in many cases he knew more about the various intricacies of this bill than anyone else; an amazing man.

Pat Bousliman, the same. Pat worked extremely hard and knew the ins and outs of all the provider positions—the physician and the hospital payment provisions, and home health care, so well.

Andy Cohen, who worked primarily on Medicaid and low-income issues, and then Dan Stein, who was the clean-up hitter—he is wonderful. And I'd like to recognize former staff persons, who also worked so hard on this bill earlier in the process, but have since taken advantage of different jobs or opportunities.

Kate Kirchgraber. Kate was our Medicaid specialist.

Mike Mongan is a young man, who is brilliant. I was able to hold onto him for one extra year before he finally decided to go off to law school.

Those are the members of my Finance Committee health care team who worked so hard.

Others in the Finance Committee who played a very key role are Jeff Forbes, the minority staff director, and Bill Dauster. Many people know both Jeff and Bill. Bill has served the Senate in many capacities, particularly with his expertise in budget matters and Senate procedures. He was invaluable to me.

Russ Sullivan is my top tax person. And Judy Miller. Judy is from my home State of Montana and, she knows pension issues better than anyone I can think of. The two of them worked on the tax provisions in this bill.

Laura Hayes handled press for the Finance Committee.

Tim Punke is my chief trade person. And Brian Pomper, also on the trade staff. There are several trade provisions that came up in this bill, particularly with respect to reimportation from Canada.

Two of my former staff who left a year ago, or less than that, are wonderful people and also deserve recognition. One is my former staff director, John Angell; and my chief counsel, Mike Evans, who, during the course of this bill, would call in. They would call in and give lots of advice.

Senator GRASSLEY, Chairman of the Committee—his health team have all been wonderful to work with. Linda Fishman, Mark Hayes, Colin Roskey, Jennifer Bell, and Leah Kegler—all working so hard. And others on Senator GRASSLEY's team, Ted Totman, who has been with Senator GRASSLEY for many years, and Kolan Davis, who is Chairman CHUCK GRASSLEY's staff director.

Senator BREAUX, my chief negotiating partner: On his staff is Sarah Walter. Sarah is very smart. She is very good. Michelle Easton and Paige Jennings, both of whom have also contributed significantly to this bill.

Other conference members, of course, were Chairman BILL THOMAS and

Chairman BILLY TAUZIN, Majority Leader FRIST, Speaker HASTERT, and Majority Leader TOM DELAY in the House played a great role. Their staffs did, too, especially John McManus, who is the chief health staff for Chairman THOMAS, and his staff, Madeline Smith, Joel White and Deb Williams; Pat Morrissey, the deputy staff director for Chairman BILLY TAUZIN, and his staff Kathleen Weldon, Chuck Clapton, Pat Ronan and Jeremy Allen; and then for Majority Leader BILL FRIST, Dean Rosen and Liz Scanlon. They are all very able, wonderful, extremely capable people, along with everybody else we have been working with who I have not mentioned by name.

On the administration side, Ziad Ojakli, Matt Kirk, and Jennifer Young all played a significant and helpful role. And Erik Ueland on Senator FRIST's staff played a valuable role in the coordinating between the Congress and the White House.

Senator NICKLES, Senator KYL, Senator HATCH, Congresswoman NANCY JOHNSON, and Congressman MIKE BILIRAKIS and their staffs played an immeasurable part in this bill.

Other conferees who were, unfortunately, excluded from the conference—that is, from the working group—played very strong roles in making this bill better than it otherwise might have been: Minority Leader TOM DASCHLE, Senator ROCKEFELLER, Representatives DINGELL, RANGEL, and BERRY. Believe it or not—they may not believe it—but their views helped to shape this bill; many of the low-income provisions, their views on premium support, and lots of areas where their strong views helped Senator BREAUX and I a lot.

I need to mention, also, the Congressional Budget Office and the House and Senate legislative counsel.

The Congressional Budget Office, CBO, as we call it, is headed up by Douglas Holtz-Eakin. He works long hours, as do his top people, Steve Lieberman and Tom Bradley and all of their staffs. Particularly in the final weeks of this bill, when we had to call up and say: What is the CBO estimate for this change? What is the CBO estimate for that change? It is an almost impossible job because we were asking for lots of different changes.

The House and the Senate legislative counsel—Ed Grossman, John Goetcheus, Pierre Poisson, and Jim Scott. Man, oh, man, did they work hard. They probably put in more hours than anybody else. Once we had the concepts, they would have to write the language. And this world, which is run by deadlines, we were always waiting until the very end, unfortunately, before decided on a direction to write the legislation. And Ruth Ernst, who also worked extremely hard.

On my personal staff: Zak Andersen, who is my chief of staff, in helping to coordinate all these matters; Sara Roberts, my legislative director; Farrar Johnston, my scheduler; and Sara Kuban—all in the office here in Washington, DC. And back home in my State of Montana: Barrett Kaiser, Jim Foley, and Melodee Hanes, working all the time to answer tons of telephone calls about this bill and coordinating all of our outreach and education efforts.

Others here in my DC office, two persons who work in the receptionist area, Megan Mikelsons and Rachel Sherouse answered many telephone calls, too, and handled them all very directly and with great grace and civility.

There are many others, Mr. President, on other staffs who I have not mentioned, but I mention these people because I know personally how hard they have worked. I also mention them as representative of all the other people who have worked for Senators, who have worked in different capacities up here in the Senate and over in the House and who have just poured their hearts out. They are here because they want to do the right thing. They are here because they want to help people. They are here because they want to make this a better place. Essentially, they are here because they are fulfilling a very deep moral obligation. I think all of us have an obligation to make this place as good or even better than we found it, in whatever way we do that. For some of us, it is health care legislation, and for some of us it is some other area.

The names I have mentioned are the names of people who I hope are remembered and recognized. I urge everyone to dwell a little more on the people who really do the work, those I have mentioned, and others who work in similar capacities in this body.

Mr. BAUCUS. Mr. President, 38 years ago, President Lyndon B. Johnson signed the Medicare Act in Independence, MO. For millions of senior and disabled Americans, the enactment of this legislation heralded an era of hope, health, and improved financial security.

At the signing of the Medicare Act, President Johnson said, ''No longer will older American be denied the healing miracle of modern medicine . . . And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country.''

Over the past 4 decades, the Medicare Program has fulfilled President Johnson's vision. Through Medicare, more than 100 million Americans have received the protection of health insurance during their most vulnerable years. Today, Medicare covers more than 35 million seniors and 6 million disabled Americans. Medicare provides assurances to these millions of Americans that their health care needs will be taken care of.

And Medicare has stood the test of time. Thirty-eight years after its enactment, Medicare remains one of the most extraordinary acts of legislation in the history of Congress.

But we all know that the program is not perfect. It is at times slow to adapt to the evolving health care market place. We owe it to our seniors to ensure that Medicare changes with the times and continues to serve their needs today and into the future.

The practice of medicine has changed dramatically over the past 4 decades. Outpatient prescription drugs were not included in Medicare's original benefit package. In 1965, medical care emphasized hospital-based and physician-provided care. Today, medical care increasingly relies on the use of prescription drugs.

As the role and expense of prescription drugs have grown dramatically over the past several decades, the lack of a prescription drug benefit in Medicare has become a critical flaw.

Seniors will spend an estimated $2,300 on average for prescription drugs this year, with almost $1,000 coming directly from their pockets. And while many seniors are fortunate to have coverage through retiree health plans, Medicaid, Medigap, and Medicare managed care plans—over 35 percent of Medicare beneficiaries currently lack any coverage for outpatient prescription drugs.

The lack of prescription drug coverage in Medicare, coupled with the rising cost of prescription drugs, is forcing seniors across America to make difficult choices. In the wealthiest nation in the world, millions of elderly Americans are forced to choose between much-needed prescription drugs and basic necessities of daily living.

Our seniors deserve better.

With the passage of this bill, we have the opportunity to uphold our commitment to America's seniors. With this conference report, we can deliver on our promise to add a prescription drug benefit to Medicare.

This bill provides seniors with much-needed prescription drug coverage and protection against high out-of-pocket drug expenses. Under the new Medicare Part D, seniors will have access to prescription drug insurance for a modest monthly premium. This benefit will provide up-front coverage for prescription drug expenditures up to $2,250 annually, and catastrophic coverage for out-of-pocket spending above $3,600.

For the millions of seniors with lower incomes and costly medical illnesses, this legislation offers the promise of comprehensive affordable prescription drug coverage through Medicare. Low-income seniors, more than a third of all Medicare beneficiaries, will receive generous assistance for all their prescription drug expenses, including premium subsidies, reduced deductibles, and affordable cost-sharing.

And we have designed a bill that will provide coverage in every part of the country. If private drug plans elect not to participate in any area of the country, our seniors will have guaranteed access to a government fallback, backed by the solemn commitment of Medicare.

Thus, all seniors will have equal access to a drug benefit, regardless of whether they choose to join a managed care plan or remain in traditional fee-for-service Medicare.

This legislation offers more than a Medicare prescription drug benefit. It will finally address many of the Medicare reimbursement inequities that have plagued America's rural health care providers. It will increase payments to local physicians and community hospitals to improve health care services throughout the nation. And this legislation will better foster competition between generic and brand-name pharmaceuticals.

I have heard from many of my colleagues regarding some of the imperfections in the conference report—for example, the gap in coverage, the risk that the bill may cause employers to drop retiree drug coverage, the potential state shortfalls in the early years of the benefit, the increased payments to private plans, and the ''premium support'' pilot program.

While I remain committed to addressing these potential shortcomings in the legislation during the upcoming months and years, we must not forget that this bill creates a $400 billion expansion of the Medicare Program. We must not squander this historic opportunity to fundamentally improve the lives of millions of American seniors.

We would not have this opportunity without the fine leadership in the Senate. Senator GRASSLEY, chairman of the Finance Committee, skillfully led this effort through the committee, on the floor, and in the conference negotiations. Majority Leader FRIST was willing to put aside party differences to focus on achieving bipartisan consensus. Senator BREAUX's efforts helped bridge differences. The work of Senator BREAUX, my steadfast partner in the difficult negotiations, as well as Senators SNOWE, HATCH, JEFFORDS, and GRAHAM have greatly contributed to the debate over prescription drugs throughout the past several years.

And Senator KENNEDY, the health care expert of the Senate. For over 25 years, Senator KENNEDY has fought to include prescription drug coverage within Medicare. Through his continued leadership, prescription drugs for seniors are now within reach.

Senator KENNEDY played a key role in getting a good bill out of the Senate and throughout the conference. The 76 votes in the Senate are a tribute to his efforts, and whatever is positive in this bill is due to his dedication and hard work.

And there is much that is positive in this bill, in my view. Of course, the conference report is not perfect by any means. There are elements that I would not include if I were writing this bill on my own. But it is a true compromise. It reflects a near evenly split Congress.

Let us not forget that the original Medicare Act also represented a compromise—in the way that the program was financed through a combination of payroll taxes, premiums, and general revenue, and in the way it was organized, with fiscal intermediaries and carriers making payments for separate Part A and Part B benefits.

In the final analysis, let us not forget why this bill is important. Millions of seniors live today without prescription drug coverage. They live in greater pain, and they live shorter lives, because of that.

With this bill, we will take an important step to make their lives better. To help them live longer, fuller lives. That is our purpose here today, and that is why I support this conference report.

For 38 years, Medicare has been a covenant—a pact between the generations. All Americans—young and old, rich and poor—pay into the promise of Medicare. And the Congress has the responsibility to uphold this commitment to those who benefit from it. As part of that responsibility, we must continue to improve the program and keep up with modern medical care.

This conference report represents an historic opportunity to strengthen Medicare. And as elected officials, we have the obligation to take advantage of this opportunity. Of course, we also have the responsibility to ensure timely implementation in a way that fulfills congressional intent.

On the day of this historic vote, we take a step to ensure that Medicare continues to fulfill Lyndon Johnson's vision. We take an important step to deliver on our promise to America's senior citizens.

I yield the Floor, and I again thank my good friend from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank my friend from Montana, Mr. BAUCUS.

## INVASION OF IRAQ

Mr. President, it was the prophet Hosea who lamented of the ancient Israelites, ''For they have sown the wind, and they shall reap the whirlwind.''

I wonder if it will come to pass that the President's flawed and dangerous doctrine of preemption on which the United States predicated its invasion of Iraq will some day come to be seen as a modern-day parable of Hosea's lament. Could it be that the Bush administration, in its disdain for the rest of the world, elected to sow the wind, and is now reaping the whirlwind?

I ponder this as the casualties in Iraq continue to mount, long past the end of major conflict, and as the vicious attacks against American troops, humanitarian workers, and coalition partners increase in both intensity and sophistication. I ponder this as the number of terrorists attacks bearing the hallmarks of al-Qaida appear to be increasing, not just in Iraq but elsewhere, including Saudi Arabia and, most recently, Turkey. I cannot help but wonder, as I view these developments with a sorrowful heart, what the President has wrought. By failing to win international support for the war in Iraq and by failing to plan effectively for an orderly post-war transition of power, has the President managed to create in Iraq the very situation he was trying to preempt?

The deaths of three more American soldiers in Iraq over the weekend, and the vicious mob attack on the bodies of two of them, are but the latest evidence of a plan gone tragically awry. The death toll of American military personnel in Iraq since the beginning of the war has now reached 427, and it continues to climb on a near-daily basis. Most troubling of all is the fact that more than two-thirds of those soldiers who have died in Iraq have been killed since the end of major combat operations. At that time, 138 American fighting men and women had died in Iraq, at the time major combat operations had ended. Instead of making headway in the effort to stabilize and democratize post-war Iraq, the administration seems to be losing ground. If the current violence cannot be curbed, if Iraq is allowed to descend unchecked into a holy hell of chaos and anarchy, the implications could be catastrophic for the region and the world.

An article earlier this month in the Los Angeles Times, entitled ''Iraq Seen As Al Qaeda's Top Battlefield,'' raises the alarming specter that Iraq already is replacing Afghanistan as the global center of Islamic jihad. According to the article, as many as 2,000 Muslim fighters from a number of countries, including Sudan, Algeria and Afghanistan, may now be operating in Iraq. No one knows the numbers for certain, but foreign Islamic terrorists are suspected in some of the deadliest attacks in Iraq, including the bombing of the United Nations headquarters and the Red Cross offices in Baghdad.

It seems only yesterday that the President and his advisers were warning the United Nations that Saddam Hussein must be disarmed at once, forcibly if necessary, to preempt Iraq from becoming the next front in the war on terrorism. On May 1, when the President announced the end of major combat operations in Iraq as he basked in the glow of a banner that was waving overhead proclaiming ''Mission Accomplished,'' he described the liberation of Iraq as ''a crucial advance in the campaign against terror.''

What a difference a few months makes. Before the war, it was Afghanistan and al-Qaida, not Iraq, that constituted the central front in the war on terror. It was Osama bin Laden, not Saddam Hussein, who orchestrated the September 11 attacks on the United States, and it was Osama bin Laden, not Saddam Hussein, who orchestrated earlier attacks on the USS Cole and on the American embassies in Kenya and Tanzania. It is Osama bin Laden who continues to taunt the United States and who continues to plot against us,

and it is Osama bin Laden who has exhorted his followers to gather in Iraq to avenge the U.S. invasion.

Today, while the Taliban appears to be regrouping in Afghanistan, it is Iraq that has become the most powerful magnet for Islamic terrorists. It is Iraq where these forces have coalesced with Saddam Hussein loyalists to create an increasingly sophisticated and deadly insurgency that has paralyzed U.S. efforts to establish postwar stability. Ironically, Saddam Hussein and his henchmen are more of a threat to the United States today than they were before the war began.

Could it be that the war on Iraq, while succeeding in chasing one monster into hiding, has created another, equally vicious, monster in his stead, a hydra-headed monster that is spewing terrorism against both the Iraqi people and their would-be liberators? Could it be that the convergence of Islamic jihadists and Baathist loyalists constitutes a more potent adversary than we ever imagined possible in Iraq?

Could it be, that instead of providing a ''crucial advance'' in the war on terrorism, as the President suggested, the war on Iraq has provided crucial new resources—money, weapons, and manpower, as well as motivation—for the terrorists themselves? Could it be that instead of curbing terrorism, the war on Iraq has served to fan the flames of terrorism?

If only the President had listened more closely to his father, and his father's advisers. In the 1998 book that he co-authored with former National Security Adviser Brent Scowcroft, A World Transformed, the first President Bush said of his decision to end the 1991 Gulf War without attempting to remove Saddam Hussein from power, ''We would have been forced to occupy Baghdad and, in effect, rule Iraq. . . .there was no viable 'exit strategy' we could see, violating another of our principles.''

The former President Bush and his national security adviser further cautioned that, ''Going in and occupying Iraq, thus unilaterally exceeding the United Nations' mandate, would have destroyed the precedent of international response to aggression that we hoped to establish. Had we gone the invasion route, the United States could conceivably still be an occupying power in a bitterly hostile land. It would have been a dramatically different—and perhaps barren—outcome.''

Clearly the situation in Iraq today is far more difficult and dangerous than the administration ever envisioned or prepared for before the war. Although the President declared an end to major combat operations more than six months ago, U.S. forces in Iraq have recently been forced to resort to a new bombing campaign in and around Baghdad—the most intense aerial offensive since active combat ended—in an effort to stem the insurgency. More than 6 months after the end of major combat operations, the situation in Iraq appears to be deteriorating, not improving.

While the President and his military advisers remain upbeat about Iraq, the top CIA official in Baghdad appears to have reached a far bleaker assessment of the situation on the ground. According to news reports, a top secret CIA analysis from Baghdad has concluded that growing numbers of Iraqi citizens are turning against the American occupation and supporting the insurgents. It may well have been this report that prompted the President to recall the U.S. administrator of the Coalition Provisional Authority to Washington two weeks ago for a hastily arranged round of meetings on accelerating the transition of power to an Iraqi provisional government.

Nothing could do more to spotlight the Administration's abysmal failure to rally international support for the stabilization and rebuilding of Iraq than this frantic scramble to arrange a Hail Mary pass of power from the United States to a provisional government in Iraq that does not yet exist. The Administration has slapped a new deadline on the democratization of Iraq—an Iraqi ''transitional assembly'' is to be in place by June 1—but it has come up with no blueprint as to how that assembly is to function or how it can be expected to stem the violence in Iraq.

Once again, the administration is ignoring the obvious—the United States cannot go it alone in Iraq. The United Nations and NATO need to be brought on board as full partners with a personal stake in the governance, the stabilization, and the future of Iraq.

Every day that the administration continues to spurn the United Nations is another day that the insurgents have to choreograph their attacks in Iraq and further isolate the United States from the rest of the world. The pattern is becoming chillingly clear. Systematic attacks, including those against the United Nations and the Red Cross headquarters in Baghdad and the Italian military police headquarters in Nasiriyah, have succeeded in driving most humanitarian workers from Iraq and have rocked the resolve of U.S. allies to support the Iraq operation. In the wake of the attack on the Italian troops, Japan is reconsidering its offer to send troops to Iraq, and South Korea continues to procrastinate. Help from other countries on which the United States had pinned its hopes, including Turkey and Pakistan, has evaporated.

Even in the streets of London, the seat of government of America's strongest ally, tens of thousands of demonstrators marched on Trafalgar Square last week to protest President Bush's state visit and his policies in Iraq.

Because of the administration's arrogance and impatience, the United States, for better or worse, is the make-or-break force in Iraq. Could it be that the President, in his haste to impose his will on the rest of the world, has inadvertently sown the wind and must now confront the whirlwind?

Mr. President, in a short time—perhaps the next day or so—the Senate will adjourn for the year. We are privileged and blessed to return to the comfort of our families for the holidays. Not all families in America will share in our blessings.

Many families will wait out the holidays in fear and tension as they worry about their loved ones in Iraq and Afghanistan.

We in the Senate will not be here to absorb the news from the battle fronts in Iraq and Afghanistan or to voice our response to these developments. I pray that all will be calm, that ''Silent Night, Holy Night'' will be more than the strain of a familiar carol. But I worry it will not be so, that reality will be harsher than sentimentality.

The war in Iraq is far from over. When we will ultimately be able to declare victory, I do not know and I dare not venture a guess. I only hope that the President will be able to put the good of the Nation over the pride of his administration and accept a helping hand from the United Nations to turn the tide of anarchy in Iraq. Perhaps he may finally be ready to do so. Senior administration officials have been quoted as suggesting that the United States is preparing to seek another U.N. resolution endorsing a new plan for the transition of power in Iraq. I urge the President to do so without delay. This time around, the effort must be genuine, and the resolution must be meaningful.

The facts are stark and hard to accept. If not outright losing, the United States is far from winning the peace in Iraq. Only a significant turnabout in the handling of the security and reconstruction effort, centered on giving the United Nations a leading role in the transition of power, holds any hope for a constructive course change in Iraq. It is a course change that is desperately needed.

As the crisis in Iraq deepens, leadership and statesmanship are urgently needed. I pray that the President, in his desperate quest for a new solution to the chaos in Iraq, will demonstrate those qualities, abandon the U.S. stranglehold on Baghdad, and forge a meaningful partnership with other nations of the world, a partnership with the United Nations so that a swift, orderly, and effective transition of power in Iraq can be achieved and American fighting men and women can come home.

## THE APPROPRIATIONS PROCESS

Mr. BYRD. Mr. President, I join with my colleagues to decry this appropriations process. This process has fallen apart. Despite the hard work of the chairman of the Senate Appropriations Committee and the bipartisan effort of members of the House and Senate Appropriations Committees, the omnibus bill is parked and the engine is cold.

Why? Why is it that funding for 11 of the 15 departments of this Government is two months late? Why is it that the Nation's veterans haven't received funding? Why is it that our classrooms have been relegated to the sidelines? Why is it that health care, law enforcement, education, roads, airports, embassy security, worker safety, job training, farmers are put off, day after day? It is because the White House has insisted on legislating. The White House has overplayed its hand and, as a result, the nation is not served.

On Thursday, the Nation will pause to celebrate Thanksgiving. But our colleagues on the other side of the aisle have decided to deliver to the Senate a turkey of an omnibus appropriations conference report. This turkey is filled with stuffing and all the trimmings, but as we stand here today, few Senators know what it is stuffed with. What we do know is that this turkey has been specially carved for special interests.

The process for producing this bill was just one more example of the President's disrespect for the Congress. My way or the highway is the President's mantra. He expects the Congress to rubber stamp his budget.

Initially, the conference process was bipartisan. Chairman STEVENS wanted to do the right thing in producing this bill. The ranking members on the seven bills were at the table and worked out reasonable compromises on the bills. I commend Chairman TED STEVENS and House Chairman BILL YOUNG for their efforts to get this bill done in a balanced way.

But when it came time to make the tough decisions, the leadership went behind closed doors with the White House at the table. And they served up a turkey.

They took a balanced package that was worked out by the conferees and at the eleventh hour insisted that they had to have it all. They insisted on changes that were not even contemplated when the bills were before the House and Senate.

The President prevailed on every one of his veto threats.

The overtime regulation prohibition, which passed the Senate by vote of 54–45 was dropped; virtually identical Cuba sanction provisions that were in both the House and Senate versions of the Transportation/Treasury bill were dropped, as was a Cuba sanction provision in the Senate version of the Agriculture bill; the 1 year limitation on the FCC media ownership rule was turned into a permanent cap at 39 percent; the House language in the Transportation/Treasury bill, blocking OMB's plan to contract out 400,000 Federal workers was dropped. A bi-partisan compromise that was worked out by the conferees was rejected by the White House and what remains provides so many loopholes for OMB that little protection is provided for Federal workers.

This is a bad bill.

There are many provisions that are controversial and were not considered by the Senate. There is language that permits overfishing in the Northeast fishery. There is language that would mandate that the Justice Department destroy background check records for the purchase of guns within 24 hours of the gun purchase. These matters were never debated in the Senate because the Commerce/Justice/State bill was never debated in the Senate.

There is language in the omnibus conference report that would postpone the country of origin labeling rule that was enacted as part of the Farm bill. Rather than the 1-year delay that was in the House bill, there is a 2-year delay, breaking up the balance of the 2002 Farm bill. The DC portion of the bill contains $13 million for approximately 2,000 school vouchers.

The White House's approach to Congress is my way or the highway. Well, this turkey of a bill wandered out on the highway and the rights of Senators to amend legislation and the needs of the American people got crushed. Whenever the Senate Republican leaders decide to bring this turkey to the floor, the Senate will be asked to vote on this as a conference report, with no opportunity for amendment.

Let's look at the overtime issue. This omnibus appropriations bill does not include the overtime pay protections included in the Senate Labor, Health and Human Services and Education Appropriations bill. That provision was included in that bill on a 54–45 vote in the Senate in early September. The House of Representatives voted to instruct its conferees to the Appropriations bill to accept the Senate language on overtime on a vote of 221–203. Yet the provision was dropped. It should be clear to the working men and women of this country that it was the Republican leadership, at the behest of the White House, that killed the overtime pay protections in the omnibus appropriations bill despite a majority of members in both the House and Senate voting to protect the overtime rights of American workers. As a result, the White House is responsible for the pay cut that 8 million American families will receive this holiday season.

On the overtime issue, Congressman DELAY recently said, ''We're sticking with the White House. We're going to win.'' White House Chief of Staff Andrew Card, on November 19, said the White House was unwilling to move away from its position of supporting the Department of Labor's proposed rules. ''We'll stick to it,'' he said.

In September, Members of Congress received a letter from several women's organizations that concluded, ''Millions of working women would see their pay reduced and their workdays lengthened.'' Well, as far as the President is concerned it is my way or the highway and the Senate effort to protect American workers is gone.

Let's look at the issue of the FCC media ownership cap. The original provision included in both the House and the Senate CJS appropriations bills limited funding to the FCC for purposes of keeping the media ownership cap at 35 percent for the next year. The CJS conferees agreed to the language. But behind closed doors, the White House said no, not good enough.

In a back room, the Republican Leadership and the White House changed the rules. Instead of a 1-year limitation, we now have a ''permanent'' fix, authorizing the cap to be raised to 39 percent. A permanent fix was never debated by the Senate. This is a policy decision that should be made by the authorizing committees. Instead, it was made by a few individuals and that authorizing language is now being placed in an unamendable appropriations conference report.

Let's look at the gun issue. As part of a carefully negotiated agreement, the C/J/S conferees agreed to drop language that was in the House bill that would have reduced the amount of time that the Justice Department has to retain records from gun purchases from ninety days to immediate destruction. Yet, the White House said that was not satisfactory. Agreements reached between House and Senate Republicans and Democrats did not make the cut for this White House.

A significant national security provision, a counter-terrorism initiative approved by Congress, is being gutted by the Bush White House. Under current law, the Bureau of Alcohol, Tobacco, and Firearms can retain for 90 days the records from gun purchases. This 90-day period gives the law enforcement community the opportunity to find individuals purchasing weapons who should simply not have access to those weapons.

It is a simple matter of law enforcement, of national security. Yet the Bush White House wants no 90 day cushion. This administration is insisting that any federal record associated with the purchase of a weapon be destroyed after just 1-day. This current 90 day cushion is not a delay on the actual purchase. This is not a step that infringes on an American's right to bear arms. But it is a better protection for America's national security. At a time when we are in a heightened state of alert for terrorist attack, should we not provide law enforcement with more than 24 hours to examine information on weapons' purchases?

This administration's own Department of Justice's Office of Legal Counsel, in an October 1, 2001, legal opinion concluded that having data from the gun transactions would aid in the investigation of 9/11. But for the White House, it is ''my way or the highway.'' No cushion, no security.

Among the many outrages that I find with the substance of this Omnibus Appropriations bill and the process in which it was developed, centers around the language regarding President Bush's so-called ''competitive sourcing'' initiative. Competitive

sourcing is President Bush's euphemism for throwing a federal employee onto the unemployment line for the purpose of contracting out his work to a private company.

Division F of this Omnibus Appropriations Act includes the Transportation, Treasury and General Government Appropriation bill. One will find in that division of the bill, under section 647, a largely meaningless and ineffective provision, that is rife with loopholes intended to mask the Bush administration's determined efforts to fire thousands of Federal employees. This provision did not always read this way. Indeed, the conferees on the Transportation, Treasury and General Government Appropriations bill met in open conference on Wednesday, November 12th and it was anticipated at that time that the conference agreement would be sent to the President as a freestanding bill. That conference was chaired by the very able Subcommittee Chairman Senator SHELBY. I was a conferee on that bill and I was proud to sign the conference report when it was presented to me.

The original conference agreement reached by the members of that conference committee included a sound and balanced policy to govern the President's competitive sourcing initiative. The conference agreement ensured that there would be uniform rules for this initiative across all agencies of the Federal Government. It also ensured that the administration would have to demonstrate meaningful cost savings to the taxpayers before contracting out federal work. The agreement also provided Federal employees an opportunity to appeal a wrongful contracting out decision. Under the Bush administration's regulations, only private contractors have that appeal right.

That tentative conference agreement was agreed to as a substitute for the amendment that was included in the House bill that was championed by Congressman VAN HOLLEN of Maryland. The Bush White House made it quite clear to all the conferees that inclusion of the Van Hollen amendment would result in the Transportation/Treasury bill being vetoed. Ever since the day that conference concluded—Wednesday, November 12th—we have been waiting for the conference agreement on the Transportation-Treasury bill to be filed in the House and Senate. Instead, what has happened has been an unpardonable effort by the Bush White House to dismantle this agreement as it pertains to its beloved ''competitive sourcing'' initiative.

Why did the administration not like this agreement? Because they do not care to have to demonstrate to the taxpayers that any real dollar savings will accrue to the taxpayer when they contract out Federal jobs; they do not want Federal employees to have the opportunity to appeal a decision that was made in error; and they do not want a consistent and fair policy for all Federal agencies in this area.

Believe it or not, the Bush administration complained about provisions in the Transportation/Treasury conference agreement that were identical to provisions that President Bush had already signed into law on the Department of Defense Appropriations Act and the Department of Interior Appropriations Act. When one now reviews the Omnibus Appropriations bill, it is clear that the Bush administration has succeeded in neutering the original conference agreement in this area. Never mind that we met in full and open conference and agreed to a meaningful set of safeguards. Never mind that all the members of the conference committee signed on to that agreement—Democrats and Republicans alike. This White House would have none of it. So, working through the offices of the House and Senate Republican leadership, the White House has succeeded in undermining the provisions of the original conference agreement to the point of making them largely hollow. The Bush administration has made a sham of our Federal procurement process and a sham of the appropriations process. So, on the Transportation Appropriations bill, once again, the President says it is my way or the highway.

Finally, there is the matter of the across the board cuts. The President set an arbitrary topline for discretionary spending of $786 billion. In the President's view, we can afford $1.7 trillion dollars of tax cuts. When it comes to the Medicare bill, we can afford $12 billion for subsidies for private insurance companies. When it comes to the Energy bill, we can afford over $25 billion of tax cuts and $5 billion of mandatory spending for big energy corporations. But when it comes to discretionary programs that help average Americans, the President insists on cuts. A cut of 0.59 percent would reduce funding for No Child Left Behind programs by over $73 million, resulting in 24,000 fewer kids being served by Title I. Overall, the Title I Education for the Disadvantaged program would be $6 billion below the level authorized by the No Child Left Behind Act that the President signed in January of 2002. Another promise unfulfilled.

The across-the-board cut would reduce Head Start funding by $40 million, resulting in 5,500 fewer kids attending Head Start. Veterans Medical Care funding would be cut by $159 million, resulting in 26,500 fewer veterans receiving medical care or 198,000 veterans not getting the drugs they need.

Funding for highway construction would be cut by over $170 million. Well, for this President, it is my way or the highway, but fewer Americans will be building highways next year.

Chairman STEVENS and I tried very hard to produce thirteen bills to send to the President. I commend him for his effort to do so. But, the process was kidnapped by the White House and the leadership. Instead of sending thirteen fiscally responsible appropriations bills to the President, the House is filing a turkey of a conference report. That is no way to govern. That is no way to serve the American people.

I wish all Senators a happy Thanksgiving and a happy Christmas. I hope they stay safe for the holidays.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, no one deserves that holiday more than Senator BYRD who constantly reminds us of what this wonderful, interesting discussion is all about; that is, stand up for the Constitution, and stand up for the people we represent. To Senator BYRD and his wonderful wife, we wish an especially warm and cheerful holiday.

Mr. BYRD. Mr. President, I thank again the Senator.

## THANKFUL FOR THANKSGIVING

Mr. BYRD. Mr. President, Thanksgiving is one of the oldest and most cherished American holidays. Along with the Fourth of July, it is a uniquely American holiday. I realize that other countries and other cultures have their days of feasts, some even have them in autumn to glorify their harvests. But our Thanksgiving, our day of thanks, is a truly American holiday.

Thanksgiving is our special day. It is a day on which we celebrate with Turkey, gravy, dressing, cranberry sauce. You should try Erma's cranberry sauce; there is nothing like it anywhere in the world, my wife's cranberry sauce. Just to think of it, just to think of it makes me want to go home now—cranberry sauce, sweet potatoes, pumpkin pie.

In addition to being a time of family togetherness, it is a day of football games, parades, and the beginning of the Christmas holiday season—a little early for the Christmas holiday season, but that is the way it is in this commercial time in which we live.

But more profoundly, Thanksgiving is a day for recognizing and celebrating our Pilgrim heritage—that small group of men and women who left their homeland, crossed a mighty ocean, and settled in a wilderness so that they could worship God as they chose.

Before disembarking from the ship that brought them to these lands, the famous and legendary Mayflower, this gallant group of early American settlers gathered together and they formulated a government for their new world—a government based on the principle of self-rule. It was also a government under God—a government under God. The document that created that new government, the Mayflower Compact—we should have on our office walls. That government was anticipated in the Mayflower Compact. The Compact read in part—listen to this:

In the name of God, amen, we whose names are underwritten . . . Having undertaken for the Glory of God . . . Do by these Presents, solemnly and mutually in the Presence of

God and one another, covenant and combine ourselves together into a civil Body Politik. . . .

How about that? That was the Mayflower Compact. A copy of that Compact ought to hang or appear in every schoolroom in this country. I know there are a few atheists around who wouldn't like it, but who cares that they wouldn't like it? Maybe we could win them over.

But let us read it again. How wonderful it is to read that. I wonder if there would be those who would say it is unconstitutional.

In the name of God, amen, we whose names are underwritten . . . Having undertaken for the Glory of God . . . Do by these Presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politik. . . .

A year after landing—after months of privation, suffering, sickness, hunger, and death—these men and women set aside time to express their gratitude to God for protecting them and for the preservation of their community. With all the hardships and agony they had endured, they still set aside time to thank God for being good to them. They were not only men and women of great courage, they were also men and women of great religious faith.

Two years later, in 1623, the Pilgrims made this day of thanks a tradition. The spirit of that glorious day, which some people recognize as the first official Thanksgiving, was captured in a proclamation attributed to Governor Bradford that read:

Inasmuch as the Great Father has given us this year an abundant harvest of Indian corn, wheat, peas, squashes and garden vegetables, and made the forest to abound with game and the sea with fish and clams, and inasmuch as he has . . . spared us from the pestilence and granted us freedom to worship God according to the dictates of our own conscience, now I, your magistrate, do proclaim that all ye Pilgrims, with your wives and ye little ones, do gather at ye meeting house, on ye hill, between the hours of nine and twelve in the daytime on Thursday, November ye 29th, of the year of our Lord one thousand six hundred and twenty-three, and the third year since ye Pilgrims landed on ye Plymouth Rock, there to listen to ye Pastor and render Thanksgiving to ye all Almighty God for all his blessings.

The tradition of Thanksgiving was reaffirmed again during the American Revolution. Following the Battle of Saratoga in October 1777, the American victory that marked a crucial turning point in the war and the birth of our Nation, the Continental Congress approved a resolution designating a day of ''Thanksgiving and praise.'' George Washington wrote of the day set apart—these are words I quoted—the ''day set apart by the honorable Congress for Public Thanksgiving and praise, and duty calling us to devoutly to express our grateful acknowledgments to God for the manifold blessings he has granted us.''

This was George Washington, the Father of our Country, Commander of the American Forces at Valley Forge—George Washington, the first President of the United States, the greatest of all Presidents of these United States—who said in part when he wrote of the ''day set apart by the honorable Congress for public Thanksgiving and praise, and duty calling us devoutly to express our grateful acknowledgments to God for the manifold blessings he has granted us.''

That was George Washington.

Following the Revolutionary War, the Continental Congress used Thanksgiving as the day to give thanks to the proper authority for delivering the country from colonization and war into independence and peace.

These were our forefathers—George Washington, of whom there is none greater—nay, of whom there is no peer, George Washington.

On October 11, 1782, Congress proclaimed ''the twenty-eight day of November next, as a day of solemn THANKSGIVING to God for all his mercies.''

Think about that.

On October 11, 1782, Congress proclaimed ''the twenty-eight day of November next, as a day of solemn THANKSGIVING to God for all his mercies: and they do further recommend to all ranks, to testify to their gratitude to God for his goodness.''

I was just verifying from the fine man who serves on my staff that this coming Thanksgiving again falls on the calendar on the day of November 28.

The proclamation further stated:

It being the indispensable duty of all Nations, not only to offer up their supplication to ALMIGHTY GOD, the giver of all good, for his gracious assistance in a time of distress, but also in a solemn and public manner to give him praise for his goodness in general, and especially for great and signal interpositions of his providence in their behalf.

Following the establishment of the new government of the United States in 1789, President George Washington—he is now President; the President is George Washington—issued the first Presidential proclamation calling for ''a day of public thanksgiving and prayer.'' He asked that the public observe that day ''by acknowledging with grateful heart the many favors of Almighty God.'' At President Washington's request, Americans assembled in churches on the appointed day and thanked God for his blessings.

Then during the awful Civil War, President Abraham Lincoln officially asked the people of the United States to set aside the last Thursday of November ''as a day of Thanksgiving and praise to our beneficent Father.'' ''In the midst of a civil war of unequal magnitude and severity,'' President Lincoln proclaimed in 1863 that the country should take a day to acknowledge the gracious gifts of the most high God.

Perhaps we have noticed that in every one of these proclamations, the Founders and the early leaders of our country carefully and purposefully recognized and thanked Almighty God for their blessings.

So in a year when we have been told that it is wrong to post the Ten Commandments in our courthouses, and we have Federal courts ruling that ours is not a nation under God, it is well to remember how the Founders of our country, going back to the Pilgrims, continuing through the Continental Congresses and our foremost Presidents, Washington and Lincoln, certainly considered ours to be a nation under God.

I was a Member of the House of Representatives on June 7, 1954, when the House voted to insert the words ''under God'' in the Pledge of Allegiance to the flag. That was June 7, 1954. I was a Member of the House 1 year from that day, perhaps just coincidentally, when the House voted to place the words ''In God We Trust'' on the currency and coins of these United States. June 7, 1955, that was.

There you have it, June 7, 1954, the words ''under God'' were inserted in the Pledge of Allegiance, and 1 year from that day, June 7, 1955, they put the words ''In God We Trust'' on the currency of our Nation. And there they are, the words ''In God We Trust.''

Do you think we would ever have to remove those words from the walls of this Chamber? Let us trust in God that those words will never be removed. No court will ever think that it can remove those words ''In God We Trust'' from the walls of this Chamber.

So our foremost Presidents, Washington and Lincoln, certainly considered ours to be a nation under God. They used Thanksgiving, our special unique American holiday, as a time and a reason to celebrate it.

That acknowledgment of divine blessing did not stop there. After 1863, President Lincoln issued other Thanksgiving proclamations, and subsequent Presidents who followed him, followed his example.

In 1905, President Theodore Roosevelt talked of how appropriate it was to ''set apart one day in each year for a special service of thanksgiving to the Almighty.'' ''It is eminently fitting,'' he proclaimed, ''that once a year our people should set apart a day of praise and thanksgiving to the Giver of Good . . . [therefore] I ask that through the land the people gather in their homes and places of worship and in rendering thanks unto the Most High for the manifold blessings of the past year.''

In his 1938 Thanksgiving proclamation, President Franklin Roosevelt noted:

[F]rom the earliest recorded history, Americans have thanked God for their blessings. In our deepest natures, in our very souls, we, like all mankind, since the earliest origin of mankind, turned to God in time of happiness.

Mr. President, 20 years later in his 1958 Thanksgiving proclamation, President Eisenhower proclaimed:

Let us be especially grateful for the religious heritage bequeathed us by our forefathers, as exemplified by the Pilgrims, who,

after the gathering of their first harvest, set apart a special day for rendering thanks to God for the bounties vouchsafed to them.

In 1962, President John F. Kennedy asked the American people to ''renew the spirit of the Pilgrims at the first Thanksgiving, lonely in an inscrutable wilderness, facing the dark unknown with a faith borne of their dedication to God and a fortitude drawn from their sense that all men were brothers.''

So it is that we celebrate this unique American holiday, a day devoted to family, to country, and to God. It always has been. I pray it always will be a day for giving thanks. With the turmoil of the past year with our sons and daughters in far away lands putting their lives in danger, we still have so much for which to be thankful.

We can be thankful for the heritage of liberty bequeathed to us by our ancestors, and from whom we are entrusted to preserve for future generations of Americans.

Mr. President, we can be thankful for the wisdom and the foresight of our Founding Fathers, who bequeathed to us a form of government unique in history, with its three strong pillars of the executive, the legislative, and the judicial branches, each balanced and checked one against the other.

Like President Washington, we can be thankful for ''the many favors of Almighty God,'' including a government that ensures our ''safety and happiness.''

And like President Lincoln, we can be thankful for the ''gracious gifts of the most high God, who, while dealing with us in anger for our sins, hath nevertheless remembered mercy.''

While we are saddened that there are so many young American men and women in uniform who will not be able to be with their families on this holiday, we can be thankful for their courage, thankful for their devotion to duty, and thankful for their service to our Nation.

We can be thankful for those men and women who, 383 years ago, had the courage, the faith, and the devotion to our Almighty Father, to God, to embark upon the most difficult and dangerous of journeys and face the darkest unknown so that they, and we, could worship freely.

We can be thankful, can we not, for the abundance of America, an abundance that includes an annual production of millions of turkeys, millions of pounds of cranberries and sweet potatoes and pumpkins.

Mr. President, a few minutes ago, I read from President Lincoln's Thanksgiving Proclamation of 1863. Permit me now to read from the 1863 White House Thanksgiving menu.

According to that menu, in 1863, the White House Thanksgiving dinner consisted of the following, and I quote from that menu: cranberry juice; that is good. How sweet it is, cranberry juice; roast turkey with dressing, cranberry sauce.

Look at that man sitting in the chair, presiding over this Senate. Yes, there he is. I can see his mouth is watering like mine is watering.

Sweet potatoes, creamed onions. Well, I like my onions just plain onions, not creamed, but that was on the menu. Squash, pumpkin pie, plum pudding, mince pie, milk, and coffee.

Does that sound familiar? How about it, does it sound familiar?

I hope my wife Erma is watching right at this moment because nobody in my lifetime can spread a table like my wife Erma. She has been spreading that table in my family now for 66 years, bless her heart.

But does it sound familiar? It sure sounds like the 2003 Thanksgiving menu at the Byrd house. Boy, how I look forward to it. I am getting hungry just thinking about it. I am getting hungry. How about that?

I hope that my listeners are getting hungry also, and thinking about the first Thanksgiving. The first Thanksgiving, how would you have liked to have sat with that incredible, intrepid band of men and women?

So I am going to stop talking now, and I am going to head home, before too long, for our great Thanksgiving meal with my wife Erma and our two daughters and their husbands and our five grandchildren, their spouses, and our three great-grandchildren and our little dog, Trouble.

Happy Thanksgiving, everyone. Happy Thanksgiving.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I note the presence of Senator BURNS. Does he wish to speak? I will tell him how long I will be.

Mr. BURNS. Mr. President, not on the Senator's time.

Mr. DOMENICI. I will only be a few moments.

## GREAT ECONOMIC NEWS

Mr. DOMENICI. Mr. President, economic growth is the lifeblood of this country. Economic growth is what gets rid of deficits. Economic growth is what provides jobs. Economic growth is what causes investments. Economic growth is what gives our people hope.

Today, the Government just released news that our economy grew by an amazing 8.2 percent last quarter, up from an earlier estimate in the same quarter of 7.2 percent. I recall when it went up 7.2 percent. We were all saying: Isn't that fantastic? The economy is really booming.

Well, it turns out there is always an adjustment, and they made the adjustment. Frequently, the adjustment is downward. In this case, the adjustment is upward, an astronomical 8.2 percent growth in the domestic product last quarter. This means solid growth this quarter and into next year. This is a tribute to the resilient American economy and to the fiscal policy pursued by the President and the Republican-led Congress.

The naysayers, principally on the other side of the aisle, have been the ones saying we should not have cut taxes. Taxes create deficits. On everything the President chose to ask us to do about the economy, the naysayers said no. Now they have been proven wrong and we have the second basket on the floor in the nature of great big positive news for the American people. Even more important to the future, confidence among the American consumers soared. They know when things are going well. It soared to almost 92 percent, a full 10 percent gain from last month. We remember when we were all worried because it was extremely low, into 60 percent, and the naysayers were saying: It is all President Bush's fault. Well, if that is the case—it is 92 percent now—is that not his fault? Or is that not to his credit? I would think so.

The kind of extraordinary growth I am talking about obviously cannot continue for years and years, perhaps not even for very many quarters, but it does mean that most estimates of growth for the year 2004 will prove to be pessimistic. They will prove to be too low. If we get a solid 3 and 3½ percent growth rate each of the next quarters for an entire fiscal year, then we will see Federal deficits also decline. Employment will increase and investments will improve.

The naysayers will be stuck. How will they answer all of these items of good news when employment starts coming down, which it already has but will come down more; when Federal deficits, instead of going up, which they run around talking about President Bush created, when everybody knows we have a huge expenditure for our military men and equipment because we have been in a series of warlike efforts from Somalia, Afghanistan, and now this one. Nothing can be done without spending a lot of money. But we are going to see the deficit come down if these growth numbers continue up.

Yes, we have all been worried about American business: Where is it going? First, we have to give American business some credit. I used the words ''resilient economy'' awhile ago. When there is a recession, American business takes action. They are not like us. They do not have all of the money to spend. They have to stop spending. They have to make changes.

They made changes. Guess what happened. Productivity went through the roof, and enormous productivity growth normally is accompanied by great GDP growth, and that has happened.

Now, it seems as if productivity growth is probably going to stop. They have taken about as much as they can out of their businesses, and now we are going to have the growth that will follow it, the job increases that will follow it, and the deficits that will diminish.

I close where I started, by saying it seems as if good news comes in bushels.

Good news comes not one thing at a time but two things and maybe three at a time, and the two pieces of great news are before us today. Let us hope there is more to come because, clearly, we are on the path upward.

I yield the floor.

## CAN-SPAM ACT OF 2003

Mr. BURNS. Mr. President, as my good friend from New Mexico was pointing out some of the good news, I have some more. I ask that the Chair lay before the Senate a message from the House on S. 877.

The PRESIDING OFFICER laid before the Senate the following message:

S. 877

*Resolved*, That the bill from the Senate (S. 877) entitled ''An Act to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN-SPAM Act of 2003''.*

***SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.***

*(a) FINDINGS.—The Congress finds the following:*

*(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.*

*(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.*

*(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.*

*(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.*

*(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.*

*(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.*

*(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.*

*(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.*

*(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of commercial electronic mail from such senders in the future, other senders provide no such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.*

*(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.*

*(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.*

*(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.*

*(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—*

*(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;*

*(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and*

*(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.*

***SEC. 3. DEFINITIONS.***

*In this Act:*

*(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that—*

*(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and*

*(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.*

*(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—*

*(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).*

*(B) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term ''commercial electronic mail message'' does not include a transactional or relationship message.*

*(C) REGULATIONS REGARDING PRIMARY PURPOSE.—Not later than 12 months after the date of the enactment of this Act, the Commission shall issue regulations pursuant to section 13 further defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.*

*(D) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.*

*(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.*

*(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.*

*(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), whether or not displayed, to which an electronic mail message can be sent or delivered.*

*(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to a unique electronic mail address.*

*(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).*

*(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.*

*(9) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than 1 person may be considered to have initiated a message.*

*(10) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 note).*

*(11) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).*

*(12) PROCURE.—The term ''procure'', when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.*

*(13) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.*

*(14) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.*

*(15) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.*

*(16) SENDER.—*

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''sender'' means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If an entity operates through separate lines of business or divisions and holds itself out to the recipient of the message, in complying with the requirement under section 5(a)(5)(B), as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this Act.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—

(A) IN GENERAL.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms or features of;

(II) notification of a change in the recipient's standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) MODIFICATION OF DEFINITION.—The Commission by regulation pursuant to section 13 may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this Act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this Act.

**SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.**

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

**''§ 1037. Fraud and related activity in connection with electronic mail**

''(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

''(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

''(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

''(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

''(4) registers, using information that materially falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

''(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

''(b) PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

''(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

''(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

''(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

''(A) the offense is an offense under subsection (a)(1);

''(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

''(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

''(D) the offense caused loss to 1 or more persons aggregating $5,000 or more in value during any 1-year period;

''(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

''(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

''(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

''(c) FORFEITURE.—

''(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

''(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

''(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

''(d) DEFINITIONS.—In this section:

''(1) LOSS.—The term 'loss' has the meaning given that term in section 1030(e) of this title.

''(2) MATERIALLY.—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially misleading if it is altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

''(3) MULTIPLE.—The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

''(4) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''Sec.

''1037. Fraud and related activity in connection with electronic mail.''.

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

**SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.**

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

*(B) a ''from'' line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and*

*(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.*

*(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria are used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).*

*(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN COMMERCIAL ELECTRONIC MAIL.—*

*(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—*

*(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and*

*(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.*

*(B) MORE DETAILED OPTIONS POSSIBLE.—The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.*

*(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.*

*(4) PROHIBITION OF TRANSMISSION OF COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—*

*(A) IN GENERAL.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—*

*(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;*

*(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;*

*(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or*

*(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law, except where the recipient has given express consent.*

*(B) OPT BACK IN.—A prohibition in clause (i), (ii), or (iii) of subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).*

*(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN COMMERCIAL ELECTRONIC MAIL.—*

*(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—*

*(i) clear and conspicuous identification that the message is an advertisement or solicitation;*

*(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and*

*(iii) a valid physical postal address of the sender.*

*(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail if the recipient has given prior affirmative consent to receipt of the message.*

*(6) SUBSEQUENT AFFIRMATIVE CONSENT.—The prohibitions in subparagraphs (A), (B), and (C) do not apply to the initiation of transmission of commercial electronic mail to a recipient who, subsequent to a request using a mechanism provided pursuant to paragraph (3) not to receive commercial electronic mail messages from the sender, has granted affirmative consent to the sender to receive such messages.*

*(7) MATERIALLY.—For purposes of paragraph (1)(A), header information shall be considered to be materially misleading if it is altered or concealed in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to the person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.*

*(b) AGGRAVATED VIOLATIONS RELATING TO COMMERCIAL ELECTRONIC MAIL.—*

*(1) ADDRESS HARVESTING AND DICTIONARY ATTACKS.—*

*(A) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—*

*(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or*

*(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.*

*(B) DISCLAIMER.—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.*

*(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).*

*(3) RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.—It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.*

*(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by rule, pursuant to section 13—*

*(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—*

*(A) the purposes of subsection (a);*

*(B) the interests of recipients of commercial electronic mail; and*

*(C) the burdens imposed on senders of lawful commercial electronic mail; and*

*(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).*

*(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—*

*(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—*

*(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or*

*(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—*

*(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;*

*(ii) the information required to be included in the message pursuant to subsection (a)(5); and*

*(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.*

*(2) PRIOR AFFIRMATIVE CONSENT.—Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.*

*(3) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.*

*(4) DEFINITION.—In this subsection, the term ''sexually oriented material'' means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the*

whole, the remainder of which is not primarily devoted to sexual matters.

(4) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

**SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.**

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1) if that person—

(1) knows, or should have known in ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the ''third party'') that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (f) and (g) of section 7 do not apply to violations of this section.

(d) SAVINGS PROVISION.—Subject to section 7(f)(7), nothing in this section may be construed to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.

**SEC. 7. ENFORCEMENT GENERALLY.**

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this Act shall be exercised by the Commission in accordance with subsection (a);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) AVAILABILITY OF CEASE-AND-DESIST ORDERS AND INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in any proceeding or action pursuant to subsection (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 5(a)(2), subparagraph (B) or (C) of section 5(a)(4), or section 5(b)(1)(A), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 5(a), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 5(a) of this Act, the attorney general, official, or agency of the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (2).

(2) AVAILABILITY OF INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be not required to allege or prove the state of mind required by section 5(a)(2), subparagraph (B) or (C) of section 5(a)(4), or section 5(b)(1)(A).

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to $250.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $2,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 5(b).

(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with such practices and procedures.

(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State may be awarded the costs of the action and reasonable attorney fees as determined by the court.

(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(6) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(8) REQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.—Except as provided in subsections (a)(2), (a)(4)(B), (a)(4)(C), (b)(1), and (d) of section 5, and paragraph (2) of this subsection, in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this Act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(g) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5(a) or of section 5(b), or a pattern or practice that violated paragraph (2), (3), (4), or (5) of section 5(a), may bring a civil action in any district court of the United States with jurisdiction over the defendant—

(A) to enjoin further violation by the defendant; or

(B) to recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (3).

(2) SPECIAL DEFINITION OF ''PROCURE''.—In any action brought under paragraph (1), this Act shall be applied as if the definition of the term ''procure'' in section 3(12) contained, after ''behalf'' the words ''with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this Act''.

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b)(1)(A)(i), treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 5(b).

(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with such practices and procedures.

(4) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

**SEC. 8. EFFECT ON OTHER LAWS.**

(a) FEDERAL LAW.—

(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) STATE LAW NOT SPECIFIC TO ELECTRONIC MAIL.—This Act shall not be construed to preempt the applicability of—

(A) State laws that are not specific to electronic mail, including State trespass, contract, or tort law; or

(B) other State laws to the extent that those laws relate to acts of fraud or computer crime.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

**SEC. 9. DO-NOT-E-MAIL REGISTRY.**

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

**SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.**

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

**SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.**

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters ''ADV'' in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

**SEC. 12. RESTRICTIONS ON OTHER TRANSMISSIONS.**

Section 227(b)(1) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting '', or any person outside the United States if the recipient is within the United States'' after ''United States''.

***SEC. 13. REGULATIONS.***

*(a) IN GENERAL.—The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with section 553 of title 5, United States Code.*

*(b) LIMITATION.—Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 5(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).*

***SEC. 14. APPLICATION TO WIRELESS.***

*(a) EFFECT ON OTHER LAW.—Nothing in this Act shall be interpreted to preclude or override the applicability of section 227 of the Communications Act of 1934 (47 U.S.C. 227) or the rules prescribed under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102). To the extent that a requirement of such Acts, or rules or regulations promulgated thereunder, is inconsistent with the requirement of this Act, the requirement of such other Acts, or rules or regulations promulgated thereunder, shall take precedence.*

*(b) FCC RULEMAKING.—The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The rules shall, to the extent consistent with subsection (c)—*

*(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization, except as provided in paragraph (3);*

*(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the initiator;*

*(3) take into consideration, in determining whether to subject providers of commercial mobile wireless services to paragraph (1), the relationship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this Act, to allow subscribers to indicate a desire not to receive future mobile service commercial messages at the time of subscribing to such service, and in any billing mechanism; and*

*(4) determine how initiators of mobile service commercial messages may comply with the provisions of this Act, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.*

*(c) OTHER FACTORS CONSIDERED.—The Federal Communications Commission shall consider the ability of an initiator of an electronic mail message to reasonably determine that the electronic mail message is a mobile service commercial message.*

*(d) MOBILE SERVICE COMMERCIAL MESSAGE DEFINED.—In this section, the term ''mobile service commercial message'' means a commercial electronic mail message that contains text, graphics, or images for visual display that is transmitted directly to a wireless device that—*

*(1) is utilized by a subscriber of commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) in connection with such service; and*

*(2) is capable of accessing and displaying such a message.*

***SEC. 15. SEPARABILITY.***

*If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.*

***SEC. 16. EFFECTIVE DATE.***

*The provisions of this Act, other than section 9, shall take effect on January 1, 2004.*

Mr. BURNS. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with the substitute amendment from Senator BURNS, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER (Mr. DOMENICI). Without objection, it is so ordered.

The amendment (No. 2219) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. BURNS. Mr. President, this is a good day, not only for me personally but many of us who serve in this Senate, especially my friend from Oregon whom I see across the aisle.

It has been 4 years, working on this legislation. This is the CAN–SPAM bill—everybody is pretty familiar with it—which we hope will stem the tide of junk mail that is flooding our Nation's inboxes and our e-mail.

I specifically thank my colleague Senator WYDEN from Oregon who is coauthor of this bill. He has been working tirelessly on this for years—as long as I have. Thanks to the discussions over the past few days, many already strong proconsumer provisions in CAN–SPAM have been enhanced. Those negotiations have been ongoing and, in some cases, have been rather tense. The bill the Senate considers today contains substantial statutory damages for spammers and additional notice requirements on commercial e-mail.

The character of the Congress is not always proactive; it is always reactive, it seems. That is the nature of the political landscape in which we find ourselves. We do not get too excited about doing anything until the folks at home get excited, or enough of them, that they form a critical mass for us to take action.

I congratulate Senator WYDEN. We serve together on the Commerce Committee. We were approached about doing something about the Internet and what is coming down on our computers and is found in our mailboxes on the Internet. We saw, 4 years ago, that this was going to become a problem. It was not just the idea of the Senator who stands before you now to do something about unwanted e-mail 4 years ago. There were more Senators around here who had the same vision, that as this industry grows, a problem will also grow with it. And that is what happened.

The extent of bipartisan cooperation on this issue is no surprise, given the deluge of spam consumers face in their inboxes every day. The costs to businesses and individuals is escalating and wide ranging. Businesses lose money when employees take more and more time to wade through their e-mail. Servers all over the country have difficulty blocking spam, clearing their machines so they can operate while spammers work to find more and more ways to circumvent the latest software server or individual blocking systems.

In my State of Montana, spam is really horrible, as it is in all rural areas across the United States. We have vast distances in Montana. Many of my constituents are forced to pay long distance charges on their time on the Internet. It is not the only State that has to do that. You will find that in the majority of rural areas, in all our States. Spam makes it nearly impossible for rural America to realize the tremendous economic and educational benefits of the online era.

This bill empowers consumers and grants additional enforcement to the Federal Trade Commission to take action against spammers. It also allows the States' attorneys general to do the same. The bill requires the senders of commercial e-mail to include a clear opt-out mechanism to allow consumers to be removed from the mass e-mail lists. This opt-out must also be clearly described in the e-mail itself, so users of e-mail are not forced to sift through pages and pages of legalese to determine where they can stop the unwanted mail. Senders of commercial e-mail must also provide a valid physical postal address, so they are not able to hide their identities. Finally, e-mail marketers must include a notice that the e-mail is advertising.

Simply put, the CAN–SPAM bill finally gives consumers a measure of control over their inboxes.

In cases where e-mail marketers don't comply with the CAN–SPAM bill, the penalties are very severe. For this part of the bill we have many people to thank. Spammers are actually on the hook for damages up to $250 per spam e-mail with a cap of $2 million. That gets my attention right there. This already high penalty can be tripled if particularly unethical methods are used, such as a computer hijacking to send spam by taking control of computers of legitimate users without their knowledge, and for harvesting addresses from legitimate Web sites to send spam. For criminal spammers who try to hide their identities by using false header information, damages are not capped. In other words, they can go as high, those damages can go as high as the market would stand. It also includes enhanced enforcement authority of the FCC to close possible loopholes for spammers and to keep up with the technological developments.

Let's face it, technology moves at the speed of light. Granting the Commission the ability to keep pace with new techniques of spammers is essential because it has become clear, in recent years anyway, that these criminals are growing increasingly sophisticated in their methods.

So the passage of this bill today will help stem the tide of the toxic sea of

spam. Clearly, consumers have been demanding control over their e-mail inboxes, and the passage of the CAN–SPAM today will give those consumers a key victory in the battle against criminal spammers.

Again, I thank my good friend with whom I served on the Commerce Committee, Senator WYDEN of Oregon, who has absolutely been a knight in shining armor in negotiations and working this through the Congress. Also on the floor is Senator SCHUMER of New York. Senator SCHUMER has offered many positive provisions in this bill. We have had a great time debating that. But nonetheless, his contribution is clearly in this bill and we appreciate his work. Of course, when I say it is a bipartisan effort, that is usually the way we get legislation passed around here, legislation that has any kind of future at all.

I thank them both. It gives me great pleasure to yield the floor for my friend from the great State of Oregon, Senator WYDEN.

Mr. WYDEN. Mr. President, I will be very brief. I know my colleague from New York, Senator SCHUMER, has a plane to catch.

Senator BURNS and I have worked for more than 4 years on this legislation, and it is particularly important that it pass today. Every single day, the flood of pornographic and sleazy spam grows. With this legislation, Congress is beginning to stem the tide. We understand that this is going to be a difficult battle because the kingpin spammers are not technological simpletons. No matter what law Congress passes, they are going to be very aggressive about trying to find evasive strategies to get around that. But I am of the view that with the passage of this legislation, if our prosecutors, the Federal Trade Commission, and the Attorney General come down on the kingpin spammers with hobnail boots, we can put in place a strategy that can stem this tide.

Suffice it to say, the spammers are going to go to great lengths to try to get around this law. We know, for example, that many of them are going to try to move offshore. It is going to be important to have international agreements that will also bring together U.S. authorities and international authorities against those who would try to get around this legislation.

It is important to remember what Congress is doing now; that is, Congress is saying spamming is an outlaw business. It is an outlaw business that is going to be treated as an area of priorities for prosecutors and law enforcement officials. That has not been the case in the past. Essentially, when Senator BURNS and I pursued this problem of spamming a number of years ago, a lot of people asked: Why in the world would a couple of U.S. Senators be tackling this issue? They intimated that it really wasn't worthy of the Senate's time. Spam has grown so extraordinarily in the last few years, and now people have been clammering about why the Senate isn't moving ahead with this legislation that they think is important because spam is such an intrusion into their lives every single day.

We have continued work to do. Senator SCHUMER will speak next. He has a very important idea with respect to trying to put in place a Do Not Spam list. It is a promising one. I think all of us would acknowledge there are some details to be worked out with the Federal Trade Commission. Senator CORZINE has done some very good work in looking at some creative ideas for the future. I intend to work closely with him because he has been a leader in the technology area. But I think we ought to understand that this effort today is the culmination of more than 4 years of hard work. It is not just needed, it is overdue.

We are not going to pretend this legislation is a silver bullet because we know that no piece of legislation is. But when this bill takes effect, the big-time spammers who up to this point faced no consequences, for all practical purposes, will suddenly be at risk for criminal prosecution, Federal Trade Commission enforcement, and million-dollar lawsuits by State attorneys general and Internet service providers.

I believe a number of these key enforcement actions will be taken immediately after this legislation is passed. This will set in place the kind of deterrent that is going to allow us to say it is a different day. The big-time spammers will face consequences when they flood our citizens and our families with the trash and the pornography. That is why this is an important step forward.

He is going to speak next, but I commend my colleague, the Senator from New York, for his usual persistence. He stayed at it by saying this was an important issue. We have wrestled with this question with respect to the Do Not Call list as well. I happen to think that the Senator from New York is certainly talking about a principle we need to address in the communications area. I happen to think the first amendment is special. People ought to have the right to communicate. But citizens also ought to have the right to say: We have had enough. We don't want to have people flooded with this kind of information. That is the principle that is at stake here. I commend the Senator from New York.

My partner, the chairman of the telecommunications subcommittee, is not in the Chamber. But I am proud to serve with him. He has been an exceptionally gracious ally on this for many years.

I am glad that this proconsumer measure, a measure that I think makes a beginning in efforts against big-time spammers, is passing. It will be of great benefit to consumers.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

First, let me thank my colleague from Oregon for his leadership on this issue, for his persistence—done in a slightly different way, the Oregon way, not the New York way, but it is effective, if not more effective—and for his understanding. There is no one in this Chamber who both understands technology issues and yet has a political grasp of politics and blends the two. I thank him for his leadership.

I thank the Senator from Montana, as well, who has worked long and hard on this issue; and my good friend from Arizona, the chairman of the Commerce Committee, also.

This is going to be a good Thanksgiving for consumers. We are dealing with spam today. The portability rules for cell phones have been enacted. I worked long and hard on those. Both antispamming legislation and portability rules are very important things we have done for consumers. As technology changes, we need to adapt the rules by which this technology can work. The basic principles we have always have to be applied in new and different ways. That is what we are trying to do today.

E-mail is one of the great inventions of the 20th century. But, unfortunately, if we did nothing, e-mail would not be around within a few years and no one could use it. What was an annoyance a few years ago has become a major problem this year and could really cripple e-mail a few years from now. So this Congress has acted. We acted in a thoughtful and careful way.

Is this bill going to solve everything? No. But will it make a real difference? You bet. Spammers: Be put on notice. Within a few months you will be committing a criminal act if you do what you are doing now.

With this bill, Congress is saying that if you are a spammer, you can wind up in the slammer. That is the bottom line. The bottom line is that there will be criminal penalties and real prosecution. Will we go after every spammer, somebody who makes a mistake here and there? No. But the studies show us—this is what gives all of us such hope—that maybe 250 spammers send out 90 percent of the e-mail. And we are saying to those 250, no matter where you are, or how you try to hide your spam, we will find you. This bill gives the FTC and the Justice Department the tools to go after you.

That is why this bill is so important. This is such a good day, not only for those who use computers but for technology in general.

I became familiar with this issue when I noticed my daughter on her computer. My wife and I had always said to one another: Isn't it great that instead of watching television, our kids are always on the computer? Then we saw what was popping up in their e-mail—things we wouldn't want to see, let alone my 14-year-old daughter. As we looked into it, we saw what was happening. Spam is annoying, crippling commerce, and pornographic. All of

that has to end while we preserve the essence of spam itself, which is ease of communication.

There is no single solution. That is why this bill is correct in taking the eclectic approach. I wanted to put a few more provisions in. I have talked to my friends from Montana and Oregon. We are going to monitor this. If new things are needed, we will add them. But there are many different ways we can go after spammers after this legislation is signed by the President.

The part for which I fought fiercely is the No Spam Registry. It will provide prosecutors with the best tools to create the case. They won't have to prove intent. They won't have to prove anything other than as they do with the No Call Registry. Day after day, spammers have relentlessly sent hundreds and thousands of spam e-mails to people who have explicitly said they do not want spam.

I believe that it will work. I know that the FTC has some doubts. Although, fortunately, they now say it is technically feasible, and they are not worried about the list being stolen, they are worried about the evidence.

My answer to the FTC: Try it. We do not have anything better. It is not going to solve everything, but it is the best tool we have.

When they come back to us in 6 months with their proposal, which they must do under this legislation, I have been assured by both Chairman MCCAIN and Ranking Member HOLLINGS, as well as Senators WYDEN and BURNS, that we will make sure they implement it. We will either do it statutorily or by pressure from the appropriators and others.

So the FTC may disagree with the vast majority of Americans and the unanimity of the Congress—I guess unanimous in the Senate, not quite in the House—but we are going to make this No Spam Registry a reality within a year.

So the bottom line is simple: For the first time there is some light at the end of the tunnel in the fight against spam. This legislation—not a panacea—will greatly reduce the burden of spam, the difficulty of spam, and the pornographic aspects of spam.

So again, I thank all of my colleagues in the Senate in letting this legislation go through. Again, it is a happy Thanksgiving to computer users everywhere.

I thank my colleagues from Montana and Oregon for their leadership. I thank Senators MCCAIN and HOLLINGS, as chairman and ranking member of the committee, for their support.

When the industry groups tried to rip the registry out of the legislation, these folks stood firm, the Senate stood firm, and that is why we have it in here today.

With that, Mr. President, let me just conclude by wishing you, my colleagues from Maine and Oregon, and all of my colleagues, and all those who work here, a very happy Thanksgiving.

For me, God has given me much to be thankful for, and I will dwell on that over the next few days. I hope everyone here feels the same way about their fortune and good fortune.

With that, I yield the floor.

ANTI-SPAN LEGISLATION

Mr. BURNS. Mr. President, I would like to engage the gentleman from Oregon, Mr. WYDEN, in a colloquy regarding some details of the anti-spam legislation approved by the Senate. We have worked tirelessly on S. 877, and it is important to ensure that spammers cannot get around the definitions of electronic mail address and electronic mail message that will be regulated under this law. The definitions in the bill require electronic mail addresses to contain a domain part. This requirement is important to make sure we only capture e-mail and do not regulate other communications platforms, such as Instant Messaging. However, I want to be clear that the intent of Congress is to capture e-mail messages as that term is commonly understood. This includes e-mail messages sent within the same domain that may not actually display the domain part of the e-mail address.

Mr. WYDEN. I thank the gentleman from Montana for raising this important issue. Yes, the intent of S. 877 is to capture all e-mail messages as that term is commonly understood. This includes e-mail messages where the domain part of the address may not be displayed. That is why the bill's definition of e-mail address, in referring to the domain part, contains the phrase ''whether or not displayed.'' We certainly do not want to create any loopholes that spammers could potentially exploit and I appreciate the opportunity to clarify this point.

Mr. BURNS. I would like to flag one other aspect of the bill. Under section 6, the FTC can bring enforcement actions against merchants whose products are promoted in spam e-mails, even if the merchant is not the spammer. Isn't that correct?

Mr. WYDEN. I agree with the Senator.

Mr. BURNS. But isn't it also true that section 5 can be used against merchants whose products are promoted in spam e-mails? Can't the FTC, State A.G.s, and Internet Service Providers bring actions under section 5 against parties who aren't themselves spamming, but rather hire spammers to promote their products or services?

Mr. WYDEN. Absolutely. The bill's definition of ''initiate'' makes that clear, because it applies not only to the spammer that originates the actual e-mail, but also to a party who has hired or otherwise induced the spammer to send the e-mail on its behalf. If the e-mail message violates the bill, both parties would be on the hook under section 5, and enforcement would be possible against both or either parties.

Mr. BURNS. That confirms my understanding. So what is different about section 6, as I understand it, is that section 6 does not require any showing that the merchant actually hired or induced the spammer to send the spam. In other words, if the spammer is hard to find and his contractual relationship with the merchant has been obscured by under-the-table dealings, the FTC doesn't have to spend time and effort trying to prove the relationship.

Mr. WYDEN. I share the Senator's understanding of how section 6 differs from the provisions of section 5. I would only add that the drafters considered which parties should have the discretion to enforce the bill in the manner set forth in section 6, and decided that section 6 should be enforced by the FTC only.

Mr. BURNS. I thank my colleague from Oregon.

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing legislation to help staunch the torrent of unwanted commercial e-mail, commonly known as spam. During the past year, I worked closely with Senator HATCH and other members of the Judiciary Committee to craft criminal penalties for a variety of spammer tactics. Those penalties, which we introduced in June as part of the Criminal Spam Act, S. 1293, are included in the broader anti-spam legislation that we pass today. The bill will now go back to the House of Representatives for final approval, and then to the President for signing.

Spam is much more than a technological nuisance. In the past few years, it has become a serious and growing problem that threatens to undermine the vast potential of the Internet.

Businesses and individuals currently wade through tremendous amounts of spam in order to access e-mail that is of relevance to them—and this is after Internet Service Providers, businesses, and individuals have spent time and in some cases enormous amounts of money blocking a large percentage of spam from reaching its intended recipients.

In my home State of Vermont, one legislator recently found that two-thirds of the 96 e-mails in his inbox were spam. And this occurred after the legislature had installed new spam-blocking software on its computer system that seemed to be catching 80 percent of the spam. The assistant attorney general in Vermont was forced to suggest to computer users the following means to avoid these unsolicited commercial e-mails: ''It's very bad to reply, even to say don't send anymore. It tells the spammer they have a live address . . . The best thing you can do is just keep deleting them. If it gets really bad, you may have to change your address.'' This experience is echoed nationwide.

E-mail users are having the online equivalent of the experience of the woman in the Monty Python skit, who seeks to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she desires. Every dish in the

restaurant comes with Spam; it is just a matter of how much. There is ''egg, bacon and Spam''; ''egg, bacon, sausage and Spam''; ''Spam, bacon, sausage and Spam''; ''Spam, egg, Spam, Spam, bacon and Spam''; ''Spam, sausage, Spam, Spam, bacon, Spam, tomato and Spam''; and so on. Exasperated, the woman finally cries out: ''I don't like Spam! . . . I don't want ANY Spam!''

Individuals and businesses are understandably reacting similarly to electronic spam. A Harris poll taken late last year found that 80 percent of respondents view spam as ''very annoying,'' and fully 74 percent of respondents favor making mass spamming illegal. Earlier this month, more than three out of four people surveyed by Yahoo! Mail said it was ''less aggravating to clean a toilet'' than to sort through spam. Americans are fed up.

Some 30 States now have anti-spam laws, but the globe-hopping nature of e-mail makes these laws difficult to enforce. Technology will undoubtedly play a key role in fighting spam, but a technological solution to the problem is not likely in the foreseeable future. ISPs block billions of unwanted e-mails each day, but spammers are winning the battle.

Millions of unwanted, unsolicited commercial e-mails are received by American businesses and individuals each day, despite their own, additional filtering efforts. Ferris Research has estimated that spam costs U.S. firms $8.9 billion annually in lost worker productivity, consumption of bandwidth, and the use of technical support to configure and run spam filters and provide helpdesk support for spam recipients.

The costs of spam are significant to individuals as well, including time spent identifying and deleting spam, inadvertently opening spam, installing and maintaining anti-spam filters, tracking down legitimate messages mistakenly deleted by spam filters, and paying for the ISP's blocking efforts.

And there are other prominent and equally important costs of spam. It may introduce viruses, worms, and ''Trojan horse'' programs—that is, programs that unsuspecting users download onto their computers that are designed to take control of those computers—into personal and business computer systems, including those that support our national infrastructure.

Spammers are constantly in need of new machines through which to route their garbage e-mail, and a virus makes a perfect delivery mechanism for the engine they use for their mass mailings. Some analysts said the SoBigF virus may have been created with a more malicious intent than most viruses, and may even be linked to spam e-mail schemes that could be a source of cash for those involved in the scheme.

The interconnection between computer viruses and spam is readily apparent: Both flood the Internet in an attempt to force a message on people who would not otherwise choose to receive it. Criminal laws I wrote prohibiting the former have been invoked and enforced from the time they were passed. It is the latter dilemma we must now confront.

Spam is also fertile ground for deceptive trade practices. The FTC has estimated that 90 percent of the spam involving investment and business opportunities, and nearly half of the spam advertising health products and services, and travel and leisure, contains false or misleading information.

This rampant deception has the potential to undermine Americans' trust of valid information on the Internet. Indeed, it has already caused some Americans to refrain from using the Internet to the extent they otherwise would. For example, some have chosen not to participate in public discussion forums, and are hesitant to provide their addresses in legitimate business transactions, for fear that their e-mail addresses will be harvested for junk e-mail lists. And they are right to be concerned. The FTC found spam arriving at its computer system just 9 minutes after posting an e-mail address in an online chat room.

I have often said that Congress must exercise great caution when regulating in cyberspace. Any legislative solution to spam must tread carefully to ensure that we do not impede or stifle the free flow of information on the Internet. The United States is the birthplace of the Internet, and the whole world watches whenever we decide to regulate it. Whenever we choose to intervene in the Internet with Government action, we must act carefully, prudently, and knowledgeably, keeping in mind the implications of what we do and how we do it. And we must not forget that spam, like more traditional forms of commercial speech, is protected by the first amendment.

At the same time, we must not allow spam to result in the ''virtual death'' of the Internet, as one Vermont newspaper put it.

The Internet is a valuable asset to our Nation, to our economy, and to the lives of Americans, and we should act prudently to secure its continued viability and vitality.

On June 19 of this year, Senator HATCH and I introduced S. 1293, the Criminal Spam Act, together with several of our colleagues on the Judiciary Committee. On September 25, the Committee unanimously voted to report S. 1293 to the floor. On October 22, the Senate unanimously adopted the criminal provisions of the bill as an amendment to S. 877, the CAN SPAM Act. Today, the Senate is passing these same criminal provisions as section 4 of a modified version of S. 877, as passed by the House last week.

The Hatch-Leahy criminal provisions prohibit five principal techniques that spammers use to evade filtering software and hide their trails.

First, our legislation prohibits hacking into another person's computer system and sending bulk spam from or through that system. This criminalizes the common spammer technique of obtaining access to other people's e-mail accounts on an ISP's e-mail network, whether by password theft or by inserting a Trojan horse to send bulk spam.

Second, our legislation prohibits using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent of deceiving recipients as to the spam's origins. This prohibition criminalizes another common spammer technique—the abuse of third parties' ''open'' servers, such as e-mail servers that have the capability to relay mail, or Web proxy servers that have the ability to generate ''form'' mail.

Spammers commandeer these servers to send bulk commercial e-mail without the server owner's knowledge, either by ''relaying'' their e-mail through an ''open'' e-mail server, or by abusing an ''open'' Web proxy server's capability to generate form e-mails as a means to originate spam, thereby exceeding the owner's authorization for use of that e-mail or Web server. In some instances the hijacked servers are even completely shut down as a result of tens of thousands of undeliverable messages generated from the spammer's e-mail list.

The legislation's third prohibition targets another way that outlaw spammers evade ISP filters: Falsifying the ''header information'' that accompanies every e-mail, and sending bulk spam containing that fake header information. More specifically, the legislation prohibits forging information regarding the origin of the e-mail message, and the route through which the message attempted to penetrate the ISP filters.

At the suggestion of the Department of Justice, this third offense has been amended since the Senate last considered it to require a showing of materiality. This means the Government must prove that the header information was altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this title, or a law enforcement agency, to identify, locate, or respond to the person who initiated the e-mail or to investigate the alleged violation.

Fourth, the Hatch-Leahy legislation prohibits registering for multiple e-mail accounts or Internet domain names using false identities, and sending bulk e-mail from those accounts or domains. This provision targets deceptive ''account churning,'' a common outlaw spammer technique that works as follows. The spammer registers—usually by means of an automatic computer program—for large numbers of e-mail accounts or domain names, using false registration information, then sends bulk spam from one account or

domain after another. This technique stays ahead of ISP filters by hiding the source, size, and scope of the sender's mailings, and prevents the e-mail account provider or domain name registrar from identifying the registrant as a spammer and denying his registration request. Falsifying registration information for domain names also violates a basic contractual requirement for domain name registration falsification. As with the last offense, this offense now requires that the registration information be falsified ''materially.''

Fifth and finally, our legislation addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration—hijacking unused expanses of Internet address space and using them as launch pads for junk e-mail. Hijacking Internet Protocol—IP—addresses is not difficult: Spammers simply falsely assert that they have the right to use a block of IP addresses, and obtain an Internet connection for those addresses. Hiding behind those addresses, they can then send vast amounts of spam that is extremely difficult to trace.

Penalties for violations of these new criminal prohibitions are tough but measured. Recidivists and those who send spam in furtherance of another felony may be imprisoned for up to 5 years. Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam ''kingpins'' who use others to operate their spamming operations may be imprisoned for up to 3 years. Other offenders may be fined and imprisoned for no more than one year. Convicted offenders are also subject to forfeiture of proceeds and instrumentalities of the offense.

In addition to these penalties, the Hatch-Leahy legislation directs the Sentencing Commission to consider providing sentencing enhancements for those convicted of the new criminal provisions who obtained e-mail addresses through improper means, such as harvesting, and those who knowingly sent spam containing or advertising a falsely registered Internet domain name. We have also worked with Senator NELSON on language directing the Sentencing Commission to consider enhancements for those who commit other crimes that are facilitated by the sending of spam.

I should note that the Criminal Spam Act, from which these provisions are taken, enjoys broad support from ISPs, direct marketers, consumer groups, and civil liberties groups alike. Again, the purpose of these criminal provisions is to deter the most pernicious and unscrupulous types of spammers—those who use trickery and deception to induce others to relay and view their messages. Ridding America's inboxes of deceptively delivered spam will help clear electronic channels for Internet users from coast-to-coast. But it is not a cure-all for the spam pandemic.

The fundamental problem inherent to spam—its sheer volume—may well persist even in the absence of fraudulent routing information and false identities. In a recent survey, 82 percent of respondents considered unsolicited bulk e-mail, even from legitimate businesses, to be unwelcome spam. Given this public opinion, and in light of the fact that spam is, in essence, cost-shifted advertising, we need to take a more comprehensive approach to our fight against spam.

While I am generally supportive of the CAN SPAM Act, it does raise some concerns. For one thing, it may not be tough enough to do the job.

The bill takes an ''opt out'' approach to spam—that is, it requires all commercial e-mail to include an ''opt out'' mechanism, by which e-mail recipients may opt out of receiving further unwanted spam. My concern is that this approach authorizes spammers to send at least one piece of spam to each e-mail address in their database, while placing the burden on e-mail recipients to respond. People who receive dozens, even hundreds, of unwanted e-mails each day may have little time or energy for anything other than opting-out from unwanted spam. Meantime, CAN SPAM will sweep away dozens of State anti-spam laws, including some that were substantially more restrictive.

I am also troubled by the two labeling requirement in the CAN SPAM Act. The first makes it unlawful to send an unsolicited commercial e-mail message unless it provides, among other things, ''clear and conspicuous identification that the message is an advertisement or solicitation,'' and ''a valid physical postal address of the sender.'' The second—added as a floor amendment during Senate consideration of the bill in October—requires ''warning labels'' on any commercial e-mail that includes ''sexually oriented material.''

While we all want to curb spam and protect our children from inappropriate material, there are important first amendment concerns to regulating commercial e-mail in ways that require specific labels on protected speech. Such requirements inhibit both the speaker's right to express and the listener's right to access constitutionally protected material.

In addition, the bill's definition of ''sexually oriented material'' as any material that ''depicts'' sexually explicit conduct seems overly broad. According to Webster's dictionary, ''depict'' may mean either to represent by a picture or to describe in words. It is my hope that the FTC, which has some rulemaking authority with respect to this labeling requirement, will clarify that it applies to ''visual'' depictions only.

The CAN SPAM Act may not be perfect, but it is a serious effort to address a difficult and urgent problem. I support its passage today, and commend the bipartisanship that was needed to get this done.

Mr. BURNS. Mr. President, I rise today to support the final passage of the CAN–SPAM bill, which will help to stem the tide of junk e-mail that is flooding the Nation's inboxes. I want to specifically thank my colleague Senator WYDEN, the coauthor of the bill, who has been working tirelessly on this issue for years. Thanks to discussions over the past few days, many of the already-strong proconsumer provisions in CAN–SPAM have been enhanced. The bill the Senate considers today contains substantial statutory damages for spammers and additional notice requirements on commercial e-mail.

The extent of bipartisan cooperation on this issue is no surprise given the deluge of spam consumers face in their inboxes everyday. The costs to businesses and individuals are escalating and wide ranging. Businesses lose money when employees take more and more time to wade through their e-mails. Servers all over the country have difficulty blocking spam, all while spammers work to find more and more ways to circumvent the latest software, server, or individual blocking systems.

Spam is particularly harmful to rural areas. Because of the vast distances in Montana, many of my constituents are forced to pay long distance charges for their time on the Internet. Spam makes it nearly impossible for those in rural America to realize the tremendous economic and educational benefits of the online era.

The CAN–SPAM bill empowers consumers and grants additional enforcement authority to the Federal Trade Commission to take action against spammers. The bill requires the senders of commercial e-mail to include a clear ''opt-out'' mechanism to allow consumers to be removed from mass e-mail lists. This ''opt-out'' must also be clearly described in the e-mail itself, so that users of e-mail are not forced to sift through pages of legalese to determine where they can stop unwanted e-mail.

The senders of commercial e-mail must also provide a valid physical postal address so that they are not able to hide their identities. Finally, e-mail marketers must include notice that the e-mail is an advertisement. Simply put, the CAN–SPAM bill finally gives consumers a measure of control over their inboxes.

In cases where e-mail marketers don't comply with the CAN–SPAM bill, the penalties are severe. Spammers are on the hook for damages up to $250 per spam e-mail with a cap of $2 million. This already high penalty can be tripled if particularly unethical methods are used, such as ''computer hijacking'' to send spam by taking control of the computers of legitimate users without their knowledge or for harvesting addresses from legitimate Web sites to send spam. For criminal spammers who try to hide their identities by using false header information, damages are not capped.

The CAN–SPAM bill also includes enhanced enforcement authority for the FTC to close possible loopholes for spammers and to keep up with technological developments. Granting the Commission the ability to keep pace with the new techniques of spammers is essential because it has become clear in recent years that these criminals are growing increasingly sophisticated in their methods.

The passage of CAN–SPAM today will help to stem the tide of the toxic sea of spam. Clearly, consumers have been demanding control over their e-mail inboxes and the passage of CAN–SPAM today will give consumers a key victory in the battle against criminal spammers.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Maine.

Ms. COLLINS. Mr. President, let me first return the Thanksgiving greetings of my colleagues. I hope that they, too, are able to have a happy holiday with their families and friends.

## INVESTIGATION INTO THE LACK OF COORDINATION BETWEEN FEDERAL AGENCIES

Ms. COLLINS. Mr. President, last week NBC News aired a report indicating that suspected terrorists had been granted American citizenship or permanent residency at the same time they were under investigation by the FBI for their involvement in terrorism. This well-researched piece reached the warranted and troubling conclusion that this occurred despite advance knowledge within the Department of Justice.

The NBC report revealed an alarming and dangerous lack of coordination between Federal agencies. The NBC piece parallels credible allegations that first came to my attention in January.

As the chairman of the Committee on Governmental Affairs, to followup on these allegations, I have made repeated requests of the Department of Justice for information that would allow my committee to assess this potentially serious threat to our national security.

We have a saying up in Maine: You can't get there from here. You may have heard it, Mr. President. But when it comes to travel in my home State, it is not really true. The roads may be winding, and the route may not be all that direct, but with persistence and patience, you can always get where you need to go.

However, when it comes to dealing with the Department of Justice on this very serious matter, it seems that you cannot get anywhere. I have been persistent, but my patience has pretty much run out.

The allegations that I received in January were these: In the course of investigating foreign-born individuals for terrorism-related offenses, the FBI learned that some of these individuals were in the process of applying for naturalization or permanent residency.

FBI agents requested permission to share that critical important information with the INS. Their FBI supervisors, however, refused those requests. This information has been confirmed by NBC News's chief investigative reporter, Lisa Myers, in her thoroughly researched piece that aired last week.

My requests to the Department of Justice for information that would define the size of this alleged hole in national security and of this possible gap in interagency cooperation have been refused repeatedly.

I have modified my requests in order to accommodate the specific objections raised by the Department. My modified requests have also been refused due to new objections or, in some cases, old ones simply rephrased.

Here is a brief travelogue of my 10-month journey in the bureaucracy of the Department of Justice: On January 21, shortly after these allegations came to my attention, I wrote to the FBI Director, Robert Mueller, and asked that he provide the committee with the names, dates of birth, INS registration numbers, and start dates of investigations of all persons who have been the subjects of terrorism investigations from September 10, 1991, through September 10, 2001, in the 15 largest FBI field offices. I asked to have this information delivered to my office by February 4.

Well, I received no response at all until February 28, when I received a reply from the Department categorically denying my request. The primary reason cited was that the Department had a longstanding policy of not providing Congress with information about people who have been investigated but not prosecuted.

Among the other supporting reasons were the separation of powers and—I am not making this up, Mr. President—a concern that providing Congress with information that could help it understand and remedy a situation so potentially damaging to our Nation's security could, and I quote, ''gravely damage the nation's security.''

The Department did offer, at that point, to work with me to see if there was an alternative. I eagerly took the Department up on that offer, and I wanted to try to accommodate whatever legitimate concerns the Department might have.

Thus, my staff talked repeatedly with the Department during the next few months to craft a mutually agreeable alternative approach.

On May 21, I submitted another much narrower request proposing that the Department of Justice would conduct its own review, a review I would think that the Department would be very eager to conduct once this threat was brought to the Department's own attention. Moreover, the length of the review would be reduced from a decade to 5 years, and the scope would be reduced from 15 field offices to just 5.

Now, by this time, of course, the INS had been moved from the Department of Justice to the new Department of Homeland Security.

It had been renamed as the Bureau of Citizenship and Immigration Services. I suggested the FBI provide the results of its internal review to the BCIS so it could determine who had been granted citizenship or permanent residency while they were being investigated for terrorism. Again, I would think the Department would be very concerned about the serious breakdown and lapse in communication and would be eager to review its own files to quickly uncover the names of individuals who might have become citizens or permanent residents while they were under investigation for terrorism-related activities.

After months of negotiations between my staff and the Department's staff, I believed I had finally come up with a solution that addressed all of the Department's concerns.

On July 3—keep in mind how much more time has yet elapsed—I received a reply. Much to my astonishment, the answer once again was no.

Two new concerns were raised: First, when the FBI and the INS were part of the same overall Department of Justice, they could share information for this purpose legally; although, as we well know, they didn't. Now that they are in two different departments, the Justice Department claims the Privacy Act prevents the sharing of this critical information.

The second reason advanced was the FBI simply did not have the time or resources to review its own files. Again, keep in mind how important it is for the Department to know how many people were in this situation where they were under investigation for terrorism and yet received either American citizenship or permanent residency. I would think the FBI, on its own volition, would be eager to retrieve that information.

At this point some of my Senate colleagues may be asking themselves a few questions, if they have had some experience with congressional oversight. First, hasn't the Justice Department many times in the past provided Congress with information such as interview summaries and documentary evidence related to individuals who have been investigated but not prosecuted? Second, does this refute the Justice Department's argument about a supposedly sacrosanct longstanding policy? Would such a policy, if it existed and were adhered to as strictly as the Justice Department now asserts, exempt the Justice Department from effective congressional oversight? The answer to these questions is obvious.

Although the Justice Department would not review its own files to discover the extent of this problem and to document whether terrorists had been granted citizenship or permanent residency, its officials have indicated in writing to me that this likely occurred.

Let me expand on that point. The Justice Department is not refuting the basic premise. In a July 3 letter I received from the Department, from which I want to quote, it says:

We appreciate the Committee's interest in the question of whether individuals were naturalized or received permanent residence status while they were subjects of foreign counterintelligence investigations and, in fact, we have indicated in conversations with Committee staff our belief that this likely occurred prior to September 11, 2001. We do not have data to support this view, but based upon our knowledge of how Bureau and then-Immigration and Naturalization Services systems interfaced, we do not dispute the premise.

This is serious. In other words, suspected terrorists most likely received citizenship or permanent residency in the country they swore to destroy because the FBI and the INS did not talk to each other. This is extraordinary.

During my negotiations with the Department of Justice, I had suggested the Privacy Act concern the Department raised could be dealt with if the FBI passed the sealed findings of their review through my committee which then could, in turn, pass the findings along to the BCIS. That wouldn't work, Justice said, because it would violate—you got it—their longstanding policy against providing information to Congress about investigations that did not result in prosecution.

If you think we have been driving around in circles, you are right. The Justice Department refuses to provide my oversight committee with information because of a ''longstanding policy.'' We suggest a way around that longstanding policy, and the Department cites the Privacy Act. We suggest a way to avoid the Privacy Act concerns, and we find ourselves back to the longstanding policy.

This is simply unacceptable. We know some terrorists and supporters of terrorism seek out the protective guise of American citizenship. We know a lack of coordination between the relevant agencies allowed this unacceptable situation to occur. What we don't know is how many times it has happened, how broad this problem is, how many people are involved and, most important of all, what has been done to stop it, to close that communications gap.

The Committee on Governmental Affairs will pursue this matter by continuing its investigation. I have again written to the FBI Director to request the records needed by the committee. I have now focused my request on those individuals who were named in the NBC report. It is not a burdensome request. It is not an onerous request. It is a request that is very specific, time limited, and narrow in scope. There is no reason for the Department of Justice not to promptly turn over these documents to the committee.

I want to acknowledge those courageous FBI agents who wanted to do the right thing, tried to do the sensible thing, who said: Let's share this critical information, when they discovered suspected terrorists were trying to become American citizens or permanent residents. It is deeply disturbing that in some cases their supervisors did not listen to them. It is deeply disturbing that bureaucracy trumped national security and common sense.

I invite those agents to step forward again to make their concerns known by contacting my committee. We will listen, and we will act.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## SENATE PAGES

Mr. DASCHLE. Mr. President, the other day the distinguished majority leader came to the floor to call attention to the special contribution made by a number of our pages who volunteered to stay beyond the time that was originally scheduled for their experience in the Senate. I wanted to join with him in expressing our heartfelt gratitude to each of those pages, not only those pages who stayed as volunteers but to those pages who have been with us this past session.

Pages play a very important role in the Senate. They are not only spectators to the democratic experiment, but they are real participants. Each of them becomes all the more adept at all of their responsibilities as the session unfolds and they become students of Government in a unique and special way.

I have always been an admirer of our pages because of the great job they do and the little attention they get. I hope they leave with an appreciation of Government.

When we have graduation for our pages, I oftentimes urge them to consider this the first installment of their public experience. I urge them to consider coming back, not only as members of the staff, but hopefully one day as elected Members themselves. I am absolutely confident at some point some will.

I will never forget Senator David Pryor, MARK PRYOR's father, telling the story that when he was a page he left a penny in the Capitol and promised himself he would come back and pick up that penny as an elected official. He did. I think it was a testament to the dreams, aspirations, and remarkable persistence that oftentimes our pages have.

As I noted, there are a number of pages who not only served the time that was expected of them but stayed on afterward to accommodate the elongated Senate schedule. Many others offered to stay, but because they had schedules that were in conflict were not able to. There are seven pages who stayed on until the last couple of days and in a couple of cases all the way up until today. Margaret Leddy, Melissa Meyer, Krista Warner, Yael Bortnick, Emily Holmgren, Farrell Oxley, and Sarah Smith all went above and beyond the call of duty. They all have served the Senate in their capacity as pages superbly. I did not want this day or this session to end without publicly acknowledging their remarkable contribution, the quality with which they did their work and the gratitude we have for the job they did.

Yesterday was Melissa Meyer's birthday. I wish her a happy birthday besides, but to each of our pages—those who may still be here and those who have gone, those who served—again let me express on behalf of the entire Senate our heartfelt thanks, our best wishes for a happy holiday season, and, perhaps most importantly, our sincere wish that they come back again in some other capacity, because we need them.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## HELP AMERICA VOTE ACT

Mr. BOND. Mr. President, earlier today I spoke briefly about the need to get our appropriations bills, many of which are now included in the so-called omnibus appropriations measure—some of us think it is an ''ominous'' appropriations measure—passed prior to the end of calendar year 2003. Among the things I pointed out were some very important measures. This body passed something called the Help America Vote Act, which I think focused attention on two very important problems. My colleagues on the other side of the aisle wanted to make sure we had up-to-date voting machines to make sure everyone who was entitled to vote could vote to remove barriers to voting. We supported that.

We also got support for something I thought was very important as well, and that was to stop the rampant fraud that has come back as a result of postcard registration.

I have the honor of representing an area that has probably the dubious distinction of being one of the vote fraud centers perhaps in the universe. The city of St. Louis, as I have said many times before, is famous for voting rolls clogged with people registered one, two, three, even four times; vacant lots with small cities worth of registered voters; and even my favorite dog, Ritzy Meckler, a 13-year-old Springer Spaniel who was registered there.

We have had some great theological experiences. For the last general election, a very prominent and outstanding alderman of the city of St. Louis registered to vote on the 10th anniversary of his death. It is a wonderful theological statement. It does not do much

for me as a political scientist, but he registered by postcard.

After the 2000 election, when we found tremendous vote fraud problems in St. Louis, they had a mayoral election scheduled for the spring of 2001. The last day of registration, 3,000 postcards showed up to register voters for that election. It did not take long for observant election officials to note that all of those cards appeared to be in the handwriting of one or two people. They started checking and they found that, lo and behold, there were a lot of phony people registered.

Terribly, the deceased mother of the prosecuting attorney of the city of St. Louis was registered to vote. This brought about some action. Several of the people involved in that little process came together and decided to destroy the records. Since that time, I have read in the paper that the prosecuting attorney in St. Louis has filed significant criminal indictments for those people.

However, I am proud to say that the St. Louis City election board is using new laws passed in the State of Missouri to tighten up on these postcard registrations. Prior to the Help America Vote Act, you couldn't even check on people who registered by mail. The process for getting voters off the list, if they are improperly registered, was byzantine, and took years to do. But under the Federal standards, there are still areas where these nonexistent or duplication voter registrations can be made by mail.

We provided new powers and new responsibilities for local election officials in the Help America Vote Act. We promised to fund them. So during the process of debate on the appropriations bills, Senator DODD of Connecticut, Senator MCCONNELL of Kentucky, the Chair, and the ranking member of the Rules Committee, when this passed, came to the floor and I supported them. We got over $1 billion to fund the Help America Vote Act. That languishes in the omnibus appropriations bill. That money is necessary to support local efforts to carry out the mandates under the Help America Vote Act.

We all thought that once we passed that law we were going to ensure honest elections in 2004, elections where everybody entitled to vote could vote. The problem is, if we don't get around to passing the funding for the Help America Vote Act until we come back next year, the process drags on and on and we are probably into March before the money goes out—which is too late to make many of the changes and to build the infrastructure and to buy the equipment that is needed to carry out the requirements of the Help America Vote Act.

I have talked with other Senators about the many important measures that are included in that Omnibus Appropriations Act. But I want to call the attention of my colleagues to some further information that I have developed about the Veterans Affairs budget.

Senator MIKULSKI and I fought long and hard to get the funding that we needed to try to catch up to the backlog in the VA. People with service-related injuries, permanent disabilities, low-income people, homeless people, are being denied, for months, the ability to get in to see a doctor because so many new enrollees have come into the system. This body expanded the eligibility. We expanded the eligibility, but the money has not kept up. So we are trying to play catchup, and there is an additional $2.9 billion above this year's funding level for the VA that cannot begin until the bill is signed. We are already a couple of months into the fiscal year 2004. We would be 6 or 7 months in before we could get funding if we wait until next year.

My staff tells me there are a number of other things that will happen. Specifically, noninstitutional long-term care cannot be increased. The VA has placed a high priority, providing a high quality of life, long-term care for each veteran. The VA planned to expand the program by over 20 percent this year because of the demand. The VA, without these funds, will not be able to expand the long-term care services under the fiscal year 2003 funding authority.

Second, pharmacy costs will continue eating the budget. For fiscal year 2003, pharmacy costs rose over 11 percent and the VA is incurring increasing demands for prescriptions each month. The continuing rise in demand for prescriptions is stripping funds from other priority areas as VA continues to operate under last year's funding levels.

Third, new community-based outpatient clinics will be curtailed. The VA has 48 high-priority community-based outpatient clinics ready to go that can't move forward because they don't have the funds under the continuing resolution.

Finally and most important, and something I hope will be significant to each one of us here, the waiting lists will continue to lengthen. Continued operations under a continuing resolution will force VA to curtail hiring of new physicians and nurses. The VA experiences about a 1-percent normal attrition rate of physicians per month. By January, VA's waiting list will rise by over 10,000 from the projected level.

VA patients, who should be getting our top priority attention, are going to find the waiting list longer. That is why I renew my appeal to the leaders on both sides to deal with the omnibus appropriations, to come to some agreement, either to take this on UC, or take it by voice vote, with the distinguished chairman and ranking member on our side and the other side to come to closure on it, or, if need be, bring us back in session.

The House is going to come back into session on December 8, I understand, and vote on the bill. We have an obligation to come in—either if there is a unanimous consent agreement granted to do it by voice vote or if there is not—and do what we are paid to do and that is to vote up or down and pass the appropriations that are so essential for many areas where continuing resolution funding will be inadequate.

I urge the leadership to work on this. We need it in many areas.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from New Mexico.

Mr. BINGAMAN. I thank the Chair.

(The remarks of Mr. BINGAMAN pertaining to the introduction of S. 1966 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I have some remarks I would like to make shortly, but I know Senator LAUTENBERG got here before I did. He told me he had about 10 minutes. I know the majority leader may have some remarks, and, of course, I would defer to him.

Unless there is objection, I would like to ask—well, I will just defer to the majority leader at this time.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, if I could just take 3 or 4 minutes, and then I know the distinguished Senator from New Jersey has his comments to make.

## THANKING THOSE WHO WORKED ON THE MEDICARE PRESCRIPTION DRUG AND REFORM BILL

Mr. FRIST. Madam President, I, just very briefly, want to thank people for a lot of hard work over the last several months.

Earlier today, we did pass a historic bill that is notable for the fact that it does help so many people in a very direct way. I think it is gratifying to all of us as U.S. Senators. But that outcome is made possible by a lot of hard work. I will be very brief, but I do want to thank the appropriate people. Again, I leave out so many people.

But, first, I thank the President of the United States. President Bush does deserve credit for making this vision of being able to reach out and help people as soon as possible in a direct way with prescription drug coverage possible. That vision really did set the template for all of us. We pulled together and passed this bipartisan bill.

Secretary Tommy Thompson, the Secretary of Health and Human Services, and Tom Scully, the Administrator of the Centers for Medicare & Medicaid Services, spent literally hundreds of hours working on this legislation.

I participated on the conference committee and had the wonderful opportunity of working side by side with them, consulting with them, seeking counsel, receiving their input.

In the Senate, Finance Committee chairman, CHUCK GRASSLEY, and ranking member, MAX BAUCUS, really did put partisanship aside from day 1,

when we first started this Senate bill, and worked tirelessly from beginning to end to deliver on the promise that we all have to the American people. In large part it was accomplished because of their work and their partnership in many ways.

Senator JOHN BREAUX deserves huge credit. I have worked with Senator BREAUX over the last 7 years. There was a Breaux-Frist bill that came out of the Bipartisan Commission. He has demonstrated real leadership and, in my mind, has been at it in terms of the final product longer than anybody in the Senate, working together on the model we ended up with.

All members of the conference committee showed a degree of dedication and resolve that is seldom seen in either Chamber. There were Senators ORRIN HATCH and DON NICKLES and JOHN KYL. We simply would not have reached this point if we had not worked together with strong leadership on the part of the conferees.

In addition, there were people such as Senators JEFFORDS, GREGG, HAGEL, ENSIGN, WYDEN, and SNOWE, who have focused on a tripartisan, bipartisan approach to health care reform, which has been instrumental in many ways.

Senators BUNNING, THOMAS, SMITH, LOTT, and SANTORUM all made huge contributions working through the Finance Committee.

Members of this body who voted against final passage also contributed in remarkable ways to this product.

I do also want to mention, just in passing, the House leadership because the House leadership, especially Speaker DENNIS HASTERT and Leader TOM DELAY, deserve very special recognition. I worked very closely, and our leadership worked very closely with them, especially in the final 2 weeks of that conference.

I had the opportunity to call yesterday Chairman BILL THOMAS. He is really the mind behind what we accomplished. He was able to assimilate very complex policy and put it into a portrait that ultimately became the substrate for this bill. He demonstrated real leadership, real patience.

Also, chairman of the House Energy and Commerce Committee, Chairman BILLY TAUZIN, we simply would not be here without his active participation as well.

My dedicated staff—Dean Rosen, Elizabeth Scanlon, Rohit Kumar, and Craig Burton—put in hundreds of hours and poured over thousands of details. Lee Rawls, Eric Ueland, David Schiappa and his wonderful staff here really made it possible.

So in closing, to everyone who worked so hard and have given so much of themselves, working hard on this effort, I thank them. I thank you, the Senate thanks you, America thanks you, and, most of all, America's seniors thank you.

Madam President, I appreciate the Senator from New Jersey giving me the floor for those few minutes. I look forward to listening to what he has to say on a very important issue.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, first, I want to say thank you——

Mr. CORNYN. Will the Senator yield for a brief UC?

Mr. LAUTENBERG. Sure.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I ask unanimous consent that following the remarks of the Senator from New Jersey—I believe he told me he would speak for about 10 minutes or so—I be recognized for remarks that I might make at that time.

Mr. LEVIN. Madam President, reserving the right to object, and I will not object, I wonder if the Senator might add to that UC—about how long does the Senator plan to speak, so I could then try to amend that UC to place myself in order?

Mr. CORNYN. Madam President, I would make my remarks no longer than 15 minutes.

Mr. LEVIN. Madam President, I ask the Senator if he would modify his unanimous consent request to allow the Senator from Michigan, and then I believe the Senator from Washington, to each have 10 minutes following his remarks?

Mr. CORNYN. That is acceptable.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. No objection, Madam President.

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

The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I would just note that the gracious statement of the Senator from Texas said ''10 minutes or so.'' I would hope, for clarification, if ''or so'' is 3 or 4 minutes longer, it will not be a violation of the unanimous consent agreement that we just heard.

## COMMENDING THE MAJORITY LEADER

Mr. LAUTENBERG. Madam President, before the majority leader leaves the floor, I want to say that I have been back here about a year now, and working with the majority leader, when he took office, has been an interesting and a positive experience. We are all cognizant of the wonderful work that Dr. FRIST has done in his time before the Senate and how he served populations so desperately in need. He took the risks and the time necessary to do that.

We all congratulate him for that, for his generosity of spirit, and his skill as a surgeon and physician.

I have found on the rare occasions that I—I hope they are rare—called on Senator FRIST for an ear, he was more than willing to lend it. If he disagreed, he said so. And if he agreed—even rarer—that was done with dispatch and a straightforwardness which I greatly respect. I hope he and his family will enjoy the Thanksgiving holiday.

As we muse over what happened in the last week, since Senator FRIST is a physician, I hope he can prescribe a way we can heal some of the bruises that occurred in this last contentious period.

## UNANIMOUS CONSENT REQUEST—S. 1602

Mr. LAUTENBERG. Madam President, it is about 26 months since the assault on our families, our people, and our invincibility that took place at the World Trade Center, at the Pentagon, and in a field in Pennsylvania where it was so heroically disrupted on its way to a target. Therefore, I am outraged that we can't find enough time to further pay attention to the memory of the 9/11 victims by passing a bill to extend the deadline for victims' families, enabling them to apply for victims' compensation which is in a fund that was passed in the Senate and passed in the House and that is about to expire.

Though we have just been through a difficult and contentious period with some acrimony, no matter how much I or others might have agreed with the outcome, our business for this year is not yet done. We are facing the expiration of this compensation fund, and there are lots of families who have yet to participate in this program that was designed for them.

The need for this 9/11 victims bill is urgent. If we don't vote on it before Thanksgiving, this bill will become obsolete because the current filing deadline is December 22, 2003.

We are reminded that a truly joyous part of the year is just beginning. It starts with Thanksgiving, goes through to Christmas and Hanukkah. It is just around the corner. A lone, anonymous Republican Senator is holding up a bill that would make these holidays less stressful for the 9/11 families. As we requested or will request in a unanimous consent request, the Senate must take up and pass this bill today in order to fulfill our commitments to compensate the victims' families.

So far, out of approximately 3,000 killed, about 1,800 families, or only 60 percent of those eligible, have filed claims on behalf of relatives who were killed. This is far too low a percentage.

Helping the families of 9/11 victims is not just the responsibility of the Senators in the Northeast, it is a national commitment we made that we owed to those who suffered on that tragic day. I am distressed by the fact that because of somebody in the majority, having just spent 39 hours of time talking about a handful of judicial nominees, we can't even commit a few minutes today to take up a simple but critical bill and pass it.

The bill is vital to thousands of Americans who lost loved ones or who were themselves injured in the 9/11 attacks. Many of these families will mourn forever. Many of these families

cannot yet bring to closure the terrible tragedy that befell their families. They are just not emotionally ready to begin the process of closure by applying to the victims compensation fund while their grief is still surrounding them.

Imagine the Thanksgiving table without a son or a daughter or a mother or a father or a child. How sad that is. And we walk away from here not yet completing the task.

I quickly point out, there are no additional funds required. Those funds were allocated 2 years ago when the fund was established. It is a rather confusing application, 40 pages. The difference is, if one applies to the fund, there is a settlement available. But in some cases, it may seem better for them to resort to the courts. That is why we have the system we have.

It is hard to proceed and leave here without trying to do something about the condition in which we leave these families. We should help them get through the holiday period and encourage them a little bit further.

The fund was estimated to cost $5 billion by Mr. Feinberg, who is the master in charge of the distribution. He is an outstanding lawyer who took this job, volunteered to do it. He notes that only $1 billion out of $5 billion that might be required or available were expended. Many others have been waiting. Some victims' families are non-native-English speakers, working hard to understand, get people to help them comprehend the application forms. Many others have been waiting to receive the required information from their loved ones' former employers in order to complete the forms.

S. 1602, the bill that Senator LEAHY and I introduced, keeps our promise to the 9/11 victims' families by extending the deadline to apply to the fund to the end of 2004, roughly a year from now. We are simply giving these grief-stricken families some more time to fill out this cumbersome application. Senators BOXER, CLINTON, CORZINE, DODD, DURBIN, LIEBERMAN, and SCHUMER are cosponsors of this bill.

I think it is really unfair that the Republican majority will not permit us to just move this bill along. President Bush and other Republicans were anxious to appear with the 9/11 families soon after the tragedy to show that they shared in some way their grief and to try to alleviate their distress. Now the cameras are gone. We should not, however, forget that we have these obligations to these families. This bill is unfinished business with a deadline.

I had hoped the majority leader and my Republican colleagues would allow us to pay our respects to these families who need our help.

On September 11 of this past year, I spoke at an event in Central Park, NY, that was arranged by a company called Cantor Fitzgerald. They lost 700 of their 1,000 employees. One of those who perished was a very close friend of my oldest daughter. They had worked together at another firm. My daughter went to law school and her friend went to work for Cantor Fitzgerald and was one of the 700 and left 3 young children and a husband behind—so unwilling to believe that his wife, the mother of these children, was taken away, that he visited hospitals in the area for some time after the attack took place, hoping that there was an error someplace, that he might find his wife, and that some way they would be able to continue. But she is gone.

When I spoke to the people from Cantor Fitzgerald, about 4,000 people were there. And, again, this company lost 700. The people they touched is a far greater number than the number who actually perished. They were looking to us for some leadership, some recognition that they paid a price for their sheer courage, many of whom died helping others, including the policemen and the fire personnel, the emergency personnel.

There are all kinds of stories, including the one about the man who walked up a flight to try to carry a woman down and both of them perished in the process. The stories are replete with heroism and courage—but dying.

I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1602 and that the Senate then proceed to its immediate consideration; that the bill be read the third time, passed, and the motion to reconsider be laid upon the table, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. I object, Madam President.

The PRESIDING OFFICER. Objection is heard.

Mr. LAUTENBERG. Madam President, I know I have to surrender the microphone. I do it sadly, because I don't believe that the Senator from Texas, who raises the objection on behalf of the Republican Party, really would object to extending a deadline—no more money and nothing else has to be done except to say to these people that we have not forgotten. We remember that you died when America's invincibility was shattered. That is a day that will mark our coming and going forever. One need only remember what happens every time you take your shoes off at the airport, or you are forced to show your ID, or you are searched with a magnetic wand, or whatever, or the fence surrounding the Washington Monument so you cannot see it at ground level when you pass by on Constitution Avenue and fortresses are being built out there. They did this to us and we are going to have to live with that.

I wish reconsideration would be taken here in a discussion with the majority leader and the Senator from Texas, if he cares to be involved, and that we can pass that bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

## JUDICIAL CONFIRMATION PROCESS

Mr. CORNYN. Madam President, I wish to speak for the next few minutes about the judicial confirmation process, now that we have passed the Medicare bill, which represents perhaps the single largest accomplishment of this session—a session filled with many important accomplishments. I want to revisit the judicial confirmation process because I think it is perhaps the one issue that has the greatest potential for constructive action in this body, and the one issue that has the most potential for destruction of constructive action in this body.

The American people have seen accusations fly back and forth in the Senate as we have observed partisan minority filibusters of President Bush's judicial nominees. As a relatively new Member of the Senate, I have no personal stake in these grievances over past perceived slights or actions. In fact, as the Chair knows, in April, all 10 freshmen Senators wrote a letter to the Senate leadership asking that we have a fresh start when it comes to the way we approach this process because, as we all know, any tactic or strategy used by a partisan minority now to obstruct President Bush's nominees, if successful, if allowed to proceed, will no doubt be sought to be used in the event a Democrat takes the White House and Republicans find themselves in the minority of this body.

I ask unanimous consent that the letter we freshmen Senators wrote to the leadership be printed in the RECORD.

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

U.S. SENATE,
*Washington, DC, April 30, 2003.*

DEAR SENATORS FRIST AND DASCHLE: As the ten newest members of the United States Senate, we write to express our concerns about the state of the federal judicial nomination and confirmation process. The apparent breakdown in this process reflects poorly on the ability of the Senate and the Administration to work together in the best interests of our country. The breakdown also disserves the qualified nominees to the federal bench whose confirmations have been delayed or blocked, and the American people who rely on our federal courts for justice.

We, the ten freshmen of the United States Senate for the 108th Congress, are a diverse group. Among our ranks are former federal executive branch officials, members of the U.S. House of Representatives, and state attorneys general. We include state and local officials, and a former trial and appellate judge. We have different viewpoints on a variety of important issues currently facing our country. But we are united in our commitment to maintaining and preserving a fair and effective justice system for all Americans. And we are united in our concern that the judicial confirmation process is broken and needs to be fixed.

In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees—typically, the nominees of a previous President—were treated. All of these recriminations, made by

members on boths sides of the aisle, relate to circumstances which occurred before any of us arrived in the United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Each of us firmly believes that the United States Senate needs a fresh start. And each of us believes strongly that we were elected to this body in order to do a job for the citizens of our respective states—to enact legislation to stimulate our economy, protect national security, and promote the national welfare, and to provide advice and consent, and to vote on the President's nominations to important positions in the executive branch and on our Nation's courts.

Accordingly, the ten freshmen of the United States Senate for the 108th Congress urge you to work toward improving the Senate's use of the current process or establishing a better process for the Senate's consideration of judicial nominations. We acknowledge that the White House should be included in repairing this process.

All of us were elected to do a job. Unfortunately, the current state of our judicial confirmation process prevents us from doing an important part of that job. We seek a bipartisan solution that will protect that integrity and independence of our Nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us.

Yours truly,

John Cornyn, Lisa Murkowski, Elizabeth Dole, Norm Coleman, Lamar Alexander, Mark Pryor, Lindsey Graham, Saxby Chambliss, Jim Talent, John E. Sununu.

Mr. CORNYN. Madam President, I, frankly, think it would be just as wrong for that to happen as I do for a partisan minority to stand in the way of a bipartisan majority of the Senate, who stand ready to confirm many of President Bush's fine nominees.

I guess just when you think this process cannot get any worse, it does. The credibility of this process has recently been called into question by the disclosure of several internal memos written for Democratic Senators on the Judiciary Committee.

Madam President, as the Chair knows, and as all Members of this body know, there is currently an investigation ongoing by the Sergeant at Arms into the circumstances under which these memos became public to determine whether there was any wrongdoing in obtaining those memos, and, of course, we must withhold judgment until that investigation is complete and the facts are made known to the Members of this body. I trust we will do whatever the law and justice requires, and that we will follow the truth, wherever it may lead in the investigation and take appropriate action. I certainly support that.

These memos are available on the Web at *http://fairjudiciary.campsol.com.*

The fact is, these memos have now entered into the public domain, and I think it is important that we address these memos and what, in fact, they confirm about the obstruction and destructive politics that have taken hold of the judicial confirmation process and which have left me concerned that there is no foreseeable end to the current gridlock.

Let me go over a few of the examples. You will see here on this chart to my left, one internal memorandum, dated November 2001. It was reported that liberal special interest groups urged Senate Democrats to oppose the nomination of Miguel Estrada ''because he has a minimal paper trail, he is Latino, and the White House seems to be grooming him for a Supreme Court appointment.''

Such comments discredit the claim made by those who object to this nomination and who oppose Miguel Estrada's confirmation to the DC Circuit Court of Appeals and who say that ethnicity played no part in their obstruction. This memo stands in stark contrast to that claim. But the one thing I hope we can all agree to is that the Senate should not make any decisions about judicial nominees, or anyone else, period, based on their ethnicity or their race. Such actions demean not only this body but all of us, and the American people did not elect us to do any such thing.

Yet this memo makes clear—or at least adds credence to the argument that but for his ethnicity Miguel Estrada would be on the Federal bench today.

In another memo, dated November 7, 2001, Democratic staff asked the question, ''Who to fight?'' Which of President Bush's judicial nominees should be opposed? The answer: Texas Supreme Court Justice Priscilla Owen. Why? Because '' . . . she is from Texas and was appointed to the Supreme Court by Bush, so she will appear parochial and out of the mainstream.''

I served for 4 years on the Texas Supreme Court with Priscilla Owen. I know Priscilla Owen. It is obvious to me that the people who wrote this memorandum do not.

Nevertheless, they decided to use the terms ''parochial'' and ''out of the mainstream,'' and to suggest that simply because she was from Texas, she could be cast in an ignorant and unfair stereotype, which should never be appropriate, even in discussing judicial nominees.

I believe firmly that these nominees should be judged on their merits, not on their home State, and certainly not on the basis of any ignorant or ill-informed stereotype.

An April 2002 memorandum indicates some Democrats wanted to delay judicial nominees, not because of any lack of qualifications but because they wanted to influence the outcome of particular cases, a very troubling suggestion.

According to one memorandum, Elaine Jones of the NAACP Legal Defense Fund would like the committee to hold off on any Sixth Circuit nominees until the University of Michigan case regarding the constitutionality of affirmative action and higher education is decided en banc by the Sixth Circuit. The memo writer appears to have understood that such tactics were highly improper but chose to proceed with those plans anyway. The memorandum expressed concern about the propriety of scheduling hearings based on the resolution of a particular case but went on to say, ''nevertheless, we recommend that Sixth Circuit nominee Julia Scott Gibbons be scheduled for a later hearing.''

Even acts that are widely recognized as improper and inappropriate seem to have become fair game for obstructionists today.

Not only have we seen obstruction, we have seen destruction when it comes to the reputation of the nominees who have been proposed by the President by the use of vicious ad hominem character attacks. In public, leading Democrat Senators have called this President's judicial nominees everything from turkeys to neanderthals, to kooks, to selfish, despicable, and mean.

In memos, Democrats—the ones in the minority who obstruct the President's consideration of his nominees—seem to scrape the bottom of the barrel when it comes to vituperation, describing these widely respected nominees as alternately ugly, heartless, and even, as was reported in today's edition of the Washington Times, Nazis. This language is deplorable and simply has no place in the Senate.

After reading these offensive memos, we cannot, nor should America, harbor any further illusions about what is going on here. The current mistreatment of nominees is not politics as usual, it is politics at its worst and exposes those who would march in lockstep with ideologically driven special interest groups whose main purpose is to defeat these nominees—and not just defeat them but destroy their reputation.

I am sad to say that as long as these tactics continue without the condemnation they deserve, we will see only further degradation and a downward spiral of the judicial confirmation process. In the end, we all know who will pay the price. It is the American people who will pay the price.

Just so we understand why this is so critical to this process, why these memos, and what they reveal is so unfortunate and deplorable, in one of the memos it was made clear that one of the special interest groups that was monitoring this process would ''score this vote in the 2003 CONGRESSIONAL RECORD.'' In other words, these special interest groups are not only dictating the tune, expecting Senators to dance to that tune, but told that if they do not, they will be punished because their vote will be scored in mass mailings and advertising and other publications issued by the various special interest groups in the next election. This reveals something that should be very disconcerting to everyone and certainly to the American people.

The question that perhaps people who are paying attention, if there are people paying attention to my remarks today, would ask is: So what? What

does this mean? Why should we care? In the brief moments remaining, I will address why the American people should care and why we should care.

We have too often seen an unelected, lifetime-tenured judiciary make decisions based on dubious constitutional grounds that would never enjoy the support of the vast majority of the American people. Just one that comes to mind is a recent ruling of the Ninth Circuit Court of Appeals saying that the words ''under God'' in the Pledge of Allegiance may not be uttered in classrooms because it violates the first amendment separation of church and state.

That does not make any sense. It certainly cannot be the law. Yet we have lifetime-tenured judges who are stating that as if it were the law. Thank goodness that decision will be reviewed, and I hope expeditiously reversed, by the U.S. Supreme Court.

We have all sorts of strange things happening today. One recent article caught my attention: When current Supreme Court Justices in a recent speech said the decisions of other countries' courts should be persuasive authority in America's courts when interpreting what our law is, we ought to look to the law of the European Union or other countries, perhaps, to guide these American judges in interpreting American law and the American Constitution. Justice Breyer recently found useful, in interpreting the American Constitution, decisions by the Privy Counsel of Jamaica and the Supreme Courts of India and Zimbabwe. Later, Justice Kennedy of the United States Supreme Court cited a decision of the European Court of Human Rights in a decision handed down this month. Justice Ginsburg, joined by Justice Breyer, cited a decision by the International Convention on the Elimination of All Forms of Racial Discrimination in a recent case. It goes on and on.

Anyone who is paying attention to what Federal judges are doing today and what they view in terms of their obligation to interpret the law have to ask the question: What is going on? What would James Madison, Alexander Hamilton, Thomas Jefferson—what would our Founding Fathers say about what is happening in our Federal Judiciary today? We all know the answer. They would be shocked. We should be shocked as well.

Finally, this is an important debate because this determines what kind of country we are and what kind of country we will become. My hope and prayer is that in the intervening 2 months, when we come back, this debate will take on a new civil tone, we will deplore and avoid these tactics of the past and embrace the fresh start we so earnestly sought just a few short months ago.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

## UNEMPLOYMENT COMPENSATION

Mr. LEVIN. Madam President, after the Senate adjourns for the year, the plan is for the Senate to reconvene on January 20 of next year. Unless Congress acts to extend Federal unemployment benefits, the so-called Temporary Extended Unemployment Compensation Program, before we adjourn, hundreds of thousands of unemployed Americans face the holidays with the prospect of losing their unemployment benefits on January 1. This lack of action would put us in exactly the same situation as last year: going home to our loved ones without helping jobless Americans during the holiday season.

At a minimum, we should extend the current Federal Unemployment Assistance Program for 6 months. At a minimum, we should stand by America's workers and help the unemployed during this holiday season.

According to the Center for Budget and Policy Priorities, in January, about 90,000 current unemployed workers are likely to exhaust their regular State benefits each week. Absent congressional action, starting January 1 next year, workers who exhaust their regular State benefits will no longer be eligible for the additional Federal benefits. The only people who will continue to receive those benefits will be those who have begun to receive their Federal benefits by January 1.

This chart shows where we are in terms of the Federal benefits. In the recession of 1974–1975, there were Federal benefits accumulating to 29 weeks. That is in addition to the 26 weeks of State benefits. In the 1981–1982 recession, again, 29 weeks of Federal benefits. In the 1990–1991 recession, 26 weeks of Federal benefits. Currently, until December 31 of this year, there will be 13 weeks of Federal benefits that are offered in addition to the 26 weeks in each of our States. That is what will disappear December 31.

This is a very modest program we have going. This is half of what we have done in the prior two recessions in terms of Federal benefits, slightly less than half of what we did in the recessions of 1974–1975 and 1981–1982, but exactly half of what we did in the 1990–1991 recession.

Currently, we only have 13 weeks of Federal benefits. This is going to run out on December 31 unless we act before we leave.

Some contend the issue of whether or not to extend the program and in what form can be dealt with when we return on January 20. I believe, however, by the time January 20 rolls around, it is going to be too late. In fact, we know it will be too late for thousands of unemployed who will have exhausted their benefits. So action is needed today. It is needed now or else this Federal benefit program, which is a modest program—again, I emphasize, half of what we have done in prior recessions—unless this is reauthorized today, it is going to run out and hundreds of thousands of unemployed Americans are going to see their benefits exhausted without the benefit of the Federal program.

In the month of January alone—this coming January—as many as 400,000 unemployed workers are going to exhaust their State benefits if we don't act.

The number of long-term jobless—that is the people who have been jobless 6 months or more—grew in October to over 2 million workers for the first time since this recession began. That represents an increase of over 700,000 workers compared to March 2002 when the current Federal unemployment program was most recently authorized.

The Federal extended benefits program which was implemented in the last recession did not end until the economy had added nearly 3 million jobs to the prerecession level. The current unemployment program is scheduled to end, although there are 3 million fewer private sector jobs than when this recession began.

Renewing this Temporary Emergency Unemployment Compensation Program, this Federal benefits program, is essential under these circumstances. The comparison on this chart is dramatic between what we did in prior recessions and this recession.

In prior recessions, we had twice the level of Federal benefits as we do now. We have a modest 13 weeks, half the level, and in the prior recession we waited to end the Federal program until millions of new jobs had been created.

Unless we act today, we will have lost 3 million jobs and still will be ending a Federal program which is so critically essential to those people who are unemployed.

The Department of Labor's announcement that 125,000 jobs were created in October and that the unemployment rate dropped to 6 percent, the first decline since I don't know how long—I don't have the exact date here, but in a long time—presents a glimmer of hope. It is a glimmer of hope at least in some places, but in my home State of Michigan the unemployment rate is 7.6 percent.

We, like most other States, are very dependent upon a minimum level of unemployment benefits. It would be unconscionable for this Congress to leave without renewing this program.

Factory employment in America declined for the 39th consecutive month by eliminating approximately 24,000 manufacturing jobs. So even though we had that slight increase in jobs in October, for the first time really, we are seeing a slight up-tick in the total number of jobs. We have at least some jobs being created. In the manufacturing sector, for the 39th consecutive month, we lost tens of thousands of manufacturing jobs.

America's manufacturing core has shed an average of over 50,000 jobs a month for the last 12 months. These manufacturing jobs, which build and sustain America's middle class, are disappearing. A total of over 2.5 million

manufacturing jobs have been lost in the last few years. These are jobs that are good paying jobs, provide good health benefits and good retirement security. We simply cannot afford to let these jobs leave our country or be lost for good.

In the meantime, while we are fighting the battle for manufacturing jobs, we should not go home for the holidays having failed to act to maintain the very modest Federal unemployment benefits program. I know there are many in this body who are determined to see us have the opportunity to act to extend this program before we leave for the recess.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

## UNANIMOUS CONSENT REQUEST—S. 1839

Ms. CANTWELL. Madam President, I rise to echo the comments of the Senator from Michigan. I think it critically important that Congress not adjourn for the year without addressing unemployment benefits for Americans who, unfortunately, have been out of work for some time now.

The Senator from Michigan is very conscious of the fact that his State, with 7.6 percent unemployment, has not seen much economic relief in this jobless recovery. I can tell him that the State of Washington has seen very little relief, as we are at 7 percent unemployment rate. The States around us—Oregon is at 7.6 percent unemployment; Alaska is at 7.3 percent unemployment—also continue to suffer.

The Pacific Northwest has been very hard hit by the downturn in our economy. While some people would like to say that is part of the process, I would argue that losing jobs in the aerospace industry after 9/11—35,000 jobs just at Boeing alone—is no fault of individual workers.

I guarantee you, individual workers in my State would rather have a paycheck than an unemployment check. But if they are not getting an unemployment check, if they do not have the ability to take care of mortgage payments and other bills, it affects our overall economy. That is why for a long period of time, not only have people believed that those who pay into unemployment benefits should get a package for taking care of them during downturns in our economy but they also think unemployment benefits are a great stimulus for an economy that is sagging.

My colleagues on the other side of the aisle continue to refuse to bring up an extension of unemployment benefits. That means by that December 31 of this year, some 90,000 unemployed people per week will exhaust their regular benefits. That means in the first 6 months of 2004 there may be as many as 2 million people affected by this loss of benefits.

This issue is so important to me because we were in this same situation last year. This side of the aisle said, given that this country has lost so many jobs, we must do something to take care of laid off workers. We must extend the Federal unemployment benefits program. We were successful in convincing the Senate, with Senator NICKLES' help, to pass a bill out of the Senate extending unemployment benefits, but the Republicans in the House refused to take up the measure and people in my State were without unemployment benefits at the end of the year.

If somehow my colleagues think that people didn't make very tough decisions because we left them without any guarantee that the program would continue, they did. I had constituents who took money out of their pension plans—at a 30 percent penalty—at the end of December to live on because they thought their benefits had been exhausted. They were forced to trade off long-term security for short-term economic need, only because the Federal Government did not stand up and do its job.

We had a similar situation in the 1990s in which we had high unemployment. What did we do to act responsibly? For 30 months, the Federal program offered to unemployed Americans a richer benefit than we are offering today—20 weeks in the 1990s, compared to 13 weeks today. Well, guess what was different in the 1990s. During that time period, 2.9 million net jobs were created. Since this recession started, we've lost 2.4 million jobs.

The 1990s recession covered both a Republican administration—the first Bush administration—and a Democratic administration. Both those administrations committed—for 30 months, and with a richer Federal program of 20 weeks—to take care of Americans until this economy recovered. As the economy recovered and 2.9 million new jobs were added, then we ended the program.

How do our actions today compare to that recession? Well, we have only had 22 months of this program, so it has not lasted as long as the previous program of Federal unemployment benefits. It has been 8 months shorter. The benefits are less, only 13 weeks instead of 20. So it is not as rich a program.

The bottom line is what has happened to our jobs during the time period. In this time period, instead of adding 2.9 million jobs, we have actually lost 2.4 million jobs. So if the argument is that it's time to stop the Federal extension program when new jobs have been created and Americans are going back to work, then obviously 22 months has not been enough. People are not going back to work. We have lost 2.4 million jobs. If somebody thinks it is time to cut off this program, they are dead wrong. To do this, going into the holiday season, is just like giving American workers a lump of coal in their stocking. It's like saying, no, thank you, for the hard work you have provided to American companies in the past and for paying into the unemployment insurance system.

It is totally irresponsible for us, as a legislative body, to pass all of these tax cuts for the wealthiest Americans, do all of these programs for special interests, give subsidies, and then leave American workers without the benefit program that was designed to help them in economic downturns.

This is not a Republican or Democrat issue. We have had a Republican administration and a Democratic administration—the first Bush administration and the Clinton administration—who said this is a great policy, but somehow this policy is now falling on deaf ears. During the 1990s, when we ran this program for 30 months at richer benefits, we had an improvement in the unemployment rate of 1.2 percent before we ended the program. It was yet another sign, in addition to the 2.9 million net jobs added that it was time to end the program.

As I said earlier, we have lost 2.4 million jobs during this time period and the unemployment rate has improved less than 1 percent—only .4 percent. So we do not have the data, we do not have the evidence that things are getting better. And yet somehow now, even though we cannot demonstrate that things are really getting better for workers, some people on the other side of the aisle want to hedge their bets and say, too bad for you. And they want to say this at the end of the year the holiday season, when people are making some of their most important financial decisions and expenditures.

I think it is outrageous. It is outrageous that this body is so cold hearted to the hard-working men and women of America. Let's remember how we got into this situation. Through no fault of their own, and in particular for New York and Washington State, resulting from the unfortunate circumstances of 9/11 and downturns of specific industries as a result of that—laid-off workers are being left high and dry.

Somehow we want to put American workers out in the cold just because a very tragic event happened to us at the national level? We do not want to say to those companies and to those individuals, we understand the hard economic times they have fallen on? That is what the Federal unemployment extension program is about.

There are additional reasons we are crazy not to extend this program. One is that we have yet to see the economic results we want. Unemployment insurance is an economic stimulus. For every dollar spent on unemployment benefits, it generates $2.15 of economic stimulus. I argue that one of the best economic stimulus programs we have had in the last 22 months has likely been Federal unemployment benefits. These benefits have allowed millions of Americans to make their house payments, to pay their medical bills, to

pay for the various essentials they need to do to exist. And that is what they are basically doing. They are just getting by. They are just getting by until new jobs are created.

I say to the administration: Where are all of these new jobs? The bottom line is still 2.4 million jobs lost. If the administration wants to curtail this economic program, at least stand up and be as responsive as the last two administrations were and create the new jobs. In that recession, 2.9 million jobs were created and so, of course, Americans could go back to work and, of course, they could get off the Federal program.

We have a big challenge before us. And although this bill does not directly address this, we must recognize that parts of our economy are retooling. Parts of our economy are demanding a more creative approach to jobs that are lost as industries are transitioning. It will take almost 2 years to regain the jobs we have lost. Why not prop up our economy by adding needed stimulus? Why not give American workers a return on a program they paid into, and why not honor them by admitting they would rather have job creation than unemployment checks and get about going back to stimulating our economy with real job creation?

None of that is happening. We are all now about ready to adjourn to some date uncertain. I do not know if it is January or a sooner time, but America was listening last year. At the holiday season, as December 31 rolled around, Americans were furious that this program was being curtailed. People made very serious decisions. Why make them live through those circumstances again and then come back in January or February? After we have all made it clear this was a program that was much needed, why not do the responsible thing now and pass these unemployment benefits.

I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 1839 and that the Senate then proceed to the immediate consideration of that legislation; that the Cantwell amendment, which is at the desk, be considered and agreed, and the motion to reconsider be laid upon the table, and that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table without intervening action or debate.

The PRESIDING OFFICER (Mr. CRAPO). On behalf of the leadership, in my capacity as the Senator from the State of Idaho, I object.

The objection is heard.

Ms. CANTWELL. I do not know how many more objections we are going to hear before we give American workers their right to unemployment benefits. We need to own up to the fact that this body cannot pass tax cuts for the wealthiest, incentivize other programs, and then not take care of our obligation to workers in America—all of whom would, in the end, certainly rather have a paycheck.

I hope this body will come to its senses, address this very important issue, and not leave any Americans at the end of the year without the resources to pay their bills and without helping them be an effective part of our economy.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## CONTRIBUTIONS OF THE 101st AIRBORNE AIR ASSAULT DIVISION OF THE GLOBAL WAR ON TERRORISM

Mr. MCCONNELL. Mr. President, I rise to honor the Screaming Eagles of the 101st Airborne, Air Assault Division, based at Fort Campbell, KY. As you all know, two Black Hawk helicopters from the 101st Airborne collided in the night sky over Mosul, Iraq on November 15, 2003. Tragically, all 17 soldiers on board the helicopters perished in the incident. This last Saturday, two additional soldiers from the Division were killed while they patrolled the streets of Mosul.

These tragic incidents bring the total number of Screaming Eagles lost in Iraq to 55. My prayers and deepest sympathies go out to the families and friends of these brave Americans.

Last month, in one of the most moving experiences of my career, I met with some of these soldiers in Mosul, where the 101st is responsible for keeping the peace in the northern part of Iraq.

These heroes shared with me their thoughts about America's struggle to bring peace and security to a long-oppressed nation, and their patriotism and passion for their mission shone through the dust and grime that accumulates with sustained operations far from the comforts of home.

Truth be told, I did not expect to encounter the extraordinary high levels of dedication and morale I witnessed in Mosul and elsewhere in Iraq. Throughout that country, I conversed with soldiers who witnessed first-hand the reality of war, and who knew friends injured or killed in combat.

It was obvious that the thoughtful young men and women I met in Iraq have spent long hours coming to grips with these harsh realities, yet remain committed to their mission and deeply believe that what they are doing is right and just. An example: at the 101st Airborne's headquarters in Mosul, I witnessed a video that detailed the Division's operations in Iraq. The moving video is dedicated to—and features footage of—Screaming Eagles who have lost their lives during the liberation of Iraq, and it is clear these lost heroes are never far from the thoughts of the soldiers of the 101st. Indeed, these heroes remain a source of poignant motivation for their comrades.

For our Armed Forces, sad memories of fallen colleagues are inescapable, but so too is the evidence that the Screaming Eagles are on the right side of history. From water coolers in Washington, DC to New York City newsrooms, many of us forget that our troops were present at the moment Iraq was liberated from the tortuous grip of Saddam Hussein. They have since witnessed firsthand the birth of a democratic process and the reawakening of a people enslaved for generations by fear and oppression. The Screaming Eagles have worked side by side with Iraqis to help rebuild a shattered country, and their joint success in this regard is truly remarkable.

The brave soldiers I met in Mosul know America is in Iraq for the right reasons, and that despite setbacks and tragic incidents we are winning the peace in Iraq, just as surely as we won the war.

At one point during my visit, one of the Screaming Eagles came up to me and introduced himself as a captain who hailed from my hometown of Louisville. In the entryway of one of Saddam's former palaces—now serving as the 101st Airborne's division headquarters—he presented me with a flag of the Commonwealth of Kentucky, and recalled how he brought it with him as the division left Fort Campbell and fought north from Kuwait, up through Baghdad, and on to Mosul.

This captain spoke with well-earned pride about the role he and his fellow soldiers played in liberating the Iraqi people and winning the war. And he spoke of the progress they were making in winning over the hearts and minds of these newly free people by treating the Iraqis with a level of dignity and respect they have not received for generations.

While in Mosul, I met with the newly elected governing council of Iraq's Nineveh Province, and I can tell you that the respect and appreciation these democratically elected leaders have for the U.S. efforts is ample evidence the Screaming Eagles are indeed winning the hearts and minds of the Iraqi people.

Indeed, both this democratically elected new government and that young captain would want us all to understand that America did the right thing to help 25 million Iraqis to realize a life without fear. I can assure you that this captain and his fellow soldiers—although mindful of the great risks and danger inherent in their work—are committed to finishing the job by winning the peace and helping the Iraqis to get back on their feet.

I keep this soldier's flag—still covered in dust and dirt from its historic travels—in my office as a reminder that when America sets out to accomplish a difficult task, it finishes the

job. And when I hear discouraging or saddening news from Iraq, I think of this young captain's dedication to this mission, and know that America must—and will—stay the course.

Mr. President, the entire Fort Campbell community grieves the loss of every single Screaming Eagle, and we long to welcome the division home to the fertile farmland of western Kentucky.

But when the division returns to Kentucky, it will have left an indelible mark on the memories of the people of northern Iraq. The 101st has treated the Iraqi people with respect and honor. They have acted not as occupiers, but as allies to the victims of Hussein's brutal reign. When the Screaming Eagles come home, Iraqis will see their legacy around every corner: in the hundreds of newly refurbished schools, in the electricity that now is available 24 hours a day, in the swimming pool renovated for Iraqi kids by the division, in the repaired irrigation canals that bring water to the wheat fields near Mosul, in the soccer fields that are no longer killing fields, and in the proud Iraqis now patrolling the streets of a free Iraq as policemen respectful of the human rights and dignity of their fellow citizens.

Mr. President, Iraq is now free—and an evil despot no longer threatens the United States and his neighbors—because of the selfless actions of the individual soldiers of units like the 101st Airborne. I pray that the families of those Americans who have lost their lives in this conflict find comfort and solace in their time of need. Their loved ones are American heroes, and I will never forget their sacrifice.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## KEY ACCOMPLISHMENTS IN THE FIRST SESSION OF THE 108TH CONGRESS

Mr. MCCONNELL. Mr. President, as the first session of the 108th Congress draws to a close, the score of accomplishments of this Senate comes into clearer view. By any historical comparison, this Senate's record of accomplishments is remarkable. But when one considers the slender majority that this party holds in the Senate, and the numerous unforeseen challenges that have risen, the record of accomplishments is truly extraordinary.

Our efforts, the efforts of this Senate in the first session of the 108th Congress, have improved the security of America and the lives of all Americans in significant ways.

While the homeland and national security of America has been strengthened, the economic and retirement security of all Americans has also dramatically improved.

America's security has benefited from the first funding of the Department of Homeland Security, the confirmation of the first Secretary of Homeland Security, full funding of the war on terrorism, passage of a modern-day Marshall plan for Iraq, and passage of both the Defense authorization and appropriations bills.

The security of the American people in their work and their retirement has dramatically improved as well. The economic growth package passed earlier this year has pushed the economy to the highest quarterly growth rate in almost 20 years, while the promise of prescription drugs for our seniors on Medicare, thwarted for 38 long years, is just hours—just hours—away from becoming the law of the land with the stroke of the President's pen.

These major legislative victories have been as demanding as they have been time consuming. Yet that did not stop the majority leader from getting the work of the people done.

In an extraordinarily tenacious manner that should make all Tennesseans proud, our leader, BILL FRIST, confronted not just the challenges of last year's business but also the present demands of the war on terrorism.

As I think back on the first year of Senator FRIST's position as our leader, I think we can all feel extraordinarily proud of his many accomplishments in holding this somewhat fractious body together in order to advance the agenda.

The Senate, as we all know from working here, and as many Americans know from studying the history books, was basically constructed not to function very well or certainly not very quickly. At one time or another, virtually every Senator takes advantage of that opportunity. Then you add on top of that the fact that the American people dealt a very narrow majority to the majority party.

Many thought at the beginning of the year the prospect of very much success was quite limited indeed. But as you look back over the year, under Senator FRIST's extraordinary leadership, we have been able to make enormous progress for the American people.

It all began back in January, when we had to pass 11 appropriations bills, uncompleted from the previous year. Under Senator FRIST's leadership, we completed the emergency wartime supplemental appropriations bill. He brought to a successful conclusion the fires and NASA disaster supplemental appropriation. Then he pulled together the conference to pass a very tough Iraq reconstruction supplemental appropriations bill—all of this in the past year.

Even though, as of today, it is not exactly clear when our remaining appropriations bills will be approved, what we can say is this: That under Senator FRIST's leadership, all but 1 of the 13 appropriations bills have gone through the Senate. Six bills are the law of the land and the remaining seven could be just hours away from being successfully concluded, or might be concluded in a couple of weeks. But, in any event, they are largely completed and are awaiting the desire of the Senate to pass this omnibus report and move it along.

When that happens, the Senate will have passed 27 normal and supplemental appropriations bills into law—not a bad year's work.

With this record on appropriations, with passage of the economic growth package, and with passage of the Medicare prescription drug bill, expecting anything more from this Senate would not be reasonable. But in fact much more has been delivered to the American people by this Senate under the leadership of Senator BILL FRIST. We have banned the horrific practice of partial-birth abortion. We have passed the Do Not Call Registry at the Federal Trade Commission. We provided tax relief to military families. We passed the Healthy Forests Act to stop the catastrophic wildfires we have witnessed raging across the western lands. I might say, the occupant of the chair, the Senator from Idaho, was right in the middle of that debate from the beginning to the end, helping steer it to a successful conclusion. I commend him for his extraordinary work on the Healthy Forests proposal.

We have enacted free trade agreements with Chile and with Singapore. The Senate has passed the Federal Aviation Administration reauthorization to revitalize an air transport industry suffering from the effects of the terrorist attack of 9/11. We pushed a comprehensive Energy bill to within two votes of breaking a filibuster.

One thing we can say today: This is only the end of the first session. We have a second session of the 108th to go. We have not given up on the prospect of getting an Energy bill. We are going to have a very cold winter. We have the potential for blackouts, all kinds of problems that could be dealt with substantially by the passage of this Energy bill. I believe there will be two additional Senators who will see their way to supporting an Energy bill something like the one we currently have before us in order to prevent America from having another experience like we had last summer with the blackout.

After more than a decade of repression, the Senate has passed the Burmese Freedom and Democracy Act. In addition, we secured resources to improve our Nation's elections systems and, hopefully, we will finish the job through the omnibus appropriations bill currently being negotiated. We made a commitment to our States to be a partner in this endeavor, and we took the first step to honor that commitment.

I want to linger a moment on this whole election reform issue. Senator

CHRIS DODD of Connecticut deserves an enormous amount of credit, as does Senator KIT BOND of Missouri. The three of us worked long and hard to produce an election reform bill, the theme of which was to make it easier to vote and tougher to cheat. There is, in the context of passing the final omnibus, an additional billion dollars going out to the States to guarantee that we have the cleanest and the most efficient election in American history next November of 2004.

That money must get out the door, and that is another reason we need to wrap up this omnibus appropriation at the earliest possible moment. States and localities all over America are waiting so they can implement this mandate, which is a funded mandate—not an unfunded mandate, a funded mandate—only when the money gets to the States. The sooner we pass the omnibus, the sooner that will happen, and the more likely it is that we will have the most honest, the most efficiently conducted election in American history next November of 2004.

Numerous other legislative accomplishments have been reached during this session. Specifically, the Senate has passed the President's faith-based initiative. We have funded the efforts to eradicate the scourge of global AIDS. We acted to guard our children against abduction and exploitation by passing the PROTECT Act. We improved safeguards from foreign terrorists by enacting the FISA bill. We expanded NATO to include almost all of the former Warsaw Pact countries. We also passed a significant arms reduction treaty with our former enemy, turned ally, Russia. We took steps to bridge the digital divide by providing needed funds to historically Black colleges.

We awarded a congressional gold medal to U.K. Prime Minister Tony Blair and affirmed the constitutionality of using the term ''under God'' in the Pledge of Allegiance.

We have a solemn responsibility to the American people to improve their lives, to protect their homeland, and build a future filled with hope and opportunity. This year, we have made excellent progress in fulfilling our obligations to the American people. Next year, it is our hope and intention to do even more.

Let me say in closing, again, how much I admire and how much all of us appreciate the extraordinary leadership of our majority leader, Senator FRIST. He has been very skillful in advancing our legislative agenda in a body which is designed to thwart almost every initiative. He has done it with a very narrow majority. So as we wrap up the first session, plaudits to the leader, to all of our colleagues, not only on the Republican side but throughout the Senate, who have worked extraordinarily hard this year.

We had 459 votes this year. We were doing a lot of voting on a lot of issues during the course of the year. In fact, we had more votes in the Senate this year than any time since 1995, the first year of the Contract with America. We had a lot of very close votes, a lot of dramatic experiences in the Senate.

Back during the budget, we had three votes on which the Vice President had to break the tie in the chair. So for those who were interested in drama and who typically think of the Senate as a place where you to go watch paint peel, there was a good deal of excitement this year at various intervals in our legislative consideration.

I hope all Members will enjoy the Thanksgiving holiday and Christmas with their families and come back to Washington refreshed to tackle the agenda that remains in the second session of the 108th Congress.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

## INTERNET TAX MORATORIUM

Mr. FRIST. Mr. President, on November 1, 2003, the most recent Internet tax moratorium expired. In the weeks prior to and following this expiration date, I have been trying to broker a compromise between those who, like me, support making the moratorium permanent and those who oppose a permanent extension. Unfortunately, we have been unable to reach resolution on legislative language that would allow us to make the moratorium on Internet access technology neutral and permanent. However, I remain committed to passing a revised moratorium next year which ensures that all Americans can receive Internet access tax free, regardless of technology.

I respect the arguments of those Senators who are concerned that the language in S. 150, the Internet Tax Nondiscrimination Act, will infringe on the ability of States to tax traditional telecommunication services. Because of their concerns, I allowed the bill to be fully debated on the floor of the Senate for several days. In the end, after spirited discussions, the relevant parties could not reach agreement on appropriate language and the current moratorium had expired.

After that process failed to achieve a resolution, I sought to broker a compromise by laying out a menu of options from which the parties could choose. None of these options were perfect, and none went as far to protect the Internet from taxation as I would have liked. But in the spirit of compromise, I believed that taking some action was better than doing nothing at all. Unfortunately, the various relevant parties disagreed. Every option I suggested was rejected by both sides and both indicated that no deal was better than any of the options I had set forth. As an aside, this was the first, last and only moment when the various parties were able to reach agreement with respect to anything having to do with taxing the Internet.

At this point it became clear to me that no agreement was in the making with respect to a permanent or even multiyear extension of the Internet tax moratorium. I therefore suggested that we pass, as a part of the omnibus appropriations bill, a so-called ''Internet-tax CR''—basically an extension of the expired statute to cover the gap between November 1 and the second session of the 108th Congress when the Senate would be able to return to this issue.

My concern was that if we did not extend the moratorium, the Internet would be open to multiple and discriminatory taxes for the fist time in 5 years. And while a simple extension would not have addressed the troubling efforts in several States to begin taxing DSL access, I still believed that doing something was better than doing nothing. Further, I was prepared to make it clear that the spirit of the original moratorium was intended to make all Internet access tax free, and that extending the current moratorium should not be an invitation for any State to continue or begin anew taxing DSL.

Much to my disappointment, even a simple extension of the original moratorium failed to gain consensus support. And even when we agreed to consider modifying the original language to prevent states from taxing DSL for the duration of this Internet-tax CR, the House of Representatives was unwilling to agree.

As the strong bipartisan support of the Internet moratorium indicates, there is a growing consensus that the Internet should never be singled out for multiple or discriminatory taxation and that all forms of Internet access should be tax free. Rather than finding new ways to tax the Internet, the unprecedented benefits it offers to our society and economy should be encouraged by policymakers at the Federal, State and local levels. We must not allow differences over details of the moratorium to result in tax policies which damage this critical economic engine of the future. The Internet is too important.

I specifically thank Senator MCCAIN, Senator SUNUNU, and Senator ALLEN for their excellent leadership and dedication to this issue. Their efforts have ensured that this important technology issue receives the attention it deserves from Congress. As majority leader, it is my intention to work hard to get the strongest, longest ban on Internet taxes as possible. As such, I will make passing a meaningful, revised Internet tax moratorium a priority for next year.

## CADET NURSING CORPS

Mr. REID. Mr. President, some of us are barely old enough to recall the end of World War II. And we remember that it was an effort that involved the entire Nation in a monumental struggle against the evil of fascism.

During World War II the United States sent more than 250,000 nurses to the front lines to care for our wounded Allied troops.

By 1942, the country was experiencing a shortage of nurses for domestic medical needs. In fact, the shortage was so severe that many clinics were forced to close.

To alleviate our domestic medical crisis, Congresswoman Frances Payne Bolton introduced legislation creating the United States Cadet Nurse Corps in 1943. Over the next 5 years, the Corps recruited about 125,000 young women to assume the duties of nurses who had been dispatched to the front lines. Throughout World War II, cadet nurses accounted for 80 percent of the nursing staff in our domestic medical facilities.

Cadet nurses completed rigorous training under the jurisdiction of the Public Health service. They also pledged to serve at any time during the war, at any hospital or clinic where they might be needed. They were often required to leave their families and fill vacant positions across the country. They acted as both caregivers and medical doctors—as there was also a scarcity of doctors—to the sick and wounded.

The Cadet Nurse Corps provided the support of health care system needed. By putting the needs of the Nation ahead of their own, these young women made it possible for Allied troops to receive the best possible medical care during a time of war.

Although the uniforms of these dedicated cadet nurses were decorated with patches certified by the Secretary of the Army, and they served under the authority of commissioned officers, the Cadet Nurse Corps has never been recognized as a military organization.

Today, many of these cadet nurses are no longer living. Those who do survive are in their seventies and eighties. Ironically, they are not entitled to use the veterans health care system, nor do they receive other benefits such as disability pay.

Even more important, they rarely receive the recognition they deserve for their service to their country. And every year, as more of the cadet nurses pass away, it becomes too late to recognize them.

These women served their country in a time of war. I believe they deserve to be recognized as veterans of that war effort. Therefore, I support veterans status for members of the Cadet Nurse Corps.

I have introduced legislation that would accomplish this goal. I hope my colleagues will support this effort so we can finally properly recognize the cadet nurses for their outstanding service to this country.

## SUPPORTING OUR TROOPS AND THEIR FAMILIES

Mr. DOMENICI. Mr. President, as we approach the Thanksgiving Day holiday, we as Americans have much for which to be thankful. Around dinner tables this year, there will be added joy of loved ones returning home especially in the case for those families of members of our Armed Forces. Other homes may not be as joyful, as those who have chosen to defend their Nation are stationed abroad, particularly in Iraq and Afghanistan. Both of these scenes will occur in my home State, NM.

We as a Nation are ever grateful to the men and women of our military and the families they leave behind to serve. Today, I rise in support of an important effort to assist these dedicated military personnel and their families.

The Armed Forces Relief Trust, AFRT, is a non-profit fund established to help ease financial burdens on our military personnel and their families. With so many of our troops on extended overseas deployments, the benefit provided by the Trust is needed more than ever.

Today nearly 140,000 soldiers, sailors, airmen and marines are deployed overseas in the war on terror. Thousands more are stationed abroad guarding our freedom. For the families left behind, the financial burden of caring for children and meeting other demands can be a strain. And with an increased number of National Guardsmen and Reservists currently overseas, the number of families facing such hardship is even greater.

In my own home State of New Mexico, many have been affected by the frequent and lengthy deployments associated with the war on terror. Most recently, 60 National Guardsmen from the 515th Corps Support Battalion out of Springer, NM, were activated to support combat forces in Operation Iraqi Freedom. They join more than 900 other New Mexico Guardsmen already deployed worldwide, including those from the Army's 717th Medical Company and the 720th Transportation Company—both from Santa Fe. And only recently did we welcome home to Las Cruces the 281st Transportation Company following its service in the Persian Gulf. These many deployments from New Mexico represent what is happening all over the country.

Clearly, many military members and their families face burdens that are compounded by months of separation and tight budgets. For example, a soldier overseas might face the unexpected cost of airfare to attend his father's funeral; a deployed airman's expectant wife might incur costs for special medical care; or a sailor's child may need assistance to cover burdensome costs associated with attending college. These situations are what the Armed Forces Relief Trust is designed to address.

It seems to me that these are the sorts of things that we ought to be doing to help boost the morale of our troops. Many endure months away from home and, in some cases, face the pressure of operating daily in a combat zone. The kind of benefit provided by the Trust gives them some peace of mind and allows them to focus on their vital mission. I salute the Military Aid Societies representing the Army, Navy, Air Force and Marine Corps for coming together to create the Armed Forces Relief Trust. Perhaps more importantly, I salute all those who have donated to the Trust and are helping to ensure that the needs of our brave military personnel and their dedicated families are being met.

As we all gather with our families this Thanksgiving and count our blessings, I believe we should remember our brave men and women in uniform, and consider supporting the Trust and its work to these personnel and their families in need.

## AIR POLLUTION CLOSE TO HOME

Mr. JEFFORDS. Mr. President, I would like to ask my colleagues and the American public some serious questions today—questions about air pollution and its impacts closer to home.

Many of us listening today have children and grandchildren. How many of them have asthma? How many of us have taken children to the emergency room in the middle of the night, desperate to put a stop to their terrifying asthma attacks?

How many of the Nation's growing number of asthmatic children have to carry inhalers to school, and wish they could run, play, and breathe freely like the other kids?

How many Americans know young children who depend on their asthma inhalers to get safely through a simple game of baseball? Their asthma attacks could be some of the six hundred thousand caused by air pollution every year.

How many of our own children or grandchildren yearn to play outdoors during school recess, only to have their teachers warn them the air is too unhealthy?

How many of us have parents or siblings with emphysema? Or chronic lung disease? Reduced lung function, or lung cancer? Air pollution decreases lung function and causes asthma and asthma attacks, lung disease, emphysema, lung cancer, and heart problems.

Do Americans ever worry that their own lives may be shortened by three or four years, just because the air is so dirty?

Sixty thousand people die prematurely in this country every year because of air pollution. It's hard to believe, isn't it? Let me put it another way.

Air pollution is responsible for more deaths than breast cancer, colon cancer, pancreatic cancer, skin cancer, prostate cancer, brain cancer, lymphoma, or leukemia.

Half of the deaths caused by air pollution are due to power plants alone. In

fact, power plant-related deaths are so numerous that they far outnumber drunk driving fatalities in all but one of the 15 dirtiest States.

Have Americans ever wondered how close they live to a powerplant? A Harvard University study showed that those who live near powerplants, who are often the poorer, less educated, uninsured, or minority populations, tend to be the most affected by pollution. Fortunately for some of us here, we are probably less vulnerable. We live further away, we live more comfortably, and we have access to quality health care.

But does that sound like a fair and equitable distribution of the impacts of pollution? Hardly.

Americans can experience pollution very differently. Although 58 percent of white Americans live in counties violating Federal air pollution standards—an unacceptably high percentage—71 percent of African Americans do. Even worse, twice as many African Americans die from pollution than whites. Does that sound like a fair allocation of the impacts?

If these appeals do not strike a chord, perhaps the economic impact of all these health problems will.

I have mentioned before that over 30,000 premature deaths can be blamed on powerplant pollution every year. An EPA consulting firm using EPA methodology estimated that this loss of life hurts the U.S. economy by $170 billion each year. I ask unanimous consent that a table from this firm's recent report be printed in the RECORD.

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

ESTIMATED ANNUAL HEALTH AND MORTALITY COSTS DUE TO PARTICULATE MATTER POLLUTION FROM POWER PLANTS

| Health effect | Attributable incidence | Mean economic impact |
|---|---|---|
| Mortality | 30,100 | $170,000,000,000 |
| Chronic Bronchitis | 18,600 | 6,130,000,000 |
| COPD—Hospitalization | 3,320 | 41,000,000 |
| Pneumonia—Hospitalization | 4,040 | 59,000,000 |
| Asthma—Hospitalization | 3,020 | 21,000,000 |
| Cardiovascular—Hospitalization | 9,720 | 179,000,000 |
| Asthma ER Visits | 7,160 | 2,000,000 |
| Acute Bronchitis | 59,00 | 3,000,000 |
| Upper Respiratory Symptoms | 679,000 | 16,000,000 |
| Lower Respiratory Symptoms | 630,000 | 10,000,000 |
| Asthma Attacks | 603,000 | 25,000,000 |
| Work Loss Days | 5,130,000 | 543,000,000 |
| Minor Restricted Activity Days | 26,300,000 | 1,270,000,000 |
| Total | | 178,000,000,000 |

Source: Abt Associates, ''The Particulate-Related Health Benefits of Reducing Power Plant Emissions,'' October 2000.

Mr. JEFFORDS. When you add in the economic impact of the tens of thousands of cases of asthma, bronchitis, pneumonia, heart problems, and lost work days, you reach a pretty staggering conclusion.

Powerplant pollution alone is responsible for $178 billion in damage to our health and our economy each year, burdening our already taxed Medicare program and draining American productivity.

There are even more ways in which air pollution hurts our way of life.

How many Americans seek peace and enjoyment in our national parks, only to find the vistas clogged with haze? Do families go hiking in our national forests, only to reach bald stands of trees that have been killed by acid rain?

I know many people from my State of Vermont and other States are avid skiers. Do they wonder why ski resorts must make their own snow more now than ever before, and why the ski season continues to come later each year? Global warming will threaten more than ski vacations in the very near future. Global warming and rising sea levels could mean life and death to those in our society who live on the margins.

Do those listening today enjoy fishing trips with their families? Do their husbands and wives, daughters and sons, and grandchildren eat the fish that are caught?

I am sorry to say that the fish being caught may contain unhealthy levels of mercury, likely due to dirty powerplants. Coal-fired powerplants emit mercury emissions. Mercury contaminates rainwater. It settles in waterways. It poisons fish. The contaminated fish create a health risk.

Powerplants are responsible for one-third of all U.S. mercury emissions. Amazingly, they are currently unregulated.

Are doctors warning pregnant women not to eat fish because mercury endangers fetuses? I hope they do, because one in 12 women in this country—that is 5 million women—have blood levels of mercury above EPA's safe health threshold. That means that over 300,000 newborns each year face increased risk of nervous system damage due to mercury exposure in the womb.

How many Americans have children or grandchildren with learning disabilities, speech problems, attention disorders, loss of muscle coordination, memory problems, poor visual spatial skills, vision problems, hearing loss, seizures, mental retardation, or cerebral palsy? Have they ever wondered whether these disorders could be due to mercury exposure?

We all saw what happened when a teen spilled less than a cup of mercury at Ballou High School in Southeast Washington. The metal is so toxic to humans that officials closed the school for over a month and evacuated 17 nearby homes.

Do we feel comfortable knowing that U.S. powerplants emit 50 tons of toxic mercury into the air every year, so that it may fall in our backyards, in our grandchildren's sandboxes, and in the lakes where we fish?

How many Americans depend on fishing in tainted waters for their livelihood? Chances are, they live in one of the 44 States in the Nation with fish advisories for mercury and other toxic pollutants. Chances are also likely that they are unaware that eating fish poisoned by mercury can damage their nervous system, cardiovascular system, kidneys, and immune system.

Sadly, some ethnic groups and anglers who rely on high amounts of fish in their diets face two to five times the health risk. Unfortunately, these Americans may lack health insurance and access to proper medical care to deal with these problems.

I have made an appeal today to my distinguished colleagues and to my fellow Americans. I know my colleagues are compassionate and they do everything possible to represent their constituents, their States, and the Nation well. I only hope they are moved by some of what I have said today to take swift and serious action to protect our air quality.

Unfortunately, this administration's recent and upcoming actions to dismantle our clean air laws mean we all have to be vigilant. I will fight to protect those 60,000 lives and those 300,000 newborns. I will fight to bring down the $178 billion in costs to human health and to our precious environment. But Americans will need all of my colleagues' help, too.

Senators should send a message to the President and EPA Administrator Leavitt right now. It needs to be loud, and it needs to be clear.

The Clean Air Act says utility emissions of air toxics, especially mercury, have to come down drastically. EPA is already years behind in regulating. There should be no further delay.

In the coming weeks, EPA is likely to propose a rule on mercury that is not legal or sanctioned by the Clean Air Act. Senators should tell Administrator Leavitt and the President that these ongoing assaults on air quality have to stop.

I call on the President to do the right thing for once on clean air—cut toxic air emissions from powerplants. Do it right. Do it as the law requires. And do it now.

## DIETARY SUPPLEMENTS

Mr. DORGAN. Mr. President, I express my support for an amendment offered by my colleagues Mr. HATCH, Mr. HARKIN, and DURBIN earlier this year that provides funding for the Food and Drug Administration to implement the dietary supplements law.

I sponsored and voted for the Dietary Supplement Health and Education Act, DSHEA, of 1994 and continue to support it today because it gives consumers the power to make informed decisions about whether they want to use dietary supplements. Millions of Americans take vitamins, minerals, and other dietary supplements every day, knowing that if there is a problem with a particular product the FDA has the authority to step in to protect the public.

Ever since the tragic death of Baltimore Orioles pitcher Steve Bechler earlier this year there has been increased interest in the potential dangers of taking ephedra. In the wake of that tragedy, the FDA has opened an investigation into the use of ephedra.

I support the enforcement efforts and urge the FDA to act as expeditiously as possible. I know some of my colleagues

would simply like to see ephedra banned by legislation. My own view is that we already have a review process in place under DSHEA and now it is important for Congress to help the agency do its job.

I support the amendment offered by my colleagues because it does just that. We must continue to provide consumers with informed choices about dietary supplements and one way to do that is to make sure the FDA has the resources to do the job as expeditiously as possible.

The FDA should conclude its rulemaking on ephedra, as well its ''good manufacturing practices'' rules, and move forward as quickly as possible so that consumers can be better informed.

## LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On Saturday, October 25, 2003, an offduty officer in Austin, TX, was attacked in an apparent anti-gay hate crime. The victim, his partner, and a friend were at a stop sign in a vehicle with a rainbow sticker on the license plate. Two pedestrians in the crosswalk blocked the vehicle while six to eight other men approached and began pounding the car. Witnesses say one man struck the victim in the face and pulled him from the passenger seat while yelling, ''faggot.'' The officer fell to the ground, and the attackers picked him up only to beat him again. He suffered broken teeth and puncture wounds on his lower lip.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## HONORING OUR TROOPS AND LOCAL BROADCASTERS

Mrs. LINCOLN. Mr. President, I rise today to recognize a program that provides an important service to the men and women serving in our military. With our Armed Forces deployed for extended tours of duty in both Iraq and Afghanistan, the pressures placed on family members left behind can be enormous. While the military is dedicated to taking care of its own, the need continues to escalate.

Today, more than 140,000 troops are fighting the war on terrorism in Iraq, in Afghanistan, and around the world.

Many of our brave men and women have now been deployed much longer than expected. Some active units served in Afghanistan, returned home for 6 months, and were immediately redeployed to Iraq

Reservists are facing extended deployment as well. Arkansas reservists in the 39th Infantry Brigade, for instance, were recently called up for what could be a 1-year rotation in Iraq beginning early next year. In many cases, the sole breadwinner in a family is deployed, making it difficult for the families left behind to cope with medical bills or other unexpected expenses.

Today, I would like to recognize an effort undertaken by local radio and television stations to help address these issues. The National Association of Broadcasters is leading its local television and radio stations in a partnership with the Armed Forces Relief Trust to raise funds for military families in need.

By producing, distributing, and airing radio and television public service announcements, the NAB and its radio and television broadcast members are helping raise funds for those military families in need.

Last year, the four emergency assistance programs representing the Army, Navy, Air Force, and Marine Corps distributed more than $109 million in interest free loans and grants to military families. Now that the four programs have joined together into the one trust, and more importantly, now that the trust is receiving generous access to the airwaves to get out its message, they will undoubtedly be able to provide yet more assistance.

All of us count on our service people who are far from home protecting us. Their families are enduring hardship enough in waiting for them to return. It is incumbent upon all of us to ensure their families do not want financially during this most difficult time. I would like to compliment the local radio and television stations that are involved in this effort. As small business people, they are dedicating a valuable resource—airtime—to a timely and important cause. I salute their efforts.

## TRIBUTE TO CPT RANDALL L. ZELLER

Mr. WARNER. Mr. President, I rise today to pay tribute to a dedicated patriot, sailor, husband and father, CPT Randel L. Zeller, USN. By the time the Congress reconvenes in January, Captain Zeller will have retired from active duty after 27 years in uniform with the U.S. Navy. CPT Randy Zeller has served the Navy and the Nation faithfully and well over these many years, most recently as the legislative director for the Chairman of the Joint Chiefs of Staff.

Captain Zeller deserves our recognition and gratitude. He has been associated with the Congress in a variety of positions for over seven years. His career accomplishments reflect the type of military officer this Nation has depended upon for over 225 years, during peace and conflict. I would like to take a moment to highlight Captain Zeller's career.

The son of a career Army soldier, Randy Zeller was born at Fort Belvoir, VA. Continuing this family tradition of service, Randy earned an appointment to the United States Naval Academy in Annapolis, graduating in 1975 with a bachelor of science degree in marine engineering. Following commissioning, he completed the nuclear power training program and the Submarine Officer Basic Course.

This promising young officer was assigned to four tours aboard nuclear attack submarines, one tour on an aircraft carrier, a tour as commander of the USS *Gato* (SSN 615) and, as commander of the Trident Submarine Refit Facility. His tours of duty have included assignments to the USS *Groton* (SSN 694) as Division Officer in 1977; Submarine Training Department Head and submarine tactics instructor at the Fleet Anti-Submarine Warfare Training Center Atlantic in Norfolk, Virginia, 1980–1982; and, Chief engineer on the USS *Phoenix* (SSN 702), from February 1983–1985. In November 1985, he reported to Carrier Group Two (CCG–2) aboard the USS CORAL SEA (CV–43), as a Tactical Action Officer and the Battle Force Anti-Submarine Warfare Officer. While assigned to CCG–2, he served on the Fleet Strike Warfare Commanders' staff during the surface action and contingency air strikes against Libya in 1986. In December 1987, he returned to the USS *Groton* as Executive Officer, serving until July 1990. During this tour, the USS *Groton* earned the COMSIXTHFLT ''Hook' em Award'' for anti-Submarine Warfare excellence and played a key role in contingency operations near Lebanon.

Captain Zeller's first command was the USS *Gato* in March 1992. Not surprisingly, his ship executed several ''First of their kind'' missions, demonstrating the utility of the attack submarine in the post cold war era. For her service during the U.N. embargo of Haiti, USS *Gato* was awarded the Joint Meritorious Unit commendation. The USS *Gato* was also awarded the Navy Meritorious Unit commendation for exemplary performance from June 1993 to June 1994. In June 1994, Captain Zeller was the Naval Submarine League RADM Jack Darby national award recipient for inspirational leadership and excellence of command.

After Captain Zeller left command in November 1994, he served in several important staff positions, during which he began his association with the congress. From January 1995 to March 1997 he served in the Department of the Navy's Office of Legislative Affairs in the Pentagon (OLA). At OLA he was instrumental in the Navy's successful effort to gain Congressional authorization for the third and final *Seawolf* class submarine, as well as the first ship of the *Virginia* Attack Submarine class. Recognizing his leadership talents and potential to assume greater

responsibilities, Captain Zeller was selected to command the Trident Refit Facility (TRF), Kings Bay, Georgia, a 2000-man Fleet Maintenance Activity. During his tour, TRF was awarded the Meritorious Unit Commendation for outstanding Trident submarine maintenance performance. Following this highly successful command tour, Captain Zeller returned to service on the Secretary of the Navy's staff as the Deputy Chief of Legislative Affairs, from May 1999 to June 2000. Captain Zeller was then selected to be the Legislative Director for the Chairman of the Joint Chiefs of Staff. During this tour of duty from June 2000 until his retirement, Captain Zeller served the Chairman of the Joint Chiefs and the Congress during an especially demanding time in U.S. history that included the attacks of September 11, 2001 on the World Trade Center and the Pentagon, and subsequent military operations in Afghanistan, Iraq, and elsewhere in the Global War on Terrorism. His important contributions were of great importance in keeping the Congress fully informed regarding worldwide military developments and requirements. Captain Zeller's timely, responsive support was critical to the success of global U.S. military efforts.

A successful military career is not accomplished without dedication and sacrifice. Captain Zeller is fortunate to have the devoted support of his wife, the former Deborah Lee Chairman of Dayton, OH, and their two children Alexandra (11) and Nathaniel (8). For their support, service and sacrifice, they have my profound appreciation, and that of a grateful Nation.

It is a great honor and personal privilege for me to recognize the exemplary service of CPT Randel L. Zeller and his family today. Their selfless service to country, to the Navy, to their community, and to family serve as an inspiration to those whose lives they have touched, and who now carry on the proud traditions of our Armed Forces. As the Zeller family moves into a new chapter in their lives as valued citizens of the Commonwealth of Virginia, I wish them the continued success and happiness they so richly deserve. May they always enjoy fair winds and following seas.

## DELAWARE'S BILL OF RIGHTS COMES HOME

Mr. BIDEN. Mr. President, it is with tremendous pride that I rise today to commemorate that after 213 years, Delaware's original copy of Bill of Rights ratified in 1790, is returning home.

This is a story steeped in history, mixed with some modern-day political negotiations—worth celebrating.

While Delaware holds the distinction as the first State to ratify the Constitution, on December 7, 1787, it was the sixth State to ratify the Bill of Rights—on January 28, 1790. The two signors of this historic document were Jehu Davis and George Mitchell. And they were quite efficient. Instead of drafting a separate letter, as most States did, to notify Congress of Delaware's ratification of the Bill of Rights, they simply penned their signatures on the Bill of Rights document and returned it whole cloth to Congress. Thus, Delaware had no copy of what Davis and Mitchell signed.

The National Archives, to its immense credit, conserved Delaware's original copy of the Bill of Rights in pristine condition for more than two centuries. However, two years ago Delaware's Public Archives, State House Majority Leader Wayne Smith, and the Delaware General Assembly asked the congressional delegation to help negotiate the return of our Bill of Rights document. We all agreed that this historic document should be displayed for all to see in Delaware, not stored in the basement of the National Archives in Washington, DC.

The National Archives is, justifiably, quite protective of its documents. Suffice to say that it took ten months of negotiations, meetings, letters and conference calls to come to terms on an agreement that returns this document to Delaware, while retaining the National Archives legal and preservation rights to it.

Starting this December 7, on my State's 216th birthday, its original Bill of Rights will be on display for all to see. It will be on view at our new, state-of-the-art Public Archives Building in Dover, DE. And that is exactly where this document belongs—on public display where school students and adults alike can appreciate its historic significance.

We should all be proud of this accomplishment because it's part of our history. The Bill of Rights is a symbol of who we are and the values we hold dear. It ties us to our past and reminds us of those principles that will guide us into the future.

## CENTER FOR AMERICAN PROGRESS'S NEW AMERICAN STRATEGIES FOR SECURITY AND PEACE CONFERENCE

Mr. LEAHY. Mr. President, in the end of October, the Center for American Progress, in conjunction with The American Prospect magazine and The Century Foundation, held a conference on U.S. national security titled, ''New American Strategies for Security and Peace.'' Three of my fellow senators—Senator HILLARY CLINTON, Senator JOE BIDEN, and Senator CHUCK HAGEL—and Dr. Zbigniew Brzezinski made incisive remarks at this conference about the direction of our country's foreign policy and its effects on Americans at home and abroad. They also spoke about how to restore America to respected international leadership. I ask unanimous consent that the remarks of Senator CLINTON and Dr. Brzezinski be printed in the RECORD.

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

REMARKS OF SENATOR HILLARY RODHAM CLINTON

WASHINGTON, Oct. 29, 2003.—Thank you, John for that introduction. I want to compliment you for all the hard work that you have put into the creation of the Center for American Progress, an institution that I am convinced will be a tremendous force in engaging in the war of ideas so critical to our country's future. And there is no better leader for that effort than John Podesta who has the warrior spirit and strategic mind needed for such an endeavor. I also want to thank Bob Kuttner at the American Prospect and Dick Leone at the Century Foundation for their work on this conference.

Today's conference, ''New American Strategies for Security and Peace'' comes at a critical point in our nation's history and I commend the Center for American Progress, the American Prospect and the Century Foundation for putting together from what is, by all accounts, an outstanding program.

Today is a critical moment, not just in our history, but in the history of democracy. As we seek to build democratic institutions in Iraq, and we in this room push for us to reach out to our global partners in this endeavor, this nation must remember the tenets of the democratic process that we advocate.

The issue I'd like to address is whether we apply the fundamental principles of democracy—rule of law, transparency and accountability, informed consent—not only to what we do at home but to what we do in the world. There can be no real question that we must do so because foreign policy involves the most important decisions a democracy can make—going to war, our relations with the world, and our use of power in that world.

But the fact is that new doctrines and actions by the Bush administration undermine these core democratic principles—both at home and abroad. I believe they do so at a severe cost.

In our efforts abroad, we now go to war as a first resort against perceived threats, not as a necessary final resort. Preemption is an option every President since Washington has had and many have used. But to elevate it to the organizing principle of American strategic policy at the outset of the 21st century is to grant legitimacy to every nation to make war on their enemies before their enemies make war on them. It is a giant step backward.

In our dealings abroad, we claim to champion rule of law, yet we too often have turned our backs on international agreements. The Kyoto Treaty, which represents an attempt by the international community to meaningfully address the global problem of climate change and global warming. The biological weapons enforcement protocol. The Comprehensive Test Ban Treaty. This unwillingness to engage the international community on problems that will require international cooperation sends a clear signal to other nations that we believe in the rule of law—if it is our law as we interpret it. That is the antithesis of the rule of law. The administration argues that international agreements, like the Kyoto Treaty, are flawed. And the fact is they have some good arguments. When the Clinton administration signed the Kyoto Protocol it said that, working, inside the tent, it would try to make further improvements. But rather than try to make further improvements from inside the process, the Bush administration stomped out in an effort to knock over the tent. That is not the prudent exercise of power. It is the petulant exercise of ideology.

In our dealings abroad, we more often than not have promoted, not the principles of

international cooperation, but the propensity for an aggressive unilateralism that alienates our allies and undermines our tenets. It deeply saddens me, as I speak with friends and colleagues around the world, that the friends of America from my generation tell me painfully that for the first time in their lives they are on the defensive when it comes to explaining to their own children that America truly is a good and benign nation. Their children, too often, have seen an America that disregards their concerns, insists they embrace our concerns and forces them to be with us or against us. Our Declaration of Independence calls for '' a decent respect for the opinions of mankind,'' yet this administration quite simply doesn't listen to our friends and allies. From our most important allies in Europe to relations with our neighbors in this hemisphere, this administration has spanned the range of emotions from dismissive to indifferent. Ask President Vincente Fox, who staked his Presidency on a political alliance with Mexico's historically controversial ally to the north, only to discover that he got no farther north than Crawford, Texas.

If we are to lead this world into a wholly democratic future, we must first be consistent in the principles we champion and the ones we pursue.

Nowhere is this more apparent than in the transparency of government decisions. Without such transparency, how can leaders be accountable? How can the people by informed? Without such transparency—openness and information—the pillars of democracy lose their foundation.

Of course in a democracy, there always is tension between the information that the Executive Branch needs to keep secret and the information that must be provided to the public to have an informed citizenry. There are no easy answers to striking the right balance. But we must always be vigilant against letting our desire to keep information confidential be used as a pretext for classifying information that is more than political embarrassment than national security. Let me be absolutely clear. This is not a propensity that is confined to one party or the other. It is a propensity of power that we must guard against. Because when that happens, we move away from the bedrock principle of informed consent that governs all State actions in a democracy. Getting back, once again, to our founders who I think were not only extraordinary statesmen, but brilliant psychologists—they understood profoundly the dangers and temptations of power. The balance of power that they enshrined in our Constitution and our system of government was a check on all of our human natures and the propensity for anyone, no matter how convinced they are of the righteousness of their cause and view of the world, to be held in a check and a balance by other institutions.

Since 9/11, this question has much more salience since the War on Terror will often be fought in the shadows outside the public limelight. New doctrines of preemption raise profound questions about democratic oversight by making decisions effecting war and peace. They also raise profound questions about the quality of the intelligence information that is not open to public scrutiny. One of the most critical issues that we confront is what is wrong with our intelligence, the gathering and the analysis and the use?

Anybody who follows what is going on on Capitol Hill is aware that we are locked in a partisan conflict as to how far to go in analyzing the intelligence with respect to Iraq—with the other side complaining that we can look to the intelligence community, but we cannot look at the decision makers. We can't look at the uses to which the intelligence was put and we can't look at the particular viewpoint that was brought to that analysis. I think that is a profound error and undermining to our democratic institutions.

The American people, and indeed the international community, need to have confidence that when the U.S. government acts, it is acting in good faith—sharing information where appropriate and developing appropriate mechanisms to insure that power is not being abused. A perception that our government is not providing honest assessments of the rationale for war or is unwilling to admit error will diminish the support for U.S. foreign policy of the American people and the international community. The American people will be far more willing to accept the administration's statement's about what is going right in Iraq if they believe that the administration is more forthright about what is going wrong. It is difficult to convince people that everything is fine when we are asking them to essentially shelve their common sense and human experience.

An example that hits close to home for me can be found in the administration's approach to the investigation surrounding 9/11. As Senator of New York, there is no more searing event than what happened to us on September 11th. My constituents have a right to know all the facts of how our government was prepared—or not—for the attacks. Yet, over the weekend, we learned that the 9/11 Commission, charged with the important task of investigating how 9/11 happened, complains that it isn't getting access to all the documents that it needs. This is a hugely important issue and one that must be addressed. The lack of transparency on the part of the Bush administration has forced Governor Kean, the former Republican governor of New Jersey, to threaten subpoenas. This should not be happening.

As bad as it was for Vice President Cheney to keep secret how the administration developed its energy policy—this is far worse. The 9/11 commission is not trying to embarrass the President, any former Presidents, or anyone else. It is trying to learn what happened—what went wrong—in hopes that we can become better prepared to protect ourselves from future attacks. In taking this action, the administration unnecessarily raises suspicions that it has something to hide—that it might use national security to hide mistakes. That is not necessary or appropriate.

Meanwhile, on Iraq, the Bush administration describes progress on many fronts in direct contravention to what we are hearing every day. There undoubtedly are many instances where U.S. efforts in Iraq are successful. But what is going right should not delude us about what is going wrong. There is too much at stake to treat war as a political spin zone.

We need to level with the American people—the good, the bad and the ugly. For the simple fact is that we cannot fail in Iraq. On that fundamental principle, I am in full and profound agreement with the President. The stakes are simply too high. That means we need to improve our transparency and credibility in Iraq. In the recent $87 billion supplemental appropriations bill passed by the Senate, an amendment that I offered, and which was included in the final bill, would require GAO audits of these opaque supplemental appropriations. Another amendment that I co-sponsored with Senator Harkin would require the GAO to examine the level of profits being made by U.S. contractors in Iraq. This is a historic mission that our government has encouraged, going back to George Washington, to make sure that no private company profited off the spoils of war. We need to assure the American people that their money is being spent wisely, assure the Iraqi people that it is being spent in their interest and assure the world that it is not being spent for profiteering by American companies. I understand both of these amendments, my amendment and the one I co-sponsored with Senator Harkin, are the subject of some dispute by the administration. And in fact, I understand that the majority party has been advised to ensure the final package doesn't include those amendments. I can only hope that they have a change of mind. They are creating a level of mistrust in our government by our citizens for which we will reap the consequences for years to come.

As we discuss and debate these issues, let us remember the simple fact that we remain at war. That is not a fact lost on the men and women stationed in Iraq. It is not a fact lost on their families who sit at home worrying about their well-being. It should not lead to the administration refusing to release injury figures. We should be willing to admit the price that is being paid by these brave young men and women to pursue this policy. I believe that the Executive Branch has a strong prerogative on national security issues. As Senator, I have supported that prerogative. But the men and women elected to serve in the Congress also have a great deal of wisdom to bring to bear. And quite honestly, my friends, things, have not gone so well in Iraq that we have a single mind to waste.

Recent articles in The New York Times and Newsweek report that many Republicans share the frustration that comes from lack of genuine consultations—failure to construct a genuine bipartisan consensus for the sacrifices we are asking Americans to make. My Republican colleagues Senator McCain and Senator Hagel, who is speaking at this conference, have cautioned the administration of the dangers of a failure to be open and honest with the American people on the situation in Iraq.

As Senator Hagel and others have suggested, Congress needs to be more than just a rubber stamp for the administration's policies. Tell me what war America has won without seeking, achieving, and maintaining a bipartisan consensus.

President Truman worked closely with Senator Vandenberg after WWII to secure U.S. support for the United Nations. President George H.W. Bush consulted closely with Democratic congressional leaders during the first Gulf War. My husband consulted closely with Senator Dole and other Republican leaders during the military action in Bosnia and Kosovo.

In giving Iraqis more of a say and in making transactions and contracting more open, the U.S. simply is practicing the habits of democracy—inclusion, empowerment and openness. Fundamentally, this is about trust—winning and earning the trust of the Iraqi people and trusting in the Iraqi people who eventually are going to be left to govern themselves and keeping the trust of the American people. I cannot stress strongly enough how significant it is that the American people across the board, are beginning to ask such serious questions about our direction in our efforts to pursue a course in Iraq, but also from the Middle East to North Korea as well. An unwillingness of the administration to be more forthright can undermine the greatest capital we have, the capital of human trust between a government and the governed. I think we're on the edge of losing both the confidence of the Iraqi people and of the American people. We can prevent that from happening with a heavy dose of straight talk.

At the same time that we are trying to build a democratic society in Iraq, we must

abide by those basic principles that we hold dear and demonstrate that we are willing to be open and have partnerships and build coalitions that are more than just in a name.

I think this moment in American history is wrought with danger and challenge. If you look back at our security and goals in WWII they were clear, the Cold War was clear, the post Cold War era, prior to 9/11, was a little more muddy because it wasn't as obvious what our strategic objectives were and how we would achieve them.

Now we do have, once again, a very clear adversary. But just proclaiming the evil of our adversary is not a strategy; just assuming that everyone will understand that we are well motivated and people to be trusted is beyond the range of human experiences that I understand. This administration is in danger of squandering not just our surplus which is already gone in financial terms, but the surplus of good feeling and hopefulness and care and that we had in almost global unanimity after 9/11. We are a resilient, optimistic and effective people and I'm confident that we can regain our footing, but it needs to be the first order of business, not only for the administration, but also for Congress and the American public. It is my hope this conference will provide more ammunition and more support for those of us who are trying to get back on track and to give America the chance to lead consistent with our values and ideals. Thank you very much.

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REMARKS OF ZBIGNIEW BRZEZINSKI

WASHINGTON, Oct. 28, 2003.—Ladies and gentlemen, 40 years ago almost to the day an important Presidential emissary was sent abroad by a beleaguered President of the United States. The United States was facing the prospect of nuclear war. These were the days of the Cuban Missile Crisis.

Several emissaries went to our principal allies. One of them was a tough-minded former Secretary of State, Dean Acheson whose mission was to brief President De Gaulle and to solicit French support in what could be a nuclear war involving not just the United States and the Soviet Union but the entire NATO Alliance and the Warsaw Pact.

The former Secretary of State briefed the French President and then said to him at the end of the briefing, I would now like to show you the evidence, the photographs that we have of Soviet missiles armed with nuclear weapons. The French President responded by saying, I do not wish to see the photographs. The word of the President of the United States is good enough for me. Please tell him that France stands with America.

Would any foreign leader today react the same way to an American emissary who would go abroad and say that country X is armed with weapons of mass destruction which threaten the United States? There's food for thought in that question. Fifty-three years ago, almost the same month following the Soviet-sponsored assault by North Korea on South Korea, the Soviet Union boycotted a proposed resolution in the U.N. Security Council for a collective response to that act.

That left the Soviet Union alone in opposition, stamping it as a global pariah. In the last three weeks there were two votes on the subject of the Middle East in the General Assembly of the United Nations. In one of them the vote was 133 to four. In the other one the vote was 141 to four, and the four included the United States, Israel, Marshall Islands and Micronesia.

All of our NATO allies voted with the majority including Great Britain, including the so-called new allies in Europe—in fact almost all of the EU—and Japan. I cite these events because I think they underline two very disturbing phenomena—the loss of U.S. international credibility, the growing U.S. international isolation.

Both together can be summed up in a troubling paradox regarding the American position and role in the world today. American power worldwide is at its historic zenith. American global political standing is at its nadir. Why? What is the cause of this? These are facts. They're measurable facts. They're also felt facts when one talks to one's friends abroad who like America, who value what we treasure but do not understand our policies, are troubled by our actions and are perplexed by what they perceive to be either demagogy or mendacity.

Maybe the explanation is that we are rich, and we are, and that we are powerful, and we certainly are. But if anyone thinks that this is the full explanation I think he or she is taking the easy way out and engaging in a self-serving justification. I think we have to take into account two troubling conditions.

Since the tragedy of 9/11 which understandably shook and outraged everyone in this country, we have increasingly embraced at the highest official level what I think fairly can be called a paranoiac view of the world. Summarized in a phrase repeatedly used at the highest level, ''he who is not with us is against us.'' I say repeatedly because actually some months ago I did a computer check to see how often it's been used at the very highest level in public statements.

The count then quite literally was 99. So it's a phrase which obviously reflects a deeply felt perception. I strongly suspect the person who uses that phrase doesn't know its historical or intellectual origins. It is a phrase popularized by Lenin when he attacked the social democrats on the grounds that they were anti-Bolshevik and therefore he who is not with us is against us and can be handled accordingly.

This phrase in a way is part of what might be considered to be the central defining focus that our policy-makers embrace in determining the American position in the world and is summed up by the words ''war on terrorism.'' War on terrorism defines the central preoccupation of the United States in the world today, and it does reflect in my view a rather narrow and extremist vision of foreign policy of the world's first superpower, of a great democracy, with genuinely idealistic traditions.

The second condition, troubling condition, which contributes in my view to the crisis of credibility and to the state of isolation in which the United States finds itself today is due in part because that skewed view of the world is intensified by a fear that periodically verges on panic that is in itself blind. By this I mean the absence of a clearly, sharply defined perception of what is transpiring abroad regarding particularly such critically important security issues as the existence or the spread or the availability or the readiness in alien hands of weapons of mass destruction.

We have actually experienced in recent months a dramatic demonstration of an unprecedented intelligence failure, perhaps the most significant intelligence failure in the history of the United States. That failure was contributed to and was compensated for by extremist demagogy which emphasizes the worst case scenarios which stimulates fear, which induces a very simple dichotomic view of world reality.

I think it is important to ask ourselves as citizens, not as Democrats attacking the administration, but as citizens, whether a world power can really provide global leadership on the basis of fear and anxiety? Can it really mobilize support and particularly the support of friends when we tell them that if you are not with us you are against us?

I think that calls for serious debate in America about the role of America in the world, and I do not believe that that serious debate is satisfied simply by a very abstract, vague and quasi-theological definition of the war on terrorism as the central preoccupation of the United States in today's world. That definition of the challenge in my view simply narrows down and over-simplifies a complex and varied set of challenges that needs to be addressed on a broad front.

It deals with abstractions. It theologizes the challenge. It doesn't point directly at the problem. It talks about a broad phenomenon, terrorism, as the enemy overlooking the fact that terrorism is a technique for killing people. That doesn't tell us who the enemy is. It's as if we said that World War II was not against the Nazis but against blitzkrieg. We need to ask who is the enemy, and the enemies are terrorists.

But not in an abstract, theologically-defined fashion, people, to quote again our highest spokesmen, ''people who hate things, whereas we love things''—literally. Not to mention the fact that of course terrorists hate freedom. I think they do hate. But believe me, I don't think they sit there abstractly hating freedom. They hate some of us. They hate some countries. They hate some particular targets. But it's a lot more concrete than these vague quasi-theological formulations.

I think in the heat of debate Democrats should not be nay-sayers only, criticizing. They certainly should not be cheerleaders as some were roughly a year ago. But they should stress a return to fundamentals in so far as American foreign policy is concerned. Above all else in stressing these fundamentals, Democrats particularly should insist that the foreign policy of a pluralistic democracy like the United States should be based on bipartisanship because bipartisanship is the means and the framework for formulating policies based on moderation and on the recognition of the complexity of the human condition.

That has been the tradition since the days of Truman and Vandenberg all the way until recent times. That has been the basis for American foreign policy that has been remarkably successful and has led us not only to a triumph in the Cold War but to emerging as the only global superpower with special responsibilities.

Bipartisanship helps to avoid extremes and imbalances. It causes compromises and accommodations. So let's cooperate. Let's cooperate and challenge the administration to cooperate with us because within the administration there are also moderates and people who are not fully comfortable with the tendencies that have prevailed in recent times.

That has a number of specific implications that are of a policy type. The first and most important is to emphasize the enduring nature of the alliance relationship particularly with Europe which does share our values and interests even if it disagrees with us on specific policies. But the sharing of values and interests is fundamental, and we partake of the same basic beliefs.

We cannot have that relationship if we only dictate or threaten and condemn those who disagree. Sometimes we may be right. Sometimes they may be right. But there is something transcendental about shared values that shouldn't be subordinated to tactical requirements. We should seek to cooperate with Europe, not to divide Europe to a fictitious new and a fictitious old.

And we should recognize that in some parts of the world Europeans have more experience and more knowledge than we and certain interests as important as ours. I think particularly of the Middle East. We should be therefore supporting a larger Europe, and in so doing we should strive to expand the zone of peace and prosperity in the

world which is the necessary foundation for a stable international system in which our leadership could be fruitfully exercised.

Part of the process of building a larger zone of peace involves also engaging Russia and drawing it into a closer relationship simultaneously with Europe and with the Euro-Atlantic community. But we can only do that if we are clear as to what we are seeking in pursuing that strategy. I would say that what we ought to be seeking unambiguously is the promotion of democracy and decency in Russia and not tactical help of a very specific and not always all that very useful type purchased at the cost of compromising even our own concept of what democracy is.

I am troubled by the unqualified endorsements of a government in which former KGB types are preponderant as a successful democracy. That has been the judgment rendered at the highest levels again within the last few weeks without any qualification. But in fairness we have to say that some of that happened before this administration assumed office as well.

We should be aware of that. If we are going to pursue a bipartisan policy let's be willing also to accept some shortcomings on our part. But if Russia is to be part of this larger zone of peace it cannot bring into it its imperial baggage. It cannot bring into it a policy of genocide against the Chechens, and cannot kill journalists, and it cannot repress the mass media.

I think we should be sensitive to that even if they do arrest oligarchs with whom some of our friends on K Street have shared interests. That is not to be approved. It is to be condemned, but surely there are deeper causes for emphasizing that it is important that Russia should move towards democracy.

To increase the zone of peace is to build the inner core of a stable international zone. While America is paramount it isn't omnipotent. We need the Europeans. We need the European Union. (Applause) We have to consistently strive to draw in Russia while at the same time being quite unambiguous in what it is that disqualifies Russia still from genuine membership in the community of democratic, law abiding states.

Secondly, we have to deal with that part of the world which is a zone of conflict and try to transform it into a zone of peace, and that means above all else the Middle East. In Iraq we must succeed. Failure is not an option. But once we say that we have to ask ourselves what is the definition of success? More killing, more repression, more effective counter-insurgency, the introduction of newer devices of technological type to crush the resistance or whatever one wishes to call it—the terrorism?

Or is it a deliberate effort to promote by using force a political solution? And if there's going to be a political solution in Iraq, clearly I think it is obvious that two prerequisites have to be fulfilled as rapidly as feasible namely the internationalization of the foreign presence in Iraq regarding which too much time has been lost and which is going to be increasingly difficult to accomplish in spite of the somewhat dialectical successes with which we are defining progress in Iraq lately.

In addition to the internationalization of Iraq we have to transfer power as soon as is possible to a sovereign Iraqi authority. Sovereignty is a word that is often used but it has really no specific meaning. Sovereignty today is nominal. Any number of countries that are sovereign are sovereign only nominally and relatively. Ultimately even the United States is not fully sovereign as we go around asking for more men and money to help us in Iraq.

Therefore there's nothing to be lost in prematurely declaring the Iraqi authority as sovereign if it helps it to gain political legitimacy in a country which is searching to define itself, which has been humiliated, in which there is a great deal of ambivalence, welcoming on the one hand the overthrow of Saddam as the majority does, and on the other hand resenting our presence and our domination.

The sooner we do that the more likely is an Iraqi authority under an international umbrella that becomes itself more effective in dealing with the residual terrorism and opposition that we continue to confront. We will not understand what is happening right now in Iraq by analogies to Vietnam because I think they are all together misplaced, and one could speak at length about it.

If you want to understand what is happening right now in Iraq I suggest a movie that was quite well known to a number of people some years ago. Maybe not many in this audience, given the age of some present, but it's a movie which deals with a reality which is very similar to that that we confront today in Baghdad. It's called ''The Battle For Algiers.'' It is a movie that deals with what happened in Algeria after the Algerian Liberation Army was defeated in the field by the French army and the resistance which used urban violence, bombs, assassinations, and turned Algiers into a continuing battle that eventually wore down the French.

I do not expect we'll be worn down, but I think we want to understand the dynamics of the resistance. This provides a much better analogy for grappling with what is becoming an increasingly painful and difficult challenge for us. A challenge which will be more successful in meeting if we have more friends engaged in meeting it and if more Iraqis begin to feel that they are responsible for the key decisions pertaining to their country.

We will not turn the Middle East into a zone of peace instead of a zone of violence unless we more clearly identify the United States with the pursuit of peace in the Israeli/Palestinian relationship. Palestinian terrorism has to be rejected and condemned, yes. But it should not be translated de facto into a policy of support for a really increasingly brutal repression, colonial settlements and a new wall.

Let us not kid ourselves. At stake is the destiny of a democratic country, Israel, to the security of which, the well-being of which, the United States has been committed historically for more than half a century for very good historical and moral reasons. But soon there will be no option of a two-state solution.

Soon the reality of the settlements which are colonial fortifications on the hill with swimming pools next to favelas below where there's no drinking water and where the population is 50 percent unemployed, there will be no opportunity for a two-state solution with a wall that cuts up the West Bank even more and creates more human suffering.

Indeed as some Israelis have lately pointed out, and I emphasize some Israelis have lately pointed out, increasingly the only prospect if this continues is Israel becoming increasingly like apartheid South Africa—the minority dominating the majority, locked in a conflict from which there is no extraction. If we want to prevent this the United States above all else must identify itself with peace and help those who are the majority in Israel, who want peace and are prepared to accept peace.

All public opinion polls show that and the majority of the Palestinians, and I believe the majority of the Jewish community in this country which is liberal, open-minded, idealistic and not committed to extremist repressions.

The United States as the government, but all of us as citizens and Democrats particularly, will soon have an opportunity to underline their commitments to a peaceful solution in the Middle East because in the next two weeks a group of Israelis and Palestinians are going to unveil a detailed peace plan on which they have been working for months and months. It's a fifty-page document with maps and detailed compromise solutions for all of the major contentious issues, solutions which opinion shows 70 percent of the Israelis would accept.

When that happens what will be the stance of the United States? Sharon has already condemned it, and not surprisingly. I hope we do not decide to condemn it. I hope we will show at least a positive interest, and many of us as citizens, as people concerned, should I think endorse it because if we count on the people who want peace eventually we will move towards peace. But they have to be mobilized and given support.

I think one of the reasons that that support from the United States has not been forthcoming is in fact political cowardice which I think is unjustified because I have real confidence in the good judgment, both of the Israeli people and of the American Jewish community and more basically of the basic American preference for a moderate peaceful solution.

The last third area pertains more broadly to strategic doctrine and to strategic commitment. It involves trying to deal with nuclear proliferation, and we are learning fortunately that we can only deal with that problem when it comes to North Korea or to Iran by cooperation with other major powers.

That we have to support, and if the administration moves in that direction or is prodded to move in that direction that is all to the good because there is no alternative. If we to resolve the North Korean problem by arms alone we will produce a violent reaction against the United States in South Korea—and don't underestimate the growing anti-American tendencies in South Korean nationalism—and will precipitate a nuclear armed Japan and thereby create a whole duel strategic dynamic in the Far East.

In the case of Iran it is also in our interest that the theocratic despotism fade. It is beginning to fade. It is in its thermidorian phase. The young people of Iran are increasingly alienated. The women of Iran are increasingly assertive and bold. Notice the reception given to the Nobel Peace Prize winner when she returned to Tehran. That is a symptom of things to come.

And if we take preemptory action we will reinforce the worst tendencies in the theocratic fundamentalist regime, not to speak about the widening of the zone of conflict in the Middle East. But beyond that we still have one more challenge in the area of strategic doctrine which is how to respond to the new conditions of uncertainty of weapons of mass destruction perhaps eventually being available to terrorist groups.

Here I think it is terribly important not to plunge headlong into the tempting notion that we will preempt unilaterally on suspicion which is what the doctrine right now amounts to. The reason for that being we simply do not know enough to be able to preempt with confidence. That to me involves one fundamentally important lesson. We have to undertake a genuine national effort to revitalize and restructure our intelligence services.

For four years I was the principal channel of intelligence to the President of the United States. We had a pretty good idea of the nature of the security challenge that we faced because the challenge itself was based on a highly advanced scientific technological system of arms. Today the problem is much more difficult.

It's more elusive. We're not dealing with nuclear silos and coordinated structures necessary for an effective assault on American security, structures that we could begin to decipher and also technologically seek to undermine or in the event of warfare paralyze. We were really remarkably well informed and in some respects prepared for a central nuclear war to a degree to which we certainly are not today in dealing with the new challenges of security.

These can only be addressed if we have what we do not have, a really effective intelligence service. I find it appalling that when we went into Iraq we did not know if they had weapons of mass destruction. We thought they had weapons of mass destruction based largely on extrapolation. But that also means that our commanders in the field went into battle without any knowledge of the Iraqi WMD order of battle.

They did not know what units, brigades or divisions in the Iraqi armed forces were equipped with what kind, allegedly, of weapons of mass destruction. Were there chemical weapons on the battalion level or on the brigade level or were there special units in the different divisions that were supposed to use chemical weapons?

What about the alleged existence of bacteriological weapons? Who had them? Who had the right to dispose of them? What about the allegedly reconstituted nuclear program? At what level of development was it? Where were these weapons to be deployed? The fact is none of that was known regarding a country that was permeable, that was not as isolated as the Soviet Union.

All of that cumulatively testifies to a fundamental shortcoming in our national security policy. If we want to lead we have to have other countries trust us. When we speak that have to think it is the truth. This is why DeGaulle said what he did. This is why others believed us. This is why they believed us prior to the war in Iraq.

It isn't that the Norwegians or the Germans or whoever else had their own independent intelligence services. They believed us, and they no longer do. To correct that we have to have an intelligence that speaks with authority, that can be trusted, and if preemption becomes necessary can truly tell us that as a last resort preemption is necessary. Right now there's no way of knowing.

Ultimately at issue, and I end on this, is the relationship between the new requirements of security and the traditions of American idealism. We have for decades and decades played a unique role in the world because we were viewed as a society that was generally committed to certain ideals and that we were prepared to practice them at home and to defend them abroad.

Today for the first time our commitment to idealism worldwide is challenged by a sense of security vulnerability. We have to be very careful in that setting not to become self-centered, preoccupied only with ourselves and subordinate everything else in the world to an exaggerated sense of insecurity.

We are going to live in an insecure world. It cannot be avoided. We have to learn to live in it with dignity, with idealism, with steadfastness. Thank you.

## FAIR AND ACCURATE CREDIT TRANSACTIONS ACT

Mr. BENNETT. Mr. President, this past Saturday, November 22, 2003, the Senate passed the Fair and Accurate Credit Transactions Act of 2003. Section 214 of the conference report, entitled ''Affiliate Sharing,'' adds a new requirement for a notice and an opportunity for a consumer to opt-out of receiving solicitations from a person based on information that has been shared from an affiliate of that person

Several exceptions to the notice and opt-out requirement are included in the bill. The first, and most logical one, is an exception for a business sending solicitations to its own customers. The conference report defines this as a ''pre-existing business relationship.''

The conference report further defines categories of relationships that qualify as a ''pre-existing business relationship'' and directs the regulators, including the Federal Trade Commission, to use their regulatory discretion to deem any ''any other pre-existing customer relationship'' as qualifying for the definition that may be appropriate but not clear from the statute.

The first category of relationships that the conference report definition of ''pre-existing business relationship'' lists is a relationship based on ''a financial contract between a person and a consumer which is in force.'' ''Financial contract,'' however, is not defined and it is not clear on its face what the term describes. In any case, I believe the operative concern is that it must be a contract in force.

As a conference, I believe the conference report intends that the term ''pre-existing business relationship'' includes a contractual relationship between a consumer and a person, where the consumer has requested the provision of a good or service, or affirmatively registered to receive a service, whether or not a fee is assessed.

Certain business models, such as those in the online world, do not follow the traditional fee for services model that characterizes the brick and mortar world. Financial consideration may not exchange up front with a customer, or at all for that matter. Accordingly, I urge the regulators to factor in new and innovative business models when issuing the regulations implementing section 214 of the Fair and Accurate Credit Transactions Act of 2003, particularly with regard to the definition of ''pre-existing business relationship.''

## ENERGY POLICY ACT OF 2003

Mr. JEFFORDS. Mr. President, I have raised concerns about the troubling environmental provisions contained in the energy bill conference report several times during the course of debate on the measure, but I also wanted to share my concerns regarding the energy provisions of the bill. Energy policy is an important issue for America and one which my Vermont constituents take very seriously. The bill before us seeks to address important issues, such as the role of domestic production of energy resources versus foreign imports, the tradeoffs between the need for energy and the need to protect the quality of our environment, and the need for additional domestic efforts to support improvements in our energy efficiency, and the wisest use of our energy resources. Given the importance of energy policy, this bill is a very serious matter and I do not take a decision to oppose such a bill lightly. In my view, this conference report does not achieve the correct balance on several important energy issues, as well as on a number of environmental issues.

In my work on this legislation, I have heard from large numbers of my constituents. They generally regard the bill as legislation written by a handful of people with the purpose of rolling back environmental protections and providing big corporations with giveaways at the expense of average Americans. Wally Elton from Springfield, VT called my office last Tuesday to voice his many concerns about the bill. Mr. Elton is skeptical about many facets of this legislation. ''It makes energy the top priority for public lands, it relaxes clean air and clean water standards, which will have bad effects on public health. There is nothing for conservation—it is all about giving companies subsidies and granting them everything on their 'wish list'. In a time of deficit, we should not be doing this.''

In short, Mr. Elton has deep concern regarding all aspects of this bill, right down to the way it was produced. ''The bill is not a reconciliation of two bills, and was not the product of bipartisan effort,'' he said. ''They just started over.''

Many people echo Mr. Elton's concern about this bill being written behind closed doors, in ''secret.'' My constituents tell me that a bill written without the valid contributions of a wide range of people will not reflect the feelings of the majority of Americans. It is widely known as ''Cheney's bill.''

Carol Groom of Warren said ''They are rolling back our environmental protections and cleanup of MBTE will be put on the taxpayers.'' Mary Lou Treat of Putney, VT is worried about respiratory diseases caused from pollutants from coal-burning factories, while Catherine Audetter, also of Putney, said ''wary of this legislation's unusual support of oil'' and lack of focus on renewables. Susanna Liepmann of South Strafford is concerned about wildlife protection.

An energy expert in my State likened this bill to a horror movie: ''My strong recommendation is to oppose this bill in any way you can. This bill should have been released on Halloween—it's a Frankenstein monster of mismatched body parts, most of them bad in and of themselves, and even worse when patched together.''

For example, in the electricity title, it strengthens the hand of FERC by permitting mandatory reliability standards, which is fine, but not as big an improvement as some claim. But it weakens the hand of FERC to require transmission companies to join RTOs, and blocks FERC's hand on moving to better market structures. In New England, this means that transmission

companies now rule the roost, and can essentially dictate terms to the ISO—because their participation in the regional pool is voluntary. These are the regional monopolists—why is our ability to regulate them on a regional basis made subject to their voluntary agreement?

For another example, this bill is deferring to States by holding back FERC from mandating regional markets; but it harms States by repealing PUHCA without any meaningful replacement. Two years after the Enron disaster, and associated revelations and bankruptcies of many other major players, why are we are repealing PUHCA without any serious look at what would be needed instead?

Of course, at a more fundamental level, a bill that gives enormous benefits to fossil extraction industries and does not improve CAFE standards is an embarrassment. The failure is mirrored on the electricity side, where it gives incentives for supply side electricity production and delivery with merely face-saving measures to advance efficiency and renewables. The list could go on.

My recommendation to the Senate is to put the Frankenstein bill out of its misery. Stop it any way you can. A filibuster is in order—and it should be about a lot more than MBTE.

These examples serve to express my constituents' frustration with this legislation. And their concern is reflected by communication that I have had with other energy sector experts as well. Ralph Nader, long regarded as an expert in vehicle fuel economy, is deeply concerned that this bill does nothing to increase the average fuel efficiency of our passenger cars, which is the worst in 20 years.

Steven M. Nadel, executive director of the American Council for an Energy-Efficient Economy, said in the New York Times on November 21, 2003, that the vehicle and energy efficiency provisions of the current energy bill ''are only a Band-Aid.'' The 3-month investigation released by a joint U.S.-Canada government task force on the blackout documents a significant and overriding reason for the cascading outage that knocked out electricity from New York to Toronto to Detroit: No one was in charge of the sprawling, heavily loaded and trouble-prone part of the transmission grid running around Lake Erie. The portion of the midwestern grid centered in Ohio has long worried industry regulators, and the energy bill does create operating rules to lessen the risk of blackouts. But this conference report could do much more for reliability such as establishing uniform net metering requirements, promoting the upgrade of existing infrastructure rather than creating a frenzy over the construction of new lines, and investing in the deployment of new transmission technologies.

Finally, I have heard from Norman Milleron, former member of Berkeley's Energy Commission in the 1970s, that the country could be doing much more to capture natural gas that is lost or inefficiently combusted at centrally located powerplants, promote the use of distributed generation, and advance research to promote energy efficiency and more effectively generate electricity from biomass.

This bill should have contained a renewable portfolio standard requiring electric utilities to generate or purchase a percentage of the electricity they sell from renewable sources. Fifty-three Senators support such a requirement, more than a majority of this body. We can and should do better on renewable energy sources. This bill should have set a serious target, we should have had a floor debate on this issue, and it should have been in the conference report.

In addition, this bill repeals the pro-consumer Public Utility Holding Company Act, among the Federal Government's most important mechanisms to protect electricity consumers. The conference report fails to protect electricity consumers, investors, and small businesses from abusive transactions between utilities and affiliate companies within the same corporate family. It also failed to include an amendment that I cosponsored, offered by the Senator from Washington, Ms. CANTWELL, to the fiscal year 2004 Agriculture Appropriations bill, which banned all of the Enron-like trading schemes. The Cantwell amendment passed with the support of 57 Senators, and should have been added to this bill.

As I have said before, the American people deserve better than this bill, and I cannot vote in favor of it as currently drafted. Both the environmental and the energy provisions of this measure will need to be greatly improved when we return next year to get my vote.

Mr. ROCKEFELLER. Mr. President, this past Friday I voted against the Energy bill conference report that was before the Senate. I did this despite having worked for many years on some of the bill's components that I believe will be good for West Virginia and the Nation, such as tax incentives and related research and development of clean coal technologies, incentives to increase domestic energy production through an expansion of existing credits for production from non-conventional sources, and incentives to promote greater use of alternative fuel vehicles. However, presented with the complete package under consideration, I had no qualms about voting to continue debate and to stop a vote on final passage.

As a Senator from a State where coal is not merely a home state industry, but a part of the spirit of the place, I did not come to this conclusion easily. Many parts of this bill will have little or no direct impact on my State, while parts of the bill could help West Virginia. My first concern when looking at any bill is how it will affect West Virginians. Only then do I look at the broader scope of legislation. In this instance, these concerns coincide. Balancing all that is good against all that is bad in a large and complex bill, I believe this energy bill will do more harm than good to my state, especially to its coal industry, and to the nation as a whole.

The failure to produce a bill the Senate could pass is especially frustrating to me because I have argued for my entire Senate career that the country desperately needs a comprehensive and responsible energy policy. Recently this need has become obvious even to the casual observer. Huge portions of the population suffer blackouts, high natural gas prices threaten our manufacturing base, and highly volatile gasoline prices hurt so many of our citizens. Factors like these compel Congress to make prudent energy policy decisions for our nation. These include developing our domestic energy resources where it can be done without harming the environment, such as is the case with natural gas exploration in the Appalachian Basin that I have promoted by working to extend tax incentives for the types of non-conventional terrain common there. It should include funding advancements in technology, as I have advocated with my support for clean coal tax incentives and related R&D, to preserve the long-term viability of our coal industry. It should include common-sense programs to protect miners and other energy industry workers who do the dangerous work that allows our economy to grow. An energy policy we can all support would do more than pay lip service to improving the reliability of our electrical grid, or to the efficiency and conservation measures that must be part of an effective national energy strategy.

I am sad to say that the Energy conference report misses the mark. We would have done better to simply pass the much more balanced bill the Senate passed in 2002, and again this year. I encourage my Republican colleagues in the strongest terms possible to use that bill as a guide, and to move quickly, with active bipartisan cooperation, on this important issue early next year. This will produce a bill that will enjoy support on both sides of the aisle. I will not hesitate to oppose another flawed bill, like the one we rejected last week that I believe would hurt my State of West Virginia, no matter how many times the majority seeks to shut off debate.

This is a bill I had hoped would help sustain the long-term health of the coal industry. I recognize that the bill contains some clean coal tax incentives, which I have worked hard for years to enact into law, and related research and development. Unfortunately, an Energy conference closedout to Democrats made damaging cuts of 20 percent or more to Senate provisions designed to move the utility industry toward emission-free coal-fired power plants in the foreseeable future. The

R&D goal of $2 billion over 10 years was cut, and then further diluted by including earmarked loan guarantees, including one to strip clean coal technology out of an Alaska demonstration project and reconfigure it as a conventional coal plant. The tax provisions, already reduced from a level coal and utility industry experts project as necessary to truly drive technological development, were cut further. That money was shifted to allow the oil and gas industries to receive almost 49 percent of all tax incentives, while coal, which produces more than 50 percent of the nation's electricity, has to be satisfied with only about 10 percent of the benefit of the bill.

What is probably most troubling for my State of West Virginia is that this bill would tilt a playing field that is far from level already dramatically in the direction of western coal. Under this legislation, companies out west that mine coal on public lands will be required to conduct much less stringent environmental analysis, and then be reimbursed by taxpayers for any costs incurred. At the same time, these companies will be able to mine this coal the taxpayers' coal—and pay lower royalties than have been required until now. Coal from the Powder River Basin is already cost-competitive in parts of the eastern United States with coal mined in Appalachia. Finally, this bill includes a completely unjustified repeal of a 4.3 cent per gallon excise tax railroads pay on diesel fuel, which will make it even cheaper for western coal companies to flood the eastern United States with their product.

Further, I am simply astonished that in a bill that gives an unprecedented amount of taxpayer money to special interests, and which purports to support coal, that House conferees not from coal states demanded that a small but critical provision of mine from last year's Senate bill be removed. This provision, which would have added no additional cost to the bill, called upon the Secretary of Labor to hire, train, and deploy as many Mine Safety Inspectors as she is currently authorized to have. This was meant to overcome a decline in the number of mine inspectors, and therefore, in mine inspections, that predates this administration. This situation, where mine inspectors spend far more time on the road traveling between mines than they ever spend inspecting them for compliance with federal health and safety rules, will become untenable if the nearly 25 percent of inspectors scheduled to retire in the next three to five years actually leave the already-depleted workforce. Let me reiterate: No new authorization; no demand for additional personnel to make sure the coal mines in this country are safe for the miners producing the fuel that generates more than half our electricity. Just hire and train them now so that planned retirements do not leave our miners unprotected by qualified Mine Safety Inspectors. Secretary Chao signed off on the provision last year, and in 2003, Senator DOMENICI included it in his version of the bill. But it's not in the conference report. I wonder how, in an energy bill that is supposed to be about maximizing our domestic production, we can look the other way at miners' safety.

I would be remiss, if I did not give credit where credit is due. I have worked for many years on incentives to promote natural gas development from non-conventional sources. These so-called section 29 credits, including incentives for the capture of coalmine methane and the production of coke, would, respectively, reinvigorate natural gas drilling in the Appalachian Basin, lower the production costs and increase the safety of coal mining, and help the struggling American steel industry get back on its feet. I have advocated for these incentives during my entire career because I understand how much they would help my State of West Virginia. I was proud, both last year and in 2003, to lead a broad bipartisan coalition in the Senate pushing for extension and expansion of section 29. With regard to these provisions I commend the conferees. Unlike many pieces of our bill that went into conference with the House, I believe the section 29 provisions in the conference report have been greatly improved.

I trust that few Senators cast many votes that are decided purely on the numbers. How much something costs, or how much are we willing to give to this industry or that one play into our decisions, to be sure. But for this Senator, at least, figures tend to be obliterated by the people our actions are helping. We had a chance in this conference report to help a group of people I have taken into my heart, and for whom I probably have spent more hours working than any other. I am speaking of retired coal miners and their surviving spouses.

The Coal Act was created to protect the promise of lifetime health benefits for coal miners, who fueled the nation's post World War II economic growth, and who made salary and pension concessions in exchange for those health benefits. The Coal Act fulfilled a promise first made by President Truman in his 1946 agreement with legendary UMWA President John L. Lewis. In response to a coal strike in the late 1980s and a looming crisis in the miners' health funds, the first Bush administration created the Coal Commission to find a long term solution. Those recommendations became the basis for the Coal Act, which protected the health benefits of more than 100,000 retired miners. Today, there are almost 50,000 retired miners and widows who depend on the Coal Act for their health care security—their average age is about 78. Since enactment, the Coal Act has faced many challenges, but the combination of sharply escalating drug costs and a series of negative court decisions have resulted in a serious deficit in the Funds. That deficit will mean a cut in health benefits next year if Congress does not act to stop it.

We had a chance, in the Energy conference, to shore up the Combined Benefit Fund while also helping make states whole with regard to what was owed them in outstanding Abandoned Mine Land contributions. I have heard promises that both Senate and House Chairmen have made to deal with this issue next year, when the AML Fund is up for reauthorization. For the 80-year old miners' widows who are facing a benefit cut next February, they have heard promises before, but in their behalf I must say that I sincerely hope that next year is not too late.

I am not happy that I must vote against this bill. I am sorry for my State of West Virginia, because it deserves better than this bill gives it. I'm sorry that our balanced bill of 2002 has been replaced with this lopsided monstrosity. I will continue to push my colleagues for a balanced and responsible energy policy for this nation, and I look forward to a time, hopefully soon, when I can vote for such a bill.

## AGROTERRORISM: THE THREAT TO AMERICA'S BREADBASKET

Mr. AKAKA. Mr. President, I rise today to discuss how to prepare our Nation against a terrorist attack on our agriculture. Senator COLLINS, chairman of the Governmental Affairs Committee, is to be commended for holding a hearing last week on a critical issue which has received little congressional attention. I am deeply concerned about our agricultural security. In July and October 2001, I held two hearings on the Nation's preparedness for a bioterror attack. The threat to our agricultural industry by potential terrorists is not imagined; it is very real.

One expert likened the American agricultural industry to a large bulls-eye stamped across the United States. Dr. Peter Chalk, a RAND policy analyst, testified that an attack on American livestock could be extremely attractive to a terrorist for the following four reasons: (1) a low level of technology is needed to do considerable damage, (2) at least 15 pathogens have the capability of severely harming the agriculture industry, (3) a terrorist would not need to be at great personal risk in order to carry out a successful attack, and (4) a disease could spread quickly throughout a city, state, or even the country.

In Afghanistan, hundreds of pages of U.S. agricultural documents were discovered in al-Qaeda's possession. A recent unclassified CIA report confirmed that the September 11th hijackers were attempting to gain knowledge and access to crop-dusting aircraft which could be used to easily contaminate America's food supply.

An agroterrorisk attack would have severe economic costs to agricultural producers, State and Federal Governments, and exporters of U.S. food products. The widespread contamination of

American produce or livestock could cause mass panic and long-lasting fear of American produced food products. Dr. Chalk cited a study conducted in California that concluded that ''each day of delay in instituting effective eradication and control measures would cost the state $1 billion in trade sanctions.'' The economic repercussions are almost unimaginable.

Yet within the Federal Government, no agency has the clear responsibility for preventing and containing an agroterrorist attack. Over 30 Federal agencies have jurisdiction over some part of the response process. This bifurcation of jurisdiction contributes to confusion among local and State officials as to where to turn for assistance and advice. According to a recent General Accounting Office, GAO, report Federal agencies are confused about the chain of command. The report states that neither the Food and Drug Administration, FDA, nor the Department of Agriculture, USDA, believe that they have the authority to enforce security at U.S. food processing plants. GAO states that ''both FDA and USDA have instructed their field inspection personnel to refrain from enforcing any aspects of the security guidelines because the agencies generally believe that they lack such authority.''

When questioned at the Governmental Affairs Committee hearing last week, Dr. Penrose Albright, Assistant Secretary for Science and Technology in the Department of Homeland Security, DHS, indicated that the responsibility of leadership would likely fall to DHS in the event of an intentional attack on the Nation's agriculture and stated that DHS ''takes these responsibilities seriously,'' but stopped short of asserting that the new department had overall responsibility. I have asked DHS for clarification on this issue.

Dr. Albright also said that an unintentional contamination of American agriculture would not involve DHS. His response demonstrates a serious deficiency in the Federal Government's crisis response procedure. If there were an incident, who would lead the response in the hours or days before the cause of an outbreak was known? One agency must shoulder the responsibility for coordinating an immediate response regardless of the cause.

To address these concerns, I introduced two bills, S. 427, the Agriculture Security Assistance Act, and S. 430, the Agriculture Security Preparedness Act, to increase the coordination in confronting the threat to America's agriculture industry and provide the needed resources. My legislation provides for better funding and a better coordinated response and defense to an agroterrorist attack.

The Agriculture Security Assistance Act would assist States and communities in responding to threats to the agriculture industry. The measure authorizes funds for communities and states to increase their ability to handle a crisis. It also encourages animal health professionals to participate in community emergency planning activities to assist farmers in strengthening their defenses against a terrorist threat.

The Agriculture Security Preparedness Act would enable better interagency coordination within the Federal Government. The legislation establishes senior level liaisons in the Departments of Homeland Security and Health and Human Services to coordinate with USDA on agricultural disease emergency management and response. The bill also requires DHS and USDA to work with the Department of Transportation to address the risks associated with transporting Animals, plants, and people between and around farms.

No doubt a terrorist attack on American agriculture could have a devastating effect on the United States. Our Nation's capability to counter such an attack is increasing, but more needs to be done. My two bills would help our Nation act now so that a future agroterrorist attack can be avoided or quickly responded to before the damage in lives or livestock is too great. I urge my colleagues to support this overdue legislation.

## OVERTIME PAY

Mr. HARKIN. Mr. President, we are sent here to do the people's business, but one critical piece of the people's business is missing in this omnibus bill that was filed today. There is one shameful omission.

Both Houses of Congress, on a bipartisan basis, voted for my amendment to block the administration's proposed new rule on overtime. Both Houses voted to block the administration's radical rewrite of the Nation's overtime laws. That amendment passed 54 to 45 in the Senate, and 221 to 203 over in the House. The Congress of the United States spoke up—clear as a bell—and said, ''No, the administration must not strip overtime rights from 8 million American workers.''

The administration refused to accept this act of defiance by Congress. The administration ordered its foot soldiers in the House of Representatives to strip this provision from the omnibus. Senator SPECTER and I fought to keep it in, but the administration refused any cooperation or compromise. In the end, just like that, the administration nullified the clear will of both Houses of Congress and the American public.

I believe this is an abuse of power, and there is a clear pattern to this abuse of power. Time and again, we see this administration dictating to Congress, nullifying the work of Congress, running roughshod over the will of Congress.

This administration seems to believe in Government by one branch—the executive branch. When the executive branch speaks, the administration's allies in Congress must obediently fall in line. And, time and again, they do. They act as a rubber stamp. They give the President a blank check.

This is dangerous to our constitutional system. The Founding Fathers did not talk about blank checks. They talked about checks and balances. In the Federalist Papers they specifically talked about the danger of allowing any one branch to reign supreme.

Instead of independent, coequal branches of Government, today the executive branch does, indeed, reign supreme. Time and again, this administration dictates to Congress, and Congress submits—even when both Houses of Congress have previously voted to the contrary.

The problem with having the executive branch dictating to the legislative branch—the problem with discarding checks and balances—is that it results in bad public policy, and that is exactly what we see here, today.

Both Houses of Congress, with bipartisan majorities, voted to block the administration's proposed overtime rule. This was the right thing to do. It was the correct public policy choice because this new rule is a stealth attack on the 40-hour workweek, pushed by the White House without a single public hearing. It will effectively end overtime pay for dozens of occupations, including nurses, police officers, firefighters, clerical workers, airtraffic controllers, social workers, and journalists.

This proposal is a slap in the face to the millions of American workers who depend on overtime pay to support their families and make ends meet. We're not talking about spare change, here. We are talking about taking away some 25 percent of the income of many American workers.

Now that Congress's vote and voice have been nullified, we are hearing that the Department of Labor could issue this new rule in the coming weeks. But I am here to serve notice that I will not give up, nor will others who have fought this.

The American people will not allow us to drop this issue. They have been watching this issue closely, because it hits so close to home. I pledge that I will offer the overtime amendment to every piece of legislation until we succeed.

Let's be clear. This is not just about reversing a destructive, misguided measure. It is also about this Congress asserting its independence and refusing to have its votes nullified at the whim of this administration.

## BLOCKING THE ENFORCEMENT OF OUR NATION'S GUN SAFETY LAWS

Mr. LEVIN. Mr. President, the House-passed version of the Commerce, Justice and State Departments Appropriations Bill included provisions that, if adopted, would severely hamper efforts of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) to enforce our nation's gun safety laws.

Under current law, dealers are required to notify the BATFE of the sale of two or more handguns to the same person within five business days. The House-passed provisions would prohibit the public release of information related to multiple handgun sales. The House language would also prohibit the release of information related to tracing requests on guns used in crimes. Eliminating the public availability of this data would make it more difficult to monitor the activities of reckless gun dealers.

In addition, the House-passed language would prohibit the BATFE from issuing a rule requiring Federal Firearm Licensees to take a physical inventory of their firearms. A physical inventory recently revealed that a Tacoma, WA, gun dealer could not account for the sniper rifle used by the Washington, D.C. area sniper and more than 200 other guns. The House language would have required the immediate destruction of records of approved firearms purchases and transfers generated by the National Instant Criminal Background Check System. The retention of these records has assisted law enforcement officials trying to prevent guns from getting into the hands of criminals and identifying gun trafficking patterns.

The House-passed provisions were never the subject of hearings and are not supported by any major law enforcement organizations. They could shield reckless and negligent gun dealers from public scrutiny and weaken the BATFE's oversight and enforcement authority. They should not be adopted by the Senate.

## ADDITIONAL STATEMENTS

### RECOGNIZING THE 1ST ANNUAL MARCH OF DIMES RADIO BROADCASTERS FOR BABIES EVENT

● Mr. BOND. Mr. President, today I recognize the St. Louis radio community for joining together to pioneer the 1st Annual March of Dimes Radio Broadcasters For Babies Event at the Saint Louis Galleria on November 8, 2003. This was the first event of its kind nationwide. Together, Clear Channel Radio, Emmis Broadcasting, Bonneville St. Louis Radio Group, KTRS The Big 550, 1380 THE TEAM, Q95.5 Radio One, Classic 99 and Infinity Radio raised almost $300,000 to support research and programs to save babies from premature birth, the leading cause of birth defects and infant mortality.

One out of every eight babies in the U.S. is born prematurely, some so tiny they can't even cry. In nearly half of these cases, no one knows why. With their 5 year, $75 million Prematurity Campaign—no one is working harder than the March of Dimes to find out why babies are born too soon. I commend the St. Louis radio community for their support of the March of Dimes. With their help we will find the causes of premature birth and gain more knowledge to save more babies.●

### OREGON HEALTH CARE HERO

● Mr. SMITH. Mr. President, I rise today to salute a trio of Oregon Health Care Heroes. Three agencies, El Programa Hispano, the Desarrollo Integral de la Familia, and the Oregon Council for Hispanic Advancement, are working together to provide much needed mental health services to Oregon's growing Latino community. Their combined effort is helping clients improve relationships, find a listening ear and access the services they need to live healthier lives.

Funded by a grant from Multnomah County, the agencies work with Latino families and individual clients facing a variety of challenges: from depression and anxiety to post-traumatic stress and domestic abuse. Part of the success of this project is that counselor and client share language and culture. Before these agencies began serving clients, finding a counselor who speaks Spanish or understands Mexican and Latin American cultures was next to impossible.

In a recent profile published by the Portland Oregonian, counselor Marcos T. Sanchez discussed the importance of sharing language and culture with clients.

It makes such a big difference when you come in and the receptionist can speak to you in Spanish. People walking by can say, ''Have you been helped?'' When you go to the clinic, you're already feeling alienated. But if you don't have to risk as much to get these services, you are much better off.

The project is also successful because it networks within the Latino community and employs nontraditional methods to help clients. Therapists conduct home visits to work with whole families and to better understand the needs of individual clients. This individualized approach to care, combined with culturally sensitive services, will ensure that quality care reaches those who need it most. As the service expands, it will serve as a national model for bringing together the best in community care and mental health services.

Through the vision of the Latino Network and the resources of Multnomah County, these agencies are reaching people in need. They connect with people and care for clients in a unique way that is making a real difference in the lives of Latino Oregonians. I thank El Programa Hispano, the Oregon Council for Hispanic Advancement and the Desarrollo Integral de la Familia for their excellent work. They are heroes to the people they serve and to all Oregonians.●

### TRIBUTE TO C. BOOTH WALLENTINE

● Mr. HATCH. Mr. President, I give tribute to my dear friend C. Booth Wallentine, who, just days ago, began a very well earned retirement after serving for 41 years in the Farm Bureau. Thirty-one of those years he served as the executive director of the Utah Farm Bureau.

Booth is an institution in my State, and I have to say that when agriculture issues come up, my first question often is, ''What's Booth's take on this?'' Even on rare occasions when we have disagreed on an issue, I found it valuable to understand his perspective. As far as I am concerned, nobody knows agriculture in Utah like Booth Wallentine, and I dare say that no state Farm Bureau director knows Congress and the legislative process like Booth Wallentine, either.

This combination of expertise in the substance and in the process of agriculture policy-making has helped to set Booth apart as a highly effective advocate on behalf of Utah agriculture interests. It has also helped him to provide service in various other ways. He served as vice chairman of the Salt Lake Chamber of Commerce as well as chairman of the board of Utah State University. Remarkably, both institutions awarded him their respective distinguished service awards. He also served as the president of the Utah Council on Economic Education and chaired the Utah Farm Service Agency Committee on Risk Management. Somehow he found the time to help establish the National Mormon Pioneer Trail Foundation and was asked to chair the Department of the Interior's Historic Trail Commission.

But wait a minute, there's more. Booth Wallentine was Utah State University's very first inductee in their Agriculture Hall of Fame, he was named the Future Farmers of America Farm Leader of the Year, a Friend of the Cattlemen, a Friend of Utah Wool Growers, and he earned the Utah State Extension Leadership Award. Booth was also officially recognized by the Environmental Protection Agency for his environmental leadership in helping farmers to improve Utah's water quality.

I should point out that this is not a complete list, but it serves to make the point that Booth Wallentine is a great American. He has helped Utah in so many ways.

I know that I will miss him dearly, but I gain some comfort knowing that while he goes into retirement, we continue to benefit from the wisdom he shared with us and the legacy he has left. I thank my friend, Booth Wallentine for serving so long and so well. I pray that the Lord will bless him and his sweet wife, Raeda, in their retirement.●

### TRIBUTE TO PHILIP SHANNON

● Mr. DODD. Mr. President, I rise in tribute to Philip J. Shannon, of Norwich, CT, passed away on Tuesday, November 11, 2003, at the age of 85. Philip was a dedicated public servant, a loyal Democrat, and above all, a good friend.

He was a Norwich native who would dedicate much of his life to serving the people of his hometown. He graduated from St. Patrick's School and the Norwich Free Academy. Like so many in

Norwich and across the State of Connecticut, he would go on to work in the manufacturing industry as a machinist at Pratt and Whitney and as a partner at the Norwich Machine and Tool Company.

During his decades of work as a public official in Norwich, Philip was never one to stay silent on any issue that he felt was important to the citizens of that city. That approach won him many allies, and it certainly earned him his share of critics. But everyone admired the passion and the dedication that Philip Shannon brought to his many years of public service.

He helped spearhead a series of important local projects, including the Norwich Golf Course and development along route 82. He also had the foresight to successfully campaign against selling the city's public utilities department to a private corporation. The decision to keep the department ultimately made the city more money than it would have received from the sale.

Those are only a few of Philip Shannon's many accomplishments. In the words of Bill Stanley, a former State Senator, ''he did more for Norwich than anyone will ever know.''

His work on behalf of the Democratic Party in Norwich was so tireless that he became known as ''Mr. Democrat.'' He served as Democratic town chairman for 20 years and represented Connecticut's 19th District on the Democratic State Central Committee. In his role as a party leader, he recruited numerous candidates who went on to hold local and State offices.

Philip was as good to his friends as he was to the Democratic Party. He was a longtime friend of my father, and I will never forget how he supported me when I first ran for the Senate back in 1980.

Norwich is a better place today because of the efforts of Philip Shannon. He will be greatly missed, both by the people he served and by everyone who knew and loved him.

I offer my most heartfelt sympathies to Philip's wife Cresencia, his four children, six grandchildren, three great-grandchildren, and his entire family.●

## JOSEPH W. McCRACKEN

● Mr. SMITH. Mr. President, I rise today to acknowledge the passing of Joseph W. McCracken on October 26, 2003.

For over 4 decades, Mr. McCracken represented the forest products industry in Oregon and other western States, as the Executive Vice President of Westen Forest Industries Association. Mr. McCracken represented a sector of the industry that I hold in particularly high esteem—a sector comprised of small, family-owned sawmills and plywood plants.

These are the mills that traditionally depended on our Federal forest lands for their supply of timber. These are the mills that are located in small rural communities where they provide the backbone of the local economy.

During his years of service to his industry, Joe McCracken was a fixture in his town and served as an advisor and mentor to many of our predecessors in this body. Warren Magnusen, Scoop Jackson, Mark Hatfield, Bob Packwood, Frank Church, Jim McClure, Jim Melcher, and other stalwarts of our western Senate delegation looked to Joe for counsel and advice on public land issues affecting his constituents.

He represented them with a passion and commitment that was exemplary. Joe McCracken was a visionary and was responsible for creating and influencing countless pieces of legislation and regulations that benefitted his industry, the people that work in it and the communities that depend on it.

The Small Business Set Aside Program, as just one example, assured small, family-owned mills a fair share of the Federal timber sold from our national forests and lands manager by the Bureau of Land Management.

Joe McCracken was a pioneer in crafting the policies and regulations affecting the Oregon and California Railroad lands in western Oregon, today known as the ''O & C'' lands. He did this both as a professional staff person for the Department of the Interior and as an advocate for his trade association.

Under Joe McCracken's representation, the small, family-owned mills throughout the west prospered. Many of them are under second and even third generation management. Unfortunately, many of them no longer exist.

After Joe's retirement in the early 90s, a sea change in Federal policies regulating the management of public forests unfolded to the point that very little timber is being provided from these forest lands and many of the mills have closed.

Unfortunately, these were the mills Mr. McCracken fought so hard to preserve. Those that have survived owe their existence largely to Joe McCracken.

Joe was born in Butte, MT in 1925. He served his country as a lieutenant in the United States Marines. He attended Princeton University where he earned a masters degree in political science.

He had a distinguished career with the Department of Interior, and specifically, the Bureau of Land Management prior to taking the leadership position with the Western Forest Industries Association.

Joe McCracken was a unique individual who left a profound imprint on the growth and evolution of public forest policy and the industry that is so closely dependent on public forest lands. His contributions to this body in assisting us in the thoughtful debate and deliberation of these important matters are worthy of our formal recognition.

I extend my heartfelt sympathy to Joe McCracken's wife Janet and his two children, Jon and Tamsen.●

## THE LIFE OF BRIAN HOWELL

● Mr. FEINGOLD. Mr. President, today I pay tribute to a friend who lived his life in the service of his community and his family.

Brian Howell was a committed journalist, and his activities reached far beyond reporting and editing. He wrote eloquently about the importance of honest government, and voiced outrage when news broke of political corruption in Wisconsin's State legislature.

Brian worked his way to become editor of Madison Magazine, a position he took after serving as features editor of the Wisconsin State Journal.

Brian Howell's dedication extended to the University of Wisconsin-Madison, where he taught a course on public campaigns and publicity. Shortly after the attacks of September 11, Brian worked closely with students to publish an issue of their student magazine that captured the circumstances, changes, and emotions surrounding the attacks. Always eager to engage young writers, Brian knew the power of good journalism.

Brian's voice remained strong, even into his last days. He wrote openly about his disease, lung cancer. In calling for increased research about the disease, Howell knew that despite lung cancer's stigma and common association with tobacco, its sufferers deserved the same scientific dedication that other patients received.

Right before he passed, Brian received by telephone the UW-Madison journalism school's Director's Award for Distinguished Service to Journalism. He greatly deserved this high honor.

My wife Mary and I will truly miss Brian. He was a friend of ours for many years and my wife had the distinct pleasure of working with him at Madison Magazine. His friendship is something we will always treasure and hold close to our hearts.

Brian's death is a great loss to the Madison community and to Wisconsin as a whole. I am saddened by his passing and join in honoring his achievements. I know that he will live on through all that he accomplished, and through everything that he taught those of us fortunate enough to call him a friend.●

## TRIBUTE TO PAUL WALLACE-BRODEUR

● Mr. JEFFORDS. Mr. President, today I pay tribute to Paul Wallace-Brodeur, an outstanding Vermonter and a national leader in the area of health care reform. As he prepares to retire from his position as director of the Office of Vermont Health Access in Waterbury, VT, it is important to reflect on how much one person can accomplish in serving others.

Paul has been on the forefront of providing individuals with greater access to the health care delivery system. As the State Medicaid director, which is

Vermont's second largest insurance program, Paul helped Vermont obtain the distinction of having one of the lowest uninsured rates in the country. Under Paul's leadership, Vermont broadened its eligibility standards and was one of the first States in the country to expand Medicaid services to children under the Dr. Dynasaur program. During his tenure, Medicaid programs grew to cover 143,313 Vermonters.

Paul began his career in Vermont as a social worker at the Brandon Training School. He quickly rose to leadership positions as a direct provider and then consultant in the field of mental health, followed by his position as the chief social worker for the Vermont State Hospital. It came as no surprise to those of us who know Paul that he was selected in the mid-1980s to lead the State of Vermont's efforts in creating universal access to health care as the executive director of the Vermont Health Policy Council and through his work for the Vermont Health Care Authority. Also during the mid-1980s he spearheaded the creation of the Vermont Ethics Network, an organization dedicated to increasing the understanding of ethical issues, values, and choices in health and health care.

Over the course of 40 years, Paul has been involved with virtually every health policy initiative in Vermont, particularly the State's efforts to expand health coverage. He is personally responsible for authoring Vermont's 1115 waiver, which over the years, and with many amendments, has provided more expansive and flexible Medicaid services to Vermonters. In his quiet unassuming way, Paul is an integral part of the health care delivery system in Vermont and has gained recognition for being a national health policy leader and mentor. He has always brought a steadfast commitment and institutional knowledge to solving the problem at hand while maintaining a vision for improving Vermont's health care system.

Paul's unwavering commitment toward improving the health status of every Vermont citizen is a great lesson for all public servants. Vermont is truly indebted to him. His deep commitment to the citizens of the Green Mountain State has endeared him to us. He has our best wishes for the future.●

## ALBERT W. BILLINGTON

● Mr. CHAFEE. Mr. President, I am pleased today to draw the Senate's attention to a public servant who has given meritorious service to Rhode Island and to the Nation.

Since 1981, Albert W. Billington has been a Special Agent with the Naval Criminal Investigative Service (NCIS). In December, Mr. Billington will retire from the NCIS. He leaves a record of achievement, and his service will be missed.

Al Billington graduated from Northeastern University in 1977 with a bachelor's degree in Criminal Justice. Beginning his career as a Special Agent, his first assignment was the San Francisco office where he investigated general criminal matters. Just 2 years later, he began a one-year assignment as the Special Agent Afloat aboard the *USS Enterprise* (CVN 65). During the tour, he led several high-profile investigations while the ship and battle group were deployed in the Western Pacific, and for this he received the NCISRA San Francisco Special Agent of the Year Award for Distinguished Service.

Later, Mr. Billington graduated from the Department of Defense Polygraph Institute in Anniston, AL, and was reassigned as a Special Agent Polygraph Examiner to the NIS Northeast Region Polygraph Site in New London, CT. He rose through the ranks first as the Site Manager and later as the Special Agent in Charge of The Polygraph Office.

As Division Head at NISHQ, he conducted oversight of all polygraph matters for the Department of the Navy.

In 1994, Al Billington was appointed Assistant Special Agent in Charge of the Northeast Field Office in Newport, RI, handling all criminal and fraud investigations.

In 1997, he was promoted and reassigned as the Special Agent in Charge of the NCIS Middle East Field Office in Bahrain. He served with distinction during this time of heightened alert and terrorist activity and was awarded the Navy Superior Civilian Service Award by VADM C.W. Moore, Commander Fifth Fleet, USN.

Two years later, he was transferred to NCIS Headquarters and served as the Deputy Assistant Director for Investigative Support.

In 2001, Mr. Billington assumed his present position as the Special Agent in Charge of the NCIS Washington, DC, Field Office.

Upon his retirement, Mr. Billington will be returning to his home in Portsmouth, RI, spending time with his wife, Bonnie, and son, Matthew.

I join with Al Billington's colleagues in expressing thanks for his dedication and valuable service to our Nation, and in wishing him success in all his future endeavors.●

## 70TH BIRTHDAY OF SAM MAYNES

● Mr. CAMPBELL. Mr. President, I rise today to congratulate Sam Maynes of Durango, CO, on his 70th birthday, although it would be more appropriate to congratulate those with the good fortune to have had Sam for an advocate or friend over the years. I have been lucky enough to count him as both.

While others have lived as many years, very few have achieved a legacy as significant and lasting as his will prove to be. The Southern Ute Tribe, Ute Mountain Ute Tribe, and all of southwestern Colorado will be enjoying the fruits of Sam's hard work long after the struggles and acrimony he endured these past decades have been forgotten. Those who time and again pronounced Animas-La Plata a lost cause obviously didn't know the stuff Sam was made of. I knew—and I knew that so long as there was any chance at all, he would keep fighting. Sam has a warrior's heart, and it was an honor to do battle alongside him.

There are generations of Coloradoans not yet born, who may never know the name of Sam Maynes, but who will live better lives because of his tenacity. So congratulations to them, Sam, and happy birthday to you.●

## TRIBUTE TO VERMONT ASSOCIATES FOR TRAINING AND DEVELOPMENT, INC.

● Mr. JEFFORDS. Mr. President, today I would like to pay tribute to Vermont Associates for Training and Development as it celebrates 20 years of service in meeting the employment needs of Vermonters, age 55 and older, who are ready, willing, and able to work.

I also acknowledge the organization's founding executive director, Pat Elmer, for her vision, leadership, and management skills as she has guided the organization during the past two decades. The agency has developed a number of programs related to career counseling, job search, and computer training in order to prepare individuals for the work place. In addition, they provide on-the-job training stipends to allow people the opportunity to build their resumes through real-life work experiences.

Too often employers may overlook this valuable, and often untapped, resource, which older workers have to offer the workplace. I commend Vermont Associates for leading the way in changing the mindset of many companies by creating new opportunities for employees and employers alike.

As a member of the Senate Committee on Health, Education, Labor, and Pensions, HELP, which has jurisdiction over the Older Americans Act, I commend Vermont Associates for their wise and prudent use of funding from this act. Vermont Associates, and their colleagues across the country, were very helpful to me as I chaired the HELP Committee during the long-awaited reauthorization of this legislation.

I have a strong admiration for Pat's dedication and the many others, including board members and volunteers, who have built Vermont Associates. Vermont is grateful to Vermont Associates for their steadfast commitment to equal access to employment. Collectively, they have greatly improved the quality of life in our small State. For that, Vermont owes a great deal of gratitude.●

## TRIBUTE TO JOHN R. (JACK) CHAILLET

● Mr. WARNER. Mr. President, I rise today to pay tribute to an outstanding

Virginian and patriotic American who died of lung cancer on November 8, 2003—John R. (Jack) Chaillet, of Fairfax, VA.

Jack, age 69, was a retired D.C. Police detective, who investigated many of the high-profile murder cases of the 1960's and '70's. He served 21½ years on the Metropolitan Police Department before he retired in 1978, serving most of his career as a detective in the Homicide Division.

In 1977, he was a lead investigator in the Hanafi Muslim murders in which seven persons were slain and then D.C. Council member Marion Barry and two others were wounded after 12 Hanafis seized the District Building and two other facilities to avenge the death of members of their sect. Over two days, the group held 134 people hostage.

Among hundreds of other cases, he and his partner were first on the scene of the car-bomb murder in 1976 at Sheridan Circle of Chile's former Ambassador to the United States, Orlando Letelier. This case was taken over by the FBI. In one of his cases involving the murder of a young female child, he collected the largest number of pieces of evidence ever gathered in a homicide case in D.C. including doorframes and bathtub.

During his years in the Homicide Division, Mr. Chaillet developed a reputation as an investigator with patience and thoroughness in the vital collection of evidence. After retirement, he was told that many homicide detectives reviewed his reports for guidance in their cases and considered him a legend in homicide investigation. He was profiled, along with others, in a Washington Post weekend magazine article as one of the most outstanding D.C. homicide detectives. He worked many round-the-clock days and nights knowing the case must be pursued while the trail was hot. There was no overtime pay and the reward was in knowing the case was closed and another criminal was taken off the streets.

Mr. Chaillet helped organize and lectured in a homicide school sponsored by the D.C. Police Department which detectives from all parts of the country attend and, therefore, made his name known through departments across the U.S. In these classes, he had a flair for presentations in slide shows which kept the classes interesting, dramatic and shocking. He also lectured at Criminal Justice classes at several community colleges and universities.

Prosecutors liked to work with him as they knew they could count on him to help make their case with his meticulous notebooks, eloquent speaking voice and unflappability. He developed many contacts in the street and at Lorton Reformatory who provided him with information on open cases even after his retirement.

After retiring from the Police Department, he performed security work for Drug Fair, former Regency Hotel, and the National Press Building. He also did background investigations of Federal job applicants, field investigations for the Environmental protection Agency, and court security assignments for the U.S. Marshal's Office.

He was a native of Washington and a graduate of Anacostia High School, where he was an outstanding football player and received the All-Metro Award for two consecutive years. He served in the Army as a military police officer in Germany.

He was a Member of the American Legion, Almas Temple Shriners, Scottish Rite, Masons, and the Fraternal Order of Police. He was a football coach for the Camp Sprints (Maryland) Boys Club for many years and a volunteer for charitable golf tournaments sponsored by the Fraternal Order of Police and Heroes, Inc.

Survivors include his wife, Marie, of Fairfax; his sons, Kurt of Fairfax and Kyle of Berryville, daughters-in-law Karolyn and Caroline; and one grandchild, Logan James as well as many other relatives and a host of friends in the metropolitan area.

My sincerest condolences are offered to his family and friends.●

## DEDICATION OF THE BURCH TRIBAL OFFICE BUILDING

● Mr. CAMPBELL. Mr. President, today I rise to observe the dedication and naming of a building by the Southern Ute Indian Tribe in Ignacio, CO, a place I am privileged to call home.

On December 1, 2003—about a week from now—the Tribe will dedicate a new tribal office building to the memory of its former chief, Mr. Leonard Burch, who passed away earlier this year. The building will bear his name.

Leonard Burch was a quiet man of enormous vision, who led the Southern Ute Indian Tribe for nearly three decades, from a little-known, mostly poor tribe to the pre-eminent energy-producing Indian tribe in the world—a leader among tribes, just as Leonard was a leader among men.

Leonard's dream for the Tribe was audacious, but he persisted where others might have faltered and he believed—believed in his vision, but more important, believed in his people: his faith in the inherent strength of the Southern Utes was unshakeable.

it speaks well of the Southern Ute Tribe that they were perceptive enough to know a great leader when they saw one, and continued following his lead even when the way was difficult. Leonard and the Tribe deserved each other, and their mutual commitment was rewarded in a community transformed.

Leonard Burch will be missed by the Southern Ute Indians, by me, and by all who call southwest Colorado home. He remains in our hearts and, with the dedication of the Southern Ute Indian Tribal Office Building, his memory will be forever honored by the tribe he loved.●

## HONORING LTC DARWIN EDWARDS

● Mr. CHAMBLISS. Mr. President, I wish to speak about my friend, Darwin Edwards, curator of the Museum of Aviation at Robins Air Force Base for the past 14 years who passed away Saturday after a lifetime of service.

Lieutenant Colonel Edwards was born in Whigham, Georgia 67 years ago. Interested in flight from a young age, he attended the United States Air Force Academy in Colorado as a member of its fourth class. He then served in the Air Force for 33 years, including a tour in Vietnam where he earned the Silver Star, the Distinguished Flying Cross and many other honors from the United States and foreign governments.

Darwin Edwards was able to combine his love of aviation and his desire to serve his fellow Americans by joining the Museum of Aviation at Warner Robins. This museum, with 93 aircraft and missiles, is a first-rate facility with aircraft spanning World War II though the Cold War, including fighters, bombers, and cargo and trainer aircraft. It also includes helicopters and missiles.

Darwin Edwards worked hard to build up the museum. His personal touch was a big reason the museum has developed into the fourth largest aviation museum in the United States. Until he was stricken ill at his home several weeks ago, he was working on its $30 million Century 2000 Next Generation expansion program.

I have known Darwin Edwards for many years and sincerely express my admiration and respect for him. Several times, I used the museum to hold Christmas receptions for cadets who had received nominations to the service academies. Each time, Darwin took the time to take the young men and women on a personal guided tour of the museum, providing his insight and detailed knowledge of this outstanding facility.

Darwin Edwards leaves behind his wife, Sheila, his two sons, Richard and Howard, as well as a granddaughter, and six sisters and three brothers. He also leaves behind many friends as well as a grateful Nation.

We will miss Darwin Edwards greatly and we extend to his family and friends our heartfelt condolences.●

## TRIBUTE TO NORMAN TOBIN

● Mr. LAUTENBERG. Mr. President, I rise to commemorate the passing of Norman Tobin on October 12, 2003, someone I respected and admired for many years. Norman and I belonged to the same synagogue for decades.

He was a talented, generous person who was a leader in philanthropy and the Jewish community. I considered Norman and his wife Zelda good friends and know how strong the ties were in the Tobin family.

I sent my deepest sympathy to the Tobin family and an acknowledgement of my gratitude for having been enriched by my contact with this great man.

I ask to print a copy of the obituary that appeared in the Star Ledger in the RECORD.

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

[From the Newark (NJ) Star-Ledger, Oct. 12, 2003]

NORMAN TOBIN, PRESIDENT OF REALTY APPRAISAL FIRM, ACTIVE IN COMMUNITY

Norman L. Tobin, 81, of West Orange died yesterday at home.

Services will be at 9:30 a.m. Tuesday in Temple Sharey Tefilo-Israel, South Orange. Arrangements are by the Menorah Chapels at Milliburn, Union.

A self-employed realtor and appraiser, Mr. Tobin was the president of Norman Tobin & Co. in Maplewood for more than 35 years.

He was a graduate of the Newark School of Fine & Industrial Arts.

Mr. Tobin served in the Army Signal Corps during World War II.

A former president of Temple Sharey Tefilo-Israel, he was a member of the Friends of the Memorial Library, the Chamber of Commerce and the Unity Club, all in Maplewood.

He was also a member of the Board of Realtors of the Oranges and Maplewood.

Mr. Tobin was currently president of the Appraisers of America and served as a judge on the Condemnation Court of Essex County for 35 years.

He was the dinner chairman of the Lautenberg Cancer Research Foundation and was instrumental in raising two millions dollars in funds.

In 1974, he was awarded the Man of the Year Maple Leaf Award for community service by the Town of Maplewood.

Mr. Tobin brought back the first Holocaust Torah from Czechoslovakia to Temple Sharey Tefilo-Israel.

An artist, his work is on exhibit at the Newark and Montclair museums and also displayed at Silermine Shows, the Sinai Museum in Los Angeles, Calif., and the Simon Wiesenthal Museum of Tolerance. He also has a sculpture in the registry of the Holocaust Museum, Washington, D.C.●

## MESSAGE FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 12:35 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 189. An act to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 579. An act to reauthorize the National Transportation Safety Board, and for other purposes.

S. 1152. An act to reauthorize the United States Fire Administration, and for other purposes.

S. 1156. An act to amend title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

S. 1895. An act to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes.

H.R. 421. An act to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

H.R. 1683. An act to increase, effective as of December 1, 2003, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

H.R. 1821. An act to award a congressional gold medal to Dr. Dorothy Height in recognition of her many contributions to the Nation.

H.R. 1828. An act to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.

H.R. 1904. An act to improve the capacity of the Security of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

H.R. 2115. An act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

H.R. 2417. An act to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 3038. An act to make certain technical and conforming amendments to correct the Health Care Safety Net Amendments of 2002.

H.R. 3140. An act to provide for availability of contact lens prescriptions to patients, and for other purposes.

H.R. 3166. An act to designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the ''John G. Dow Post Office building''.

H.R. 3185. An act to designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the ''Hugh Gregg Post Office Building''.

H.R. 3349. An act to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004.

H.R. 3491. An act to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

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At 1:32 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1768. An act to extend the national flood insurance program.

H.R. 1367. An act to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes.

The enrolled bills were signed subsequently by the President pro temore (Mr. STEVENS).

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At 3:49 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the amendment of the Senate to the resolution (H. Con. Res. 339) providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

## ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on November 25, 2003, she had presented to the President of the United States the following enrolled bills:

S. 189. An act to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 579. An act to reauthorize the National Transportation Safety Board, and for other purposes.

S. 1152. An act to reauthorize the United States Fire Administration, and for other purposes.

S. 1156 An act to amend title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

S. 1768 An act to extend the national flood insurance program.

S. 1895. An act to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs:

Report to accompany S. 1567, a bill to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes (Rept. No. 108-211).

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment:

S. 1267. A bill to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes (Rept. No. 108-212).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 420. A bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes (Rept. No. 108-213).

By Ms. COLLINS, from the Committee on Governmental Affairs, with amendments:

H.R. 1416. A bill to make technical corrections to the Homeland Security Act of 2002 (Rept. No. 108-214).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1978. An original bill to authorize funds for highway safety programs, motor carrier safety programs, hazardous materials transportation safety programs, boating safety programs, and for other purposes (Rept. No. 108-215).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1172. A bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1545. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1612. A bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

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

S. 1951. A bill to promote rural safety and improve rural law enforcement; to the Committee on Finance.

By Mr. GRASSLEY:

S. 1952. A bill to direct the United States Trade Representative to enforce United States rights, under certain trade agreements with respect to Mexico, pursuant to title III of the Trade Act of 1974; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 1953. A bill to protect deep sea corals and sponges, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CRAPO:

S. 1954. A bill to amend the Violence Against Women Act of 2000 by expanding the legal assistance for victims of violence grant program to include legal assistance for victims of dating violence; to the Committee on the Judiciary.

By Mr. CAMPBELL:

S. 1955. A bill to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

By Mrs. BOXER:

S. 1956. A bill to provide assistance to States and nongovernmental entities to initiate public awareness and outreach campaigns to reduce teenage pregnancies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN:

S. 1957. A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 1958. A bill to prevent the practice of late trading by mutual funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SARBANES (for himself, Ms. LANDRIEU, Ms. MIKULSKI, and Mr. ALLEN):

S. 1959. A bill to amend the Federal Water Pollution Control Act and the Water Resources Development Act if 1992 to provide for the restoration, protection, and enhancement of the environmental integrity and social and economic benefits of the Anacostia Watershed in the State of Maryland and the District of Columbia; to the Committee on Environment and Public Works.

By Mrs. BOXER:

S. 1960. A bill to exempt airports in economically depressed communities from matching grant obligations under the Airport Improvement Program; to the Committee on Commerce, Science, and Transportation.

By Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPECTER, Mr. JEFFORDS, Mr. LAUTENBERG, and Mr. BIDEN):

S. 1961. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. BUNNING, and Mr. BREAUX):

S. 1962. A bill to amend the Internal Revenue Code of 1986 to provide for excise tax reform and simplification, and for other purposes; to the Committee on Finance.

By Mr. SPECTER (for himself and Mrs. BOXER):

S. 1963. A bill to amend the Communications Act of 1934 to protect the privacy right of subscribers to wireless communication services; to the Committee on Commerce, Science, and Transportation.

By Ms. STABENOW (for herself and Mr. GRAHAM of South Carolina):

S. 1964. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, and for other purposes; to the Committee on Finance.

By Mr. BAYH:

S. 1965. A bill to provide for the creation of private-sector-led Community Workforce Partnerships, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN:

S. 1966. A bill to require a report on the detainees held at Guantanamo Bay, Cuba; to the Committee on Armed Services.

By Mr. HAGEL (for himself and Ms. SNOWE):

S. 1967. A bill to allow all businesses to make up to 24 transfers each month from interest-bearing transaction accounts to other transaction accounts, to require the payment of interest on reserves held for depository institutions at Federal reserve banks, to repeal the prohibition of interest on business accounts, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ENZI (for himself, Mr. AKAKA, Mr. CORZINE, and Mr. SARBANES):

S. 1968. A bill to amend the Higher Education Act of 1965 to enhance literacy in finance and economics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MURRAY (for herself, Ms. CANTWELL, and Mr. SMITH):

S. 1969. A bill to amend the Agricultural Adjustment Act to add pears and cherries to the list of fruits and vegetables subject to regulation in a marketing order by grade, size, quality, or maturity, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ROCKEFELLER:

S. 1970. A bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes; to the Committee on the Judiciary.

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

S. 1971. A bill to improve transparency relating to the fees and costs that mutual fund investors incur and to improve corporate governance of mutual funds; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER:

S. 1972. A bill to amend the Internal Revenue Code of 1986 to provide for a tax credit for small employer-based health insurance coverage in States in which such coverage is mandated, and for other purposes; to the Committee on Finance.

By Mr. DEWINE:

S. 1973. A bill to amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE:

S. 1974. A bill to make improvements to the Medicare Prescriptions Drug, Improvement, and Modernization Act of 2003; to the Committee on Finance.

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

S. 1975. A bill to amend the Internal Revenue Code of 1986 to deny a deduction for securities-related fines, penalties, and other amounts, and to provide that revenues resulting from such denial be transferred to Fair Funds for the relief of victims; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mrs. MURRAY, Mr. JEFFORDS, Ms. CANTWELL, Mr. AKAKA, Mr. REED, Mr. CHAFEE, and Mr. INOUYE):

S. 1976. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State children's health insurance program for any fiscal year for certain medical expenditures, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. VOINOVICH):

S. 1977. A bill to promote the manufacturing industry in the United States by establishing an Assistant Secretary for Manufacturing within the Department of Commerce, an Interagency Manufacturing Task Force, and a Small Business Manufacturing Task Force, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. MCCAIN:

S. 1978. An original bill to authorize funds for highway safety programs, motor carrier safety programs, hazardous materials transportation safety program, boating safety programs, and for other purposes; from the Committee on Commerce, Science, and Transportation; placed on the calendar.

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

S. 1979. A bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes; to the Committee on Finance.

By Mr. ALLARD (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, and Mr. INHOFE):

S.J. Res. 26. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. NICKLES (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, Mr. CORNYN, Mr. SANTORUM, and Mr. ALLARD):

S. Res. 275. A resolution to affirm the Defense of Marriage Act; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Mr. LEAHY, and Mr. LAUTENBERG):

S. Res. 276. A resolution expressing the sense of the Senate regarding fighting terror and embracing efforts to achieve Israeli-Palestinian peace; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mr. GRASSLEY, Mr. HATCH, Mr. BREAUX, Mr. BAUCUS, and Mr. NICKLES):

S. Res. 277. A resolution tendering the sincere thanks of the Senate to the staffs of the Offices of the Legislative Counsel of the Senate and the House of Representatives for their dedication and service to the legislative process; considered and agreed to.

By Mr. BINGAMAN:

S. Res. 278. A resolution expressing the sense of the Senate regarding the anthrax and smallpox vaccines; to the Committee on Armed Services.

By Ms. LANDRIEU (for herself and Mr. BURNS):

S. Con. Res. 86. A concurrent resolution congratulating the people and Government of the Republic of Kazakhstan on the twelfth anniversary of the independence of Kazakhstan and praising the longstanding and growing friendship between the United States and Kazakhstan; to the Committee on Foreign Relations.

## ADDITIONAL COSPONSORS

S. 557

At the request of Ms. COLLINS, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 684

At the request of Mr. SMITH, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 684, a bill to create an office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government regardless of the terrorists' country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists' country of origin or residence.

S. 736

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 972

At the request of Mr. COLEMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 972, a bill to clarify the authority of States to establish conditions for insurers to conduct the business of insurance within a State based on the provision of information regarding Holocaust era insurance policies of the insurer, to establish a Federal cause of action for claims for payment of such insurance policies, and for other purposes.

S. 1109

At the request of Mr. TALENT, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1353

At the request of Mr. BROWNBACK, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1380

At the request of Mr. SMITH, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1595

At the request of Mr. KERRY, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1595, a bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for activated military reservists who are self-employed individuals, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the names of the Senator from North Carolina (Mrs. DOLE) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1709

At the request of Mr. CRAIG, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1709, a bill to amend the USA PATRIOT ACT to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes.

S. 1833

At the request of Mr. DASCHLE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1833, a bill to improve the health of minority individuals.

S. 1834

At the request of Ms. STABENOW, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1834, a bill to waive time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War.

S. 1840

At the request of Mr. CONRAD, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1840, a bill to amend the Food Security Act of 1985 to encourage owners and operations of privately-held farm and ranch land to voluntarily make their land available for access by the public under programs administered by States.

S. 1853

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1853, a bill to provide extended unemployment benefits to displaced workers.

S. 1890

At the request of Mr. ENZI, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 1896

At the request of Mr. BAUCUS, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1896, a bill to provide extensions for certain expiring provisions of the Internal Revenue Code of 1986, and for other purposes.

S. 1920

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1920, a bill to extend for 6

months the period for which chapter 12 of title 11 of the United States Code is reenacted.

S. 1926

At the request of Ms. STABENOW, the names of the Senator from California (Mrs. BOXER), the Senator from South Carolina (Mr. HOLLINGS) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1926, a bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes.

S. 1937

At the request of Mr. BAUCUS, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Vermont (Mr. JEFFORDS) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1937, a bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes.

S. 1945

At the request of Mr. MCCAIN, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1945, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 1946

At the request of Mr. CORZINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1946, a bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom.

S. 1950

At the request of Mr. DURBIN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 1950, a bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program.

S.J. RES. 19

At the request of Mr. SPECTER, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S.J. Res. 19, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. CON. RES. 82

At the request of Mr. BIDEN, the names of the Senator from Washington (Ms. CANTWELL), the Senator from Maryland (Mr. SARBANES), the Senator from Mississippi (Mr. LOTT), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Nebraska (Mr. HAGEL), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr. LUGAR), the Senator from Illinois (Mr. FITZGERALD), the Senator from Illinois (Mr. DURBIN), the Senator from California (Mrs. FEINSTEIN), the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. Con. Res. 82, a concurrent resolution recognizing the importance of Ralph Bunche as one of the great leaders of the United States, the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner of civil rights for people throughout the world.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

S. RES. 273

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. Res. 273, a resolution condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY:

S. 1952. A bill to direct the United States Trade Representative to enforce Special Agent rights, under certain trade agreements with respect to Mexico, pursuant to title III of the Trade Act of 1974; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce the Mexican Agricultural Trade Compliance Act. This bill directs the U.S. Trade Representative to retaliate against Mexico over that country's de facto prohibition on the importation of U.S.-produced high fructose corn syrup.

I introduce this bill reluctantly. For months I have made it clear, through letters, floor statements, a hearing, and a trade roundtable, that if the Mexican Congress did not lift its illegal 20 percent tax on soft drinks containing high fructose corn syrup, I would be forced to consider introducing retaliatory legislation, such as this ''tequila tariff'' which also covers other agricultural products.

We're at the end of our legislative session and there has been no action by the Mexican Congress. So, I'm faced with no alternative but to introduce this bill.

Let me explain how we got to where we are today. Mexico was formerly the largest export market for U.S.-produced high fructose corn syrup. But since 1997, Mexico has engaged in a concerted effort to restrict U.S. imports of this product. Throughout this time, Mexico has consistently violated its NAFTA and WTO commitments.

Let me give you a short history of Mexico's unjustified actions. In February 1997, Mexico initiated an antidumping investigation of U.S. high fructose corn syrup, followed by the imposition of an antidumping order the following year. The United States challenged Mexico's antidumping order under the NAFTA. On two different occasions, NAFTA panels determined that Mexico's actions violated its NAFTA obligations.

The United States also challenged Mexico's antidumping order at the Wortd Trade Organization. On two separate occasions, the Dispute Settlement Body of the WTO held that Mexico's actions violated its international trade commitments.

But Mexico continued to ignore its NAFTA and WTO obligations. In fact, Mexico went one step further and in effect threw gasoline onto the fire. On January 1, 2002, in a transparent attempt to evade the NAFTA and WTO determinations against it, Mexico imposed a 20 percent tax on soft drinks containing high fructose corn syrup. The intent and effect of this tax was to continue Mexico's antidumping order on U.S. produced high fructose corn syrup by other means.

In April 2002, with its tax now in place, and in a continuous event with the imposition of this tax, Mexico lifted its antidumping order on high fructose corn syrup. These actions enabled Mexico to make the disingenuous claim that it had come into compliance with the findings adopted by the NAFTA and the WTO regarding its antidumping order.

The effects of the import restrictions of Mexico's antidumping order continue, with even more egregious results. Because of Mexico's tax, U.S. exports of high fructose corn syrup to Mexico are now at almost zero levels.

This is an extraordinary situation. Mexico lost under the NAFTA, and it lost at the WTO commitments, Mexico responded by imposing a de facto ban on imports of U.S. high fructose corn syrup. Mexico is not only violating its international trade commitments, but also causing significant harm for Iowa's corn farmers. Iowa's producers of high fructose corn syrup are suffering as well. I know of no other U.S. agricultural product that has been shut out of its largest export market for so long.

The United States has worked diligently, and patiently with Mexico on this issue. U.S. Trade Representative Robert Zoellick and Ambassador Allen Johnson, our Chief Agricultural Negotiator, have put in countless hours trying to convince Mexico to come into compliance with its trade obligations regarding high fructose corn syrup. But still, the tax remains in place. My colleagues on both sides of the aisle, and

in both the Senate and the House, have repeatedly contacted Mexican officials reminding them of Mexico's trade commitments with regard to this issue. But still, the tax remains in place.

I too have worked hard, since the beginning, to try to convince Mexico to lift its de facto ban on the sale of U.S.-produced high fructose corn syrup. As I have mentioned, I've written letters to Mexican officials, delivered floor speeches, conducted a Finance Committee hearing, and held an agricultural roundtable, all in an effort to convince Mexico to lift its de facto ban on imports of U.S. high fructose corn syrup. During a hearing of the Finance Committee on September 23, I stated clearly that if the Mexican tax on soft drinks containing high fructose corn syrup was not lifted—and soon—I would be forced to consider introducing retaliatory legislation. But still, the tax remains in place.

So now, at the end of our legislative session, I see no alternative but to introduce the Mexican Agricultural Trade Compliance Act.

The Mexican Agricultural Trade Compliance Act establishes that the Government of Mexico has engaged in a pattern of activity that has continuously denied the rights of U.S. exporters of high fructose corn syrup under existing trade agreements. Further, the denial of these rights is unjustifiable and burdens or restricts U.S. commerce. Therefore, Mexico's actions meet the statutory criteria under section 301 of the Trade Act of 1974 for retaliatory action.

The Mexican Agricultural Trade Compliance Act requires the U.S. Trade Representative to retaliate, pursuant to section 301, against imports from Mexico within 60 days of enactment of the Act. However, the U.S. Trade Representative shall not take such action if he certifies, within 30 days after enactment of the Act, that Mexico has eliminated its tax on soft drinks containing high fructose corn syrup and is according the U.S. high fructose corn syrup industry the benefits of all applicable trade agreements.

I fully hope that prior to the return of the U.S. Senate in January, the Mexican Congress will act rationally and bring Mexico into compliance with its international trade obligations regarding high fructose corn syrup. If it does not, I'll work hard to advance the Mexican Agricultural Trade Compliance Act through the Senate. Given the large number of unjustified barriers imposed by Mexico over the past months against imports of U.S. agricultural products, Mexico has not been earning goodwill with Members of the Senate. I expect that my legislation will receive broad support.

I also intend to work with the U.S. Trade Representative to designate Mexican products upon which retaliatory duties will be imposed. The products on this list will consist first and foremost of Mexican agricultural products that are prospering on account of their access to the U.S. market. These Mexican products will likely include bottled tequila, tomatoes, bell peppers, avocados, limes, asparagus, mangos, papayas, watermelons, honey, pecans, and shrimp and prawns. The total amount of duties imposed on these Mexican products will equal the lost sales being experienced by U.S. producers of high fructose corn syrup on account of Mexico's de facto ban of this product, an amount which—according to U.S. industry—could be as high as $465 million annually.

Let me conclude by stating that I know that some in Mexico are working constructively to try to resolve this issue. Earlier this month President Fox of Mexico sent to the Mexican Congress a formal request to repeal the tax on high fructose corn syrup. I hope that his request becomes law. I appreciated the offer of Mexico's Secretary of Agriculture, Javier Usabiaga, to speak with me regarding the tax, and I regret that our schedules have not permitted us to meet personally. I also note that U.S. and Mexican private sector representatives have been negotiating over access for U.S. high fructose corn syrup to the Mexican market.

Regardless of these efforts, Mexico's de facto ban on imports of U.S. high fructose corn syrup remains in place. Meanwhile, Iowa's corn growers and Iowa's high fructose corn syrup producers continue to suffer on account of Mexico's NAFTA and WTO illegal actions. Again, I strongly hope that Mexican legislators will remove Mexico's tax on soft drinks containing high fructose corn syrup prior to the return of the U.S. Senate next January. But if this tax is not repealed by January, I have every intention of working to advance this legislation through the Senate.

I'm a strong believer in free trade. I fought hard for passage of the NAFTA. I did so because I know free trade benefits farmers in Iowa and other states. U.S. agriculture certainly benefits from the NAFTA, as does Mexican agriculture. But Mexico has engaged in a blatantly illegal act against U.S. agriculture for too long. Mexico's action is having a particularly negative impact on my State of Iowa. If we are to maintain support for free trade in this country, we must ensure that our trading partners live up to their obligations. If they do not, we must take action. I hope the introduction of this bill sends a strong message to my Mexican counterparts that we are ready and willing to stand up for U.S. agriculture. I sincerely hope that they will do the right thing and repeal their illegal tax on high fructose corn syrup.

I hope they repeal their illegal tax to demonstrate their commitment to living up to the letter and spirit of Mexico's promises under NAFTA and the WTO. I hope they repeal their illegal tax to improve relations between the United States and Mexico and to bring the benefits of free trade to consumers and producers in both countries. And, Mr. President, I hope they repeal their illegal tax so the Mexican Agricultural Trade Compliance act is no longer needed. But, if that's what it takes, then that's what we should do.

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By Mr. CAMPBELL:

S. 1955. A bill to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am introducing the Native American Technical Corrections Act of 2004 to provide amendments to certain Federal statutes affecting Indian tribes and Indian people.

Though a modest bill, when it is enacted it will provide real relief to the affected tribes that seek Congress' help in removing the many obstacles that block the paths to greater levels of advancement.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1955

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definition of Secretary.
TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS
Sec. 101. National Fund for Excellence in American Indian Education.
Sec. 102. Indian Financing Act Amendment.
Sec. 103. Exchanged Indian land.
Sec. 104. Indian tribal justice technical and legal assistance.
Sec. 105. Tribal justice systems.
Sec. 106. Authorization of 99-year leases for the Prairie Band of Potawatomi.
Sec. 107. Navajo healthcare contracting.
Sec. 108. Crow Tribal Trust Fund.
Sec. 109. Fallon Paiute-Shoshone Tribe Settlement Fund.
Sec. 110. ANCSA amendment.
TITLE II—COWLITZ INDIAN TRIBE DISTRIBUTION OF JUDGMENT FUNDS ACT
Sec. 201. Cowlitz Indian Tribe Distribution of Judgment Funds Act.

Sec. 202. Definitions.
Sec. 203. Judgment distribution plan.
Sec. 204. Distribution and use of funds.
TITLE III—ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.
Sec. 301. Short title.
Sec. 302. Findings and purpose.
Sec. 303. Definitions.
Sec. 304. Distribution of judgment funds.
Sec. 305. Applicable law.
TITLE IV—UTU UTU GWAITU PAIUTE INDIAN LAND TRANSFER
Sec. 401. Transfer.

**SEC. 2. DEFINITION OF SECRETARY.**

In this Act, the term ''Secretary'' means the Secretary of the Interior.

## TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

**SEC. 101. NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION.**

Title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bbb) is amended—

(1) by striking the title heading and inserting the following:

**''TITLE V—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION'';**

(2) in section 501 (25 U.S.C. 458bbb)—

(A) by striking the section heading and inserting the following:

**''SEC. 501. NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION.'';**

and

(B) in subsection (a), by striking ''the American Indian Education Foundation'' and inserting ''a foundation to be known as the 'National Fund for Excellence in American Indian Education' ''; and

(3) in section 503(2) (25 U.S.C. 458bbb–2(2)), by striking ''Foundation'' the second place it appears and inserting ''National Fund for Excellence in American Indian Education''.

**SEC. 102. INDIAN FINANCING ACT AMENDMENT.**

(a) LOAN GUARANTIES AND INSURANCE.—Section 201 of the Indian Financing Act of 1974 (25 U.S.C. 1481) is amended—

(1) by striking ''the Secretary is authorized (a) to guarantee'' and inserting ''the Secretary may—

''(1) guarantee'';

(2) by striking ''members; and (b) in lieu of such guaranty, to insure'' and inserting ''members; or

''(2) to insure'';

(3) by striking ''SEC. 201. In order'' and inserting the following:

**''SEC. 201. LOAN GUARANTIES AND INSURANCE.**

''(a) IN GENERAL.—In order''; and

(4) by adding at the end the following:

''(b) ELIGIBLE BORROWERS.—The Secretary may guarantee or insure loans under subsection (a) to both for-profit and nonprofit borrowers.''.

(b) LOAN APPROVAL.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended by striking ''SEC. 204.'' and inserting the following:

**''SEC. 204. LOAN APPROVAL.''.**

**SEC. 103. EXCHANGED INDIAN LAND.**

Notwithstanding any other provision of law, if—

(1) any portion of the Indian country (as defined in section 1151 of title 18, United States Code) under the jurisdiction of an Indian tribe was subject to a government taking for a project that received any funding under Public Law 85–500;

(2) the Indian tribe applies for land to be taken into trust by the Federal Government; and

(3) the Secretary of the Interior accepts the land into trust on behalf of the Indian tribe;

the land shall be deemed for all purposes to have been acquired in trust as of the date of the taking.

**SEC. 104. INDIAN TRIBAL JUSTICE TECHNICAL AND LEGAL ASSISTANCE.**

Sections 106 and 201(d) of the Indian Tribal Justice Technical and Legal Assistance Act (25 U.S.C. 3666, 3681(d)) are amended by striking ''for fiscal years 2000 through 2004'' and inserting ''for fiscal years 2004 through 2010''.

**SEC. 105. TRIBAL JUSTICE SYSTEMS.**

Subsections (a), (b), (c), and (d) of section 201 of the Indian Tribal Justice Act (25 U.S.C. 3621) are amended by striking ''2007'' and inserting ''2010''.

**SEC. 106. AUTHORIZATION OF 99-YEAR LEASES FOR THE PRAIRIE BAND OF POTAWATOMI.**

(a) IN GENERAL.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) is amended in the second sentence—

(1) by inserting ''the reservation of the Prairie Band Potawatomi Nation Reservation,'' after ''Spanish Grant'),''; and

(2) by inserting ''lands held in trust for the Prairie Band Potawatomi Nation,'' before ''lands held in trust for the Cherokee Nation of Oklahoma''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to any lease entered into or renewed on or after the date of enactment of this Act.

**SEC. 107. NAVAJO HEALTHCARE CONTRACTING.**

Congress authorizes the Navajo Area Office of the Indian Health Service to reprogram contract healthcare service dollars for the Navajo Health Foundation/Sage Memorial Hospital 638 contract.

**SEC. 108. CROW TRIBAL TRUST FUND.**

Section 6(d) of the Crow Boundary Settlement Act of 1994 (25 U.S.C. 1776d(d)), is amended—

(1) in the subsection heading, by inserting ''AND CAPITAL GAINS'' after ''INTEREST'';

(2) in paragraph (1), by striking ''Only'' and inserting ''Except as provided in paragraph (4), only''; and

(3) by adding at the end the following:

''(4) DISTRIBUTION OF CAPITAL GAINS.—Notwithstanding subsection (f) or any other provision of law, capital gains and any other noninterest income received on funds in the Crow Tribal Trust Fund shall be available for distribution by the Secretary to the Crow Tribe to the extent that the balance in the Crow Tribal Trust Fund (including capital gains) exceeds $85,000,000, for the same uses and subject to the same restrictions in paragraphs (1) and (3) as are applicable to distributions of interest.''.

**SEC. 109. FALLON PAIUTE-SHOSHONE TRIBE SETTLEMENT FUND.**

Section 102 of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (104 Stat. 3289) is amended—

(1) In subsection (C)—

(A) in paragraph (1), by striking ''The income of the Fund may be obligated and expended only for the following purposes:'' and inserting the following: ''Notwithstanding any conflicting provision in the original Fund plan developed in consultation with the Secretary under subsection (f), during fiscal year 2004 and each subsequent fiscal year, 6 percent of the average quarterly market value of the Fund during the immediately preceding 3 fiscal years (referred to in this title as the 'Annual 6 percent Amount') may be expended or obligated only for the purposes specified in subparagraphs (a) through (f) of this section. In addition, during each fiscal year subsequent to Fund fiscal year 2004, any unexpended and unobligated portion of the Annual 6 percent Amount from any of the 3 immediately preceding Fund fiscal years subsequent to fiscal year 2003, not including any income that may accrue on that portion may also be expended or obligated only for the following purposes:''; and

(B) by striking paragraphs (2) through (4) and inserting the following:

''(2) No monies from the Fund other than the amounts authorized in subsection (C)(1) may be expended or obligated for any purpose.

''(3) Notwithstanding any conflicting provision in the original Fund plan, during fiscal year 2004 and each subsequent fiscal year, not more than 20 percent of the Annual 6 percent Amount for the fiscal year (referred to in this title as the 'Annual 1.2 percent Amount') may be expended or obligated under subsection (c)(1)(C) for per capita distributions to tribal members, provided that during each Fund fiscal year subsequent to fiscal year 2004, any unexpended and unobligated portion of the Annual 1.2 percent Amount from any of the 3 immediately preceding Fund fiscal years subsequent to fiscal year 2003, not including any income that may accrue on that portion, may also be expended or obligated for such per capita payments.''; and

(2) in subsection (D), by adding at the end the following: ''Notwithstanding any conflicting provision in the original Fund plan, the Fallon Business Council, in consultation with the Secretary, shall promptly amend the original plan for purposes of conforming the plan to this title and making nonsubstantive updates, improvements, or corrections to the original plan.''.

**SEC. 110. ANCSA AMENDMENT.**

All land and interests in land in the State of Alaska conveyed by the Federal Government under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to a Native Corporation and reconveyed by that Native Corporation, or a successor in interest, in exchange for any other land or interest in land in the State of Alaska and located within the same region (as defined in section 9(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1608(a)), to a Native Corporation under an exchange or other conveyance, shall be deemed, notwithstanding the conveyance or exchange, to have been conveyed pursuant to that Act.

## TITLE II—COWLITZ INDIAN TRIBE DISTRIBUTION OF JUDGMENT FUNDS ACT

**SEC. 201. COWLITZ INDIAN TRIBE DISTRIBUTION OF JUDGMENT FUNDS ACT.**

This title shall be known as the ''Cowlitz Indian Tribe Distribution of Judgment Funds Act''.

**SEC. 202. DEFINITIONS.**

In this title:

(1) CURRENT JUDGMENT FUND.—The term ''current judgment fund'' means the funds awarded by the Indian Claims Commission Docket No. 218 and all interest accrued on the funds as of the date of enactment of this Act.

(2) INITIAL INTEREST.—The term ''initial interest'' means the interest on the funds awarded by the Indian Claims Commission Docket No. 218 during the time period from 1 year before the date of enactment of this Act through the date of enactment of this Act.

(3) PRINCIPAL.—The term ''principal'' means the funds awarded by the Indian Claims Commission Docket No. 218 and all interest accrued on the funds as of 1 year before the date of enactment of this Act.

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

(5) TRIBE.—The term ''Tribe'' means the Cowlitzq Indian Tribe of Washington, to which the Secretary extended Federal recognition on December 31, 2001, under part 83 of title 25, Code of Federal Regulations.

(6) TRIBAL MEMBER.—The term ''tribal member'' means an individual who is an enrolled member of the Cowlitz Indian Tribe in accordance with tribal enrollment procedures and requirements.

(7) TRIBAL ELDER.—The term ''tribal elder'' means a tribal member who was 62 years of age or older as of February 14, 2000.

**SEC. 203. JUDGMENT DISTRIBUTION PLAN.**

Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), or any plan prepared or promulgated by the Secretary under that Act, the judgment funds awarded in Indian Claims Commission Docket No. 218 and interest accrued on those funds as of the date of enactment of this Act shall be distributed and used in accordance with this title.

**SEC. 204. DISTRIBUTION AND USE OF FUNDS.**

(a) PRESERVATION OF PRINCIPAL AFTER ELDERLY ASSISTANCE AND TRIBAL ADMINISTRATION PAYMENTS.—

(1) IN GENERAL.—Except as provided in subsection (b), the principal shall not be distributed under this title.

(2) DISBURSEMENTS.—The Secretary shall—

(A) maintain undistributed current judgment funds in an interest-bearing account in trust for the Tribe; and

(B) disburse principal or interest in accordance with this title not later than 30 days after receipt by the Northwest Regional Director of the Bureau of Indian Affairs of a request by the Cowlitz Tribal Council for a disbursement of funds.

(b) ELDERLY ASSISTANCE PROGRAM.—

(1) SETASIDE.—From the current judgment fund, the Secretary shall set aside 20 percent for an elderly assistance payment.

(2) PAYMENTS.—The Secretary shall provide 1 elderly assistance payment to each enrolled tribal elder not later than 30 days after all of the following have occurred:

(A) LIST OF ENROLLED MEMBERS.—The Cowlitz Tribal Council has compiled and reviewed for accuracy a list of all enrolled tribal members that are both a minimum of 1/16 Cowlitz blood and 62 years of age or older as of February 14, 2000.

(B) VERIFICATION.—The Secretary has verified the blood quantum and age of the tribal members identified on the list under subparagraph (A).

(C) REQUEST FOR DISBURSEMENT.—The Cowlitz Tribal Council has made a request for disbursement of judgment funds for the elderly assistance payment.

(3) DEATH OF TRIBAL ELDER.—If a tribal elder eligible for an elderly assistance payment dies before receiving payment under this subsection, the funds that would have been paid to the tribal elder shall be added to and distributed in accordance with the emergency assistance program under subsection (c).

(4) COSTS.—The Secretary shall pay all costs of distribution under this subsection out of the amount set aside under paragraph (1).

(c) EMERGENCY ASSISTANCE PROGRAM.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 10 percent for an emergency assistance program.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount setaside—

(A) shall be distributed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used to provide emergency assistance for tribal members.

(3) AVAILABILITY OF INTEREST.—Of the initial interest, 10 percent shall be available on the date of enactment of this Act shall be used to fund the program for the first year after the date of enactment of this Act.

(d) EDUCATION, VOCATIONAL, AND CULTURAL TRAINING PROGRAM.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 10 percent for an education, vocational, and cultural training program.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount setaside—

(A) shall be distributed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used to provide scholarships to tribal members pursuing educational advancement, including cultural and vocational training.

(3) AVAILABILITY OF INTEREST.—Of the initial interest, 10 percent shall be available upon the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(e) HOUSING ASSISTANCE PROGRAM.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 5 percent for a housing assistance program.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be—

(i) used as a supplement to any existing tribal housing improvements program; or

(ii) used in a separate housing assistance Program established by the Cowlitz Tribal Council.

(3) AVAILABILITY OF INTEREST.—Of the initial interest, 5 percent shall be available on the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(f) ECONOMIC DEVELOPMENT, TRIBAL, AND CULTURAL CENTERS.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 21.5 percent—

(A) for economic development; and

(B) if other funding is not available or not adequate (as determined by the Tribe), for the construction and maintenance of tribal and cultural centers.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used for—

(i) property acquisition for business or other activities that are likely to benefit the Tribe economically or provide employment for tribal members;

(ii) business development for the Tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures that are likely to produce profits for the Tribe; and

(iii) design, construction, maintenance, and operation of tribal centers and cultural centers.

(3) LOAN REPAYMENT.—The principal and interest of any business loan made under paragraph (2) shall be repaid to the economic development program for reinvestments, and business profits shall be credited to the general fund of the Tribe for uses to be determined by the Cowlitz Tribal Council.

(4) AVAILABILITY OF INTEREST.— 21.5 percent of the initial interest available upon the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(g) NATURAL RESOURCES.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 7.5 percent for natural resources.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) may be added to any existing tribal natural resource program to enhance the use and enjoyment by the Tribe of existing and renewable natural resources on tribal land.

(3) AVAILABILITY OF INTEREST.—7.5 percent of the initial interest shall be available upon the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(h) CULTURAL RESOURCES.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 4 percent for cultural resources.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be distributed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used to—

(i) maintain artifacts;

(ii) collect documents; and

(iii) archive and identify cultural sites of tribal significance.

(3) AVAILABILITY OR INTEREST.—Of the initial interest, 4 percent shall be available on the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(i) HEALTH.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 21 percent for health.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used for the health needs of the Tribe.

(3) AVAILABILITY OF INTEREST.—21 percent of the initial interest shall be available on the date of enactment of this Act to fund the program for the first year after the date of enactment of this Act.

(j) TRIBAL ADMINISTRATION PROGRAM.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 21 percent for tribal administration.

(2) DISTRIBUTION OF INTEREST.—

(A) INITIAL DISTRIBUTION.—Of the initial interest, 21 percent, and of the principal, the difference between 21 percent of the initial interest and $150,000, shall be set aside and immediately disbursed to the Tribe for the purposes of funding tribal administration for the first year after the date of enactment of this Act.

(B) SUBSEQUENT DISTRIBUTION.—Beginning the second year after the date of enactment of this Act, interest earned on the remaining principal set aside under this subsection shall be disbursed annually in a lump sum to pay the operating costs of the Cowlitz Tribal Council, including travel, telephone, cultural, and other expenses incurred in the conduct of the affairs of the Tribe and legal fees as approved by the Cowlitz Tribal Council.

(k) GENERAL CONDITIONS.—

(1) IN GENERAL.—The conditions stated in this subsection apply to the management and use of all funds available under this title by the Cowlitz Tribal Council.

(2) ADMINISTRATIVE COSTS.—Not more than 10 percent of the interest earned on the principal designated for the program under any subsection, except the programs under subsections (i) and (j), may be used for the administrative costs of the program.

(3) NO SERVICE AREA.—

(A) IN GENERAL.—No service area is implied or imposed under any program under this title.

(B) MEMBERS OUTSIDE SERVICE AREA.—If the costs of administering any program under this Act for the benefit of tribal members living outside the Tribe's Indian Health Service area are greater than 10 percent of the interest earned on the principal designated for that program, the Cowlitz Tribal Council may authorize the expenditure of such funds for that program.

(3) APPROVAL.—Before any expenditures, the Cowlitz Tribal Council shall approve all programs and shall publish in a publication of general circulation regulations that provide standards and priorities for programs under this title.

(4) APPLICABILITY OF OTHER LAW.—Section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407) shall apply to funds available under this title.

(5) APPEAL.—

(A) IN GENERAL.—Any tribal member who believes that he or she has been unfairly denied the right to take part in any program under this title may appeal to the tribal secretary.

(B) RESOLUTION.—The tribal secretary shall bring the appeal to the Cowlitz Tribal Council for resolution.

(C) TIMELY RESPONSE.—The resolution shall be made in a timely manner, and the tribal secretary shall respond to the tribal member.

## TITLE III—ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

### SEC. 301. SHORT TITLE.

This title may be cited as the ''Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Fund Distribution Act of 2003''.

### SEC. 302. FINDINGS.

Congress finds that—

(1) on December 18, 1987, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and 5 individual Fort Peck tribal members filed a complaint in the United States Claims Court (currently the Court of Federal Claims) in the case of Assiniboine and Sioux Tribes of the Fort Peck Reservation v. United States of America, Docket No. 773–87–L, to recover interest earned on trust funds while those funds were held in special deposit accounts and Indian Moneys–Proceeds of Labor accounts;

(2) the Court held that the United States was liable for any income derived from investment of the trust funds of the Tribe and individual members of the Tribe for the period during which those funds were held in special deposit accounts and Indian Moneys–Proceeds of Labor accounts;

(3) on December 31, 1998, the plaintiffs entered into a settlement with the United States for claims made in the case for payment by the United States of—

(A) $1,339,415.33, representing interest earned on funds while held in special deposit accounts at the Fort Peck Agency during the period August 13, 1946, through September 30, 1981;

(B) $2,749,354.41, representing—

(i) interest on the principal indebtedness for the period from August 13, 1946, through July 31, 1998; plus

(ii) $364.27 in per diem interest on the principal indebtedness for each day during the period commencing August 1, 1998, and ending on the date on which the judgment is paid; and

(C) $350,000, representing the litigation costs and attorney's fees that the Tribe incurred to prosecute the claims;

(4) the terms of the settlement were approved by the Court on January 8, 1999, and judgment was entered on January 12, 1999;

(5) on March 18, 1999, $4,522,551.84 was transferred to the Department of the Interior;

(6) that judgment amount was deposited in an escrow account established to provide—

(A) $350,000 for the payment of attorney's fees and expenses; and

(B) $4,172,551.84 for pending Court-ordered distribution to the Tribe and individual Indian trust beneficiaries;

(7) on January 31, 2001, the Court approved a joint stipulation that established procedures for—

(A) identification of the class of individual Indians having an interest in the judgment;

(B) notice to and certification of that class; and

(C) the distribution of the judgment amount to the Tribe and affected class of individual Indians;

(8)(A) on or about February 14, 2001, in accordance with the Court-approved stipulation, $643,186.73 was transferred to an account established by the Secretary for the benefit of the Tribe; and

(B) that transferred amount represents—

(i) 54.2 percent of the Tribe's estimated 26-percent share of the amount referred to in paragraph (6)(B); plus

(ii) 50 percent of the Tribe's estimated 26-percent share of interest and capital gains earned on the judgment amount from the period beginning March 18, 1999, and ending on December 31, 2000;

(9) under the Court-approved stipulation—

(A) that transferred amount is to remain available for use by the Tribe in accordance with a plan adopted under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.);

(B) the Tribe will most likely receive additional payments from the distribution amount once the identification of all individuals eligible to share in the distribution amount is completed and the pro rata shares are calculated; and

(C) those additional payments would include—

(i) the balance of the share of the Tribe of the distribution amount and investment income earned on the distribution amount;

(ii) the portion of the distribution amount that represents income derived on funds in special deposit accounts that are not attributable to the Tribe or any individual Indian; and

(iii) the portion of the distribution amount that represents shares attributable to individual Indians that—

(I) cannot be located for purposes of accepting payment; and

(II) will not be bound by the judgment in the case referred to in paragraph (1); and

(10) under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit to Congress for approval an Indian judgment fund use or distribution plan.

### SEC. 303. DEFINITIONS.

In this title:

(1) COURT.—The term ''Court'' means the Court of Federal Claims.

(2) DISTRIBUTION AMOUNT.—The term ''distribution amount'' means the amount referred to in section 302(6)(B).

(3) JUDGMENT AMOUNT.—The term ''judgment amount'' means the amount referred to in section 302(5).

(4) PRINCIPAL INDEBTEDNESS.—The term ''principal indebtedness'' means the amount referred to in section 302(3)(A).

(5) TRIBE.—The term ''Tribe'' means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

### SEC. 304. DISTRIBUTION OF JUDGMENT FUNDS.

(a) IN GENERAL.—Notwithstanding any provision of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the share of the Tribe of the distribution amount, and such additional amounts as may be awarded to the Tribe by the Court with respect to the case referred to in section 302(1) (including any interest accrued on those amounts)—

(1) shall be made available for tribal health, education, housing, and social services programs of the Tribe, including—

(A) educational and youth programs;

(B) programs for improvement of facilities and housing;

(C) programs to provide equipment for public utilities;

(D) programs to provide medical assistance or dental, optical, or convalescent equipment; and

(E) programs to provide senior citizen and community services; and

(2) shall not be available for per capita distribution to any member of the Tribe.

(b) BUDGET SPECIFICATION.—The specific programs for which funds are made available under subsection (a)(1), and the amount of funds allocated to each of those programs, shall be specified in an annual budget developed by the Tribe and approved by the Secretary.

### SEC. 305. APPLICABLE LAW.

Except as provided in section 304(a), all funds distributed under this title are subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

## TITLE IV—UTU UTU GWAITU PAIUTE INDIAN LAND TRANSFER

### SEC. 401. TRANSFER.

Section 902(b) of the California Indian Land Transfer Act (114 Stat. 2921) is amended—

(1) by striking ''3,525.8'' and inserting ''3,765.8''; and

(2) by adding at the end the following:

''(9) UTU UTU GWAITU PAIUTE TRIBE.—Lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe, Benton Paiute Reservation are comprised of approximately 240 acres described as follows:

''Mount Diablo Base and Meridian

''Township 2 South, Range 31 East

''Section 11:

''SE¼ and E½ of SW¼.''.

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By Mrs. BOXER:

S. 1956. A bill to provide assistance to States and nongovernmental entities to initiate public awareness and outreach campaigns to reduce teenage pregnancies; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, today, I am proud to introduce the HOPE Youth Pregnancy Prevention Act.

While teen pregnancy rates in the United States have dropped significantly in the last decade, we still have one of the highest rates among industrialized nations. American teens are twice as likely to become pregnant as teenagers in Great Britain and four times more likely than teens in Sweden and France. At the same time, the teen pregnancy rates for Hispanic and other minority teens in the United States are significantly higher than the national average.

The HOPE Youth Pregnancy Prevention Act would provide resources to help prevent teen pregnancy among at-risk and minority youth.

Specifically, my bill would provide grants to States, localities, and non-

governmental organizations for teenage pregnancy prevention activities targeted to areas with large ethnic minorities and other at-risk youth. These grants could be used for a number of activities, including youth development, work-related interventions and other educational activities, parental involvement, teenage outreach and clinical services. The bill would authorize $30 million a year for five years for these grants.

The bill would also provide grants to States and non-governmental organizations to establish multimedia public awareness campaigns to combat teenage pregnancy. These campaigns would aim to prevent teen pregnancy through TV, radio and print ads, billboards, posters, and the Internet. Priority would be given to those activities that target ethnic minorities and other at-risk youth. The bill would authorize $20 million a year for 5 years.

Over the past 10 years, we have made progress reducing teen pregnancy. But out work is not done. We need to strengthen our efforts, especially among Hispanic and other minority youth. I encourage my colleagues to support this effort.

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By Mr. BINGAMAN:

S. 1957. A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am pleased to introduce the United States-Mexico Transboundary Aquifer Assessment Act.

This bill is the result of a field hearing I conducted in Las Cruces, NM two years ago during my tenure as the Chairman of the Energy and Natural Resources Committee. The focus of the hearing was water resource issues that were developing along the U.S.-Mexico border—particularly the area encompassing Las Cruces, El Paso, Texas, and Juárez, Mexico.

There had long existed an ongoing effort to address water quality issues and waste-water infrastructure needs in the border region, but I was concerned that issues regarding the availability of future water supplies were growing. The testimony at that hearing made clear that there exists little consensus on how growing communities in the border region will address their future water needs. In particular, I was struck by the lack of agreement on the long-term viability of future groundwater sources, many of which involve aquifers underlying communities in both the United States and Mexico. Given the rapid population growth along the U.S.-Mexico border and the increasing demand for water, there is a strong need to gain a common understanding of the limits of our shared groundwater resources. A thorough understanding of the resource is the first step to avoiding conflicts similar to those that have arisen between the United States and Mexico over shared surface waters—e.g. the Rio Grande.

The United States-Mexico Transboundary Assessment Act is intended to address the lack of binational consensus regarding the source and availability of future water supplies along the border. It will do this by establishing a scientific program, involving entities on both sides of the border, to comprehensively assess priority transboundary aquifers. The information and scientific tools developed by this program will be extremely valuable to State and local water resource managers in the border region. This effort is to be led by the United States Geological Survey (USGS) working closely with the border states and local entities. Over the last several years the USGS has been working with key stakeholders in the border region to design this technical program.

I understand that establishing this scientific program and accurately assessing our shared water resources is just a step towards developing the long-term plans and solutions that will help avoid future international disputes concerning scarce water supplies. This small step, however, is an important one, and is recognized by a number of organizations familiar with the need for cooperative efforts between the United States and Mexico on shared water resources. In its 6th Report on the U.S.-Mexico Border Environment, the Good Neighbor Environmental Board, an independent federal advisory committee managed by the U.S. Environmental Protection Agency, recommended the initiation of a ''border-wide groundwater assessment program to systematically analyze priority trans-boundary aquifers.'' Also, the Center for Strategic and International Studies, in a January 2003 report of its U.S.-Mexico Binational Council, included as one of its recommendations that Mexico and the United States ''improve data collection, information gathering, and transparency as the first step to developing a long-term strategy for water management.''

Ultimately, the necessary long-term strategy will have to be developed by the communities and other water users who reside along the border. Working with each other and their state water resource agencies, I believe successful strategies can be developed so long as the information that is the basis for the plans is the most accurate possible. In that respect, the USGS has a strong and important role to play. This bill will ensure that the USGS will be able to fulfill this role which, in turn, will enhance the prospects for our border communities to plan for their future and manage their growth in a manner that ensures their long-term viability and prosperity.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1957

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''United States-Mexico Transboundary Aquifer Assessment Act''.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) rapid population growth in the United States-Mexico border region over the last decade has placed major strains on limited water supplies in the region;

(2) water quantity and quality issues are likely to be the determining and limiting factors affecting future economic development, population growth, and human health in the border region;

(3) increasing use of groundwater resources in the border region by municipal and other water users has raised serious questions concerning the long-term availability of the water supply;

(4) cooperation between the United States and Mexico in assessing and understanding transboundary aquifers is necessary for the successful management of shared groundwater resources by State and local authorities in the United States and appropriate authorities in Mexico, including management that avoids conflict between the United States and Mexico;

(5) while there have been some studies of binational groundwater resources along the United States-Mexico border, additional data and analyses are needed to develop an accurate understanding of the long-term availability of useable water supplies from transboundary aquifers; and

(6) the Border States—

(A) are primarily responsible for the management and allocation of groundwater resources within the respective boundaries of the Border States; and

(B) should have a cooperative role in the analysis and characterization of transboundary aquifers.

(b) PURPOSE.—The purpose of this Act is to direct the Secretary of the Interior to establish a United States-Mexico transboundary aquifer assessment program to—

(1) systematically assess priority transboundary aquifers; and

(2) provide the scientific foundation necessary for State and local officials to address pressing water resource challenges in the United States-Mexico border region.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) AQUIFER.—The term ''aquifer'' means a subsurface water-bearing geologic formation from which significant quantities of water may be extracted.

(2) BORDER STATE.—The term ''Border State'' means each of the States of Arizona, California, New Mexico, and Texas.

(3) INDIAN TRIBE.—The term ''Indian tribe'' means an Indian tribe, band, nation, or other organized group or community—

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

(B) the reservation of which includes a transboundary aquifer within the exterior boundaries of the reservation.

(4) PRIORITY TRANSBOUNDARY AQUIFER.—The term ''priority transboundary aquifer'' means a transboundary aquifer that has been

designated for study and analysis under the program.

(5) PROGRAM.—The term ''program'' means the United States-Mexico transboundary aquifer assessment program established under section 4(a).

(6) RESERVATION.—The term ''reservation'' means land that has been set aside or that has been acknowledged as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final tribal treaty, agreement, executive order, Federal statute, secretarial order, or judicial determination.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

(8) TRANSBOUNDARY AQUIFER.—The term ''transboundary aquifer'' means an aquifer that underlies the boundary between the United States and Mexico.

(9) TRI-REGIONAL PLANNING GROUP.—The term ''Tri-Regional Planning Group'' means the binational planning group comprised of—

(A) the Junta Municipal de Aqua y Saneamiento de Ciudad Juarez;

(B) the El Paso Water Utilities Public Service Board; and

(C) the Lower Rio Grande Water Users Organization.

(10) WATER RESOURCES RESEARCH INSTITUTES.—The term ''water resources research institutes'' means the institutes within the Border States established under section 104 of the Water Resources Research Act of 1984 (42 U.S.C. 10303).

**SEC. 4. ESTABLISHMENT OF PROGRAM.**

(a) IN GENERAL.—The Secretary, in consultation and cooperation with the Border States, the Water Resources Research Institutes, Sandia National Laboratories, and other appropriate entities in the United States and Mexico, shall carry out the United States-Mexico transboundary aquifer assessment program to characterize, map, and model transboundary groundwater resources along the United States-Mexico border at a level of detail determined to be appropriate for the particular aquifer.

(b) OBJECTIVES.—The objectives of the program are to—

(1) develop and implement an integrated scientific approach to assess transboundary groundwater resources, including—

(A)(i) identifying fresh and saline transboundary aquifers; and

(ii) prioritizing the transboundary aquifers for further analysis by assessing—

(I) the proximity of the transboundary aquifer to areas of high population density;

(II) the extent to which the transboundary aquifer is used; and

(III) the susceptibility of the transboundary aquifer to contamination;

(B) evaluating all available data and publications as part of the development of study plans for each priority transboundary aquifer;

(C) creating a geographic information system database to characterize the spatial and temporal aspects of each priority transboundary aquifer; and

(D) using field studies, including support for and expansion of ongoing monitoring and metering efforts, to develop any additional data that are needed to define aquifer characteristics to the extent necessary to enable the development of groundwater flow models to assess sustainable water yields for each priority transboundary aquifer;

(2) expand existing agreements, as appropriate, between the United States Geological Survey, the Border States, the Water Resources Research Institutes, and appropriate authorities in the United States and Mexico, to—

(A) conduct joint scientific investigations;

(B) archive and share relevant data; and

(C) carry out any other activities consistent with the program; and

(3) produce scientific products for each priority transboundary aquifer to provide the scientific information needed by water managers and natural resource agencies on both sides of the United States-Mexico border to effectively accomplish the missions of the managers and agencies.

(c) DESIGNATION OF CERTAIN AQUIFERS.—For purposes of the program, the Secretary shall designate the Hueco Bolson and Mesilla aquifers underlying parts of Texas, New Mexico, and Mexico as priority transboundary aquifers.

(d) COOPERATION WITH MEXICO.—To ensure a comprehensive assessment of transboundary aquifers, the Secretary shall, to the maximum extent practicable, work with appropriate Federal agencies and other organizations to develop partnerships with, and receive input from, relevant organizations in Mexico to carry out the program.

(e) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may provide grants or enter into cooperative agreements and other agreements with the Water Resource Research Institutes and other Border State entities to carry out the program.

**SEC. 5. STATE AND TRIBAL ROLE.**

(a) COORDINATION.—The Secretary shall coordinate the activities carried out under the program with—

(1) the appropriate water resource agencies in the Border States; and

(2) any affected Indian tribes.

(b) NEW ACTIVITY.—After the date of enactment of this Act, the Secretary shall not initiate any field studies to develop data or develop any groundwater flow models for a priority transboundary aquifer under the program before consulting with, and coordinating the activity with, the Border State water resource agency that has jurisdiction over the aquifer.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act $50,000,000 for the period of fiscal years 2005 through 2014.

(b) DISTRIBUTION OF FUNDS.—Of the amounts made available under subsection (a), 50 percent shall be made available to the Water Resource Research Institutes to provide funding to appropriate entities in the Border States (including Sandia National Laboratories, State agencies, universities, the Tri-Regional Planning Group, and other relevant organizations) and Mexico to conduct activities under the program, including the binational collection and exchange of scientific data.

**SEC. 7. REPORTS.**

Not later than 5 years after the date of enactment of this Act, and on completion of the program in fiscal year 2014, the Secretary shall submit to the appropriate water resource agency in the Border States, an interim and final report, respectively, that describes—

(1) any activities carried out under the program;

(2) any conclusions of the Secretary relating to the status of transboundary aquifers; and

(3) the level of participation in the program of entities in Mexico.

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By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 1958. A bill to prevent the practice of late trading by mutual funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, as the world's largest economy, I believe the United States must have the fairest, most transparent and efficient financial markets in the world. Our financial services companies must live up to the highest standards of accountability. This is critical to ensure that the United States remains strong, competitive and safe in the global economy. Unfortunately, recent reports of late trading and market timing have brought into question whether mutual fund companies have lived up to the highest standards of accountability. They have also shown that the Bush Administration failed to provide effective oversight and examination of mutual fund companies, while poorly enforcing our securities laws. The inaction of the Bush Administration has dangerously eroded the trust and confidence of the American people in mutual funds and may have allowed mutual fund companies and big investors to engage in fraudulent behavior against individuals and pension funds.

New York and Massachusetts regulators have uncovered a scheme in which some of America's top mutual fund companies let big investors profit illegally at the expense of small investors with so-called ''late trades'' and ''market timing.'' The scam appears to be widespread. Today, roughly half of all American households own mutual funds either directly or through a retirement account or pension fund. It's been reported that as much as one quarter of mutual fund companies may be involved in late trading and market timing and that such schemes may cost investors as much as $5 billion annually.

In a late trade, big investors purchase mutual fund shares after the close of the market but at the closing price, allowing them to take advantage of late-breaking financial news. A mutual fund manager might allow a big investor to buy shares in a technology fund at the 4 p.m. close price after learning at 5 p.m. that a major technology company has reported unexpectedly strong earnings. The investor is almost guaranteed a profit when the market opens the following day and share prices climb. In return for this illegal access, the big investor might pledge to continue to invest in the fund.

Market timing exploits the unique way that mutual funds set their prices. While it is not illegal, most mutual fund companies assure investors that they discourage such practices and that they are working to prevent fund timing. Under a market timing trade, big investors trade in and out of certain mutual funds in order to exploit the inefficient way mutual funds price their shares and ensure a profit.

In 2002, individuals who invested in mutual funds paid approximately $70 billion in advisory and management

fees, an average of more than $700 per investor. There is a significant disparity between the rate of advisory fees charged to mutual fund investors and the rate paid by institutional investors, even though they provide the similar services. Currently, mutual fund managers are under no obligation to negotiate advisory and management fees that are in the best interest of their shareholders. In some instances, mutual fund managers has a financial relationship with the contractor which receives a no-bid contract from the same mutual fund.

In a September 2003 complaint, New York Attorney General Spitzer alleged that Canary Capital Partners, a New Jersey hedge fund, engaged in illegal and unethical trading in mutual funds, such as late trading and market timing. After the New York State complaint, the SEC ordered a preliminary investigation, which found that half of the 88 mutual fund companies and brokerage firms had arrangements to make market-timing trades. These arrangements occurred even though about half of the fund companies have policies specifically barring market timing. Other investigations of mutual fund companies have begun, and it appears as though many mutual fund companies have been involved directly or indirectly in late trading and market-timing schemes.

I am very concerned that the actions of the SEC in response to the State investigations of late trading and market timing have been inadequate and show a bias in favor of mutual fund companies at the expense of small investors.

For example, earlier this year the SEC conducted a four-month investigation of Putnam Investments' record keeping, internal controls, and ability to comply with Federal securities laws. During that review, a Putnam employee informed the SEC that the company had failed to stop improper market-timing trades. Despite the tip, SEC examiners did not identify any problems with market timing in its report on Putnam. The Putnam employee, after being rejected by the SEC, brought the same information to the Massachusetts Secretary of State's office, which began an investigation. Only after the Commonwealth of Massachusetts began an investigation did the SEC begin its own investigation of market timing at Putnam. In October, both the Commonwealth of Massachusetts and the SEC charged Putnam with securities fraud, only months after the SEC gave Putnam a clean bill of health. Only a few weeks later, Putnam reached a partial settlement of the securities fraud charges with the SEC which did not include the Commonwealth of Massachusetts. Under the settlement, Putnam agrees to make restitution only for losses to investors attributable to excessive short-term and market-timing trading by its employees and to make structural reforms. Under the agreement, Putnam neither admitted nor denied wrongdoing and the SEC still has not investigated whether outside investors were engaged in market-timing activities. New York Attorney General Eliot Spitzer said that Putnam's agreement with the SEC does not address crucial issues involving restitution to fund holders, fees and penalties. William Galvin, the Massachusetts Secretary of State said that the agreement clearly demonstrates that the SEC is more interested in protecting the mutual fund industry than the average investor.

These actions by the SEC highlight a fundamental problem in the Bush Administration's hands-off approach to regulating financial markets and the danger it poses to small investors and the national economy.

Compounding this danger and lack of responsible leadership, President Bush has repeatedly nominated individuals to important economic positions notable for their corporate sympathies. The President selected a lobbyist for financial deregulation as the chief regulator of the federal mortgage lender Freddie Mac. His first SEC chairman was an accounting industry who was forced to resign in a storm of public outrage over his lenient treatment of his former business.

Even after the accounting scandals that felled Enron and WorldCom, it was last year's Democratic Senate that pushed to enact an historic corporate reform law and the President who joined the effort only once its passage was all but ensured. It was state attorneys general who exposed dubious conflicts of interest at brokerage houses. And when energy companies gauged ratepayers in the West through questionable trades, the Administration sat on its hands for months.

The message from the White House to the regulatory agencies, in actions if not words, is don't ask and don't tell when it comes to protecting investors and consumers.

Justice demands that we fully prosecute Wall Street insiders that steal from Americans saving for retirement, education or simply a brighter future. And we can only hope to revive our economy if we restore investor confidence in the markets so that capital flows to business growth and job creation.

To stop the erosion of trust in our financial markets and to help restore the American investor's faith in the mutual fund industry, I am introducing the Mutual Fund Investor Protection Act to update federal securities laws to curb late-trading and market-timing abuses and institute new limits on mutual fund fees paid by investors.

The actions by the SEC show that it is incapable of protecting investors from securities fraud by mutual fund companies and will not prosecute this type of fraud to the full extent of the law. Therefore, we must take the day-to-day oversight of mutual funds away from the SEC and develop a new Mutual Fund Oversight Board to provide oversight, examination and enforcement of mutual funds. This new board will be similar to the Public Company Accounting Oversight Board developed in the Sarbanes-Oxley Act. It will be charged with identifying potential problems in the mutual fund industry and ensuring that fund boards are actively addressing these problems—before they spread. It would promulgate guidance regarding current regulatory issues and best practices regarding how to deal with them, and it would examine mutual funds to ensure that they are taking necessary steps to protect shareholders. The Board itself would determine how to provide an adequate and reliable source of funding for its investigations.

I believe that every investor has the right to know how much their mutual fund takes away from their investment to pay for advisory, management, and investment service fees. Under this legislation, each investor will receive in their statement a regular accounting as to what types of fees they are paying to invest in their mutual fund. This will help investors shop around and find the mutual funds that have the lowest fees. Mutual funds will have to respond to the changing marketplace and only charge fees that are absolutely necessary to the management of the fund. Also, this legislation requires mutual fund managers to negotiate fee contracts that are reasonable and in their investors' best interest and to report on any significant or material business or professional relationship with companies that the mutual fund provides contracts. Finally, the bill requires each mutual fund to hire a compliance officer to ensure that the mutual fund complies with all relevant laws and makes sure that they provide any information on scams to the independent mutual fund directors to stop abuse. Taken together, these provisions will help investors by making it much more difficult for mutual funds to charge unreasonable and unnecessary fees.

Today, mutual funds are valued once a day, called the Net Asset Value or NAV, usually at 4 p.m. EST, when the New York market closes. The bill will require that all mutual fund companies receive an order prior to the time the fund sets a share price or NAV for an investor to receive that day's price. This will make it much more difficult for big investors to use brokers to send in trades after the 4 p.m. deadline.

We should include late-trading laws as an offense under the Racketeer Influenced and Corrupt Organization (RICO) provisions of the criminal code. First used to prosecute the Mob, RICO should now be used to stop and punish organized crime on Wall Street. This will help limit mutual fund employees and big investors from attempting to defraud small investors. It will also help investors who lose money due to late-trading schemes to recover treble damages, costs and attorneys' fees.

The SEC recently found that many mutual fund companies and brokerage

firms had arrangements with big investors allowing them to make market-timing trades even though these fund companies have policies specifically barring market timing. My legislation bars mutual fund employees from engaging in market timing trades. It requires each mutual fund prospectus to explicitly disclose market-timing policies and procedures to stop abuse. Then, it increases penalties for mutual funds which do not follow their own policies and procedures to limit abuse.

In order to help stop mutual fund abuse, this legislation increases the penalties and jail time for current securities laws including: defrauding the offer or sale of securities, failing to keep current and appropriate records of brokerage transactions, and not selling or redeeming fund shares at a price based on current Net Asset Value (NAV). These changes will make criminals think twice before committing violations of securities laws. The proceeds of the additional fines collected by this legislation will be put into a fund to assist the victims of their crimes.

Today, individual mutual funds are effectively dominated by their advisers. My legislation strengthens the influence of independent directors on fund boards by requiring that independent directors comprise at least three-quarters of the board. It will also require mutual funds to have an independent chairman with the authority and ability to demand and receive all information from the fund advisory and management companies. This will increase the voice investors have in fund management and limit mutual fund abuses.

By developing a new structure to provide appropriate oversight and enforcement mechanisms to fight abuse in the mutual fund industry, this legislation restores the confidence of investors in mutual funds. Ultimately, investor confidence will increase investment and enhance economic growth. I ask all my colleagues to support this legislation.●

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By Mr. SARBANES (for himself, Ms. LANDRIEU, Ms. MIKULSKI, and Mr. ALLEN):

S. 1959. A bill to amend the Federal Water Pollution Control Act and the Water Resources Development Act of 1992 to provide for the restoration, protection, and enhancement of the environmental integrity and social and economic benefits of the Anacostia Watershed in the State of Maryland and the District of Columbia; to the Committee on Environment and Public Works.

Mr. SARBANES. Mr. President, today I am introducing legislation to bolster efforts to restore the Anacostia River. Joining me in sponsoring this measure are my colleagues Senators LANDRIEU, MIKULSKI and ALLEN. A companion bill has also been introduced in the House, sponsored by Representative ELEANOR HOLMES NORTON and other members of the Washington metropolitan area Congressional Delegation.

Mr. President, the Anacostia River is a resource rich in history and with tremendous natural resources and recreational potential. It is homes to 43 species of fish, some 200 species of birds, as well as more than 800,000 people whose neighborhoods border the watershed. Flowing through Montgomery and Prince George's Counties in Maryland and emptying into the Potomac at the District of Columbia, the watershed consists of a 176-square-mile drainage area. One of the most urbanized watersheds in the United States, the Anacostia suffers a series of problems including trash, toxic pollution from urban runoff, sewage pollution from leaking sewer lines and combined sewer overflows, sediment pollution from erosion, and loss of fish and wildlife and recreational resources. It is a resource that has long been abused and neglected, but one that, in my view, can and must be protected and restored.

Efforts to begin rejuvenating the Anacostia watershed began formally in 1987 when the State of Maryland, Montgomery and Prince George's Counties, and the District of Columbia signed an Anacostia Watershed Restoration Agreement. The agreement authorized the Washington Area Council of Governments, COG, to manage the restoration program and the Interstate Commission on the Potomac River Basin, ICPRB, to protect the resources and facilitate public participation. COG created an Anacostia Watershed Restoration Committee, AWRC, to coordinate and implement restoration projects throughout the watershed. Since that time, local, State, and Federal Government agencies, as well as the Anacostia Watershed Society, the Anacostia Citizens Advisory Committee and other environmental organizations and dedicated private citizens have contributed significant resources toward re-establishing the Anacostia watershed ecosystem.

Thanks to this cooperative and coordinated Federal, State, local and private effort, we are beginning to make some progress in restoring the watershed. A Six Point Action Plan was signed in 1991 setting ambitious and broad-reaching goals for the river's restoration. In 1993 we celebrated the successful restoration of 32 acres of emergent tidal wetlands by the Army Corps of Engineers at Kenilworth marsh. The project has shown significant results in improving tidal water flow through the marsh, and reducing the concentration of nitrogen and phosphorus in the area and demonstrates what can be achieved in urban river restoration. There have been other success stories as well in urban stream restoration in Montgomery and Prince George's counties, removing barriers to fish passage and reforestation efforts throughout the watershed, to name only a few. In 1999, a new Anacostia Watershed Agreement was signed to strengthen the regional governmental commitment to Anacostia restoration. There are today more than 60 local, State and Federal agencies involved in Anacostia watershed restoration. And more than $100 million has been spent cleaning up the river. There is clearly much for which we can all be proud. But the job of restoring the Anacostia watershed is far from complete. The Anacostia is still one of North America's most endangered and threatened rivers. It is designated one of three ''regions of concern'' for toxics in the Chesapeake Bay watershed.

The legislation which we are introducing authorizes more than $200 million in Federal assistance over the next 10 years to restore the Anacostia. Of these funds, $170 million is authorized to address the biggest pollution problems in the watershed—stormwater runoff and failing wastewater infrastructure. As the builder of much of the original infrastructure and a major user, the Federal Government has an important responsibility to help stem the flow of this pollution and comply with the Clean Water Act. The remaining funds will allow the administrator of EPA, working together with an ''Anacostia Watershed Council'' of State and local officials, to develop a comprehensive environmental protection and resource management plan for the watershed, for several Federal agencies to join in the implementation of the plan.

Mr. President, the Anacostia River suffers from centuries of impacts and changes. Once a healthy, thriving river, it is today severely degraded. This legislation is urgently needed if we are to achieve the goal of making the Anacostia and its tributaries swimmable and fishable again. I urge my colleagues to join me in supporting this measure and ask unanimous consent that a section-by-section analysis of the legislation be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF THE ''ANACOSTIA WATERSHED INITIATIVE ACT OF 2003''

Section 1—Title—''The Anacostia Watershed Restoration Act of 2003''

Section 2—Findings—Describes the attributes and challenges of the watershed, addresses the economic and natural potential of the watershed to Maryland, DC and the United States; relates the history of efforts to restore the Anacostia River and watershed; and suggests that the importance of the Anacostia River combined with the need for concerted sustained actions among the affected jurisdictions, requires the development of comprehensive environmental protection and resource management action plan.

Section 3—Anacostia Watershed Initiative—Amends Federal Water Pollution Control Act (Clean Water Act) by adding a new section 123 that:

a. Provides definitions.

b. Establishes the ''Anacostia Watershed Restoration Initiative'' in the U.S. Environmental Protection Agency to restore the environmental integrity of the Anacostia watershed and plan and fund restoration improvements.

c. Establishes the Anacostia Watershed Council (comprised of the Administrator of the EPA, the Interior Secretary, the Secretary of the Army, the Governor of Maryland, the Governor of Virginia, the Mayor of the District of Columbia, and the County Executives from Prince Georges and Montgomery Counties) and provides minimum meeting requirements.

d. Establishes objectives and guidelines for the development, review and approval, within one year after enactment, of a 10-year multi-jurisdictional Comprehensive Action Plan for restoration of the Anacostia watershed. Directs that the comprehensive action plan shall incorporate the goals of the 1991 Anacostia Watershed Restoration Agreement; provide for public input; identify annual restoration targets, describe the duties of federal, state and local agencies, and suggest methods, schedules, and amounts of funding required for programs, activities, and projects. Directs that the plan shall promote implementation of a federally approved combined sewer long term control plan. Allows the plan to be amended as appropriated.

e. Requires the Anacostia Watershed Council to report annually to the Congressional authorizing and appropriating committees.

f. Permits the Administrator, in consultation with the Anacostia Watershed Council, to provide financial and technical support to local public and non-profit entities to develop and implement the Comprehensive Action Plan.

g. Directs Under or Assistant Secretaries of the EPA, Interior, Agriculture, Commerce, Army, HUD, and Transportation acting through designed agencies to support the Initiative and Comprehensive Action Plan.

h. Provides that the Initiative shall not affect existing obligations.

i. Authorizes appropriations for fiscal years 2004–2013; $3,000,000 to the Administrator for development and implementation of the Initiative and $6,000,000 of which shall be used by EPA, Interior, Agriculture, Commerce, Transportation, HUD, and the Army; provided that not more than 10 percent of these funds may be used for administrative costs.

Section 4—Water Infrastructure—Amends Section 219(f) of the Water Resource Development Act to provide $150 million to support upgrading the DC combined sewer and $20 million for a program of assistance to non-federal entities to address other water quality issues.

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By Mrs. BOXER:

S. 1960. A bill to exempt airports in economically depressed communities from matching grant obligations under the Airport Improvement Program; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, last summer I visited Del Norte County—in the most northern part of my State. Del Norte County has been hit particularly hard during these tough economic times. Unemployment in the county tops 7.6 percent. Local officials are working hard to revitalize the economy, and one of their top priorities is to renovate Del Norte County's airport. And they would like federal assistance.

However, under the federal Airport Improvement Program, federal grants must be matched with local funds. In general, I support that policy. But, for communities facing severe economic problems, this match is prohibitive. It's a bit of a Catch-22. The Federal funds that would help the local economy rebound are not available because the local economy is in such bad shape that the community can't match the federal grants.

The bill that I am introducing today would address this by eliminating the match required under the Airport Improvement Program for economically depressed communities.

To be considered an economically depressed community, a community would have a variety of ways to quality. First, for the last two years, the unemployment rate could be one percent higher than the nation's unemployment rate. Second, the per capita income of the community could be 80 percent or less of the nation's per capita income. Or third, the Secretary of Transportation could decide that a particular community had a special needs. These criteria are consistent with other provisions of federal law.

I believe that by waiving the matching grant in communities that have a high unemployment rate or low per capita income, we will help to rejuvenate their business climate and reinvigorate their local economies.

With a little bit of help, I am very optimistic about the future of Del Norte County and other areas in California and across the Nation that are facing tough economic times. This bill will provide that little bit of help.

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By Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPECTER, Mr. JEFFORDS, Mr. LAUTENBERG, and Mr. BIDEN):

S. 1961. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today to introduce the American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century, better known as ''ARRIVE–21.'' This legislation is of vital importance to rail transportation because it provides steady, dependable funding for our beleaguered national passenger rail system. It also provides funding for infrastructure investment in the railroad industry as a whole, including freight railroads. And it establishes a financing mechanism to ensure that our rail system benefits from a steady stream of funding, just like our airline industry, our transit systems, and our national highway system.

For the past 30 years, Amtrak has provided us with a valuable public service, even though it was forced year after year to come beg for money from the Congress. And year after year, the Congress gave it just enough money to barely survive another 12 months. Sometimes Congress didn't appropriate even enough money to last 12 months, and Amtrak had to come back and beg for a supplemental appropriation just to remain in business until the end of the fiscal year. Never mind having enough money to grow the railroad; never mind having enough money to run a first-class passenger railroad. And never mind having enough money to keep the infrastructure in a state of good repair. All Amtrak has been able to do for 30 years is stay alive. It's time to give Amtrak the tools and funding it needs to do the job we keep asking it to do.

Last year I introduced the National Defense Rail Act of 2002 which was approved by the Senate Commerce Committee by a vote of 20–3. We have shown that bipartisan support exists for authorizing a strong rail program, however the main obstacle we have faced has been securing funding to live up to the authorized amounts. This legislation attempts to address the lack of a guaranteed revenue stream for passenger rail programs and establishes a framework to address freight needs where there is a clear public benefit.

It's a foregone conclusion that transportation development requires money. We somehow figured this out a long time ago with regard to every other mode of transportation. We federally funded the development of the interstate highway system; we subsidized airport construction; we dredged harbors and channels; and we built locks and dams. And the result of all that investment is that our citizens and our goods can move across the country, from big cities and from small towns, efficiently and relatively cheaply. We have today a national transportation system with many impressive components.

You might even say we have been a little too successful with these modes of transportation because many of them are now strained to capacity in many areas of the country. This situation presents not only an economic dilemma, but also a genuine security risk. The atrocious events of September 11th, and the aftermath that followed, exposed the vulnerability of our society and our economy when transportation choices become limited and our mobility is diminished. Effective transportation security means that, as a Nation, we nurture all transportation options and we do not allow ourselves to be overly dependent on only one or two particular modes. In effect, that's what we have done by favoring highways and aviation, where we have directed the flow of billions of dollars. Ironically, rail passenger service is more environmentally-friendly, more fuel-efficient, and more capable of mitigating the impacts of population congestion to help foster regional economic growth than any of the other modes. But in the process of shoring up those other transportation modes for all those years, we lost our focus on passenger rail and we sadly neglected investing in its development.

For passenger rail to be successful, its infrastructure must be developed through the kind of bold Federal leadership we exercised for our other modes of transportation. That's why my colleagues and I are pleased to introduce this landmark piece of legislation designed to change the way we think

about financing passenger rail service and designed to grow our passenger rail system into the world-class system it should be. The bill creates Federal/State and public/private partnerships to promote infrastructure development for both freight and passenger rail. It provides $20-$25 billion in grants over six years to States and State compacts for rail capital projects to provide for a safe, secure, and efficient rail transportation system. It enhances Federal and State rail transportation policy, and it promotes intermodal transportation investment.

ARRIVE–21 creates a non-profit Rail Infrastructure Finance Corporation (RIFCO) to issue $30 billion in tax-credit bonds over six years for the purpose of providing grants to States for capital investment in freight and passenger rail infrastructure and facilities. RIFCO will establish a trust account made up of bond proceeds and contributions from States that receive RIFCO grants. Bond proceeds and State contributions in excess of the amount required to maintain the trust account will then be available for grants to the States through a competitive process.

Although my first choice would be to fully fund the needs authorized in this legislation by straight federal spending, it has become clear that over the last thirty years that there is no pot of gold at the end of the rainbow when it comes to Amtrak. There is not enough money in the scant pot available for discretionary spending on transportation programs. We have established dedicated trust funds for the airlines with their ticket taxes, and we have the trust fund for the highways and transit programs which are funded through the gas tax, but when it comes to passenger railroads, there is no such revenue stream. The establishment of RIFCO was not my first choice to finance the publicly needed improvements of the railroad system, but it is an option for the Congress to debate and consider as we attempt to address what we need the rail system to do for this country.

RIFCO is set up to assist the States fund both passenger and freight projects that benefit the public on a State, regional or national basis. State or State compacts may apply for RIFCO funds for discretionary and formula funds for capital projects in four categories: State Intercity Passenger Rail Corridor Development, including equipment, stations, and facilities. State Freight Rail Infrastructure Development Projects, including capital projects that primarily benefit freight rail transportation. States may use a percentage of these formula funds to manage State rail programs. National System Improvement Projects, including projects that significantly benefit the national passenger rail system, Amtrak-sponsored projects and Northeast Corridor projects. High Priority Projects, including projects with major public policy benefits to the national rail system or significantly expand rail intermodal capacity in connection with maritime, aviation, and highway facilities.

Eligible capital projects would include new rail line development, planning and environmental reviews, track upgrades and restoration, highway-rail grade crossing improvements and eliminations, relocation of track, infrastructure and facilities, construction of intermodal facilities and passenger rail stations, tunnel and bridge repairs, communication and signaling improvements, environmental impact mitigation, acquisition of passenger rail equipment, and security improvements. Projects to receive discretionary funding would be selected by RIFCO according to selection criteria contained in the bill. The projects would require a 20 percent non-Federal contribution paid to RIFCO for bond repayment.

ARRIVE–21 also directs the Federal Railroad Administration to develop a National Rail Plan and to work with States in developing State rail plans, so that we have a comprehensive and coordinated long-range plan for rail development for the whole country. The bill also directs the Office of Intermodalism in the Department of Transportation to create a ''50-Year Blueprint'' for the development of a national intermodal transportation system and provide a vision of emerging trends and opportunities for the future of passenger and freight rail transportation.

Before I close, I would be remiss if I did not recognize the work of Nancy Lummens Lewis, a detailee from the Federal Railroad Administration, who has worked on the Commerce Committee since January. We have appreciated her professionalism, competency, and her willingness to work and share her time with us. I thank Nancy for her time spent on this bill, as well as her efforts on the reauthorization of the Transportation Equity Act of the 21st Century, The Federal Railroad Safety Improvement Act, and The Surface Transportation Board Act of 2003. We wish her well in her future endeavors.

ARRIVE–21 presents a smart and efficient solution to a very important transportation dilemma. I am joined by several of my colleagues, including Senators COLLINS, SPECTER, CARPER and JEFFORDS, in introducing this bipartisan legislation. As we have passed legislation this week providing approximately $15 billion annually for aviation for the next 4 years, and plan to take up a highway bill next year which will spend $40 to $60 billion annually on highways and transit over six years, we must not leave rail out. It is critical that the Senate take this bill up, and pass it, to ensure that our railroad transportation system, especially our passenger rail system, can grow and develop to meet our current and future transportation needs.

Attached is an amendment that the sponsors of ARRIVE–21 intend to offer during floor consideration of the bill. I ask unanimous consent that the amendment and the text of the bill be printed in the RECORD.

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

AMENDMENT

**TITLE VIII—RAIL INFRASTRUCTURE TAX CREDIT BONDS**

**SEC. 801. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.**

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding at the end the following new subpart:

**''Subpart H—Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds**

''Sec. 54. Credit to holders of qualified rail infrastructure bonds.

**''SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.**

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified rail infrastructure bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified rail infrastructure bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate, equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

''(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15.

Such term includes the last day on which the bond is outstanding.

''(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under this part (other than this subpart and subpart C).

''(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (e)) and the amount so included shall be treated as interest income.

''(c) QUALIFIED RAIL, INFRASTRUCTURE BOND.—For purposes of this part, the term 'qualified rail infrastructure bond' means any bond issued as part of an issue if—

''(1) the bond is issued by the Rail Infrastructure Finance Corporation and is in registered form,

''(2) the term of each bond which is part of such issue does not exceed 20 years,

''(3) the payment of principal with respect to such bond is the obligation of the Rail Infrastructure Finance Corporation and not an obligation of the United States,

''(4) all proceeds from the sale of the issue are used for the purposes set forth in section 507(c)(5) of the Arrive 21 Act, and

''(5) 95 percent or more of the net spendable proceeds from the sale of such issue are to be used for expenditures incurred after the date of enactment of this section for any qualified project described in section 601, 602, or 603 of the Arrive 21 Act subject to the limitations established by that Act.

''(f) SPECIAL RULES RELATING TO NET SPENDABLE PROCEEDS.—

''(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if, as of 6 years after the date of issuance, the issuer reasonably expects—

''(A) to award grants under sections 501, 502, and 503 of the Arrive 21 Act in a total amount that is at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 6-year period beginning on such date,

''(B) to incur a binding commitment with a third party—

''(i) to spend at least 10 percent of the net spendable proceeds of the issue, or to commence construction, with respect to such projects within the 12-month period beginning on such date, and

''(ii) to proceed with due diligence to complete such projects, and

''(C) to expend the total amount of the net spendable proceeds of the issue.

''(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 6-YEAR DETERMINATION.—If at least 95 percent of the net spendable proceeds of the issue is not awarded as grants to be expended for 1 or more qualified projects within the 6-year period beginning 6 years after the date of issuance, but the requirements of paragraph (1) are otherwise met, an issue shall be treated as continuing to meet the requirements of paragraph (1) if either the requirement under subparagraph (A) or the requirements under subparagraph (B) are met, as follows:

''(A) The issuer uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of such 6-year period and disburses any remaining net spendable proceeds to the Secretary of Treasury within 30 days after the end of such 6-year period.

''(B) The issuer—

''(i) awards in grants under sections 501, 502, and 503 of the Arrive 21 Act at least 75 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 6-year period beginning 6 years after the date of issuance, and

''(ii) awards in grants under sections 501, 502, and 503 of the Arrive 21 Act at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 7-year period beginning 6 years after the date of issuance.

''(g) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

''(1) IN GENERAL.—If any bond which when issued purported to be a qualified rail infrastructure bond ceases to be such a qualified bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

''(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

''(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

''(2) NONCULPABLE DISQUALIFICATIONS.—If a qualified rail infrastructure bond ceases to qualify as such a bond due to action taken by the recipient of a grant made under section 601, 602, or 603 of the Arrive 21 Act, the issuer may seek compensation under paragraph (1) of this subsection.

''(h) RAIL INFRASTRUCTURE FINANCE TRUST.—

''(i) IN GENERAL.—The following amounts shall be held in a trust account by the Rail Infrastructure Finance Corporation:

''(A) An amount of the proceeds from the sale of all bonds designated for purposes of this section that, when combined with amounts described in subparagraphs (B), (C), and (D), is sufficient—

''(i) to ensure the Corporation's ability to redeem all bonds upon maturity; and

''(ii) to pay the administrative expenses of the Corporation and the Rail Infrastructure Finance Trust.

''(B) The amount of any on-Federal contributions required under section 604(b) of the Arrive 21 Act.

''(C) The temporary period investment earnings on proceeds from the sale of such bonds.

''(D) Any earnings on any amounts described in subparagraph (A), (B), or (C).

''(2) USE OF FUNDS.—Amounts in the trust account may be used only for investment purposes to generate sufficient funds to redeem qualified rail infrastructure bonds at maturity and pay the administrative expenses of the Corporation and the Trust.

''(3) USE OF REMAINING FUNDS ON TRUST ACCOUNT.—If the Corporation determines that the amount in the trusts account exceeds the amount required to comply with paragraph (2), the Corporation may transfer the excess to the Rail Infrastructure Investment account to be available for awarding grants as provided for in section 507(c)(5)(B) of the Arrive 21 Act.

''(4) REVERSION OF REMAINING PROCEEDS.—Upon retirement of all bonds issued by the Corporation, any remaining proceeds from the sale of such bonds shall be covered into the general fund of the Treasury of the United States as miscellaneous receipts.

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

''(1) BOND.—The term 'bond' includes any obligation.

''(2) NET SPENDABLE PROCEEDS.—The terms 'net spendable proceeds' has the meaning give such term in section 507(c)(6) of the Arrive 21 Act.

''(3) QUALIFIED PROJECT.—The term 'qualified project' means any project that is eligible for grant funding under section 601, 602, or 603 of the Arrive 21 Act.

''(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified rail infrastructure bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(6) REPORTING.—Issuers of qualified rail infrastructure bonds shall submit reports similar to the reports required under section 149(e).''.

(b) AMENDMENTS TO OTHER CODE SECTIONS.—

(1) REPORTING.—Subsection (d) of section 6049 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

''(8) REPORTING OF CREDIT ON QUALIFIED RAIL INFRASTRUCTURE BONDS.—

''(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

''(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

''(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.''.

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(B) CORPORATE.—Section 6655 of such Code (relating to failure by corporation to pay estimated income tax) is amended by adding at the end of subsection (g) the following new paragraph:

''(5) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart H. Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds.''.

(2) Section 6401(b)(1) is amended by striking ''and G'' and inserting ''G, and H''.

**SEC. 802. ISSUANCE OF REGULATIONS.**

The Secretary of the Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 not later than 90 days after the date of the enactment of this Act.

**SEC. 803. EFFECTIVE DATE.**

The amendments made by section 701 shall apply to obligations issued after the date of enactment of this Act.

On page 3, at the end of the matter appearing before line 1, insert the following:

TITLE VIII—RAIL INFRASTRUCTURE TAX CREDIT BONDS
Sec. 801. Credit to holders of qualified rail infrastructure bonds.
Sec. 802. Issuance of regulations.
Sec. 803. Effective date.

S. 1961

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century'' or the ''Arrive 21 Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendment of title 49, United States Code.
Sec. 3. Purposes.
TITLE I—RAIL TRANSPORTATION SECURITY
Sec. 101. Rail transportation security risk assessment.
Sec. 102. Certain personnel limitations not to apply.
TITLE II—FEDERAL RAIL POLICY
Sec. 201. Federal rail policy enhancement.
Sec. 202. Rail cooperative research program.
Sec. 203. State rail plans.
Sec. 204. Interstate railroad passenger high-speed transportation policy.
Sec. 205. High-speed rail corridor planning.
Sec. 206. Designated high-speed rail corridors.
Sec. 207. Rehabilitation, improvement, and security financing.
Sec. 208. Repayment of loan to National Railroad Passenger Corporation.
TITLE III—INTERMODAL POLICY
Sec. 301. 50–year intermodal blueprint.
Sec. 302. Intermodal transportation policy.
TITLE IV—AMTRAK AUTHORIZATIONS
Sec. 401. National Railroad Passenger Transportation system defined.
Sec. 402. Restructuring of long-term debt and capital leases.
Sec. 403. General Amtrak authorizations.
Sec. 404. Excess railroad retirement.
Sec. 405. Authorizations for environmental compliance and station improvements.
Sec. 406. Tunnel life safety.
Sec. 407. Authorization for capital and operating expenses.
Sec. 408. Establishment of grant process.
Sec. 409. State-supported routes.
Sec. 410. Re-establishment of Northeast Corridor Safety Committee.
Sec. 411. Amtrak board of directors.
Sec. 412. Establishment of financial accounting system for Amtrak operations by independent auditor.
Sec. 413. Development of 5-year financial plan.
Sec. 414. Independent auditor to establish methodologies for Amtrak route and service planning decisions.
Sec. 415. Metrics and standards.
Sec. 416. On-time performance.
TITLE V—RAIL INFRASTRUCTURE FINANCE CORPORATION
Sec. 501. Establishment of corporation.
Sec. 502. Board of directors.
Sec. 503. Officers and employees.
Sec. 504. Nonprofit and nonpolitical nature of the corporation.
Sec. 505. Purpose and activities of corporation.
Sec. 506. Report to Congress.
Sec. 507. Administrative matters.
Sec. 508. Rail Infrastructure Finance Trust.
TITLE VI—RAIL DEVELOPMENT GRANT PROGRAMS
Sec. 601. Intercity passenger rail development grant program.
Sec. 602. Freight rail infrastructure development grant program.
Sec. 603. High priority projects grant program.
Sec. 604. Grant program requirements and limitations.
Sec. 605. Standards and conditions.
Sec. 606. Grant program funding.
TITLE VII—AUTHORIZATION OF APPROPRIATIONS
Sec. 701. Authorization of Appropriations.

**SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

**SEC. 3. PURPOSES.**

The purposes of this Act are—

(1) to ensure more adequate financing of infrastructure projects for the national rail transportation system through—

(A) the establishment of the nonprofit Rail Infrastructure Finance Corporation to provide financial support for rail infrastructure improvement projects by issuing qualified rail transportation bonds; and

(B) the provision of appropriate tax treatment of qualified rail transportation bonds so issued;

(2) to create a partnership between public and private entities to promote freight and passenger rail infrastructure development that benefits the public;

(3) to provide resources to States and groups of States for rail capital projects that result in a safe, secure, and efficient rail transportation system;

(4) to enhance Federal and State rail transportation policy and planning;

(5) to promote intermodal transportation investment, planning, and coordination; and

(6) to reauthorize the National Railroad Passenger Corporation and reaffirm the Federal commitment to a national system of intercity passenger 191 transportation.

TITLE I—RAIL TRANSPORTATION SECURITY

**SEC. 101. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.**

(a) IN GENERAL.—

(1) ASSESSMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall assess the security risks associated with freight and intercity passenger rail transportation and develop prioritized recommendations for—

(A) improving the security of rail infrastructure and facilities, terminals, tunnels, rail bridges, rail switching areas, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

(B) deploying chemical and biological weapon detection equipment;

(C) training employees in terrorism response activities; and

(D) identifying the immediate and long-term economic impact of measures that may be required to address those risks.

(2) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The assessment shall include a review of any actions already taken or prospective actions necessary to address identified security issues by both public and private entities.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment required by subsection (a), the Secretary shall consult with rail management, rail labor, facility owners and operators, and public safety officials (including officials responsible for responding to emergencies).

(C) REPORT.—

(1) CONTENTS.—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report, without compromising national security, containing the assessment and prioritized recommendations required by subsection (a).

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $515,000,000 for fiscal year 2004 to carry out this section, implement the measures contained in the Secretary's prioritized recommendations, and award grants for purposes identified in the assessment in subsection (a), such sums to remain available until expended.

**SEC. 102. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.**

Any statutory limitation on the number of employees in the Transportation Security Administration of the Department of Transportation, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this Act.

TITLE II—FEDERAL RAIL POLICY

**SEC. 201. FEDERAL RAIL POLICY ENHANCEMENT**

Section 103 is amended to read as follows:

**''§ 103. Federal Railroad Administration**

''(a) IN GENERAL.—The Federal Railroad Administration is an administration in the Department of Transportation.

''(b) ADMINISTRATOR.—The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

''(c) SAFETY.—To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.

''(d) POWERS AND DUTIES.—

''(1) IN GENERAL.—The Administrator shall carry out—

''(A) the duties and powers related to rail road safety vested in the Secretary by section 20134(c) and chapters 203 through 211 of this title, and chapter 213 of this title in carrying out chapters 203 through 211;

''(B) the duties and powers related to railroad policy and development under subsection (e); and

''(C) any additional duties and powers prescribed by the Secretary.

''(2) TRANSFERS.—A duty or power specified by paragraph (1)(A) of this subsection may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

''(3) CONTRACTS, GRANTS, LEASES, COOPERATIVE AGREEMENTS, AND SIMILAR TRANSACTIONS.—Subject to the provisions of subtitle I of title 40 and title III of the Federal

Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions of the Federal Railroad Administration. The authority of the Secretary granted by this paragraph shall be carried out by the Administrator.

''(e) ADDITIONAL DUTIES OF THE ADMINISTRATOR.—The Administrator shall—

''(1) provide assistance to States in developing State rail plans prepared under section 22501 and review all State rail plans submitted under such section 22501;

''(2) develop a long range national rail plan that is consistent with approved State rail plans, the 50-year Intermodal Blueprint developed under section 5503(e), and the rail needs of the Nation, as determined by the Secretary in order to promote an integrated, cohesive, efficient, and optimized national rail system for the movement of goods and people;

''(3) develop a preliminary national rail plan within a year after the date of enactment of the Arrive 21 Act;

''(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;–

''(5) support rail intermodal development and high-speed rail development, including high speed rail planning under section 205;

''(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

''(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

''(f) PERFORMANCE GOALS AND REPORTS.—

''(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under section 103(e) of this title, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

''(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under section 103(e).

''(3) SUBMISSION WITH PRESIDENT'S BUDGET.—Beginning with fiscal year 2005 and each fiscal year thereafter, the Secretary shall submit to Congress, at the same time as the President's budget submission, the Administration's performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.''.

**SEC. 202. RAIL COOPERATIVE RESEARCH PROGRAM.**

(a) REQUIREMENT FOR PROGRAM.—

(1) ESTABLISHMENT AND CONTENT.—Chapter 249 is amended by adding at the end the following:

**''§ 24910. Rail cooperative research program**

''(a) IN GENERAL.—The Secretary shall establish and carry out a rail cooperative research program. The program shall—

''(1) address, among other matters, intercity rail passenger and freight rail services, including existing rail passenger and freight technologies and speeds, incrementally enhanced rail systems and infrastructure, and new high-speed wheel-on-rail systems and rail security;

''(2) address ways to expand the transportation of international trade traffic by rail, enhance the efficiency of intermodal interchange at ports and other intermodal terminals, and increase capacity and availability of rail service for seasonal freight needs;

''(3) consider research on the interconnectedness of commuter rail, passenger rail, freight rail, and other rail networks; and

''(4) give consideration to regional concerns regarding rail passenger and freight transportation, including meeting research needs common to designated high-speed corridors, long-distance rail services, and regional intercity rail corridors, projects, and entities.

''(b) CONTENT.—The program to be carried out under this section shall include research designed—

''(1) to identify the unique aspects and attributes of rail passenger and freight service;

''(2) to develop more accurate models for evaluating the impact of rail passenger and freight service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;

''(3) to develop a better understanding of modal choice as it affects rail passenger and freight transportation, including development of better models to predict utilization;

''(4) to recommend priorities for technology demonstration and development;

''(5) to meet additional priorities as determined by the advisory board established under subsection (c), including any recommendations made by the National Research Council;

''(6) to explore improvements in management, financing, and institutional structures;

''(7) to address rail capacity constraints that affect passenger and freight rail service through a wide variety of options, ranging from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

''(8) to improve maintenance, operations, customer service, or other aspects of intercity rail passenger and freight service;

''(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

''(10) to review the impact of equipment and operational safety standards on the further development of high speed passenger rail operations connected to or integrated with non-high speed freight or passenger rail operations; and

''(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high speed freight or passenger rail operations.

''(c) ADVISORY BOARD.—

''(1) ESTABLISHMENT.—In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight transportation.

''(2) MEMBERSHIP.—The advisory board shall include—

''(A) representatives of State transportation agencies;

''(B) transportation and environmental economists, scientists, and engineers; and

''(C) representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railway labor organizations, and environmental organizations.

''(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 249 is amended by adding at the end the following:

''24910. Rail cooperative research program''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2004 through 2009 to carry out the rail cooperative research program under section 24910 of title 49, United States Code.

**SEC. 203. STATE RAIL PLANS.**

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

''CHAPTER 225—STATE RAIL PLANS AND HIGH PRIORITY PROJECTS

''Sec.
''22501. Authority
''22502. Purposes
''22503. Transparency; coordination; review
''22504. Content
''22505. Approval
''22506. High priority projects
''22507. Definitions

**''§ 22501. Authority**

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the State's approved plan to the Secretary of Transportation for approval; and

''(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

**''§ 22502. Purposes**

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to preserve, enhance, or expand rail service in the State that benefits the public.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system.

**''§ 22503. Transparency; coordination; review**

''(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives

by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

''(c) ANNUAL REVIEWS.—Each State shall transmit an annual report on its plan to the Secretary of Transportation. The report shall include, for the year preceding the year in which submitted, the following matters:

''(1) A review of progress made, and actions taken, under the plan during the year, including an update on the budget, schedule, and financing for each project on the freight or passenger rail capital project list compiled under section 22504(a) of this title.

''(2) Any modifications made in the plan after approval of the plan by the Secretary or after the submission of the most recent annual report on the plan to the Secretary, including any modifications made to the priority freight or passenger rail capital list required by section 22504(b).

''(d) APPROVAL OF MODIFIED PLANS.—Modifications of a State rail plan that are determined substantive by the Secretary, including any modification to a priority freight or passenger rail capital project list required by section 22504(b), is subject to approval (for the purposes of this chapter) by the Secretary.

**''§ 22504. Content**

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An evaluation of the existing overall rail transportation system and rail services and facilities within the State, a prioritization of such services and facilities in terms of their contributions to the State's rail and transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service, containing an overview of the transportation services provided by those lines, their ownership, operating characteristics, and the general state of their infrastructure.

''(3) A statement of the State's freight and passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

''(4) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(5) A long-range rail service and investment program for current and future freight and passenger services in the State that meets the requirements of subsection (b).

''(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail service and rail infrastructure development.

''(7) A statement of rail service issues within the State, such as congestion and capacity, and current system deficiencies on a regional, intrastate, and interstate basis, that reflects consultation with neighboring States and describes any coordination of regional rail service.

''(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

''(9) A description of new technology that relates to rail transportation within the State, including logistics and process improvements.

''(10) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

''(11) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

''(12) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this chapter, and a plan for funding any recommended development of such corridors in the State.

''(13) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail service and investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

''(A) Two ranked lists for rail capital projects, 1 for freight rail capital projects and 1 for intercity passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The ranked list of freight and intercity passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) public funding contributions for the projects; and

''(ii) the public benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the ranked list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Competitive and service impacts for rail carriers and shippers.

''(G) Preservation of rail service.

''(H) Economic and employment impacts.

''(I) Projected ridership and other service measures for passenger rail projects.

''(c) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

**''§ 22505. Approval**

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

''(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure or right of way directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with—

''(A) State transportation plans developed pursuant to the requirements of section 135 of title 23; and

''(B) the national rail plan, the 50-year intermodal blueprint developed under section 5503(e) of this title, (if either is available) and any other transportation plan of the Federal Government that is required by law deemed relevant by the Secretary.

''(b) PROCEDURES FOR STATE RAIL PLAN SUBMISSION AND APPROVAL.—The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements and procedures for resubmittal if a State rail plan is disapproved. The procedures shall provide for the Secretary to review a State rail plan and issue a record of decision of approval or disapproval, with comment, on such plan within 180 days after the plan is submitted.

**''§ 22506. High priority projects**

''(a) DESIGNATION OF PROJECTS.—In reviewing State rail plans, the Secretary of Transportation may designate as a high priority project any project submitted by a State or group of States that meets both of the following criteria:

''(1) The project focuses on key rail congestion points that are—

''(A) selected by the Secretary on the basis of national benefits to the rail transportation system; and

''(B) coordinated with the national rail plan, if that plan is available.

''(2) The project is on a ranked list of priority freight and passenger rail capital projects that is included in a State rail plan under section 22504(a)(5) of title 49, United States Code, unless this criterion is waived by the Secretary.

''(b) PREFERRED PROJECTS.—The Secretary, in designating high priority projects, shall give preference to—

''(1) projects that have national significance for—

''(A) improving the national rail network and the Nation's transportation system;

''(B) ensuring particularly high levels of safety;

''(C) increasing intermodal connectivity by providing or improving direct connections between rail facilities and other modes of transportation;

''(D) significantly improving highway, aviation, or maritime capacity, congestion, or safety;

''(E) improving intercity passenger rail service by increasing ridership, reducing trip time, or other significant enhancements;

''(F) improving both intercity passenger rail and freight rail services simultaneously;

''(G) enhancing freight rail service for shippers;

''(H) causing positive economic and employment results;

''(I) producing significant environmental or community benefits;

''(J) having received financial commitments and other support from non-Federal entities such as States, local governments, or private entities;

''(K) enhancing international trade;

''(L) enhancing national security; or

''(M) employing positive train control technologies; and

''(2) projects that are at the stage of preparation that all pre-commencement compliance with environmental protection requirements has been completed and the projects are ready to commence.

''(c) REGIONAL BALANCE AND COMPATIBILITY.—The Secretary, in designating high priority projects, shall ensure that—

''(1) the geographic distribution of the designated high priority projects is balanced

among the geographic regions of the United States and a disproportionated number of such projects is not concentrated in a single State; and

''(2) all projects are—

''(A) compatible with State transportation plans developed pursuant to the requirements of section 135 of title 23; and

''(B) carried out in conformance with the national rail plan.

''(d) ADDITIONAL PROJECTS.—The Secretary may designate projects submitted to the Office by the National Railroad Passenger Corporation, either independently or in conjunction with a State or group of States, as a high priority project. Any such projects shall be subject to the same designation and selection criteria as apply under this section, except the criteria set forth in subsections (a)(2) and (c)(2) of this section.

**''§ 22507. Definitions**

''In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit' means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary. The Secretary may seek the advice of the states and rail carriers in further defining this term.xxx

''(2) PUBLIC BENEFIT.—The term 'public benefit' means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary. The Secretary make seek the advice of the States and rail carriers in further defining this term.

''(3) STATE.—The term 'State' means any of the 50 States and the District of Columbia.

''(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term 'State rail transportation authority' means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.''.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle V is amended by inserting after the item relating to chapter 223 the following:

''225. STATE RAIL PLANS AND HIGH PRIORITY PROJECTS ..... 22501.''.

**2SEC. 204. INTERSTATE RAILROAD PASSENGER HIGH-SPEED TRANSPORTATION POLICY.**

(a) IN GENERAL.—Chapter 261 is amended by inserting before section 26101 the following:

**''§ 26100. Policy.**

''The Congress declares that it is the policy of the United States that designated high-speed railroad passenger transportation corridors are the building blocks of an interconnected National railroad passenger system.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 261 is amended by inserting before the item relating to section 26101 the following:

''26100. Policy''.

**SEC. 205. HIGH-SPEED RAIL CORRIDOR PLANNING.**

(a) IN GENERAL.—Section 26101(a) is amended to read as follows:

''(a) PLANNING.—

''(1) IN GENERAL.—The Secretary of Transportation shall provide planning assistance to States or group of States and other public agencies promoting the development of high-speed rail corridors designated by the Secretary under section 104(d) of title 23. The Secretary shall establish an application and qualification process for applicants eligible for assistance under this section.

''(2) SECRETARY MAY PROVIDE DIRECT OR FINANCIAL ASSISTANCE.—The Secretary may provide planning assistance under paragraph (1) directly or by providing financial assistance to a public agency or group of public agencies to undertake planning activities approved by the Secretary. Twenty percent of the publicly financed planning costs associated with projects assisted under this chapter shall come from non-Federal sources. State matching contributions may not be derived, directly or indirectly, from Federal funds.

''(d) RECORD OF DECISION.—Upon completion of planning activities funded under this section, the Secretary shall make a recommendation on the record of whether to proceed with the implementation of the corridor.''.

(b) CONFORMING AND OTHER AMENDMENTS TO SECTION 26101.—Section 26101 is further amended—

(1) by striking subsection (c)(2) and inserting the following:

''(2) the extent to which the proposed planning focuses on high-speed rail systems, giving a priority to systems which will achieve sustained speeds of 125 miles per hour or greater and projects involving dedicated rail passenger rights-of-way;'';

(2) by inserting ''and'' after the semicolon in subsection (c)(12);

(3) by striking ''completed; and'' in subsection (c)(13) and inserting ''completed.''; and

(4) by striking subsection (c)(14).

(c) CONFORMING AMENDMENT.—Section 26105(2)(A) is amended by striking ''more than 125 miles per hour;'' and inserting ''90 miles per hour or more;''.

(d) FINANCIAL ASSISTANCE TO INCLUDE LOANS AND LOAN GUARANTEES—.Section 26105(1) is amended by inserting ''loans, loan guarantees,'' after ''contracts,''.

(e) SPECIAL TRANSPORTATION CIRCUMSTANCES.—Section 26101 is amended by adding at the end the following:

''(d) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available for planning assistance to providing appropriate transportation-related assistance in any State in which the rail transportation system—

''(1) is not physically connected to rail systems in the continental United States; and

''(2) may not otherwise qualify for high speed rail implementation assistance due to the constraints imposed on the railway infrastructure in that State due to the unique characteristics of the geography of that State or other relevant considerations, as determined by the Secretary.''.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $50,000,000 for each of fiscal years 2004 through 2009 to provide planning assistance under section 26101(a) of title 49, United States Code.

**SEC. 206. DESIGNATED HIGH-SPEED RAIL CORRIDORS.**

(a) IN GENERAL.—The Secretary of Transportation shall give priority in allocating funds authorized by section 26104 of title 49, United States Code, to designated high-speed rail corridors.

(b) DESIGNATED HIGH-SPEED RAIL CORRIDORS.—For purposes of subsection (a), the following shall be considered to be designated high-speed rail corridors:

(1) California Corridor connecting the San Francisco Bay area and Sacramento to Los Angeles and San Diego.

(2) Chicago Hub Corridor Network with the following spokes:

(A) Chicago to Detroit.

(B) Chicago to Minneapolis/St. Paul, Minnesota, via Milwaukee, Wisconsin.

(C) Chicago to Kansas City, Missouri, via Springfield, Illinois, and St. Louis, Missouri.

(D) Chicago to Louisville, Kentucky, via Indianapolis, Indiana, and Cincinnati, Ohio.

(E) Chicago to Cleveland, Ohio, via Toledo, Ohio.

(F) Cleveland, Ohio, to Cincinnati, Ohio, via Columbus, Ohio.

(3) Empire State Corridor from New York City, New York, through Albany, New York, to Buffalo, New York.

(4) Florida High-Speed Rail Corridor from Tampa through Orlando to Miami.

(5) Gulf Coast Corridor from Houston Texas, through New Orleans, Louisiana, to Mobile, Alabama, with a branch from New Orleans, through Meridian, Mississippi, and Birmingham, Alabama, to Atlanta, Georgia.

(6) Keystone Corridor from Philadelphia, Pennsylvania, through Harrisburg, Pennsylvania, to Pittsburgh, Pennsylvania.

(7) Northeast Corridor from Washington, District of Columbia, through New York City, New York, New Haven, Connecticut, and Providence, Rhode Island, to Boston, Massachusetts, with a branch from New Haven, Connecticut, to Springfield, Massachusetts.

(8) New England Corridor from Boston, Massachusetts, to Portland and Auburn, Maine, and from Boston, Massachusetts, through Concord, New Hampshire, and Montpelier, Vermont, to Montreal, Quebec.

(9) Pacific Northwest Corridor from Eugene, Oregon; through Portland, Oregon, and Seattle, Washington, to Vancouver, British Columbia.

(10) South Central Corridor from San Antonio, Texas, through Dallas/Fort Worth to Little Rock, Arkansas, with a branch from Dallas/Fort Worth through Oklahoma City, Oklahoma, to Tulsa, Oklahoma.

(11) Southeast Corridor from Washington, District of Columbia, through Richmond, Virginia, Raleigh, North Carolina, Columbia, South Carolina, Savannah, Georgia, and Jessup, Georgia, to Jacksonville, Florida, with—

(A) a branch from Raleigh, North Carolina, through Charlotte, North Carolina, and Greenville, South Carolina, to Atlanta, Georgia; a branch from Richmond, to Hampton Roads/Norfolk, Virginia;

(B) a branch from Charlotte, North Carolina, to Columbia, South Carolina, to Charleston, South Carolina;

(C) a connecting route from Atlanta, Georgia, to Jessup, Georgia;

(D) a connecting route from Atlanta, Georgia, to Charleston, South Carolina; and

(E) a branch from Raleigh, North Carolina, through Florence, South Carolina, to Charleston, South Carolina, and Savannah, Georgia, with a connecting route from Florence, South Carolina, to Myrtle Beach, South Carolina.

(12) Southwest Corridor from Los Angeles, California, to Las Vegas, Nevada.

(c) OTHER HIGH-SPEED RAIL CORRIDORS.—For purposes of this section, subsection (b)—

(1) does not limit the term ''designated highspeed rail corridor'' to those corridors described in subsection (b); and

(2) does not limit the Secretary of Transportation's authority—

(A) to designate additional high-speed rail corridors; or

(B) to terminate the designation of any high-speed rail corridor.

**SEC. 207. REHABILITATION, IMPROVEMENT, AND SECURITY FINANCING.**

(a) DEFINITIONS.—Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended to read as follows:

''(7) 'railroad' has the meaning given that term in section 20102 of title 49, United States Code; and''.

(b) GENERAL AUTHORITY.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended—

(1) by striking ''Secretary may provide direct loans and loan guarantees to State and local governments,'' in subsection (a) and inserting ''Secretary shall provide direct loans and loan guarantees to State and local governments, interstate compacts entered into under section 410 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C 24101 note),'';

(2) by striking ''or'' in subsection (b)(1)(B);

(3) by redesignating subparagraph (C) of subsection (b)(1) as subparagraph (D); and

(4) by inserting after subparagraph (B) of subsection (b)(1) the following:

''(C) to acquire, improve, or rehabilitate rail safety and security equipment and facilities; or''.

(c) EXTENT OF AUTHORITY.—Section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)) is amended by adding at the end ''The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for a single loan or loan guarantee.''.

(d) COHORTS OF LOANS.—Section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by adding after subparagraph (D) the following new subparagraph:

''(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and''; and

(2) by adding at the end of paragraph (4) the following: ''A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for a single loan or loan guarantee.''.

(e) CONDITIONS OF ASSISTANCE.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended—

(1) by striking ''offered;'' in subsection (f)(2)(A) and inserting ''offered, if any;'';

(2) by inserting ''(1)'' before ''The Secretary'' in subsection (h) and redesignating paragraphs (1), (2), and (3) of that subsection as subparagraphs (A), (B), and (C); and

(3) by adding at the end of subsection (h) the following: .

''(2) The Secretary may not require an applicant for a direct loan or loan guarantee under this section to provide collateral.

''(3) The Secretary may not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

''(4) The Secretary shall require recipients of direct loans or loan guarantees under this section to apply the standards of subsections (b) and (e) of section 22301 of title 49, United States Code, to their projects.

''(5) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

''(A) the standards of section 24312, as in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a); and

''(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed by direct loans or loan guarantees.''.

(f) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended by adding at the end the following:

''(i) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.''.

(g) FEES AND CHARGES.—Section 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 823) is amended—

(1) by adding at the end of subsection (k) the following: ''Funds received by the Secretary under the preceding sentence shall be credited to the appropriation from which the expenses of making such appraisals, determinations, and findings were incurred.''; and

(2) by adding at the end the following new subsection:

''(m) FEES AND CHARGES.—Except as provided in this title, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 502.''.

(h) SUBSTANTIVE CRITERIA AND STANDARDS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation Web site the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822).

(i) OPERATORS DEEMED RAIL CARRIERS; LOANS AND LOAN GUARANTEES FOR NON-RAILROAD ENTITIES.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822), as amended by subsection (f), is amended by adding at the end the following:

''(j) OPERATORS DEEMED RAIL CARRIERS.—Any entity providing railroad transportation (within the meaning of section 20102) that begins operations after the date of enactment of the Arrive 21 Act and that uses property acquired pursuant to this section shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.) and considered a carrier for purposes of the Railway Labor Act (45 U.S.C. 151 et seq. ).

''(k) LOAN AND LOAN GUARANTEES FOR NON-RAILROAD ENTITIES.—Notwithstanding any other provision of law, entities other than rail companies shall be eligible for loans and loan guarantees under this section.''.

**SEC. 208. REPAYMENT OF LOAN TO NATIONAL RAILROAD PASSENGER CORPORATION.**

The Secretary of Transportation may not collect any payments of principal or interest for the direct loan made to the National Railroad Passenger Corporation under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). There are authorized to be appropriated to the Secretary for fiscal year 2004 $100,000,000 for the purpose of repaying that loan to the Secretary of the Treasury.

## TITLE III—INTERMODAL POLICY

**SEC. 301. 50-YEAR INTERMODAL BLUEPRINT.**

(a) IN GENERAL.—Section 5503 is amended—

(1) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively; and

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

''(e) 50-YEAR INTERMODAL BLUEPRINT.—

''(1) IN GENERAL.—The Secretary, in consultation with the advisory board established under section 24910(c) of this title, and other Federal, State, local, and private concerns, shall create a document to be known as the '50-year Intermodal Blueprint', which shall—

''(A) set forth a plan to develop a national intermodal transportation system, including all major modes of transportation;

''(B) describe emerging trends and opportunities to fulfill the future passenger and freight transportation needs of the United States;

''(C) illustrate and estimate the potential results of current policies, possible policy improvements, and directives for achieving the goals set forth in the document;

''(D) forecast the impact of current and future transportation policies on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and the quality of life in the United States; and

''(E) identify sources of funding to implement the plan described in subparagraph (A).

''(2) BIENNIAL PROGRESS REPORTS.—The Director, working with the Department of Transportation Inspector General, shall issue a 50-year Intermodal Blueprint progress report every 2 years and transmit a copy to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. In the report, the Director shall—

''(A) disclose the results of an audit of the progress made toward achieving the goals set forth in the 50-year Intermodal Blueprint;

''(B) describe successes, challenges, and obstacles with respect to the 50-year Intermodal Blueprint;

''(C) suggest any changes to the 50-year Intermodal Blueprint that the Director deems necessary or appropriate to reflect changed circumstances or new developments;

''(D) make recommendations on ways to increase intermodal planning and cooperation throughout the national transportation system and within the Department of Transportation; and

''(E) identify successful funding mechanisms and make recommendations for new approaches to funding intermodal transportation facilities and services.

''(3) SEXENNIAL REVISIONS.—The Secretary, in consultation with Federal, State, local, and private concerns, shall revise and republish the 50-year Intermodal Blueprint every 6 years.

''(f) IMPACT MEASUREMENT METHODOLOGY; IMPACT REVIEW.—The Secretary, working with the Bureau of Transportation Statistics, and taking into account the work of the rail cooperative research program established under section 24910(a) of this title, shall—

''(1) formulate a methodology for measuring the impact of intermodal transportation on—

''(A) the environment;

''(B) public health and welfare;

''(C) energy consumption;

''(D) the operation and efficiency of the transportation system;

''(E) congestion; and

''(F) the economy and employment; and

''(2) undertake a comprehensive review of the impact of international trade on intermodal transportation and existing intermodal transportation infrastructure.''.

(b) RETAINED FUNDS.—Section 5568 is amended—

(1) by redesignating subsection (b) as subsection (c); and

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

''(b) 50-YEAR INTERMODAL BLUEPRINT.—There are authorized to be appropriated to the Secretary $1,000,000 for each of fiscal years 2004 through 2009 to carry out section 5503(e).''.

**SEC. 302. INTERMODAL TRANSPORTATION POLICY.**

(a) POLICY STANDARDS.—Section 302(e) is amended by striking ''system'' and inserting ''system, including freight and passenger rail service and maritime transportation, including such transportation via inland waterways,''.

(b) STATE TRANSPORTATION IMPROVEMENT PROGRAMS.—Section 135(f)(4) of title 23, United States Code, is amended by inserting ''a State rail plan developed under chapter 225 of title 49,'' after ''134,''.

TITLE IV—AMTRAK AUTHORIZATIONS

**SEC. 401. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.**

(a) IN GENERAL.—Section 24102 is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

(3) by inserting after paragraph (4) as so redesignated the following:

''(5) 'national rail passenger transportation system' means—

''(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, D.C.;

''(B) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors, but only after they have been improved to permit operation of highspeed service;

''(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Arrive 21 Act; and

''(D) short-distance corridors or routes operated by Amtrak.''.

(b) AMTRAK ROUTES WITH STATE FUNDING.—

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

**''§ 24702. Transportation requested by States, authorities, and other persons**

''(a) CONTRACTS FOR TRANSPORTATION.—Amtrak and a State, a regional or local authority, or another person may enter into a contract for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

''(b) DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

''24702. Transportation requested by States, authorities, and other persons''.

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES.—Nothing in this Act is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

**SEC. 402. RESTRUCTURING OF LONG-TERM DEBT AND CAPITAL LEASES.**

(a) IN GENERAL.—The Secretary of the Treasury shall work with the Secretary of Transportation and Amtrak to restructure Amtrak's indebtedness as of the date of enactment of this Act.

(b) NEW DEBT PROHIBITION.—Except as approved by the Secretary of Transportation, Amtrak may not enter into any obligation secured by assets of the Corporation after the date of enactment of this Act. This section does not prohibit unsecured lines of credit used by Amtrak or any subsidiary for working capital purposes.

(c) DEBT REDEMPTION.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall enter into negotiations with the holders of Amtrak debt, including leases, that is outstanding on the date of enactment of this Act for the purpose of redeeming or restructuring that debt. The Secretary, in consultation with the Secretary of the Treasury, shall secure agreements for repayment on such terms as the Secretary deems favorable to the interests of the Government. Payments for such redemption may be made after October 1, 2004, in either a single payment or a series of payments, but in no case shall the repayment period extend beyond September 30, 2008.

(d) CRITERIA.—In redeeming or restructuring Amtrak's indebtedness, the Secretaries and Amtrak—

(1) shall ensure that the restructuring imposes the least practicable burden on taxpayers; and

(2) take into consideration repayment costs, the term of any loan or loans, and market conditions.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal years 2005 through 2008 to restructure or redeem Amtrak's secured debt.

(f) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, not more than the following amounts:

(A) For fiscal year 2004, $116,900,000.
(B) For fiscal year 2005, $109,500,000.
(C) For fiscal year 2006, $114,700,000.
(D) For fiscal year 2007, $202,900,000.
(E) For fiscal year 2008, $164,300,000.
(F) For fiscal year 2009, $155,800,000.

(2) INTEREST ON DEBT.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, there are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases, the following amounts:

(A) For fiscal year 2004, $162,600,000.
(B) For fiscal year 2005, $151,300,000.
(C) For fiscal year 2006, $146,300,000.
(D) For fiscal year 2007, $137,500,000.
(E) For fiscal year 2008, $125,300,000.
(F) For fiscal year 2009, $117,100,000.

(3) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (c) results in reductions in amounts of principle and interest that Amtrak must service on existing debt, Amtrak shall submit revised recommendations to the Senate Committee on Commerce, Science and Transportation, the House of Representatives Committee on Transportation and Infrastructure, the Senate Committee on Appropriations, and House of Representatives Committee on Appropriations revised requests for amounts authorized by paragraphs (1) and (2) that reflect the such reductions.

**SEC. 403. GENERAL AMTRAK AUTHORIZATIONS.**

(a) REPEAL OF SELF-SUFFICIENCY REQUIREMENTS.—

(1) TITLE 49 AMENDMENTS.—CHAPTER 241 IS AMENDED

(A) by striking the last sentence of section 24101(d); and

(B) by striking the last sentence of section 24104(a).

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(3) COMMON STOCK REDEMPTION DATE.—Section 415 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24304 nt) is amended by striking subsection (b).

(b) LEASE ARRANGEMENTS.—Amtrak may obtain services from the Administrator of General Services, and the Administrator may provide services to Amtrak, under section 201(b) and 211(b) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 481(b) and 491(b)) for each of fiscal years 2004 through 2008.

(c) FINANCIAL POWERS.—Section 415(d) of the Amtrak Reform and Accountability Act of 1997 by adding at the end, the following:

''(3) This section does not affect the applicability of section 3729 of title 31, United States Code, to claims made against Amtrak.''.

**SEC. 404. EXCESS RAILROAD RETIREMENT.**

Beginning in fiscal year 2004, the Secretary of the Treasury each year shall pay to the Railroad Retirement Account an amount equal to the amount Amtrak must pay under section 3221 of the Internal Revenue Code of 1986 in fiscal years that is more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries. There are authorized to be appropriated such sums as may be necessary in each fiscal year beginning after fiscal year 2004 for these payments.

**SEC. 405. AUTHORIZATIONS FOR ENVIRONMENTAL COMPLIANCE AND STATION EVIPROVEMENTS.**

(a) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak in order to comply with environmental regulations the following amounts:

(A) For fiscal year 2004, $18,800,000.
(B) For fiscal year 2005, $21,700,000.
(C) For fiscal year 2006, $22,300,000.
(D) For fiscal year 2007, $15,100,000.
(E) For fiscal year 2008, $15,900,000.
(F) For fiscal year 2009, $16,000,000.

(b) CAPITAL IMPROVEMENTS TO STATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital improvements to stations, including an initial assessment of the full set of accessibility needs across the national rail passenger transportation system and improved accessibility for the elderly and people with disabilities and in Amtrak facilities and stations, the following amounts:

(A) For fiscal year 2004, $17,100,000.
(B) For fiscal year 2005, $19,800,000.
(C) For fiscal year 2006, $19,800,000.
(D) For fiscal year 2007, $19,000,000.
(E) For fiscal year 2008, $19,000,000.
(F) For fiscal year 2009, $19,000,000.

(2) STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.—Amtrak shall evaluate the improvements necessary to make. all existing stations it serves readily accessible to and usable by individuals with disabilities, as required by section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5)), and the earliest practicable date when such improvements can be made. Amtrak shall submit the survey to the Senate Committee on

Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the National Council on Disability by September 30, 2005, along with recommendations for funding the necessary improvements.

**SEC. 406. TUNNEL LIFE SAFETY.**

(a) LIFE SAFETY NEEDS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for fiscal year 2004:

(1) $677,000,000 for the 6 New York tunnels built in 1910 to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers.

(2) $57,000,000 for the Baltimore & Potomac tunnel built in 1872 to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades.

(3) $40,000,000 for the Washington, DC, Union Station tunnels built in 1904 under the Supreme Court and House and Senate Office Buildings to improve ventilation, communication, lighting, and passenger egress upgrades.

(b) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak $3,000,000 for fiscal year 2004 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(c) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all life safety portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers if feasible.

(d) AVAILABILITY OF FUNDS. Amounts appropriated pursuant to this section shall remain available until expended.

**SEC. 407. AUTHORIZATION FOR CAPITAL AND OPERATING EXPENSES.**

(a) OPERATING EXPENSES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for operating costs the following amounts:

(1) For fiscal year 2004, $581,000,000.
(2) For fiscal year 2005, $567,000,000.
(3) For fiscal year 2006, $558,000,000.
(4) For fiscal year 2007, $529,000,000.
(5) For fiscal year 2008, $522,000,000.
(6) For fiscal year 2009, $522,000,000.

(b) CAPITAL BACKLOG AND UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital expenses, the following amounts:

(1) For fiscal year 2004, $674,000,000.
(2) For fiscal year 2005, $765,000,000.
(3) For fiscal year 2006, $733,000,000.
(4) For fiscal year 2007, $604,000,000.
(5) For fiscal year 2008, $560,000,000.
(6) For fiscal year 2009, $565,000,000.

(c) REDUCTIONS.—Amounts authorized under subsection (b) shall be reduced by amounts equal to grants provided by the Rail Infrastructure Finance Corporation under title VI of this Act upon receipt to Amtrak for capital requirements and expenditures listed in the annual budget and 5 Year Financial Plan required under section 413.

**SEC. 409. ESTABLISHMENT OF GRANT PROCESS.**

(a) GRANT REQUESTS.—Amtrak shall submit grant requests to the Secretary of Transportation for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 405, 406, and 407.

(b) PROCEDURES FOR GRANT REQUESTS.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY PROCESS.—The Secretary shall complete the review of a grant request and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request.

(2) INCOMPLETE OR DEFICIENT REQUESTS.—If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall immediately notify Amtrak of the reason for disapproval or the incomplete items or deficiencies. Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

**SEC. 409. STATE-SUPPORTED ROUTES.**

The Board of Directors of Amtrak, in consultation with the Secretary of Transportation and the chief executive officer of each State and the District of Columbia, shall develop a formula for funding the operating costs of trains operating on routes not in excess of 750 miles in length that—

(1) is equitable and fair; and

(2) ensures, within 5 years after the date of enactment of this Act, equal treatment of all States (and the District of Columbia) and groups of States (including the District of Columbia).

**SEC. 410. RE-ESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.**

(a) RE-ESTABLISHMENT OF NORTHEAST CORRIDOR SAFETY COMMITTEE.—The Secretary of Transportation shall re-establish the Northeast Corridor Safety Committee authorized by section 24905(b) of title 49, United States Code.

(b) TERMINATION DATE.—Section 24905(b)(4) is amended by striking ''January 1, 1999,'' and inserting ''January 1, 2009,''.

**SEC. 411. AMTRAK BOARD OF DIRECTORS.**

(a) IN GENERAL.—Section 24302 is amended to read as follows:

**''§ 24302. Board of directors**

''(a) COMPOSITION AND TERMS.—

''(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:

''(A) The President of Amtrak.

''(B) The Secretary of Transportation.

''(C) 7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with experience and qualifications in or directly related to rail transportation, including representatives of freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, consumers of passenger rail transportation, and State government.

''(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate and should ensure adequate and balanced representation of the major geographic regions of the United States.

''(3) An individual appointed under paragraph (1)(C) of this subsection serves for 5 years or until the individual's successor is appointed and qualified. Not more than 4 individuals appointed under paragraph (1)(C) may be members of the same political party.

''(4) The board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

''(5) The Secretary may be represented at board meetings by the Secretary's designee.

''(b) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

''(c) VACANCIES.— A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

''(d) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.''.

(b) EFFECTIVE DATE FOR DIRECTORS' PROVISION.—The amendment made by subsection (a) shall take effect on October 1, 2003. The members of the Amtrak Reform Board may continue to serve until 3 directors appointed by the President under section 24302(a) of title 49, United States Code, as amended by subsection (a), have qualified for office.

**SEC. 412. ESTABLISHMENT OF FINANCIAL ACCOUNTING SYSTEM FOR AMTRAK OPERATIONS BY INDEPENDENT AUDITOR.**

(a) IN GENERAL.—The Inspector General of the Department of Transportation shall employ an independent financial consultant with experience in railroad accounting—

(1) to assess Amtrak's financial accounting and reporting system and practices;

(2) to design and assist Amtrak in implementing a modern financial accounting and reporting system, on the basis of the assessment, that will produce accurate and timely financial information in sufficient detail—

(A) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity within each line of business activity, including train operations, equipment maintenance, ticketing, and reservations;

(B) to aggregate expenses and revenues related to infrastructure and distinguish them from expenses and revenues related to rail operations; and

(C) to provide ticketing and reservation information on a real-time basis.

(b) VERIFICATION OF SYSTEM; REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his findings and conclusions, together with any recommendations, to the Senate Committee on Commerce, Science, and Transportation and the

House of Representatives Committee on Transportation and Infrastructure.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $2,500,000 for fiscal year 2004 to carry out subsection (a), such sums to remain available until expended.

**SEC. 413. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.**

(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak board of directors shall submit an annual budget for Amtrak, and a 5-year financial plan for the fiscal year to which that budget relates and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriation Act for the fiscal year, if later.

(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for nonpassenger operations;

(4) capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as: the ability of the federal government to adequately meet capital and operating requirements, Amtrak's access to long-term and short-term capital markets, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service.

(8) lump sum expenditures of $10,000,000 or more and sources of funding.

(9) estimates of long-term and short-term debt and associated principle and interest payments (both current and anticipated);

(10) annual cash flow forecasts; and

(11) a statement describing methods of estimation and significant assumptions.

(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b) with respect to a 5-year financial plan, Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices; and

(2) use the categories specified in the financial accounting and reporting system developed under section 412 when preparing its 5-year financial plan.

(d) ASSESSMENT BY DOT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall assess the 5–year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b), and may suggest revisions to any components thereof that do not meet those requirements.

(2) ASSESSMENT TO BE FURNISHED TO THE CONGRESS.—The Inspector General shall furnish to the House of Representatives Committee on Appropriations, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation—

(A) an assessment of the annual budget within 90 days after receiving it from Amtrak; and

(B) an assessment of the remaining 4 years of the 5–year financial plan within 180 days after receiving it from Amtrak.

**SEC. 414. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.**

(a) REVIEW.—The Secretary of Transportation shall, in consultation with the Federal Railroad Administration, execute a contract to obtain the services of an independent auditor or consultant to research and define Amtrak's past and current methodologies for determining intercity passenger rail routes and services.

(b) RECOMMENDATIONS.—The independent auditor or consultant shall recommend objective methodologies for determining such routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes.

(c) SUBMITTAL TO CONGRESS.—The Secretary shall submit recommendations received under subsection (b) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be made available to the Secretary of Transportation, out of any amounts authorized by this Act to be appropriated for the benefit of Amtrak and not otherwise obligated or expended, such sums as may be necessary to carry out this section.

**SEC. 415. METRICS AND STANDARDS.**

The Administrator of the Federal Railroad Administration shall, in consultation with Amtrak and host railroads, develop new or improve existing metrics and minimum standards for measuring the service quality of intercity train operations, including on-time performance, on-board services, stations, facilities, equipment, and other services.

**SEC. 416. ON–TIME PERFORMANCE.**

Section 24308 is amended by adding at the end the following:

''(f) ON–TIME PERFORMANCE AND OTHER STANDARDS.—If the on-time performance of any intercity passenger train averages less than 80 percent for any consecutive 6–month period, or the service quality of intercity train operations for which minimum standards are established under section 415 of the Arrive 21 Act fails to meet those standards, Amtrak may petition the Surface Transportation Board to investigate whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over the tracks of which the intercity passenger train operates, or by a regional authority providing commuter service, if any. In carrying out such an investigation, the Surface Transportation Board shall obtain information from all parties involved and make recommendations regarding reasonable measures to improve the service, quality, and on-time performance of the train.''.

## TITLE V—RAIL INFRASTRUCTURE FINANCE CORPORATION

**SEC. 501. ESTABLISHMENT OF CORPORATION.**

There is established a nonprofit corporation, to be known as the ''Rail Infrastructure Finance Corporation''. The Rail Infrastructure Finance Corporation is not an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this title and title VI, and, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

**SEC. 502. BOARD OF DIRECTORS.**

(a) APPOINTMENT.—The Rail Infrastructure Finance Corporation shall have a Board of Directors consisting of 9 members appointed by the President, by and with the advice and consent of the Senate. The President shall submit all nominations for the initial Board not less than 180 days after the date of enactment of this Act. Not more than 5 members of the Board may be members of the same political party.

(b) MEMBERSHIP QUALIFICATIONS.—

(1) IN GENERAL.—The 9 members of the Board shall be appointed from among citizens of the United States (not regular full-time employees of the United States) who are eminent in the fields of rail transportation, rail financing, and intermodal transportation planning, and the financing and management of large-scale, long-term public-private cooperative projects.

(2) REPRESENTATION OF SPECIFIC INTERESTS.—Of the 9 members of the Board, 8 of the members shall be selected as follows:

(A) 1 member from among individuals who represent the interests of freight rail transportation.

(B) 1 member from among individuals who represent the interests of intermodal transportation.

(C) 1 member from among individuals who represent the interests of passenger rail transportation.

(D) 1 member from among individuals who represent the interests of the States.

(E) 1 member from among individuals who represent the interests of intercity passenger rail users.

(F) 1 member from among individuals who represent the interests of organized rail labor.

(G) 2 members from among persons who are involved in finance.

(c) INCORPORATION.—The members initially appointed to the Board of Directors shall serve as incorporators and, upon the establishment of a quorum, shall take whatever actions are necessary to establish the Corporation under the laws of Delaware.

(d) TERMS OF OFFICE.—Members of the Board shall be appointed for terms of 6 years. No member of the Board shall be eligible to serve in excess of 2 consecutive full terms.

(e) VACANCIES.—A member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of a member's term, the member shall continue to serve until a successor is appointed.

(f) ATTENDANCE REQUIRED.—Members of the Board shall attend not less than 50 percent of all duly convened meetings of the Board in any calendar year. A member who fails to meet the requirement of the preceding sentence shall forfeit membership and the President shall appoint a new member to fill the resulting vacancy not later than 90 days after such vacancy is determined by the Chairman of the Board.

(g) ELECTION OF CHAIRMAN AND VICE CHAIRMAN.—Members of the Board shall annually elect 1 of their members to be Chairman and elect 1 or more of their members as a Vice Chairman or Vice Chairmen.

(h) COMPENSATION.—The members of the Board shall not, by reason of such membership, be considered to be officers or employees of the United States. They shall, while

attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this Act, be entitled to receive compensation at the rate of $300 per day, including traveltime. No Board member shall receive compensation of more than $10,000 in any fiscal year. While away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

(i) MEETINGS OPEN TO PUBLIC.—All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as the Board may establish.

(j) QUORUM AND PROCEEDINGS.—Five members of the Board shall constitute a quorum for the Board to conduct business. All decisions of the Board shall be entered upon the records of the Board.

**SEC. 503. OFFICERS AND EMPLOYEES.**

(a) IN GENERAL.—The Rail Infrastructure Finance Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation. Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the Board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers shall serve at the pleasure of the Board. An officer of the corporation shall not be considered to be an officer or employee of the United States by virtue of such office.

(b) NONPARTISAN NATURE OF APPOINTMENTS.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, or employees of the Corporation.

**SEC. 504. NONPROFIT AND NONPOLITICAL NATURE OF THE CORPORATION.**

(a) STOCK.—The Rail Infrastructure Finance Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(b) NO PRIVATE BENEFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(c) POLITICAL ACTIVITY PROHIBITED.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(d) CONFLICTS OF INTEREST.—No director, officer, or employee of the Corporation shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she has a direct or indirect financial interest. Board members shall recuse themselves from Board decisions that directly affect either them or entities they represent regarding grants and other financial assistance provided to States by the Board.

**SEC. 505. PURPOSE AND ACTIVITIES OF CORPORATION.**

(a) PURPOSE.—The Rail Infrastructure Finance Corporation shall, through the issuance of qualified rail infrastructure bonds in accordance with section 54 of the Internal Revenue Code of 1986 and this title, provide financial support for rail transportation capital projects under title VI of this Act.

(b) BOND ISSUANCE AUTHORITY.—

(1) IN GENERAL.—In order to carry out its purposes, the Corporation is authorized to issue qualified rail infrastructure bonds (as defined in section 54(e) of the Internal Revenue Code of 1986) during the 6–year period beginning on the day after the date of enactment of this Act.

(2) LIMITATION.—The total face amount of the bonds outstanding under paragraph (1) at any time may not exceed $30,000,000,000.

(3) NO FEDERAL GUARANTEE.—

(A) OBLIGATIONS INSURED BY THE CORPORATION.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the full faith and credit of the United States.

(B) SPECIAL RULE.—This paragraph shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

(C) SECURITIES OFFERED BY THE CORPORATION.—No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(4) AUTHORITY.—To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

(c) FEDERAL ASSISTANCE.—The Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purpose set forth in subsection (a) and the activities described in subsection (b).

(d) STATUS UNDER FEDERAL SECURITIES LAWS.—

(1) IN GENERAL.—For purposes of the Securities Act of 1933, the Securities Exchange Act of 1934 or the Trust Indenture Act of 1939, the Rail Infrastructure Finance Corporation shall not be considered an agency or instrumentality of the United States or any State or Territory thereof nor an entity described in section 3(a)(4) of the Securities Act of 1933 and shall not be entitled to rely on any exemption from those laws. Any security offered or sold or guaranteed by the Rail Infrastructure Finance Corporation may not be offered or sold in reliance on any exemption from registration under the Securities Act of 1933, unless exempted by rule or regulation of the Securities and Exchange Commission. For so long as the Rail Infrastructure Finance Corporation has any securities outstanding, it may not rely on the rules promulgated under the Securities Exchange Act of 1934 to voluntarily terminate or suspend the Rail Infrastructure Finance Corporation's obligations to comply with the reporting requirements of the Securities Exchange Act of 1934 with regard to any of its outstanding securities and the provisions of section 15(d)(6) of the Securities Exchange Act of 1934 shall not apply to the Rail Infrastructure Finance Corporation, unless exempted by rule, regulation, or order of the Securities and Exchange Commission.

(2) RELATIONSHIP TO FEDERAL SECURITIES LAWS.—Except as provided in paragraph (1), no provision of this section or any regulation issued by any other Federal agency shall supercede or otherwise affect the application of the Federal securities laws (as such term is defined in section 2(a)(47) of the Securities Exchange Act of 1934) or the rules, regulations, or orders of the Securities and Exchange Commission promulgated under those laws.

**SEC. 506. REPORT TO CONGRESS.**

(a) IN GENERAL.—On or before May 15 of each year, the Rail Infrastructure Finance Corporation shall submit an annual report for the fiscal year ending on September 30 of the preceding year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this title and such recommendations as the Corporation deems appropriate.

(b) AVAILABILITY FOR TESTIMONY.—The officers and directors of the Corporation shall be available to testify before those committees with respect to such report or any other matter which such committees may determine.

**SEC. 507. ADMINISTRATIVE MATTERS.**

(a) BUDGET.—The Rail Infrastructure Finance Corporation shall establish an annual budget for the Corporation, including the Rail Infrastructure Investment Account under subsection (c).

(b) IMPLEMENTATION PLAN.—

(1) REQUIREMENT FOR PLAN.—The Corporation shall conduct a study and prepare a plan on how the Corporation can best achieve the purposes and fulfill the requirements of this title.

(2) CONSULTATION.—In preparing the plan, the Corporation may consult with representatives of State and local governments, railroads, and other similar entities.

(3) OTHER REQUIREMENTS.—The plan, which shall be based on the conclusions resulting from the study conducted under paragraph (1), shall be submitted by the Corporation to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure not later than 180 days after the date on which the Corporation is incorporated. Unless directed otherwise by law, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.

(c) RAIL INFRASTRUCTURE INVESTMENT ACCOUNT.—

(1) ESTABLISHMENT.—The Board of Directors for the Corporation shall establish an account to be known as the Rail Infrastructure Investment Account.

(2) DEPOSIT OF BOND PROCEEDS.—The Corporation shall deposit the proceeds of sales of any bonds issued under section 54 of the Internal Revenue Code of 1986 into the Account.

(3) DEPOSIT OF NON-FEDERAL CONTRIBUTIONS.—The Board shall deposit all non-Federal contributions received into the Account.

(4) DISBURSEMENTS.—The Board may make available and may disburse, during the first fiscal year beginning after the date of enactment of this Act and during each succeeding fiscal year thereafter, such funds as may be available for obligation and expenditure from the Account.

(5) USE OF ACCOUNT FUNDS.—Funds in the Account—

(A) shall be used by the Corporation for investment purposes through the trust established under section 508 to generate an amount sufficient—

(i) to repay the principal of the bonds at their maturity; and

(ii) to pay the administrative costs of the Corporation and the Rail Infrastructure Finance Trust under section 508; and

(B) shall, to the extent of the net spendable proceeds in the account, be held in the Rail Infrastructure Finance Trust established under section 508 and be available for distribution as grants of financial assistance under title VI of this Act.

(6) NET SPENDABLE PROCEEDS DEFINED.—In this subsection, the term ''net spendable proceeds'', with respect to the Rail Infrastructure Investment Account, means the amount, determined by the Board of Trustees of the Rail Infrastructure Finance Trust, equal to the excess of—

(A) the total amount in such Account, over

(B) the amount in such Account that is needed for uses under paragraph (5)(A).

(d) RECORDS AND AUDIT.—

(1) IN GENERAL.—The account of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons.

(2) AUDIT REPORT.—The report of each such independent audit shall be included in the annual report required by section 506. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements.

(3) ACCOUNTING PRINCIPLES.—Not later than 1 year after the date of the enactment of this Act, the Corporation shall develop accounting principles which shall be used uniformly by all entities receiving funds under this Act, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for purposes of this Act by such entities.

(4) REQUIREMENTS FOR RECIPIENTS.—Each entity receiving funds under this Act shall—

(A) keep its books, records, and accounts in such form as may be required by the Corporation;

(B) either—

(i) undergo an annual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation; or

(ii) submit a financial statement in lieu of the audit required by subparagraph (A) if the Corporation determines that the cost burden of such audit on such entity is excessive in light of the financial condition of such entity; and

(C) furnish biennially to the Corporation a copy of the audit report required pursuant to the subparagraph (B), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(5) ADDITIONAL RECORDKEEPING.—Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, that total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the projects or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) ACCESS TO RECORDS.—The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and, examining all funds received from the Corporation.

(7) PUBLIC INSPECTION.—The Corporation shall maintain the information described in paragraphs (4), (5), and (6) at its offices for public inspection and copying for at least 3 years, according to such reasonable guidelines as the Corporation may issue. This public file shall be updated regularly.

**SEC. 508. RAIL. INFRASTRUCTURE FINANCE TRUST.**

(a) ESTABLISHMENT.—The Board of Directors of the Rail Infrastructure Finance Corporation shall establish the Rail Infrastructure Finance Trust (hereafter in this section referred to as the ''Trust'') as a trust domiciled in the State of Delaware before the issuance of bonds under section 505(b). The Trust shall, to the extent not inconsistent with this Act, be subject to the laws of the State of Delaware that are applicable to trusts. The Trust shall manage and invest the assets of the Rail Infrastructure Account described in section 507(c) that are transferred to it by the Board in the manner set forth in this section.

(b) NOT A FEDERAL AGENCY OR INSTRUMENTALITY.—The Trust is not a department, agency, or other instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.

(c) BOARD OF TRUSTEES.—

(1) ESTABLISHMENT.—The Trust shall have a Board of Trustees.

(2) COMPOSITION.—

(A) APPOINTMENT.—The Board of Trustees shall consist of 5 members (hereafter in this title referred to as ''Trustees'') 3 of whom shall be appointed by a unanimous vote of the Board of Directors of the Rail Infrastructure Finance Corporation.

(B) REPRESENTATION OF PARTICULAR INTERESTS.—The 3 members of the Board of Trustees shall be selected as follows:

(i) 1 from among persons who represent the interests of the States.

(ii) 1 from among persons who represent the interests of freight and passenger railroads.

(iii) 1 from among persons who represent the interests of holders of qualified rail infrastructure bonds issued by the Rail Infrastructure Corporation.

(C) The 2 Trustees not appointed under subparagraph (A) shall be elected directly by holders of qualified rail infrastructure bonds issued by the Rail Infrastructure Corporation through procedures established by the Board of Trustees to represent the interests of such bond holders. The election shall be held, and both members elected under this subparagraph shall take office as Trustees, within 1 year after the initial issuance of bonds under section 505(b).

(3) MEMBERS NOT UNITED STATES OFFICIALS.—The members of the Board of Trustees may not be considered officers or employees of the Government of the United States.

(4) QUALIFICATIONS.—The Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments. No member of the Board of Directors of the Rail Infrastructure Finance Corporation is eligible to be a Trustee.

(5) TERMS.—Each member of the Board of Trustees shall be appointed for a 3–year term. Any member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the member whose departure caused the vacancy. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) POWERS.—The Board of Trustees shall—

(1) establish investment policies, including guidelines, and retain independent advisers to assist in the formulation and adoption of the investment guidelines;

(2) retain independent investment managers to invest the assets of the Trust in a manner consistent with such investment guidelines;

(3) invest assets in the Trust, pursuant to the policies adopted in paragraph (1);

(4) pay administrative expenses of the Trust from the assets in the Trust;

(5) transfer money to the Rail Infrastructure Investment Account, upon request of the Board of Directors of the Rail Infrastructure Finance Corporation, for bond repayment and administrative expenses; and

(6) develop a formula, subject to approval by the Board of Directors before the issuance of bonds under section 505(b), for determining when there is a sufficient trust income stream for purposes of paragraph (7); and

(7) transfer net spendable proceeds to the Board of Directors to be used for grants under title VI of this Act after determining that adequate trust funds are available, or that there is a trust income stream sufficient, to allow the Board of Trustees to meet its obligations under paragraphs (4) and (5).

(e) REPORTING REQUIREMENTS AND FIDUCIARY STANDARDS.—The following reporting requirements and fiduciary standards shall apply with respect to the Trust:

(1) DUTIES OF THE BOARD OF TRUSTEES.—The Trust and each member of the Board of Trustees shall discharge the duties of the Trust and the duties of the Trustee, respectively (including the voting of proxies), with respect to the assets of the Trust solely in the interests of the Rail Infrastructure Finance Corporation and the programs funded under this title—

(A) for the exclusive purposes of—

(i) providing sufficient funds to repay qualified rail infrastructure bonds issued by the Rail Infrastructure Finance Corporation,

(ii) funding the administrative costs of the Rail Infrastructure Finance Corporation;

(iii) defraying reasonable expenses of administering the Trust; and

(iv) providing grants for rail capital projects under title VI of this Act; and

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the

circumstances it is clearly prudent not to do so; and

(D) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this title.

(2) PROHIBITIONS WITH RESPECT TO MEMBERS OF THE BOARD OF TRUSTEES.—A member of the Board of Trustees may not—

(A) deal with the assets of the Trust in the Trustee's own interest or for the Trustee's own account;

(B) act in an individual or in any other capacity, in any transaction involving the assets of the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust and the Rail Infrastructure Finance Corporation; or

(C) receive any consideration for the Trustee's own personal account from any party dealing with the assets of the Trust.

(3) EXCULPATORY PROVISIONS AND INSURANCE.—Any provision in an agreement or instrument that purports to relieve a Trustee from responsibility or liability for any responsibility, obligation, or duty under this Act shall be void. Nothing in this paragraph shall be construed to preclude—

(A) the Trust from purchasing insurance for its Trustees or for itself to cover liability or losses occurring by reason of the act or omission of a Trustee, if such insurance permits recourse by the insurer against the Trustee in the case of a breach of a fiduciary obligation by such Trustee;

(B) a Trustee from purchasing insurance to cover liability under this section from and for his own account; or

(C) an employer or an employee organization from purchasing insurance to cover potential liability of 1 or more Trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

(4) TRUSTEES, BONDS.—

(A) REQUIREMENT.—Each Trustee and every person who handles funds or other property of the Trust (hereafter in this section referred to as ''Trust official'') shall be bonded. The bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others.

(B) AMOUNT.—The amount of a bond for a Trustee under this paragraph shall be fixed at the beginning of each fiscal year of the Trust by the Board of Directors of the Rail Infrastructure Finance Corporation. The amount may not be less than 10 percent of the amount of the funds administered by the Trust.

(C) UNLAWFUL CONDUCT.—It shall be unlawful for—

(i) any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust without being bonded as required by this subsection;

(ii) any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements of this subsection have not been met; and

(iii) any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(f) ADMINISTRATIVE MATTERS.—

(1) AUTHORITY.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisors (including the Rail Infrastructure Finance Corporation) to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this section. In the case of a contract for investment advisory services, compensation for such services may be provided on a fixed fee basis or on such other terms and conditions as are customary for such services.

(2) QUORUM AND PROCEEDINGS.—Three members of the Board of Trustees shall constitute a quorum for the Board to conduct business. Investment guidelines shall be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

(3) COMPENSATION OF TRUSTEES AND EMPLOYEES.—The salaries of the Trustees are subject to the limitations in section 502(h).

(4) COMPENSATION ARRANGEMENTS.—The Board of Trustees may compensate investment advisory service providers and employees of the Trust on a fixed contract fee basis or on such other terms and conditions as are customary for such services.

(5) FUNDING.—The expenses of the Trust and the Board of Trustees that are incurred under this section shall be paid from the Trust.

(g) AUDIT AND REPORT.—

(1) REQUIREMENT FOR ANNUAL AUDIT.—The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust.

(2) ANNUAL MANAGEMENT REPORT.—The Trust shall submit an annual management report to be included in the annual report of the Corporation required under section 506. The management report under this paragraph shall include the following matters:

(A) A statement of financial position.

(B) A statement of operations.

(C) A statement of cash flows.

(D) A statement on internal accounting and administrative control systems.

(E) The report resulting from an audit of the financial statements of the Trust conducted under paragraph (1).

(F) Any other comments and information necessary to inform Congress about the operations and financial condition of the Trust.

(h) ENFORCEMENT.—The Rail Infrastructure Finance Corporation may commence a civil action—

(1) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this title; or

(2) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this title.

(i) EXEMPTION FROM TAX FOR RAIL INFRASTRUCTURE FINANCE TRUST.—Subsection (c) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(29) The Rail Infrastructure Finance Trust established under section 408 of the Arrive 21 Act.''Add to Title IV where appropriate:

## TITLE VI—RAIL DEVELOPMENT GRANT PROGRAMS

### SEC. 601. INTERCITY PASSENGER RAIL DEVELOPMENT GRANT PROGRAM.

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation may, by grant, provide financial assistance to a State, a group of States, or the National Railroad Passenger Corporation for, or in connection with, 1 or more intercity passenger rail capital projects that—

(1) in accordance with section 22504(a)(5) of title 49, United States Code, are listed in a State rail plan approved for such State under chapter 225 of such title; and

(2) as determined by the Board, would primarily benefit intercity passenger rail infrastructure or services or the development of passenger rail corridors (including high-speed rail corridors designated by the Secretary under section 104(d) of title 23, United States Code) and provide significant public benefits.

(b) PURPOSES ELIGIBLE FOR GRANT FUNDING.—The purposes for which grants may be made under subsection (a) for, or in connection with, an intercity passenger rail capital project described in that subsection are as follows:

(1) Planning, including activities described in section 26101(b)(1) of title 49, United States Code, and environmental impact studies.

(2) New rail line development, including right of way and infrastructure acquisition and construction of track and facilities.

(3) Track upgrades and restoration.

(4) Highway-rail grade crossing improvement or elimination.

(5) Track, infrastructure, and facility relocation.

(6) Acquisition, financing, or refinancing of locomotives and rolling stock.

(7) Intermodal and station facilities.

(8) Tunnel and bridge repair or replacement.

(9) Communications and signaling improvements.

(10) Environmental impact mitigation.

(11) Security improvements.

(12) Supplemental funding for direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.).

(13) Payment of credit risk premiums, to lower rates of interest, or to provide for a holiday on principal payments on loan or financing directly associated with rail capital projects described in paragraphs (1) through (11).

(c) PROJECT SELECTION CRITERIA.—The Board, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require that each proposed project meet all safety requirements that are applicable to the project under law, and give a preference to any project determined by the Board as having provided for particularly high levels of safety;

(2) give preference to projects with high levels of estimated ridership, increased ontime performance, reduced trip time, additional service frequency, or other significant service enhancements as measured against minimum standards developed under section 415 of this Act;

(3) encourage intermodal connectivity through projects that provide direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(4) ensure a general balance across geographic regions of the United States in providing such assistance and avoid a concentration of a disproportionate amount of such financial assistance in a single project, State, or region of the country;

(5) encourage projects that also improve freight or commuter rail operations;

(6) ensure that each project is compatible with, and is operated in conformance with—

(A) plans developed pursuant to the requirements of sections 135 of title 23, United States Code;

(B) State rail plans under chapter 225 of title 49, United States Code; and

(C) the national rail plan (if it is available); and

(8) favor the following kinds of projects:

(A) Projects that are expected to have a significant favorable impact on air or highway traffic congestion, capacity, or safety.

(B) Projects that have significant environmental benefits.

(C) Projects that are—

(i) at a stage of preparation that all precommencement compliance with environmental protection requirements has already been completed; and

(ii) ready to be commenced.

(D) Projects with positive economic and employment impacts.

(E) Projects that encourage the use of positive train control technologies.

(F) Projects that have commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required for the project.

(G) Projects that involve donated property interests or services.

(H) Projects that enhance national security.

(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on an approved State rail plan's ranked list of priority freight and passenger rail capital projects developed under section 22504(a)(5) of title 49, United States Code, or may submit an independent application for a grant for any eligible project under this section. Any such independent grant request shall be subject to the same selection criteria as apply under subsection (b) to projects of States, except the criteria set forth in subsection (a) (1) and subparagraphs (A) and (B) of subsection (b)(12).

(e) LIMITATIONS.—

(1) 2-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the purposes described in subsection (a) or (b) within 2 years after the date on which the State or Corporation received the grant, such sums shall be returned to the Board for other intercity passenger rail development projects under this section at the discretion of the Board.

(2) SINGLE PROJECT AMOUNT.—In awarding grants to States or the National Railroad Passenger Corporation for eligible projects under this section, the Board shall limit the amount of any grant made for a particular project in a fiscal year to not more than 30 percent of the total amount of the funds available for grants under this section for that fiscal year.

(3) AMTRAK.—The total amount of grants made under this section solely to the National Railroad Passenger Corporation in a fiscal year may not exceed 50 percent of the total amount available under this section for all grants in that fiscal year.

(f) FUNDING.—Amounts reserved for grants for a fiscal year under section 606(b)(1) shall be available for grants under this section.

(e) PUBLIC BENEFIT.—The term ''public benefit'' means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary.

**SEC. 602. FREIGHT RAIL INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM.**

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation shall, by grant, provide financial assistance to a State or group of States—

(1) for, or in connection with, 1 or more freight rail capital projects that—

(A) in accordance with section 22504(a)(5) of title 49, United States Code, are listed in a State rail plan approved for such State under chapter 225 of such title; and

(B) as determined by the Board, would primarily benefit freight rail transportation infrastructure or services, but also would provide significant public benefits; or

(2) for the payment of staff expenses associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code.

(b) PURPOSES ELIGIBLE FOR GRANT FUNDING.—The purposes for which grants may be made under subsection (a)(1) for, or in connection with, a freight rail capital project are as follows:

(1) Planning, including activities described in section 26101(b)(1) of title 49, United States Code, and environmental impact studies.

(2) New rail line development, including infrastructure acquisition and construction of track and facilities.

(3) Track upgrades and restoration.

(4) Highway-rail grade crossing improvement or elimination.

(5) Track, infrastructure, and facility relocation.

(6) Intermodal facilities.

(7) Tunnel and bridge repair or replacement.

(8) Communications and signaling improvements.

(9) Environmental impact mitigation.

(10) Security improvements.

(11) Supplemental funding for direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) for projects described in the last sentence of section 502(d) of that Act (45 U.S.C. 822(d)).

(12) Payment of credit risk premiums, to lower rates of interest, or to provide for a holiday on principal payments on loan or financing directly associated with capital projects described paragraphs (1) through (9).

(c) STATE GRANT FUNDING FORMULA.—Of the total amount reserved for a grant program under section 606(b)(2) for a fiscal year, there shall be reserved for each State (to fund grants made to such State under this section) the amount determined for such State in accordance with a formula prescribed by the Board to weigh equally for each State—

(1) the number of rail miles in active use in the State;

(2) the number of rail cars loaded in the State;

(3) the number of rail cars unloaded in the State; and

(4) the number of railroad and public road grade crossings in the State.

(d) PERIOD OF AVAILABILITY FOR GRANTS.—

(1) THREE-YEAR RESERVATION.—The amount reserved for grant to a State under section (c) in a fiscal year shall be available for grant to such State in such fiscal year and the 2 successive fiscal years.

(2) CANCELLATION AT END OF PERIOD.—At the end of the third of the 3 successive fiscal years, the reservation of any part of the amount for a State that has not been awarded in a grant to such State shall be canceled, and the amount of the canceled reservation—

(A) shall be merged with the funds reserved for the grant program under section 606(b)(2) for the next fiscal year; and

(B) shall be reserved for each State in accordance with the formula provided under this section.

(e) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State under this section is not obligated or expended for the purposes described in subsection (a) or (b) within 2 years after the date on which the State received the grant, such sums shall be returned to the Board for other freight rail capital projects under this section at the discretion of the Board.

**SEC. 603. HIGH PRIORITY PROJECTS GRANT PROGRAM.**

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation may, by grant, provide financial assistance to a State, a group of States, or the National Railroad Passenger Corporation for intercity passenger rail and freight rail infrastructure development projects that are designated as high priority projects under section 22505 of title 49, United States Code.

(b) PURPOSES.—The purposes for which a grant may be made under this section are—

(1) in the case of an intercity passenger rail corridor development project, the same purposes as are provided under section 601; and

(2) in the case of a freight rail infrastructure development project, the same purposes as are provided under section 602.

(c) PREFERRED PROJECTS.—In selecting the projects to receive financial assistance under this section, the Board shall give preference to a project that—

(1) provides for use of positive train control technologies;

(2) provides for particularly high levels of safety;

(3) increases intermodal connectivity by providing or improving direct connections between rail facilities and other modes of transportation;

(4) assists the Board—

(A) to achieve a general balance across geographic regions of the United States in the awarding of grants under this section; and

(B) to avoid a concentration of a disproportionate amount of such financial assistance in a single project, State, or region of the country;

(5) has a significant favorable impact on highway, aviation, or maritime capacity, congestion, or safety;

(6) improves the national intercity passenger rail system through higher levels of estimated ridership, reduced trip time, increased ontime performance, additional service frequency, or other significant service enhancements as measured against minimum standards developed under section 415 of this Act;

(7) has positive economic and employment impacts;

(8) has significant environmental benefits;

(9) is—

(A) at the stage of preparation that all precommencement compliance with environmental protection requirements has been completed; and

(B) ready to be commenced;

(10) has received financial commitments and other support from non-Federal entities such as States, local governments, and private entities;

(11) has commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required; and

(12) involves donated property interests or services.

(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may submit an independent application or may enter into a cooperative agreement with 1 or more States to carry out 1 or more high priority projects designated under section 22506 of title 49, United States Code. Any such independent grant request shall be subject to the same conditions as apply under this section to projects of States.

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under

this section is not obligated or expended for the purposes for which the grant is made within 2 years after the date on which the State or the National Railroad Passenger Corporation received the grant, such sums shall be returned to the Board for other high priority projects under this section at the discretion of the Board.

(2) SINGLE PROJECT AMOUNT.—In awarding grants to States for eligible projects under this section, the Board shall limit the amount of any grant made for a particular project in a fiscal year to not more than 30 percent of the total amount of the funds available for grants under this section for that fiscal year.

(f) FUNDING.—Amounts reserved for grants for a fiscal year under section 606(b)(3) shall be available for grants under this section.

**SEC. 604. GRANT PROGRAM REQUIREMENTS AND LIMITATIONS.**

(a) AUTHORIZED USES.—The proceeds of a grant made for a project under this title may be used to defray the costs of the project or to reimburse the recipient for costs of the project paid by the recipient.

(b) NON-FEDERAL CONTRIBUTION.—The proceeds of a grant under this title may be released upon receipt by the Board of Directors of the Rail Infrastructure Finance Corporation of cash payment by a non-Federal Government source, or 1 or more such sources jointly, in an amount not less than the amount equal to 20 percent of the amount of the grant disbursed. The cash payment may not be derived, directly or indirectly, from Federal funds. Amounts received under this subsection shall be credited to the Rail Infrastructure Investment Account established under section 507(e).

(c) PREFERENCE INVOLVING DONATED PROPERTY INTERESTS AND SERVICES.—In selecting projects for grant funding under this title, the Board may give preference to projects that involve donated right-of-way, property, or in-kind services by a public sector or private sector entity. The value of a donation under this subsection may not be counted toward satisfaction of the requirement in subsection (b).

(d) FLEXIBILITY.—Notwithstanding any other provision of this title, amounts made available under section 506 may be combined and used for projects that significantly benefit either freight rail service, intercity passenger rail service, or both.

(e) SUBALLOCATION; PUBLIC-PRIVATE PARTNERSHIPS.—

(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this title.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Board.

(3) SUB-ALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

(f) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Board shall allocate an appropriate portion of the amounts available under section 601 or 602 to provide appropriate transportation-related assistance in any State in which the rail transportation system—

''(1) is not physically connected to rail systems in the continental United States; and

''(2) may not otherwise qualify for assistance under section 601 or 602 due to the constraints imposed on the railway infrastructure in that State due to the unique characteristics of the geography of that State or other relevant considerations, as determined by the Board.

(g) APPLICATIONS.—To seek a grant under this title, a State or, in the case of a grant under section 601 or 603, the National Railroad Passenger Corporation shall submit an application for the grant to the Board. The application shall be submitted at such time and contain such information as the Board requires.

(h) PROCEDURES FOR GRANT AWARD.—The Board shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the applicant and the Board. The Board shall issue a final rule establishing the procedures not later than 90 days after the date on which a sufficient number of the members of Board to constitute a quorum has taken office.

(i) DOMESTIC BUYING PREFERENCE.—

(1) REQUIREMENT.—

(A) IN GENERAL.—In carrying out a project funded in whole or in part with a grant under this title, the grant recipient shall purchase only—

(i) unmanufactured articles, material, and supplies mined or produced in the United States; or

(ii) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

(B) DE MINIMIS AMOUNT.—Subparagraph (1) applies only to a purchase in an total amount that is not less than $1,000,000.

(2) EXEMPTIONS.—On application of a recipient, the Board may exempt a recipient from the requirements of this subsection if the Board decides that, for particular articles, material, or supplies—

(A) such requirements are inconsistent with the public interest;

(B) the cost of imposing the requirements is unreasonable; or

(C) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality.

(3) UNITED STATES DEFINED.—In this subsection, the term ''the United States'' means the States, territories, and possessions of the United States and the District of Columbia.

**SEC. 605. STANDARDS AND CONDITIONS.**

(a) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that con ducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this title

(1) shall be considered an employer for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) shall be considered a carrier for purposes of the Railway Labor Act (43 U.S.C. 151 et seq.).

(b) GRANT CONDITIONS.—The Board of Directors of the Rail Infrastructure Finance Corporation shall require as a condition of making any grant under this title that includes the improvement or use of rights-of-way owned by a railroad that—

(1) a written agreement exist between the applicant and the railroad regarding such use and owner ship, including—

(A) any compensation for such use;

(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; and

(C) an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

(2) the applicant agrees to comply with—

(A) the standards of section 24312 of title 49, United States Code, as such section was in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by the Rail Infrastructure Finance Corporation.

(c) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act on a project funded in whole or in part by grants made under this title and replaces intercity rail passenger service that was provided by another entity as of such date shall enter into an agreement with the authorized bargaining agent or agents for employees of the predecessor provider that—

(A) gives each qualified employee of the predecessor provider priority in hiring according to the employee's seniority on the predecessor provider for each position with the replacing entity that is in the employee's craft or class and is available within 3 years after the termination of the service being replaced;

(B) establishes a procedure for notifying such an employee of such positions;

(C) establishes a procedure for such an employee to apply for such positions; and

(D) establishes rates of pay, rules, and working conditions.

(2) IMMEDIATE REPLACEMENT SERVICE.—

(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters

set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

(d) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.—Nothing in this section applies to—

(1) commuter rail passenger transportation (as defined in section 24102(4) of title 49, United States Code) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of that title) eligible to receive financial assistance under section 5307 of that title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined); or

(2) the Alaska Railroad or its contractors.

(3) The National Railroad Passenger Corporation's access rights to railroad rights of way and facilities under current law for projects funded under this title where train operating speeds do not exceed 79 miles per hour.

**SEC. 606. GRANT PROGRAM FUNDING.**

(a) ANNUAL RESERVATION OF FUNDS.—Each fiscal year, the Board of directors of the Rail Infrastructure Finance Corporation Board shall reserve for grants under each of the grant programs authorized under sections 501, 502, and 503 the amount determined by multiplying the percent applicable to the program under subsection (b) times the amount of the net spendable proceeds (as defined under section 507(c)(7)) that is available for such fiscal year.

(b) APPLICABLE PERCENT.—The percent applicable to a grant program under subsection (a) is as follows:

(1) INTERCITY PASSENGER RAIL DEVELOPMENT GRANT PROGRAM.—For the intercity passenger rail development grant program under section 601, 40 percent.

(2) FREIGHT INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM.—For the freight infrastructure development grant program under section 602, 40 percent.

(4) HIGH PRIORITY PROJECTS GRANT PROGRAM.—For the high priority projects grant program under section 603, 20 percent.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

**SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated $5,000,000 for fiscal year 2004 for the establishment and payment of initial administrative costs of the Rail Infrastructure Finance Corporation, including the Rail Infrastructure Finance Trust.

Mr. CARPER. Mr. President, I rise today to join Senators HOLLINGS, COLLINS, SPECTER, JEFFORDS and LAUTENBERG in introducing ''ARRIVE 21,'' the American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century. ARRIVE 21 is a comprehensive proposal that creates a new public/private partnership to fund rail infrastructure development, reauthorizes and improves Amtrak, and enhances Federal and State rail policy and planning efforts.

As our Nation faces a mobility crisis of staggering proportions, with freight movements expected to double and our highways and airways already overburdened with congestion, ARRIVE 21 will give our States a new and powerful tool to unlock the potential of intercity passenger rail, bringing high-speed rail to viable corridors across the country while providing capital funding for freight rail projects that deliver public benefits. Today's passenger and freight railroads are already essential components of our surface transportation system and I believe that greater use of rail offers one of the best opportunities to augment the capacity of our existing transportation network, while benefiting the environment and reducing our dependency on foreign oil.

Historically, railroads have been built, maintained and operated outside of the publicly funded programs that finance our other transportation modes, relying almost exclusively on the private sector to fund their infrastructure. However, today's railroads face restricted access to capital and capacity constraints that limit service quality and expansion, all the while facing ever-growing modal competition financed by federally funded trust funds. If rail is to remain viable or increase its share of the intercity passenger and freight markets—necessary developments if we are to reach other transportation and public policy goals including highway infrastructure preservation, highway and air congestion relief, energy efficiency, environmental stewardship and smart growth development—then the pubic sector, through arm's length voluntary partnerships with private railroads, must play a more active role in financing the development of freight and passenger rail infrastructure, as it has with all other modes.

Today, America's freight railroads carry 16 percent of the nation's freight by tonnage and intercity passenger rail carriers roughly 23 million passenger annually. But, the ability of our passenger and freight rail systems to generate the sufficient investment capital needed to maintain this market share, or expand it to handle the expected increases in passenger and freight traffic over the next 20 years, is limited or in jeopardy. According to the America Association of State Highway and Transportation Officials' (ASSHTO) ''Freight Rail Bottom Line Report,'' the nation's freight railroads will need an additional $2.65 billion of public sector annual capital investment over the next 20 years above and beyond what they can finance themselves just to maintain their current share of the freight tonnage.

Without this additional investment, freight traffic is likely to shift from rail to our highways, resulting in an additional 450 million tons of freight and 15 billion truck VMT (Vehicle Miles Traveled) on our roads and $162 billion in increased shipper costs, $238 billion in increased highway user costs, and approximately $20 billion in direct additional highway infrastructure costs. Alternatively, ASSHTO has concluded that with a public investment of $4 billion annually in freight rail infrastructure over the next 20 years, freight rail's tonnage share would increase 1 percentage point to 17 percent. This shift would thereby relieve our highways of an estimated 600 million tons of freight traffic and 25 billion VMT, while saving shippers $239 billion and highways users $397 billion, and reducing direct highway infrastructure costs by $17 billion.

For intercity passenger rail, ASSHTO similarly concludes that roughly $3 billion in annual public sector investment over the next 20 years is needed to expand intercity passenger rail services and advance the many viable high speed rail corridors that could reduce highway and aviation congestion. The Texas Transportation Institute's ''2003 Urban Mobility Report,'' which looks at transportation mobility in 75 cities of varying sizes, concludes that the average annual transportation delay time per person climbed from ''16 hours in 1982 to 60 hours in 2001'' due to the congestion of our surface system.

High-quality and high-speed intercity passenger service, especially in intercity corridors of 500 miles or less where rail can offer competitive trip times, offers a tremendous opportunity to relieve such congestion by shifting travelers who current drive and fly onto trains. Today, roughly 80 percent off all trips of more than 100 miles are less than 500 miles in length. Successful rail corridors in California, the Pacific Northwest, and in the Northeast have shown that rail can be viable option for travelers in such markets, capturing significant market share and in same cases becoming the dominate mode when frequent and high-quality service

is offered. Where intercity passenger rail is successful, congestion in our airports and on our highways is reduced, smart development is induced, jobs are created and citizens' safety and quality of life are improved.

Theses facts lead to the obvious conclusion that leveraging modest public investment in our rail system will reap benefits to our entire surface transportation system and to our Nation as a whole. In my State of Delaware, we have clearly seen the value that high-quality passenger and freight rail service brings and we have made significant investments to upgrade both Amtrak facilities and infrastructure and enhance freight capacity for the railroads that serve Delaware industries. But despite of all the good reasons to invest in our railroad infrastructure, Delaware and other States are limited in what they can do on there own without the benefit of the financing partnership that our Federal Government provides the State for all other transportation investments. ARRIVE 21 is designed to change that.

ARRIVE 21 will empower our States to make rational investments in our rail system when such investments provide significant pubic benefits. Through the creation of the Rail Infrastructure Finance Corporation (RIFCO) a non-profit, non-Federal, congressionally-chartered corporation that can issue $30 billion in tax-credit bonds over 6 years, States will have a new partner to assist them in undertaking rail capital projects. RIFCO will award, using a portion of the proceeds from the bond issuance, discretionary capital matching grants to States and Amtrak for high-speed rail and intercity passenger rail projects and State formula matching grants for freight capital projects. Prior to issuing grants, a portion of the bond proceeds will be deposited in a secure and continually monitored repayment fund managed by the RIFCO investment trust to retire the debt over the life of the bonds.

Passenger and freight rail projects eligible for funding through RIFCO include planning and environmental review, rail line rehabilitation, upgrades and development, safety and security projects, passenger equipment acquisition, station improvements, and intermodal facilities development. In order to receive grants, States must prepare a State rail plan and provide a 20 percent non-Federal match to RIFCO, thereby replicating the cost sharing relationship our States currently have for investments in other modes.

ARRIVE 21 will promote jobs and economic growth through the rehabilitation and expansion of rail infrastructure, the manufacture and procurement of new rail equipment and the enhancement of mobility and development in and around or cities and towns. Our bill provides a total $42 billion investment in U.S. rail infrastructure and service to expand high-speed passenger rail in congested corridors, strengthen Amtrak, and improve freight mobility. Such investment will revitalize the U.S. rail supply industry and create thousands of jobs. According to U.S. Transportation Secretary Mineta, every $1 billion invested in transportation infrastructure creates roughly 47,500 jobs. That means ARRIVE 21 stands to create roughly 2 million jobs, if enacted.

ARRIVE 21 reauthorizes and reforms Amtrak. Designed to improve upon Amtrak's current congressional and State funding processes, our bill authorizes approximately $1.5 billion annually for 6 years to Amtrak for the basic capital and operating needs required to run and maintain the current system. In addition to these funds, the States and Amtrak can pursue major capital improvements and equipment acquisition through RIFCO, with reductions in Amtrak's capital authorizations for projects funded through RIFCO capital grants. Through this process, the amount needed for annual Amtrak appropriation for capital will be reduced over the life of the reauthorization, as RIFCO begins to finance a growing share of Amtrak's capital needs. As is the case today, operating costs on long distance trains will be covered by Amtrak's annual appropriation, while States will share the costs with Amtrak for operations of short distance corridors.

For such shot distance corridors, ARRIVE 21 infuse fairness into the current system by requiring parity between Amtrak and all States for cost sharing, putting an end to disparate treatment among the States that contract with Amtrak to provide corridor service. Furthermore, it authorizes a study of new methodologies to determine Amtrak routes and services while defining the national passenger rail system based on existing service and high-speed rail corridors. ARRIVE 21 also requires a whole host of new reforms including accounting transparency measures, the establishment of a quarterly grant process for Amtrak through the U.S. Department of Transportation to ensure accountability, and the creation of new service metrics that will improve the monitoring and quantification of Amtrak service performance and quality.

ARRIVE 21 helps to coordinate rail-planning efforts across the U.S. at the national and State level and increases the Federal Railroad Administration's advocacy role in promoting a safe, secure, efficient, environmentally sound rail transportation system nationwide. The bill directs the Federal Government to develop a national rail plan in coordination with State rail plans and creates a rail cooperative research program through the National Academies of Sciences. It also authorizes additional funds for planning of high-speed rail projects through the U.S. Secretary of Transportation and addresses rail safety needs by authorizing funding for emergency passenger safety improvement projects. In light of the security risks facing our railroads, ARRIVE 21 authorizes $515 million in 2004 for rail security threat assessments and grants through the Department of Homeland Security.

In total, ARRIVE 21 provides the needed funding for the more than $5 billion annual shortfall in U.S. rail infrastructure investment cited by AASHTO Bottom Line Report without involving the Highway Trust Fund or sapping funds away from other important transportation priorities. This bill will provide our States and the Nation with a fiscally responsible and innovative opportunity to enhance our entire transportation system. We owe it to the American people to support this bill and move towards the type of high-quality, high-speed intercity passenger rail service that Americans desire and deserve, while meeting the ever-growing demands that trade and our economy are placing on our freight system. I ask my colleagues to join me in supporting ARRIVE 21.

Mr. JEFFORDS. Mr. President, I have frequently reiterated my conviction that investment in transportation is a means to an end. Our national transportation policy must be designed to serve the public good. In my view, the outcomes we seek are a strong economy, safe and healthy communities, and a clean environment. A balanced transportation system, including a strong freight and passenger rail system, is necessary for us to attain these goals.

As ranking member of the Committee on Environment and Public Works, I have been highly involved in the Senate's effort to reauthorize the nation's surface transportation program. Over the past two years, I have traveled around the country, visiting local examples of national transportation challenges. I have heard critiques and suggestions from dozens of transportation officials, users, and advocates.

In order to best serve the needs of this country, we must redouble our investment in an efficient, intermodal transportation system. I have often expressed my view that the success of our surface transportation program rests on four fundamental 'pillars':

First, asset management. We must maintain and preserve existing infrastructure. Second, we must enhance access and mobility, particularly for Americans living in our most congested urban areas.

The third pillar is freight and trade. We need new and improved facilities to accommodate the quantity of goods moving through our system.

Fourth, I believe that rail is the final component of a successful surface transportation system. We are not currently meeting the nation's freight and passenger rail needs. We must invest in a modern national rail system, comparable to our highway and aviation systems. The bill that we are introducing today will help us achieve that goal.

The American Railroad Revitalization, Investment, and Enhancement

Act of the 21st Century (ARRIVE 21) strives to provide sustainable, meaningful, and continuous funding opportunities for states that want to improve and expand their rail systems. Currently, the federal government provides few funding sources to assist states in their efforts to maintain and improve freight and passenger rail service. This bill creates a nonprofit, public-private partnership—the Rail Infrastructure Finance Corporation (RIFCO)—with the authority to issue $30 billion in tax-credit bonds over six years. With the resulting revenue, RIFCO will award capital grants to states and to Amtrak.

My State of Vermont has long displayed a commitment to maintaining an effective and efficient freight and passenger rail system. This legislation would provide Vermont a significant new source of revenue to fund capital projects such as rail line rehabilitation, safety and security projects, and development of intermodal facilities. In fact, grants awarded by RIFCO could be used to reimburse States for the capital investments they've already made, a provision that is particularly helpful to States, like Vermont, that have invested State money into eligible projects.

For Amtrak, this legislation introduces financial and policy commitments to dramatically improve passenger rail service in this country. We envision a future that includes a healthy and efficient passenger rail system and provide the resources to move Amtrak in that direction.

ARRIVE 21 authorizes approximately $1.5 billion per year, for six years, for capital and operating expenses. We have under-funded Amtrak for too long. This funding level will provide Amtrak the resources it needs to address urgent infrastructure needs and system-wide service improvements.

Amtrak will also benefit from provisions in this bill that encourage long-term sustainability and enhanced operations. ARRIVE 21 requires improved accounting procedures and oversight. Additionally, states that currently share responsibility with Amtrak for supporting services through or within their states will see changes to equalize their cost burden. This bill requires that Amtrak, in collaboration with the Department of Transportation, adopt fair and uniform standards for cost sharing on short-distance services that states contract with Amtrak to provide.

ARRIVE 21 also directs an independent study to research Amtrak's current and past procedures for determining intercity passenger rail routes and services. The study will recommend changes to that process to improve the efficiency, accessibility, and effectiveness of our national rail service.

I have long been a strong advocate for rail. I firmly believe that nationwide investment in freight and passenger rail infrastructure will invite rewards in the form of reduced congestion, improved environmental quality, and improved mobility options for our nation's travelers. ARRIVE 21 encourages States, and the Federal Government, to more fully integrate freight and passenger rail into the surface transportation system. Improved rail planning policy, at both the Federal and State levels, will enhance the efficiency and longevity of our transportation system and will promote safe, efficient, and environmentally sound transportation options.

Mr. LAUTENBERG. Mr. President, I am proud to be a cosponsor of ARRIVE–21. I believe rail is a vital component of our national transportation system, and investment in our Nation's rail infrastructure is necessary for our economy, our security, and the effective and safe movement of people and goods in our country.

The importance of rail service became apparent in the Northeast long ago, as we dealt with the myriad transportation planning and congestion issues that many other States are now just facing. These States are joining us Northeasterners in looking to the Federal Government to provide the leadership needed to ensure that passenger rail is given the priority it deserves.

It took Federal money, not just gasoline taxes, to build the Dwight D. Eisenhower Interstate Highway System. It took Federal money to build our national aviation system.

Here in the Northeast, the first part of the country to become densely populated, we faced congestion problems long ago, and passenger rail service became a mainstay. In the Northeast, we rely heavily on Amtrak's high-speed service between Boston and Washington, D.C. The Northeast Corridor serves cities with four of the Nation's seven most congested airports: Logan, LaGuardia, Newark, and Reagan National. Amtrak carries more passengers between New York and Washington than all of the airlines combined and, unlike airline passengers, rail travelers are able to stop in Trenton and Newark, New Jersey, and in other places along the way.

Next month, New Jersey Transit will open for service a new rail station in Secaucus, NJ. As a result of this opening, more than 15,000 cars will be diverted from our roads each day by 2010. That will reduce carbon monoxide emissions by nearly 277,000 pounds each year. New Jersey riders who switch to rail because of this one station will cut their gasoline consumption by 1.3 million gallons each year.

Also, in this post-9–11 environment we have a new perspective about the national security interest in ensuring that there is more than one way to get from here to there, and this includes passenger rail. September 11 underscored just how important passenger rail is to America's economy and security.

New Jersey's economy is so dependent on passenger rail and mass transit as a result of being the most densely populated State in the Nation. New Jersey needs federal assistance for passenger rail infrastructure. But New Jersey is not alone. As metropolitan areas across the country continue to swell with people, our roads and airports become more and more congested. I think the prudence of increasing our investment in another way to move people—passenger rail—has become more and more obvious. And ARRIVE–21 provides this investment opportunity.

The benefits of rail service are not limited to urban areas. In rural towns across America, passenger trains may be the only option for intercity travel for many people.

From 1987 through 2000, I was the Chairman or Ranking Member of the Senate Appropriations Subcommittee on Transportation. During that time, I helped to secure 10.3 billion dollars in operating funds for AMTRAK and an additional 2.2 billion dollars in tax-advantaged financing for capital improvements. Unfortunately, during that time, we have not been able to make the capital investments necessary to bring Amtrak's infrastructure up to a state of good repair.

ARRIVE–21 gives the Federal Government the impetus to step up and take charge with a strong program to invest in our rail infrastructure. The States are interested, the traveling public is interested. This kind of investment will lay the tracks for the future of all Americans to have travel options, provide a national security role, and support our economy.

For these reasons, I am proud to cosponsor ARRIVE–21.

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By Mr. SPECTER (for himself and Mrs. BOXER):

S. 1963. A bill to amend the Communications Act of 1934 to protect the privacy right of subscribers to wireless communication services; to the Committee on Commerce, Science, and Transportation.

Mr. SPECTER. Mr. President, I rise today to introduce the Wireless Consumer Privacy Protection Act.

As every Senator is aware, consumers today rely on their wireless telephones as a vital and important means of communication. Wireless telephones enable families to stay connected, permit commerce to be conducted anywhere at any time, and provide a vital link in the event of an emergency. Some people have even abandoned traditional telephones and now use their wireless phones as their primary phone service. In fact, just this month, the Federal Communications Commission began requiring number portability for wireless phones so that consumers, if they wish, can make their wireless phone their only phone.

The wireless industry is on the verge of introducing a ''wireless white pages'' service, and though this step could have positive benefits, it raises concerns about how consumers' expectation of privacy will be protected. The

legislation I am introducing today along with Senator BOXER ensures that consumers expectations will be preserved.

An important reason that Americans increasingly trust their cell phone service is that they have a great deal of privacy on their cell phone numbers. For more than 20 years of cellular service, consumers have become accustomed to not having their wireless phone numbers available to the public. The protection of wireless telephone number is important. For example, wireless customers are typically charged for incoming calls. Without protections for wireless numbers, subscribers could incur large bills, or use up their allotted minutes of use, simply by receiving calls they do not want—from telemarketers and others. Because consumers often take their cell phones with them everywhere, repeated unwanted calls are particularly disruptive, and may even present safety concerns for those behind the wheel.

It may surprise my colleagues that today, no federal or state law or regulation prohibits a carrier from divulging your wireless telephone number. And with the industry poised to introduce wireless director assistance services, it is important for Congress to act now to preserve the expectation of privacy that consumers have in their wireless phone numbers. Because wireless directory assistance offer great benefits as well as posing significant privacy concerns, the legislation I am introducing today strikes an important balance. It enables those consumers who want to be reached to be accessible, while providing privacy protections that are important to consumers.

First, this legislation permits wireless subscribers to choose not to be listed in wireless directory assistance databases. This feature gives consumers the ultimate ability to keep their numbers entirely private. Second, for those in the directory assistance database, the bill requires wireless providers to use systems that give users privacy protections and control over the use of their wireless numbers. These services must not divulge a subscriber's wireless number (unless the subscriber consents to disclosure), the service must provide identifying information to the wireless subscriber so that the subscriber knows who is calling through the forwarding service, and the service must give a subscriber the option of rejecting or accepting each incoming call. Finally, this legislation prohibits wireless carriers from charging any special fees to consumers who wish to receive the privacy protections provided by the bill. Customers should not have to pay extra for the privacy protections that they have come to expect. There should be no ''privacy tax'' for consumers to continue the privacy protection they have long enjoyed, and this bill ensures that will be the case.

I urge my colleagues to join me in supporting this important legislation. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1963

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Wireless 411 Privacy Act''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) there are roughly 150 million wireless subscribers in the United States, up from approximately 15 million subscribers just a decade ago;

(2) wireless phone service has proven valuable to millions of Americans because of its mobility, and the fact that government policies have expanded opportunities for new carriers to enter the market, offering more choices and ever lower prices for consumers;

(3) in addition to the benefits of competition and mobility, subscribers also benefit from the fact that wireless phone numbers have not been publicly available;

(4) up until now, the privacy of wireless subscribers has been safeguarded and thus vastly diminished the likelihood of subscribers receiving unwanted or annoying phone call interruptions on their wireless phones;

(5) moreover, because their wireless contact information, such as their phone number, have never been publicly available in any published directory or from any directory assistance service, subscribers have come to expect that if their phone rings it's likely to be a call from someone to whom they have personally given their number;

(6) the wireless industry is poised to begin implementing a directory assistance service so that callers can reach wireless subscribers, including subscribers who have not given such callers their wireless phone number;

(7) while some wireless subscribers may find such directory assistance service useful, current subscribers deserve the right to choose whether they want to participate in such a directory;

(8) because wireless users are typically charged for incoming calls, consumers must be afforded the ability to maintain the maximum amount of control over how many calls they may expect to receive and, in particular, control over the disclosure of their wireless phone number;

(9) current wireless subscribers who elect to participate, or new wireless subscribers who decline to be listed, in any new wireless directory assistance service directory, including those subscribers who also elect not to receive forwarded calls from any wireless directory assistance service, should not be charged for exercising such rights;

(10) the marketplace has not yet adequately explained an effective plan to protect consumer privacy rights;

(11) Congress previously acted to protect the wireless location information of subscribers by enacting prohibitions on the disclosure of such sensitive in formation without the express prior authorization of the subscriber; and

(12) the public interest would be served by similarly enacting effective and industry-wide privacy protections for consumers with respect to wireless directory assistance service.

**SEC. 3. CONSUMER CONTROL OF WIRELESS PHONE NUMBERS.**

Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by adding at the end the following:

''(9) WIRELESS CONSUMER PRIVACY PROTECTION.—

''(A) CURRENT SUBSCRIBERS.—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may not include the wireless telephone number information of any current subscriber in any wireless directory assistance service database unless—

''(i) the mobile service provider provides a conspicuous, separate notice to the subscriber informing the subscriber of the right not to be listed in any wireless directory assistance service; and

''(ii) the mobile service provider obtains express prior authorization for listing from such subscriber, separate from any authorization obtained to provide such subscriber with commercial mobile service, or any calling plan or service associated with such commercial mobile service, and such authorization has not been subsequently withdrawn.

''(B) NEW SUBSCRIBERS.—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may include the wireless telephone number information of any new subscriber in a wireless directory assistance service database only if the commercial mobile service provider—

''(i) provides a conspicuous, separate notice to the subscriber, at the time of entering into an agreement to provide commercial mobile service, and at least once each year thereafter, informing the subscriber of the right not to be listed in any wireless directory assistance service database; and

''(ii) provides the subscriber with convenient mechanisms by which the subscriber may decline or refuse to participate in such database, including mechanisms at the time of entering into an agreement to provide commercial mobile service, in the billing of such service, and when receiving any connected call from a wireless directory assistance service.

''(C) CALL FORWARDING.—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such provider, may connect a calling party from a wireless directory assistance service to a commercial mobile service subscriber only if—

''(i) such subscriber is provided prior notice of the calling party's identity and is permitted to accept or reject the incoming call on a per-call basis;

''(ii) such subscriber's wireless telephone number information is not disclosed to the calling party; and

''(iii) such subscriber is not an unlisted commercial mobile service subscriber.

''(D) PUBLICATION OF DIRECTORIES PROHIBITED.—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may not publish, in printed, electronic, or other form, the contents of any wireless directory assistance service database, or any portion or segment thereof.

''(E) NO CONSUMER FEE FOR RETAINING PRIVACY.—A provider of commercial mobile services may not charge any subscriber for exercising any of the rights under this paragraph.

''(F) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'current subscriber' means any subscriber to commercial mobile service as of the date when a wireless directory assistance service is implemented by a provider of commercial mobile service;

''(ii) the term 'new subscriber' means any subscriber to commercial mobile service who becomes a subscriber after the date when a wireless directory assistance service is implemented by a provider of commercial mobile service, and includes any subscriber of a different provider of commercial mobile

service who subsequently switches to a new provider of commercial mobile service;

''(iii) the term 'wireless telephone number information' means the telephone number, electronic address, and any other identifying information by which a calling party may reach a subscriber to commercial mobile services, and which is assigned by a commercial mobile service provider to such subscriber, and includes such subscriber's name and address;

''(iv) the term 'wireless directory assistance service' means any service for connecting calling parties to a subscriber of commercial mobile service when such calling parties themselves do not possess such subscriber's wireless telephone number information; and

''(v) the term 'calling party's identity' means the telephone number of the calling party or the name of subscriber to such telephone, or an oral or text message which provides sufficient information to enable a commercial mobile services subscriber to determine who is calling;

''(vi) the term 'unlisted commercial mobile services subscriber' means—

''(I) a current subscriber to commercial mobile services who has not provided express prior consent to a commercial mobile service provider to be included in a wireless directory assistance service database; and

''(II) a new subscriber to commercial mobile service who has exercised the right contained in subparagraph (B)(ii) to decline or refuse to such inclusion.''.

Mrs. BOXER. Mr. President, I am pleased to join Senator SPECTER in introducing the Wireless 411 Privacy Act of 2003.

About 150 million Americans subscribe to wireless telephone service. They rely on wireless service to stay in touch with friends, family, and the workplace. As a cellular phone user myself, I value the privacy of my wireless number. I want to have control over who can reach me on my cell phone.

However, the wireless phone industry is planning to list customers in a wireless phone directory starting sometime next year. The Specter-Boxer bill would protect consumers by providing them with the right not to have their cell phone number listed in the directory and the right not to be charged a fee for being unlisted.

As we saw with the strong consumer support for the right to keep a cell phone when you switch carriers, consumers consider their cell phone number their property. It is not the property of the carrier to hand out to whomever the carrier wishes, and the carrier should not be allowed to charge consumers for the right to keep that number private.

This is especially important when you consider that wireless users pay for both their incoming and outgoing calls. Having your number listed could easily lead to receiving calls that you did not want but for which you will have to pay. That seems wrong to me.

To date, the wireless phone industry has been unclear on how they will address these valid concerns when they move forward with their directory plans next year. To avoid any confusion or uncertainty, Congress must make clear to the cell phone companies that the rights of consumers to keep their cell phone numbers private is paramount.

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By Ms. STABENOW (for herself and Mr. GRAHAM of South Carolina):

S. 1964. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, and for other purposes; to the Committee on Finance.

Ms. STABENOW. Mr. President, I rise today to introduce the Manufacturing Opportunities to Revitalize our Economy's JOBS Act, or the MORE JOBS Act. We are facing a manufacturing job crisis in this country, and that is why I am introducing this bill to help our U.S. manufacturers to create manufacturing jobs here at home.

Since January of 2001, the State of Michigan has faced devastating losses in the manufacturing sector. While the U.S. has lost 3.3 million private sector jobs—2.5 million in the manufacturing sector, Michigan has lost 162,300 manufacturing jobs. That is 18 percent of the state's manufacturing employment. In other words, 1 in 6 Michiganians has lost their manufacturing job in the last 2 years.

It is an unfortunate fact that Michigan is one of the leading states in the country in manufacturing job loss. Indeed, while the U.S. employment rate is around 6 percent, Michigan's unemployment rate is currently around 7.6 percent. In some parts of Michigan, the unemployment rate is as high as 12 percent.

The people of Michigan and the people of the United States need relief to help revitalize our economy. In the midst of these troubling times, we are faced with a new challenge: complying with a World Trade Organization (WTO) decision finding that our Foreign Sales Corporation (FSC) and Extraterritorial Income (ETI) tax code must be reformed to meet international trade law requirements. I understand that our colleagues on the Senate Finance Committee have been and continue to work diligently on this issue. Our country is one that plays by the rules and we will ultimately fix our tax code.

The tax benefits of the FSC and ETI, however, are valued at nearly $50 billion over 10 years. We cannot just take away these benefits to our American manufacturers without creating new tax relief for them. The practical effect of that would be a $50 billion tax increase. And, that is why we must create a new tax credit for our U.S. manufacturers.

The MORE JOBS Act that I am introducing today lays out a vision on how I believe we should reform the code. First of all it, it phases out the noncompliant FSC/ETI tax code over the next three years.

Then, to help our U.S. manufacturers, the bill creates a Manufacturers' Tax Credit for domestic companies. A company, under my proposal, would be allowed to deduct 9 percent of its domestic production income before it has to figure its tax liability. In effect, this would result in a new tax rate for our U.S. manufacturers that are 3 percent lower—32 percent instead of 35 percent. And, my bill would make this effective immediately, not phased in as others have suggested.

The credit would be extended to a wide array of companies: small businesses, large businesses and agricultural cooperatives. So whether it is a small furniture manufacturer in western Michigan, a tool and die company in Grand Rapids, or one of our automakers in metro Detroit, companies will be rewarded for their domestic production. And, our farmers will benefit, too.

I often say that we in Michigan pride ourselves on what we make and what we grow. These two activities are vital to a strong economy, and our farmers would also benefit under my bill.

Farmers themselves, if they have at least one employee, will directly benefit under my bill, since they qualify for the tax benefit as manufacturers. In addition, agricultural cooperatives would also receive this tax benefit. Farmers often belong to an agricultural cooperative which is covered under my bill. Agricultural cooperatives do the processing, handling, storing, and marketing for their members. For example, a farmer will sell his specialty crop to the cooperative. The cooperative then takes the farmer's crop and puts it with other farmers' produce and then stores and prepares the produce for sale to a food processing company. The coop passes its profits on to the members of the cooperative based on the amount of business each member does with the cooperative. So the tax benefits for the cooperative can be passed-through to farmer members of the coop.

Finally, one of the cornerstones of my legislation is that my bill would create incentives for companies to keep jobs in the U.S. and to bring more jobs to our country. The MORE JOBS Act would encourage companies to keep their manufacturing in the U.S. by basing the amount of their tax credit on how much of their manufacturing is done in the U.S. Companies that have all of their manufacturing in the U.S. would receive the full 3 percent tax credit. Companies that have much their manufacturing outside of the U.S. would receive a reduced credit in proportion to their U.S. manufacturing. While other proposals being circulated eventually eliminate this incentive, my bill would make this incentive permanent.

Why would we want to reward companies if they send their jobs overseas? We want to reward those who are contributing to our economy and putting Americans to work here at home.

I want to work closely with my colleagues to reform our manufacturing

tax code. In doing so, we will make our country stronger, our economy more resilient, and we can create millions of new good jobs in the manufacturing and agricultural sector. But we must do it carefully and with a priority on our U.S. manufacturing base. I urge my colleagues to support the MORE JOBS Act.

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By Mr. BAYH:

S. 1965. A bill to provide for the creation of private-sector-led Community Workforce Partnerships, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

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

S. 1965

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Community Workforce Development and Modernization Partnership Act''.

**SEC. 2. AUTHORIZATION.**

(a) IN GENERAL.—From amounts made available to carry out this Act, the Secretary of Labor (referred to in this Act as the ''Secretary''), in consultation with the Secretary of Commerce and the Secretary of Education, shall award grants on a competitive basis to eligible entities described in subsection (b) to assist each entity to—

(1) help workers improve those job skills that are necessary for employment by businesses in the industry with respect to which the entity was established;

(2) help dislocated workers find employment; and

(3) upgrade the operating and competitive capacities of businesses that are members of the entity.

(b) ELIGIBLE ENTITIES.—An eligible entity described in this subsection is a consortium (either established prior to the date of enactment of this Act or established specifically to carry out programs under this Act) that—

(1) shall include—

(A) 2 or more businesses (or nonprofit organizations representing businesses) that are facing similar workforce development or business modernization challenges;

(B) labor organizations, if the businesses described in subparagraph (A) employ workers who are covered by collective bargaining agreements; and

(C) 1 or more businesses (or nonprofit organizations that represent businesses) with resources or expertise that can be brought to bear on the workforce development and business modernization challenges referred to in subparagraph (A); and

(2) may include—

(A) State governments and units of local government;

(B) educational institutions;

(C) labor organizations; or

(D) nonprofit organizations.

(c) COMMON GEOGRAPHIC REGION.—To the maximum extent practicable, the organizations that are members of an eligible entity described in subsection (b) shall be located within a single geographic region of the United States.

(d) PRIORITY CONSIDERATION.—In awarding grants under subsection (a), the Secretary shall give priority consideration to—

(1) eligible entities that serve dislocated workers or workers who are threatened with becoming totally or partially separated from employment;

(2) eligible entities that include businesses with fewer than 250 employees; or

(3) eligible entities from a geographic region in the United States that has been adversely impacted by the movement of manufacturing operations or businesses to other regions or countries, due to corporate restructuring, technological advances, Federal law, international trade, or another factor, as determined by the Secretary.

**SEC. 3. PARTNERSHIP ACTIVITIES.**

(a) USE OF GRANT AMOUNTS.—Each eligible entity that receives a grant under section 2 shall use the amount made available through the grant to carry out a program that provides—

(1) workforce development activities to improve the job skills of individuals who have, are seeking, or have been dislocated from, employment with a business that is a member of that eligible entity, or with a business that is in the industry of a business that is a member of that eligible entity;

(2) business modernization activities; or

(3) activities that are—

(A) workforce investment activities (including such activities carried out through one-stop delivery systems) carried out under subtitle B of title I of the Workforce Investment Act of 1998 (42 U.S.C. 2811 et seq.); or

(B) activities described in section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(b) ACTIVITIES INCLUDED.—

(1) WORKFORCE DEVELOPMENT ACTIVITIES.—The workforce development activities referred to in subsection (a)(1) may include activities that—

(A) develop skill standards and provide training, including—

(i) assessing the training and job skill needs of the industry involved;

(ii) developing a sequence of skill standards that are benchmarked to advanced industry practices;

(iii) developing curricula and training methods;

(iv) purchasing, leasing, or receiving donations of training equipment;

(v) identifying and developing the skills of training providers;

(vi) developing apprenticeship programs; and

(vii) developing training programs for dislocated workers;

(B) assist workers in finding new employment; or

(C) provide supportive services to workers who—

(i) are participating in a program carried out by the entity under this Act; and

(ii) are unable to obtain the supportive services through another program providing the services.

(2) BUSINESS MODERNIZATION ACTIVITIES.—The business modernization activities referred to in subsection (a)(2) may include activities that upgrade technical or organizational capabilities in conjunction with improving the job skills of workers in a business that is a member of that entity.

**SEC. 4. APPLICATION.**

To be eligible to receive a grant under section 2, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

**SEC. 5. SEED GRANTS AND OUTREACH ACTIVITIES.**

(a) SEED GRANTS.—The Secretary shall provide technical assistance and award financial assistance (not to exceed $150,000 per award) on such terms and conditions as the Secretary determines to be appropriate—

(1) to businesses, nonprofit organizations representing businesses, and labor organizations, for the purpose of establishing an eligible entity; and

(2) to entities described in paragraph (1) and established eligible entities, for the purpose of preparing such application materials as may be required under section 4.

(b) OUTREACH AND PROMOTIONAL ACTIVITIES.—The Secretary may undertake such outreach and promotional activities as the Secretary determines will best carry out the objectives of this Act.

(c) LIMITATIONS ON EXPENDITURES.—The Secretary may not use more than 10 percent of the amount authorized to be appropriated under section 8 to carry out this section.

**SEC. 6. LIMITATIONS ON FUNDING.**

(a) REQUIREMENT OF MATCHING FUNDS.—The Secretary may not award a grant under this Act to an eligible entity unless such entity agrees that the entity will make available non-Federal contributions toward the costs of carrying out activities funded by that grant in an amount that is not less than $2 for each $1 of Federal funds made available through the grant.

(b) IN-KIND CONTRIBUTIONS.—The Secretary—

(1) shall, in awarding grants under this Act, give priority consideration to those entities whose members offer in-kind contributions; and

(2) may not consider any in-kind contribution in lieu of or as any part of the contributions required under subsection (a).

(c) SENIOR MANAGEMENT TRAINING AND DEVELOPMENT.—An eligible entity may not use any amount made available through a grant awarded under this Act for training and development activities for senior management, unless that entity certifies to the Secretary that expenditures for the activities are—

(1) an integral part of a comprehensive modernization plan; or

(2) dedicated to team building or employee involvement programs.

(d) PERFORMANCE MEASURES.—Each eligible entity shall, in carrying out the activities described in section 3, provide for development of, and tracking of performance according to, performance outcome measures.

(e) ADMINISTRATIVE COSTS.—Each eligible entity may use not more than 10 percent of the amount made available to that entity through a grant awarded under this Act to pay for administrative costs.

(f) MAXIMUM AMOUNT OF GRANT.—No eligible entity may receive—

(1) a grant under this Act in an amount of more than $1,000,000 for any fiscal year; or

(2) grants under this Act in any amount for more than 3 fiscal years.

(g) SUPPORT FOR EXISTING OPERATIONS.—

(1) IN GENERAL.—In making grants under this Act, the Secretary may use a portion equal to not more than 50 percent of the funds appropriated to carry out this Act for a fiscal year, to support the existing training and modernization operations of existing eligible entities.

(2) ENTITIES.—The Secretary may award a grant to an existing eligible entity for existing training and modernization operations only if the entity—

(A) currently offers (as of the date of the award of the grant) a combination of training, modernization, and business assistance services; and

(B) has demonstrated success in accomplishing the objectives of activities described in section 3.

(3) APPLICATION.—Paragraph (1) shall not apply to support for the expansion of training and modernization operations of existing eligible entities.

(4) DEFINITIONS.—In this subsection:

(A) EXISTING TRAINING AND MODERNIZATION ACTIVITY.—The term ''existing training and

modernization activity'' means a training and modernization activity carried out prior to the date of enactment of this Act.

(B) EXISTING ELIGIBLE ENTITY.—The term ''existing eligible entity'' means an eligible entity that was established prior to the date of enactment of this Act.

**SEC. 7. GENERAL ACCOUNTING OFFICE STUDY.**

(a) STUDY.—Beginning 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study concerning the activities carried out under this Act. In conducting the study, the Comptroller General shall assess the effectiveness of the activities and suggest improvements to the grant program established under this Act, including recommending whether the program should be administered by the Department of Labor or by another agency or an alternative entity.

(b) REPORT.—Not later than 3 years and 6 months after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report containing the results of the study.

**SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this Act—

(1) $15,000,000 for fiscal year 2004;

(2) $20,000,000 for fiscal year 2005;

(3) $25,000,000 for fiscal year 2006; and

(4) $30,000,000 for fiscal year 2007.

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By Mr. BINGAMAN:

S. 1966. A bill to require a report on the detainees held at Guantanamo Bay, Cuba; to the Committee on Armed Services.

Mr. BINGAMAN. Mr. President, I want to speak for just a few minutes today on an issue on which I have introduced a bill. The bill is S. 1966. It is a bill to require a report on the detainees being held at Guantanamo Bay, Cuba.

The purpose of this legislation is to shed some light on the process that is being used by this administration to determine the status of so-called enemy combatants who are held by our Government at Guantanamo Bay Naval Base. It has now been nearly 2 years since the first detainees arrived at Guantanamo as prisoners of the United States. Yet these individuals are still being held in what most would refer to as legal limbo.

My colleagues will recall that on July 16, I urged the Senate to adopt an amendment to the Defense appropriations bill. That amendment was tabled 52 to 42. It is essentially the same provision—it contained the same provisions I have now put into S. 1966, this freestanding legislation I have introduced.

The day after that amendment was defeated I sent a letter to Secretary Rumsfeld expressing my concern over the apparent lack of any kind of legal process being extended to the detainees being held at Guantanamo. Only recently I received a reply from the Department of Defense. In that letter, the Department of Defense maintains that it:

> . . . reviews on a regular basis the continued detention of each enemy combatant and assesses the appropriate disposition of each individual case.

According to the Defense Department, at the time they wrote back to me, they said that the review had resulted in the release of 64 detainees who were determined to no longer pose a threat to the United States, and more releases were expected.

However, the letter fails to address the more important question, which is whether the Department's review of these detainees is being done in accordance with any recognized civilian or military legal process.

I ask unanimous consent to have the letter printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. BINGAMAN. What prompted me to come to the floor of the Senate today was an article I saw in the morning paper. This appeared in various papers around the country, but the one I have here in front of me is from the Boston Globe. It says:

> The U.S. military sent home 20 ''enemy combatants'' last weekend who were being held without trial at Guantanamo Bay Naval Base in Cuba, only to replace them with the same number of new prisoners.

It has a quotation from a spokesperson for the military saying:

> We cannot talk about any of the individuals that may have departed the island due to security concerns.

According to this article, all those transferred last week have been returned, many of them to Pakistan, and all of those transferred last weekend, according to representatives from the countries they are citizens of, said they will be released once they have arrived in those countries.

The figure now, as I understand it, is there are 88 suspects who have been transferred out of Guantanamo Bay. Four were released, 4 were handed over to Saudi Arabia, and the remaining 650 or 700 are still there. As this article indicated, we continue to add additional people to this prison we are operating there at Guantanamo.

There are various complaints described in the article by foreign diplomats about the process we are following. There is a statement by the attorney for one of the human rights organizations that has complained bitterly about the improvisational policy decisions and the arbitrary power over prisoners at the base.

My motives for offering this legislation are very simple. While I obviously have concerns about judicial treatment and the failure of any kind of legal process being followed in the treatment of these detainees in Guantanamo, I am even more concerned about the implications of this treatment we are affording these individuals for our own fighting forces as well as our international reputation.

The bill I filed here in the Senate today requires the Secretary of Defense to report on the status of these detainees, including the process that was utilized to determine that status for those who have already been released from Guantanamo. The bill requires the Secretary to provide information related to this release, how long they were detained, the conditions of their release, if any, the explanations of why the Department of Defense has now determined these individuals could be released after what has in many cases been a very long detention.

For the remaining detainees—those who are still at Guantanamo—the administration has still refused to provide ''access to an impartial tribunal to review whether any basis exists for [detainees] continued detention.'' The detainees have not been allowed to speak with their families or their counsel, nor have they been informed of any charges against them, as far as I am informed.

The bill I filed requires that within 90 days of its enactment the Secretary of Defense provide the Senate with information related to the process used to categorize and hold these detainees. It does not call for release of the detainees. It does not in any way, shape, or form require the release of any classified information other than to the chairman and vice chairman of the Senate and House committees. The amendment merely seeks to clarify for the Senate and for the Congress the process by which the detainees' status is determined.

Like most Americans, I have always thought that what distinguished our country in the history of the world was our commitment to individual freedom and to the rule of law; that the bedrock of a free society is the obligation taken by the Government to afford individuals with certain legal protections, and as a Nation committed to these principles we have been instrumental in the formulation and enforcement of international law, particularly when it came to the treatment of prisoners of war. For over 75 years, the United States has adhered to the Geneva Convention. Even during conflicts with insurgents and irregular forces, we have adhered to the Geneva Convention. Whenever our Nation has gone to war, we have taken pride in going above and beyond the requirements of international law as set out in the third Geneva Convention of 1929. In fact, the Department of Defense has adopted its own detailed regulations and doctrine and field manuals built on the provisions of the Geneva Convention which have guided our military through many conflicts regardless of size and scope and duration.

These regulations we have in our own military, like international law, do not contemplate the legal limbo we are holding these detainees in at Guantanamo. Neither the Geneva Convention nor the established military regulations define or use the term the President is using here. This term, unlawful combatant, is a new term which has come up in order to sidestep the requirements both of the Geneva Convention and of our own military regulations. Army Regulation 190–8 provides an effective and efficient process to

categorize the detainees on the battlefield. According to that provision, detainees must be classified either as an enemy prisoner of war, a recommended retained person entitled to enemy prisoner-of-war protections, an innocent civilian who should be immediately returned to his or her home or released, or a civilian internee who, for reasons of operational security, or probable cause incident to criminal investigation, should be retained. Such internees have the right to appeal the order directing their internment by challenging the existence of imperative security reasons that led to their detention.

The President's unilateral determination of the detainee's status at Guantanamo Bay signals a significant departure from the spirit of the Geneva Convention and a significant departure from the letter of established military regulations. In stark contrast to our Government's previous commitment to adherence to the rule of law and human rights, this administration has adopted a position that once the President designates that a person is a so-called enemy combatant or unlawful combatant, a term created by the administration, that person can be locked up and held incommunicado as long as the President desires, with absolutely no legal rights; no right to review of that decision. This means even if the administration makes a mistake or is given faulty information, it is virtually impossible for the person involved to prove his or her innocence because not only can they not talk to a lawyer or to family members, but they do not have the right even to know what they are being charged with.

The U.S. Supreme Court has agreed to consider the narrow question of whether the Federal courts have the power to hear challenges to the detainees' imprisonment. This is a significant move towards restoring the system of checks and balances, which needs to be restored—the system of checks and balances our Founders felt was essential to preserving liberty in the country. Similarly, the bill I have filed begins to fulfill Congress's constitutional responsibility to oversee what the executive branch does. It calls on the administration to tell us whether its actions are in accordance with military regulations and doctrine.

Our goal is to bring transparency to the issue and to fulfill Congress's constitutional role of oversight of the executive. We should know what process the administration is using to determine the status of these detainees.

My concern is much broader than what happens to these particular detainees. I am concerned about the impact of our treatment of these detainees on the treatment of our own military personnel who are captured in future conflicts. Former U.S. diplomats and judge advocate generals and even former U.S. prisoners of war filed ''friend of the court'' briefs in the Supreme Court questioning the legality and wisdom of the administration's policy of open-ended detentions at Guantanamo. Some of those briefs were extremely thoughtful, in my view. One former diplomat wrote:

It has been the experience of each of us that our most important diplomatic asset has been this Nation's values. . . . The hint that America is not all that it claims, that it . . . can accept that the Executive Branch may imprison whom it will and do so beyond the reach of due process of law demeans and weakens this Nation's voice abroad.

In their brief, former judge advocate generals, the military's legal prosecutors and those most familiar with the law as it applies to enemy prisoners of war, strongly argue:

To be sure, this is a perilous time, as the President has stated. But that does not justify indefinite confinement without any type of hearing or judicial review. The United States played a major role in the development and adoption of the Geneva Conventions. The requirements of those Conventions. The requirements of those Conventions are incorporated directly into American Military Regulations. American failure to provide foreign prisoners with the protections of the Geneva Conventions may well provide foreign authorities, in current or future conflicts, with an excuse not to comply with the Geneva Conventions with respect to captured American military forces.

Just as compelling are the stories told in the ''friends of the court'' brief filed by former prisoners of war. They argue that as a result of their own experience as prisoners of war, the United States has an interest ''in fostering the development, acceptance and enforcement of international norms pursuant to which prisoners of war and others captured during armed conflicts will be treated humanely and in accordance with the rule of law.'' They emphasize, that in particular, they ''wish to ensure that the treatment by the Untied States of foreign detainees . . . is such that the United States and former American POWs retain the moral authority to demand fair and humane treatment for any future Americans detained by foreign governments.''

However, nothing more clearly demonstrates this point than the actual stories themselves. Leslie H. Jackson, Edward Jackfert, and Neal Harrington are former prisoners of war. Mr. Jackson was captured by the Germans, who adhered to the Geneva Conventions. Mr. Jackfert and Mr. Harrington were held by Japan, which had not ratified and did not purport to follow international law.

If you will allow me to read them their brief:

Mr. Jackson was captured by the German Army on April 24, 1944, when his B–17 bomber crashed. Jailed and interrogated for approximately one week, he was then transported to Stalag 17, a converted concentration camp. In his 13 months of captivity, Mr. Jackson was granted the bare necessities: shelter, minimal food, and the ability to socialize with other American POWs. While the experience was harsh and unpleasant, Mr. Jackson was never tortured or otherwise hurt by the German guards. To follow the terms of the Geneva Conventions of 1929, to which Germany was a party, Mr. Jackson's German captors placed the appropriate Geneva Convention signage in the barracks, permitted the international Red Cross to ship basic necessities to POWs, and allowed a Geneva inspector to survey the premises. Mr. Jackson believes that his survival and relatively good health while in captivity are the result of the German Army's adherence to the 1929 Geneva Conventions.

The experiences of Mr. Jackfert and Mr. Harrington in the custody of Japan, which had not ratified and did not purport to follow the 1929 Geneva Conventions, offer a sharp contrast. Both men were serving with the U.S. Army in the Philippines when it surrendered to the Japanese in 1942, and both subsequently served several years of hard captivity beyond the reach of any Geneva Convention protections. Both were part of the Bataan Death March and its well-documented horrors. Mr. Harrington was forced into slave labor in a Japanese coalmine, and saw his compatriots starved, beaten and killed. Mr. Jackfert was also forced into slave labor and suffered the extreme effects of heavy labor, cruelty and inadequate nourishment, going from 125 pounds to 90 pounds in a matter of months. There was no Geneva signage, no recognition of prisoner rights, and virtually no Red Cross access.

Nor were the experiences of Mr. Harrington and Mr. Jackfert atypical. Studies have determined that the death rate of U.S. Military personnel interned by Japan was as high as 40 percent while the death rate of personnel captured and interned by Germany was little more than 1 percent. . . . Moreover, while it was rare for American POWs detained in Germany to be tortured, the opposite was true for American POWs in Japan. No one can adequately impart the suffering most allied prisoners endured [in Japan]. . . . They were beaten, kicked, robbed . . . and were buried alive. . . . [T]he overwhelming majority endured ''hell on earth.''

Again, let me say, I am in no way suggesting that the detainees are not being treated humanely. In fact, from all information I have received, they are being treated humanely. But what I and these briefs that were filed in the Supreme Court are suggesting is that our failure to adhere to some recognized legal process in determining the status of these detainees opens the door for other countries to refuse to adhere to any legal process as well. It may very well result in arbitrary confinement and harsh treatment or other inhumane practices applied to our own citizens.

This bill will help Congress fulfill its duties and obligations as outlined in the Constitution and in U.S. law and regulation.

I hope we can quickly pass this legislation when we return for the second session of the Congress in January.

I yield the floor.

EXHIBIT 1

[From the Boston Globe, Nov. 25, 2003]

US RELEASES 20 DETAINEES, TRANSFERS 20 MORE TO CUBA

(By Charlie Savage)

WASHINGTON.—The U.S. military sent home 20 ''enemy combatants'' last weekend who were being held without trial at Guantanamo Bay naval base in Cuba—only to replace them with the same number of new prisoners.

The prisoner transfer, the first such movement since mid-July, followed a determination by senior military and intelligence officials that the outgoing group ''either no

longer posed a threat to U.S. security or no longer required detention by the United States,'' according to a statement the Department of Defense released yesterday.

''We can't talk about any of the individuals that may have departed the island due to security concerns,'' said Lieutenant Colonel Pamela Hart, a spokeswoman for the isolated facility at which the United States detains and interrogates suspected terrorists.

But a high-ranking Pakistani official, who said yesterday that at least five of the outgoing transferees were Pakistani citizens, offered a chilly reaction to the Pentagon's news.

''The government is happy, but this is too damn late,'' said Imran Ali, second secretary of the Pakistan Embassy, adding that 21 Pakistanis have been released from Guantanamo, but another 37 are still there.

''Their lives have been destroyed. Their families have gone through psychological trauma, since they were not terrorists; they were just low-level Taliban fighters.''

The Pakistani official's reaction illustrated the pressure on the United States to resolve the situation—especially from allies in the war on terrorism who have expressed concern for their citizens who are among the 660 prisoners from 42 countries being held at the base.

Although the State Department has been negotiating with a number of countries to continue the detention of some, all those transferred last weekend will be released by their countries, U.S. officials said.

The Pentagon statement said that ''at the time of their detention, these enemy combatants posed a threat to U.S. security.'' It offered little information about the new arrivals, except that they were transferred from U.S. Central Command in the Middle East.

Navy Lieutenant Commander Barbara Burfeind, a Pentagon spokeswoman, said none of the new detainees were captured in Iraq.

The weekend transfers of the detainees bring to 88 the number of Al Qaeda or Taliban suspects who have been transferred out. Of those, 84 were released and four were handed over to Saudi Arabia.

Ruth Wedgwood, an international law professor at Johns Hopkins University, said the arrival of the 20 new detainees follows a flare-up of fighting by Taliban insurgents in Afghanistan.

Wedgwood has defended the Bush administration's position that the rules of the Geneva Conventions do not apply to the detainees because they were not soldiers of a regular Afghan army.

''Dismayingly, the Taliban have become very active again in the southern area, so really . . . the war isn't over in that area,'' she said.

Not among those who were transferred for release, according to a senior Pentagon official, were the three ''juvenile enemy combatants''—Afghans ages 13 to 15 who were captured fighting alongside the Taliban and whose detention at the prison has attracted particularly intense international criticism. The commander of Guantanamo operations, Major General Geoffrey Miller, had recommended that they be sent home in August.

U.S. officials say they have been coordinating with UNICEF in the event that the young fighters are released. UNICEF, a United Nations agency that has offered to handle the juvenile combatants, runs a program to ease the reintegration of former child soldiers back into their home societies.

''The State Department and UNICEF will make sure that if they're returned to Afghanistan, they won't just be plopped down,'' a Pentagon official told The Boston Globe last week.

Ken Hurwitz of the Lawyers Committee for Human Rights, a New York-based organization, said that the surprise release reflected the military's ''improvisational'' policy decisions and its arbitrary power over the prisoners at the base.

''It's the rule of law that's the point,'' he said. ''They're saying, 'Trust us, and we'll do the right thing.' But there is no right thing unless it's pursuant to some kind of ordered, lawful proceeding.''

Challenges to the detentions that have been filed in federal court have so far been dismissed because the base is located on Cuban soil—it has been leased and controlled by the United States for a century—and outside the jurisdiction of U.S. sovereignty. Two weeks ago, the Supreme Court said it would review the question of whether federal court jurisdiction may extend there.

In a related development, the lawyer for Army Captain James ''Yousef'' Yee, the former Muslim chaplain at Guantanamo who was arrested in September in the alleged mishandling of classified material, sent a letter to President Bush yesterday asking that his client be released from pretrial detention for Thanksgiving and his daughter's birthday.

''These charges do not warrant pretrial confinement of any kind,'' Eugene Fidell wrote in the letter. ''While military sources initially reported a wild laundry list of suspected offenses, such as spying or aiding the enemy, these have now been reduced to two relatively minor [charges]. . . . Nonetheless, he is being treated as if the original laundry list of charges was the legal basis for his confinement. This is totally wrong and unfair.''

Sean McCormack, a spokesman for the National Security Council, said he would look into the letter, but had no comment on the president's behalf.

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By Mr. HAGEL (for himself and Ms. SNOWE):

S. 1967. A bill to allow all businesses to make up to 24 transfers each month from interest-bearing transaction accounts to other transaction accounts, to require the payment of interest on reserves held for depository institutions at Federal reserve banks, to repeal the prohibition of interest on business accounts, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

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

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

S. 1967

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Interest on Business Checking Act of 2003''.

**SEC. 2. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED FOR ALL BUSINESSES.**

(a) IN GENERAL.—Section 2(a) of Public Law 93–100 (12 U.S.C. 1832(a)) is amended by inserting after paragraph (2) the following:

''(3) Notwithstanding any other provision of law, any depository institution may permit the owner of any deposit or account which is a deposit or account on which interest or dividends are paid and is not a deposit or account described in paragraph (2) to make not more than 24 transfers per month (or such greater number as the Board of Governors of the Federal Reserve System may determine by rule or order), for any purpose, to another account of the owner in the same institution. An account offered pursuant to this paragraph shall be considered a transaction account for purposes of section 19 of the Federal Reserve Act, unless the Board of Governors of the Federal Reserve System determines otherwise.''.

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 2(a) of Public Law 93–100 (12 U.S.C. 1832(a)), as amended by subsection (a), is further amended—

(A) in paragraph (1), by striking ''but subject to paragraph (2)'';

(B) by amending paragraph (2) to read as follows:

''(2) No provision of this section may be construed as conferring the authority to offer demand deposit accounts to any institution that is prohibited by law from offering demand deposit accounts.''; and

(C) in paragraph (3), by striking ''and is not a deposit or account described in paragraph (2)''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date which is 2 years after the date of enactment of this Act.

**SEC. 3. AUTHORIZATION OF INTEREST-BEARING TRANSACTION ACCOUNTS.**

(a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is repealed.

(2) HOME OWNERS' LOAN ACT.—Section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking ''savings association may not—'' and all that follows through ''(ii) permit any'' and inserting ''savings association may not permit any''.

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is repealed.

(b) JOINT RULEMAKING REQUIRED.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Treasury and the Federal banking agencies shall issue joint final regulations authorizing the payment of interest and dividends on transaction accounts at depository institutions that are subject to regulation by those entities.

(2) CONTENTS.—Regulations required by this subsection shall—

(A) establish the scope of the authorization described in paragraph (1) and the types of transaction accounts to which that authorization shall apply; and

(B) include any appropriate limitations, exceptions, or restrictions on that authorization, consistent with the purposes of this section.

(3) EFFECTIVE DATE OF REGULATIONS.—The regulations required by this subsection shall take effect not later than 2 years after the date of enactment of this Act.

(4) DEFINITIONS.—As used in this subsection—

(A) the terms ''depository institution'' and ''transaction account'' have the meanings given such terms in subparagraphs (A) and (C), respectively, of section 19(b)(1) of the Federal Reserve Act (12 U.S.C. 461(b)(1)); and

(B) the term ''Federal banking agency'' has the meaning the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) EFFECTIVE DATE OF REPEAL.—The amendments made by subsection (a) shall become effective on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the date on which final regulations required to be issued under subsection (b) become effective.

**SEC. 4. PAYMENT OF INTEREST ON RESERVES AT FEDERAL RESERVE BANKS.**

(a) IN GENERAL.—Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended by adding at the end the following:

''(12) EARNINGS ON RESERVES.—

''(A) IN GENERAL.—Balances maintained at a Federal reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal reserve bank at least once each calendar quarter at a rate or rates not to exceed the general level of short-term interest rates.

''(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTION.—The Board may promulgate regulations concerning—

''(i) the payment of earnings in accordance with this paragraph;

''(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks or on whose behalf such balances are maintained; and

''(iii) the responsibilities of depository institutions, Federal home loan banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal reserve bank by any such entity on behalf of depository institutions.

''(C) DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'depository institution', in addition to any institution described in paragraph (1)(A), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).''.

(b) AUTHORIZATION FOR PASS THROUGH RESERVES FOR MEMBER BANKS.—Section 19(c)(1)(B) of the Federal Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by striking ''which is not a member bank''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 19 of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in subsection (b)(4),

(A) by striking subparagraph (C); and

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

(2) in subsection (c)(1)(A), by striking ''subsection (b)(4)(C)'' and inserting ''subsection (b)''.

**SEC. 5. INCREASED FEDERAL RESERVE BOARD FLEXIBILITY IN SETTING RESERVE REQUIREMENTS.**

Section 19(b)(2)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(A)) is amended—

(1) in clause (i), by striking ''the ratio of 3 per centum'' and inserting ''a ratio not greater than 3 percent (and which may be zero)''; and

(2) in clause (ii), by striking ''and not less than 8 per centum,'' and inserting ''(and which may be zero),''.

**SEC. 6. TREATMENT OF CERTAIN ESCROW ACCOUNTS.**

(a) IN GENERAL.—In the case of an escrow account maintained at a depository institution for the purpose of completing the settlement of a real estate transaction, activities described in subsection (b) shall not be treated as the payment or receipt of interest for purposes of this Act or any other provision of law relating to the payment of interest on accounts or deposits maintained at depository institutions, including such provisions in—

(1) Public Law 93–100;

(2) the Federal Reserve Act;

(3) the Home Owners' Loan Act; or

(4) the Federal Deposit Insurance Act.

(b) EXCLUSIONS.—For purposes of subsection (a), activities described in this paragraph are—

(1) the absorption, by the depository institution, of expenses incidental to providing a normal banking service with respect to an escrow account described in subsection (a);

(2) the forbearance, by the depository institution, from charging a fee for providing any such banking function; and

(3) any benefit which may accrue to the holder or the beneficiary of such escrow account as a result of an action of the depository institution described in paragraph (1) or (2) or a similar action.

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By Mr. ENZI (for himself, Mr. AKAKA, Mr. CORZINE, and Mr. SARBANES):

S. 1968. A bill to amend the Higher Education Act of 1965 to enhance literacy in finance and economics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, it wasn't all that long ago that a good education consisted of providing our children with a strong background in reading, writing and arithmetic skills, mixed with an understanding of history and a good hard look at civics and how our government works. We thought, if our sons and daughters had taken courses in those subjects and mastered them, they were as prepared as they could be to face the real world, get good jobs, and one day, live happily ever after. Unfortunately, we left one vital skill out of the mix.

As an accountant, I have become increasingly concerned about the lack of knowledge we have as a society, and especially, the lack of insight we share with our children about money and how to properly handle it, budget it, and use it to plan for their retirement. The numbers are quite startling when you take a close look at how many of our children are leaving college already saddled with credit card debt and school loans that need to be repaid. It wasn't like that when many of us were in college. School didn't seem to cost nearly as much as it does now, and the scourge of a strong economy, easily available credit, hadn't reached the ranks of our schools yet.

This is a problem at the present time, but if we don't act quickly to make sure our Nation's young people receive the advice and education they need on handling money and planning their finances for the future, we will have a disaster on our hands. Young men and women, in their prime earning years, are facing a mountain of personal debt at high interest rates, with little hope of paying it off anytime soon. Clearly, that is something we must take every action to help future generations of students avoid.

That is why I am introducing the Financial Literacy in Higher Education Act with my colleague, Senator AKAKA. Senator AKAKA and I share many of the same ideas with respect to the importance of financial literacy and ensuring our children have a grasp of the implications of their actions when they use the credit they have been extended by banks eager to make quick loans at high interest rates. Senator AKAKA and I worked together on language included in the No Child Left Behind Act to ensure elementary and secondary students would have more access to financial literacy training that we hope will make our children wiser and better users of consumer credit.

This bill builds on the activities we helped authorize in No Child Left Behind. It emphasizes financial literacy for students enrolled in institutions of higher education, or students who will soon be enrolled. With the training and real life advice they will receive in these courses we will be able to reduce the number of our children who leave high school and head out into the world on their own with little or no preparation for the demands that will be placed on their limited incomes.

Our legislation would include financial literacy and personal finance in the list of permissible activities of several programs authorized under the Higher Education Act. These programs are set up to support students, and I believe financial literacy should be an important aspect of the support process. Attending college is a necessary step that must be taken if our young adults are to succeed in the work force, and learning how to make a personal budget and meet individual financial obligations should be a priority in that process.

Our bill would also emphasize financial literacy in exit counseling for college students receiving federal student financial assistance. Today's undergraduate students are leaving school with an average of nearly $17,000 in student loan obligations. This can be a large burden to bear, but it becomes impossible to address if a young man or woman is unable to successfully manage their own finances.

The answer to this challenge is to start educating students before they experience financial difficulty. Students who are faced with the possibility of accruing larger and larger levels of debt must be taught the full meaning and significance of concepts as simple as compound interest, credit scores, and minimum payments. That way, when they leave school with their lives before them, they will be able to plan how to pay back their student loans, and keep credit card debt to a minimum. Taking the initiative while these students are in school will help them avoid some of the serious problems that can develop when someone has little or poor financial skills. These problems can literally have lifelong implications for those who overextend their resources or fail to learn to live within the limits of a budget.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1968

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Financial Literacy in Higher Education Act''.

**SEC. 2. AREAS OF EMPHASIS.**

Part B of title I of the Higher Education Act of 1965 (20 U.S.C. 1011 et seq.) is amended by adding at the end the following:

**''SEC. 123. AREAS OF EMPHASIS.**

''In carrying out activities under this Act related to improving financial and economic literacy, education, and counseling, the Secretary shall emphasize, among other elements, basic personal income and household money management and financial planning skills, and basic economic decision making skills, including how to—

''(1) create household budgets, initiate savings plans, and make strategic investment decisions for education, employment, retirement, home ownership, wealth building, or other savings goals;

''(2) manage credit and debt effectively, including student financial aid and credit card debt, and understand the merits of establishing and maintaining excellent credit history;

''(3) understand, evaluate, and compare fair and favorable financial products, services, and opportunities, and avoid abusive, predatory, or deceptive financial products, services, and opportunities;

''(4) complete tax returns and understand tax consequences when making certain financial decisions, such as placing an investment or purchasing a home;

''(5) identify economic problems, alternatives, benefits, and costs;

''(6) analyze the incentives at work in an economic situation;

''(7) examine the consequences of changes in economic conditions and public policies;

''(8) collect and organize economic evidence, including understanding, evaluating, and making strategic decisions using economic indicators;

''(9) compare benefits with costs; and

''(10) improve financial and economic literacy and education through all other related skills.''.

**SEC. 3. COORDINATION.**

In carrying out the financial and economic literacy activities authorized under this Act and the amendments made by this Act, the Secretary of Education, to the greatest extent practicable, shall coordinate such activities with the financial and economic literacy efforts of a Federal commission comprised of the following:

(1) The Secretary of the Treasury.

(2) The respective head of each of the following:

(A) Each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(B) The National Credit Union Administration.

(C) The Securities and Exchange Commission.

(D) Each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs.

(E) The Federal Trade Commission.

(F) The General Services Administration.

(G) The Small Business Administration.

(H) The Social Security Administration.

(I) The Commodity Futures Trading Commission.

(J) The Office of Personal Management.

(3) At the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

**SEC. 4. ENHANCEMENT OF FINANCIAL LITERACY AND ECONOMIC LITERACY.**

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 201(a)(3), by inserting ''personal finance,'' after ''economics,'';

(2) in section 311(c)—

(A) by redesignating paragraphs (7) through (12) as paragraphs (8) through (13), respectively; and

(B) by inserting after paragraph (6) the following:

''(7) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.'';

(3) in section 316(c)(2)—

(A) by redesignating subparagraphs (G) through (L) as subparagraphs (H) through (M), respectively;

(B) by inserting after subparagraph (F) the following:

''(G) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;''; and

(C) in subparagraph (M), as redesignated by subparagraph (A), by striking ''subparagraphs (A) through (K)'' and inserting ''subparagraphs (A) through (L)'';

(4) in section 317(c)(2)—

(A) in subparagraph (G), by striking ''and'' after the semicolon;

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

(C) by adding at the end the following:

''(I) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.'';

(5) in section 323(a)—

(A) by redesignating paragraphs (7) through (12) as paragraphs (8) through (13), respectively; and

(B) by inserting after paragraph (6) the following:

''(7) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.'';

(6) in section 326(c)—

(A) by redesignating paragraphs (5) through (7) as paragraphs (6) through (8), respectively; and

(B) by inserting after paragraph (4) the following:

''(5) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;'';

(7) in section 503(b)—

(A) by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively; and

(B) by inserting after paragraph (4) the following:

''(5) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.'';

(8) in section 402B(b)—

(A) by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively;

(B) by inserting after paragraph (2) the following:

''(3) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;''; and

(C) in paragraph (11), as redesignated by subparagraph (A), by striking ''paragraphs (1) through (9)'' and inserting ''paragraphs (1) through (10)'';

(9) in section 402C—

(A) in subsection (b)—

(i) by redesignating paragraphs (2) through (12) as paragraphs (3) through (13), respectively;

(ii) by inserting after paragraph (1) the following:

''(2) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;''; and

(iii) in paragraph (13), as redesignated by clause (i), by striking ''paragraphs (1) through (11)'' and inserting ''paragraphs (1) through (12)''; and

(B) in subsection (e), by striking ''subsection (b)(10)'' and inserting ''subsection (b)(11)'';

(10) in section 402D(b)—

(A) by redesignating paragraphs (2) through (10) as paragraphs (3) through (11), respectively;

(B) by inserting after paragraph (1) the following:

''(2) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;''; and

(C) in paragraph (11), as redesignated by subparagraph (A), by striking ''paragraphs (1) through (9)'' and inserting ''paragraphs (1) through (10)'';

(11) in section 402E(b)—

(A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(B) by inserting after paragraph (6) the following:

''(7) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;'';

(12) in section 402F(b)—

(A) by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively;

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

''(4) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;''; and

(C) in paragraph (11), as redesignated by subparagraph (A), by striking ''paragraphs (1) through (9)'' and inserting ''paragraphs (1) through (10)'';

(13) in section 404D(b)(2)(A)(ii), by striking ''and academic counseling'' and inserting ''academic counseling, and financial literacy and economic literacy education or counseling'';

(14) by striking section 418A(c)(1)(B)(i) and inserting the following:

''(i) personal, academic, career, and economic education or personal finance counseling as an ongoing part of the program;'';

(15) in section 428F, by adding at the end the following:

''(c) FINANCIAL AND ECONOMIC LITERACY.—Where appropriate, each program described under subsection (b) shall include making available financial and economic education materials for the borrower.'';

(16) in section 432(k)(1), by striking ''and offering'' and all that follows through the period and inserting '', offering loan repayment matching provisions as part of employee benefit packages, and providing employees with financial and economic education and counseling.'';

(17) in section 441(c)—

(A) in paragraph (1), by inserting ''financial literacy and economic literacy,'' after ''social services,''; and

(B) in paragraph (4)(C), by striking the period at the end and inserting ''and counseling for the purposes of improving financial literacy and economic literacy.'';

(18) in section 485—

(A) in subsection (a)(1)(D), by striking the semicolon at the end and inserting '', including the merits of taking a personal finance course, if the institution offers such a course, and of the student reviewing the student's personal credit profile not less frequently than once a year;'';

(B) in subsection (b)—

(i) in paragraph (1)(A)—

(I) in clause (i), by striking ''and'' after the semicolon;

(II) in clause (ii), by striking the period at the end and inserting ''; and''; and

(III) by adding at the end the following:

''(iii) if it is determined during the counseling that the borrower is not connected to a mainstream financial institution, information about low-cost financial services and the benefits of using such services, and where and how the borrower could open a low-cost account in a federally insured credit union or bank.''; and

(ii) by adding at the end the following:

''(3) PILOT PROGRAM.—

''(A) AUTHORIZATION.—

''(i) IN GENERAL.—The Secretary shall establish a pilot program that awards a total of 5 grants to 5 different institutions of higher education that are located in geographically different parts of the United States to enable the institutions to provide annual personal finance counseling for students enrolled at such institutions.

''(ii) MINORITY SERVING INSTITUTIONS.—In awarding grants under this paragraph, the Secretary shall award not less than 2 of the 5 grants to institutions of higher education that are eligible to receive assistance under title III or title V.

''(B) APPLICATION.—An institution of higher education that desires to receive a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(C) USE OF FUNDS.—

''(i) COUNSELING.—

''(I) IN GENERAL.—In addition to making available exit counseling under paragraph (1), an institution of higher education that receives a grant under this paragraph shall through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B (other than loans made pursuant to section 428B) of this title or made under part D or E of this title at the commencement of the borrower's course of study at the institution, not less frequently than once annually while the borrower is enrolled at the institution, and not later than 30 days after completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution.

''(II) CONTENT.—The counseling required under subclause (I) shall include the average anticipated monthly repayments, a review of the repayment options available, the total amount of interest that would be paid over a range of possible interest rates and the amount of interest in the monthly payments, information on the availability and content of a personal finance course if such course is offered by the institution and if not already completed by the individual, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness, which may be implemented in partnership with State or local public, private, and nonprofit entities approved by the local educational agency that serves schools in the area where the institution is located, or a campus committee formed for the purpose of evaluating the qualifications of such entities. If it is determined during the counseling that the borrower is not connected to a mainstream financial institution, the counseling shall include information about low-cost financial services and the benefits of using such services, and where and how the borrower could open a low-cost account in a federally insured credit union or bank.

''(ii) PERMISSIVE USE.—Grant funds received under this paragraph may be used to pay for additional financial aid personnel or for training for existing financial aid personnel.

''(iii) STUDY.—

''(I) IN GENERAL.—An institution of higher education that receives a grant under this paragraph shall conduct a study to evaluate the impacts, if any, of the financial and economic literacy and counseling activities on students' levels of savings and indebtedness, and creditworthiness, and such activities' effectiveness in reducing the incidence of problems with handling credit, including bankruptcy filing and student financial loan default.

''(II) ASSISTANCE.—An institution of higher education may conduct the study under subclause (I) with the assistance of appropriate Federal agencies or other entities approved by the Secretary.

''(III) REPORT.—Not later than 6 months after completion of the study under subclause (I), the institution of higher education shall report the results of such study to the Secretary, the Secretary of the Treasury, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Financial Services of the House of Representatives.

''(D) DURATION.—Grants awarded under this paragraph shall be for a period of 3 years.

''(E) AMOUNT.—The Secretary shall award grants of not more than $1,000,000 annually to each institution of higher education awarded a grant under this paragraph. The Secretary may determine the grant award amount based on the number of students to be counseled at the institution of higher education.

''(F) REPORT.—Not later than 90 days after the date of completion of the pilot program under this paragraph, the Secretary shall submit a report to Congress on the effectiveness of the program.

''(G) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph such sums as may be necessary for each of fiscal years 2005 through 2009.''; and

(C) in subsection (c), by adding at the end the following: ''Appropriate Federal agencies shall provide material developed by such agencies for the purpose of financial education, to financial assistance information personnel at institutions of higher education for the use of such personnel in financial aid counseling.''; and

(19) in section 491(d)(8), by inserting '', including those related to financial literacy activities,'' after ''resources and services''.

**SEC. 5. EVALUATION.**

Not later than 6 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Financial Services of the House of Representatives, an evaluation of the range and effectiveness of financial and economic education and financial aid counseling activities of institutions of higher education, lenders, servicers, and guaranty agencies as emphasized by the Secretary of Education pursuant to section 123 of the Higher Education Act of 1965.

Mr. AKAKA. Mr. President, I am pleased to introduce the Financial Literacy in Higher Education Act with Senator ENZI and original cosponsors of S. 1800, the College LIFE, Literacy in Finance and Economics Act, Senators SARBANES and CORZINE.

This is truly a bipartisan compromise on the provisions of S. 1800, the College LIFE Act, and I appreciate Senator ENZI's willingness to collaborate on this matter. As in S. 1800, the Financial Literacy in Higher Education Act proposes a pilot program for five higher education institutions to encourage students to take a personal finance course and participate in preventive annual credit counseling, working in conjunction with State or local public, private, and nonprofit entities selected by the local education agency or the school, and measuring the effectiveness of efforts in any behavioral changes that may result.

The bill emphasizes the importance of personal finance and economic education and counseling by authorizing these activities as allowable uses in existing Higher Education Act programs, such as TRIO, GEAR UP, and title III and title V Serving Institutions. These are programs that have been successful in expanding higher education access to populations with unique needs and, therefore, are ideal avenues through which we can further the important components of financial and economic literacy, such as wise budgeting, saving, debt management, tax preparation, and avoiding predatory or abusive practices.

The bill promotes greater collaboration with and support from Federal agencies in the higher education arena with respect to economic and financial literacy, including coordination with the Financial Literacy and Education Commission, which was created by title V of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. The conference report of H.R. 2622 was adopted recently by this Chamber and the other body. For those who may not be familiar with the Commission, the new entity will work to improve financial literacy and education in the United States through the development of a national strategy.

I urge my colleagues to support this bipartisan effort to increase the financial and economic literacy of our college students. I will also work with my colleagues on advancing the grant programs in S. 1800 that are not in our compromise package, because I feel that those, too, are important parts of our overall effort. Students in higher education are some of our Nation's best and brightest, and we must work to give them the tools that will help them succeed. Not the least among these is literacy in personal finance and economics.

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By Mr. ROCKEFELLER:

S. 1970. A bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes; to the Committee on the Judiciary.

Mr. ROCKEFELLER. Mr. President, over the last several years as the economy came down from the high of the 1990s, we have seen how devastating it can be for workers when their companies declare bankruptcy. From the enormous Enron bankruptcy at the end of 2001 to the bankruptcies of Wheeling-Pitt and then Weirton Steel in my own home State, every bankruptcy has brought heartache for workers who had dedicated themselves to their employers. In many cases, employees and retirees have very limited ability to recover the wages, severance, or benefits they are due when their companies seek protection from creditors.

Workers deserve better. So today I am introducing the Bankruptcy Fairness Act to strengthen workers' rights in bankruptcy and to provide greater authority to bankruptcy courts to ensure a fair distribution of assets. Specifically, my bill will do three things. It will ensure that retirees whose promised health insurance is taken away receive at least some compensation for their lost benefits. Second, my legislation would allow employees to recover more of the back-pay or other compensation that is owed to them at the time of the bankruptcy. And lastly, I would provide bankruptcy courts the authority to recover company assets in cases where company managers flagrantly paid excessive compensation to favored employees just before declaring bankruptcy.

I am proposing this legislation as a way to start a dialogue about how we can better protect workers whose companies file for bankruptcy. I do not pretend to have all the answers. But I do know that we must do a better job of easing the burden that bankruptcy imposes on employees and retirees. And I believe that we can do so in creative ways that do not make it more difficult for companies to successfully reorganize and emerge from bankruptcy. I look forward to the ideas and suggestions of my colleagues.

In the simplest economic terms, employees sell their labor to their companies. They toil away in offices, plants, factories, mills, and mines, because they are promised that at the end of the day they will receive certain compensation. One of the most important types of compensation that workers earn is the right to enjoy certain benefits when they retire. Pensions, life insurance, or health care coverage are earned by workers in addition to their weekly paychecks. Yet, sadly we have seen many companies in the last few years abandon these promises when they declare bankruptcy.

More and more we see companies taking the easy road to profitability by abandoning commitments that they made to workers. For retirees who have planned for their golden years based on the benefits they have earned, losing health insurance can be a devastating blow. Retirees must have the right to reasonable compensation if the company seeks to break its promise to provide health insurance. Under current law, these retirees receive what is called a general unsecured claim for the value of the benefits they lost. As any creditor will tell you, a general unsecured claim is essentially worthless in most bankruptcies. It means you are at the end of the line, and there are not enough assets to go around. This law allows companies to essentially rescind compensation that retirees have earned with virtually no cost to the company. Of course that is a great deal for the company, but it is spectacularly unfair to the retirees.

Recognizing that so-called legacy costs are often an impossible burden for a company that is trying to emerge from bankruptcy, my legislation would still allow companies in some circumstances to alter the health coverage offered to retirees. However, it would require that the company pay a minimum level of compensation to retirees. Under this bill, each retiree would be entitled to a payment equal to the cost of purchasing comparable health insurance for a period of 18 months. Of course, 18 months of health insurance coverage is a lot less than many of these retirees are losing, but it can ease the transition as retirees make alternative plans, and it will discourage companies from thinking that terminating retiree health coverage is an easy solution. The retirees would still be entitled to a general unsecured claim for the value of the benefits lost in excess of this one time payment. This change would ensure that retirees, while still not being made whole on lost benefits, will at least receive some compensation for the broken promises.

Many active workers, too, have a difficult time recovering what is owed to them by their employer when the company files bankruptcy. Under current law, employees are entitled to a priority claim of up to $4,650. But that figure is usually not enough to cover the back-wages, vacation time, severance pay, or benefit payments that the employees are owed for work done prior to the bankruptcy. Congress needs to update the amount of the priority claim to ensure that more workers are able to receive what is rightfully theirs. The Bankruptcy Fairness Act would establish a priority claim for the first $15,000 of compensation owed to an employee.

In most cases, employees have been working their hardest to help the company avoid the nightmare of bankruptcy, only to find that they will not be compensated for their services as promised. As we saw so clearly with the Enron case, employees are often left holding the bag when their company declares bankruptcy. In that case, employees were owed an average of $35,000 in back-wages, severance, and other promised compensation. They deserved to recover more than a mere $4,650 of what was owed them. Let me be clear, this bill does not establish any new obligation for a company to pay severance or other compensation to employees caught up in a company's bankruptcy. It merely ensures that employees can recover more of what is already owed to them through the bankruptcy process.

I understand that many creditors or investors are not able to recover what is rightfully owed to them in bankruptcy, but employees deserve protection that recognizes the unique nature of their dependence on their employer. Any smart investor diversifies his or her portfolio so that a bankruptcy at one company does not bankrupt the investor. Likewise, suppliers and creditors that do business with a company typically have many other clients. This is not the case with workers. They cannot diversify away from the risk of working for a bankrupt company, and the financial hardship a bankruptcy brings is more devastating to the average worker than the average creditor or supplier.

Now, I know that some of my colleagues listening to this may be worrying that this legislation is insensitive to the needs of companies that are trying to reorganize in order to emerge from bankruptcy and go forward as successful businesses. I am fully aware that sometimes, too often in the real world, the bankruptcy process can help companies stay open and maintain jobs by restructuring obligations to creditors. Too many companies in West Virginia have had to go through the painful process of Chapter 11 reorganization. I completely understand the need to keep the factories open. And I have always worked side by side with companies to help them recover.

I will continue that important work, and I have included a provision in this bill to help bankrupt companies that are struggling to survive to recover assets that have been pilfered from the corporate coffers. In too many cases, company executives reward themselves even as their companies careen toward bankruptcy. The most egregious recent example is at Enron in 2001. In the days and weeks leading up to the bankruptcy filing, executives granted large bonuses to themselves and their favored employees. Millions of dollars were paid to a select group of employees just before the company declared bankruptcy. It is unconscionable that executives would grant themselves undeserved bonuses and then weeks later claim that the company did not have the resources to pay its rank and file employees.

My legislation provides bankruptcy courts greater authority to recover excessive compensation that was paid just prior to the bankruptcy filing. If

the court finds that compensation was out of the ordinary course of business or was unjust enrichment, the court can recover those assets for the bankrupt company, ensuring that more creditors, employees, and retirees can receive what is rightfully owed to them by the company.

The reforms I have outlined are modest. They will not take the sting out of bankruptcy. By definition a bankruptcy is a failure, and it is painful for the company's employees, retirees, and business partners. But the Bankruptcy Fairness Act I am introducing today would make progress toward ensuring that bankruptcies are more fair to the workers who gave their time and energy and sweat to the company in exchange for certain promised compensation. And by helping a company recover assets that should not have been paid out as undeserved bonuses just before bankruptcy the bill ensures that more of a company's assets are paid to the employees, retirees, and creditors who are rightfully owed.

It is my hope that this legislation will receive serious consideration from my colleagues, and that this can open an important debate about how workers and retirees can be better protected from the ugly side of prolonged economic downturns.

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

S. 1971. A bill to improve transparency relating to the fees and costs that mutual fund investors incur and to improve corporate governance of mutual funds; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DODD. Mr. President, I rise today, with my colleague from New Jersey, to introduce a measure that is critical to improving the investing public's faith in our capital markets. This legislation, the ''Mutual Fund Investor Confidence Restoration Act'' will fundamentally strengthen protections for the millions of investors who rely on mutual funds for their financial security.

America is the land of opportunity. Millions of Americans and countless others around the world seek the opportunity to participate in the economic life of our nation. Mutual funds are a principal pathway through which most investors achieve financial security. Mutual funds have in the past not only lived up to, but in many cases exceeded, the grand expectations of investors. They are a true success story of our securities markets and our system of securities regulation.

However, in recent months, a series of revelations has shaken investor confidence in the promise of mutual funds. We must restore the faith of investors in mutual funds and those who manage them. This legislation is designed to address some of the abuses and shortcomings which have received so much recent attention.

There are five broad areas which this legislation addresses: corporate governance, disclosures to investors, late trading and market timing, increased regulatory oversight, and financial literacy.

This legislation significantly improves corporate governance standards at mutual funds. Investors have begun to lose faith that their hard earned savings are not being managed with their best interests in mind. Mutual fund boards must have greater independence from fund managers and be more accountable to shareholders of the fund. Directors and chairmen must exercise greater oversight to ensure that funds are run in the interest of their shareholders—and be accountable to shareholders for failing to do so. Additionally, this legislation directs the SEC to determine whether directors and chairmen need additional tools to carry out that job.

This legislation mandates that corporate governance requirements created in the Sarbanes-Oxley Act, such as director independence requirements, financial expertise, and certification measures apply to mutual funds. Of particular note, this legislation mandates that funds employ a chief compliance officer to ensure that internal controls, policies and procedures are met by the fund in the interest of shareholders.

We need to improve the disclosures to investors about the fees and costs associated with mutual funds. Current disclosures are inadequate in providing investors the information necessary to understand the true costs of investing through mutual funds. The current expense ratio by no means includes all of the fund's expenses.

This legislation requires that currently unaccounted for expenses, such as brokerage commissions, advertising fees and research costs, among others, are fully disclosed.

Additionally, the legislation requires the breakout of these respective costs to be displayed as a graph provided to shareholders that will enable them to compare the costs associated with owning shares of different mutual funds. The ability to compare the total costs of mutual funds with each other will drive competition and lower costs for investors.

Investors deserve to know if their broker has a financial incentive to steer them into particular mutual funds. This legislation mandates greater disclosure of financial incentives provided to intermediaries and requires fund companies and investment advisers to fully disclose certain sales practices, including revenue-sharing and directed brokerage arrangements and disclose the value of research and other services paid for as part of brokerage commissions.

The recent abuses that we have seen with respect to late trading and market timing must be stopped to restore investors faith in mutual funds. Insider dealings at mutual funds must never recur. Fund insiders must be prohibited from trading against their own shareholders' interest. Neither fund insiders nor preferred customers must enjoy privileges like market timing that are denied to the millions of average mutual fund investors.

Late trading is already illegal, but we now know it isn't isolated. The system for prohibiting late trading in mutual funds must be strengthened, so all mutual fund investors are treated fairly. This legislation creates new requirements for intermediaries and funds to ensure that illegal late trading activities are stopped.

As a result of the recent widespread scandals in this area, we must rededicate our regulatory oversight of the mutual fund industry. Due to the tremendous size of mutual funds and how critical of an investment tool they are to small investors, this legislation directs the General Accounting Office to consider the value of creating a new self regulatory body and/or independent regulator for mutual fund oversight.

Lastly, this legislation calls for improved efforts to promote financial literacy among mutual fund shareholders. Ensuring that investors have the resources available to them to understand the benefits and costs of mutual funds is a fundamental importance.

The Mutual Fund Investor Confidence Restoration Act is an important step in the right direction of restoring the integrity of the mutual fund industry and will greatly improve the basic protections given to investors who rely upon these investment vehicles for their economic security.

Mr. CORZINE. Mr. President, I rise along with my colleague from Connecticut, Senator DODD, to introduce the Mutual Fund Investor Confidence Restoration Act of 2003, a bill that would improve the oversight of the mutual fund industry, enhance fund governance, and protect the millions of Americans who invest in these funds.

Mutual funds are the primary means for investors to participate in the market. Approximately 95 million Americans invest in mutual funds, and investments total near $7 trillion dollars. The industry, one of our oldest and most-revered, is entrusted by those shareholders with their dreams of a comfortable retirement, the ability to pay their children's college tuition, buy a first home or pursue other lifelong dreams.

It's not a stretch to say that in many ways the mutual fund industry has been the standard bearer for ethical behavior, strong oversight and governance committed to investor protection in our capital markets. Few, if anyone, would dare to have suggested that our mutual fund industry could become fertile ground for the types of 'infectious greed' we witnessed during the governance and accounting scandals a few years ago.

But that is just what has happened.

Today, the mutual fund industry faces its own litany of scandals centered on allegations of investor fraud,

flawed corporate governance, financial conflicts of interest and outright investor abuse. Names like Putnam and Canary Capital have become synonymous with Enron, Tyco and WorldCom in terms of the financial harm inflicted upon investors, undermining their confidence and trust in America's financial markets.

The vast majority of those who work in this industry are decent, hard-working individuals who make a significant contribution to the betterment of our nation.

Unfortunately, there are also far too many associated with this profession—including some investment advisors, fund board members, and those in fund company management—who are all too willing to disregard their fiduciary obligation to shareholders in order to pursue their own personal self-enrichment.

Investors should not perceive that the deck is stacked against them. They should not think that there are different rules—one that applies to them and a different and considerably less stringent set that applies to wealthy industry insiders.

The legislation we are introducing today, The Mutual Fund Investor Confidence Restoration Act will make sure that the playing field stays level.

This bill has five primary themes: improving mutual fund governance; enhancing cost, fee and other important disclosures to shareholders; preventing abusive mutual fund practices such as late trading and market timing; strengthening mutual fund industry oversight; and promoting fund shareholder literacy.

Let me give a more detailed summation of what this legislation would do and why it is so important.

Boards of directors for mutual funds have been criticized recently for the high number of directorships that members hold, the lack of board independence from fund management and the failure of several to fulfill their fiduciary responsibility to shareholders. This legislation would strengthen fund governance by establishing truly independent mutual fund boards, chairmen, nominating committees and independent audit committees that conform to Sarbanes-Oxley Act requirements for those at publicly traded companies.

The bill would also improve fund governance by requiring Sarbanes-Oxley-like ''certification'' from Board Chairmen and newly-designated Chief Compliance Officers that shareholders safeguards are in place within the fund.

Also, it would ensure that accurate disclosures to shareholders, including cost and fee information, are contained in the prospectus.

The legislation includes other 'certifiable' requirements for board chairmen and chief compliance officers, including disclosures that internal controls, a code of ethics and personnel designated to ensuring adherence to stated polices and compliance with relevant securities laws, including measures preventing market-timing and late trading abuses, are in place at the fund and with the investment adviser. Additionally, the legislation calls for the disclosure of insider transactions by mutual fund managers and Board notification of Securities and Exchange Commission (SEC) deficiency letters.

Another issue of concern with the mutual fund industry is the inadequate and confusing disclosure provided to shareholders regarding expenses. Fund shareholders are responsible for paying various fees and costs related to the operation and trading activity of the fund. While funds provide investors with certain fee-related disclosure, shareholders are largely in the dark about many other costs that impact the value of their fund's assets.

The legislation includes numerous provisions aimed at improving the cost, fee and other disclosures shareholders receive from mutual funds. These would include requirements that funds disclose the actual cost borne by each shareholder for the operating expenses of the fund and the estimated expenses paid for costs associated with management of the fund that reduces the fund's overall value, including brokerage commissions, revenue sharing and directed brokerage arrangements, transactions costs another fees.

The legislation would require a breakdown of these respective costs to be displayed graphically, in order to provide shareholders with the requisite information to compare the costs associated with owning shares of various mutual funds.

In addition these requirements, the legislation would require fund companies and investment advisers to fully disclose certain sales practices, including revenue-sharing and directed brokerage arrangements, shareholder eligibility for breakpoint discounts and the value of research and other services paid for as part of brokerage commissions, directing the SEC to study so-called ''soft-dollar'' arrangements.

As I mentioned earlier, Mr. President, this bill includes measures aimed at preventing abusive mutual fund practices, such as late trading and market timing, that diminish the shareholders' assets of a particular fund. First, the legislation seeks to ensure that fund companies and investment advisers have adequate shareholder safeguards in palace, and that they 'certify' these internal control procedures. Those would include establishing a code of ethics, improving the accurate disclosure of fund company policies, and ensuring compliance efforts are overseen by the chief compliance officer.

The bill also would also take steps aimed at directly preventing abusive practices and conflicts of interest. The recent scandals surrounding mutual funds primarily focus on brokers and fund officials that have engaged in the improper trading of mutual fund shares through late trading and market timing. Late trading refers to the practice of placing orders to buy or sell mutual fund shares after 4 p.m., and market timing is short-term trading in and out of stocks in the hope of exploiting an inefficiency in the fund's share price.

To address the issue of market timing, the legislation requires the SEC to ensure that fund companies are in compliance with the Investment Company Act rules requiring them to use fair value calculation to determine the net asset value a fund company's securities when market quotations are otherwise unavailable or do not accurately reflect the companies fair market value. This provision would eliminate the stale pricing that allows market timers to profit, often illicitly, from the inaccurate pricing of a fund's shares.

The legislation would also require the SEC to establish a rule requiring fund companies and investment advisers to develop and disclose formal policies related to market timing and short term trading. Certification by fund company management would further ensure that policies are being adhered to.

To address late trading, the bill requires the SEC to issues rules and establishes guidelines for trades in fund securities that go through newly established ''permitted intermediaries'', such as broker-dealers. The rules would allow these permitted intermediaries to execute trades of a fund after the funds net asset value has been derived, if the intermediary has; a policy in place that the company does not permit late trades, mechanisms in place to detect late-trades and if that intermediary make those procedures available for inspection by the SEC. Non-permitted intermediaries would be required to submit their transactions to the fund company prior to market close.

To reduce other conflicts, the legislation would prohibit mutual fund managers from jointly managing a hedge fund, and would prohibit short-term trading by fund and investment company management and requires disclosure of insider transactions.

In seeking to bolster mutual fund industry oversight, this legislation would require the SEC to review the allocation of the resources it has dedicated to industry oversight and the General Accounting Office (GAO) to study the feasibility of establishing a new, independent regulator—the Mutual Fund Oversight Board. The bill also would direct the SEC to establish incentives and protections for whistleblowers and would require the GAO to independently review and report to Congress on the coordination of enforcement efforts between the SEC, its regional offices, and state regulators.

Finally, this bill calls for a study into ways in which we can improve and promote financial literacy among mutual fund shareholders. And the legislation, through its enhanced disclosures to shareholders, already makes a significant contribution to improving

shareholder understanding of the policies of the fund and the costs associated with its management and operation.

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

S. 1971

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Mutual Fund Investor Confidence Restoration Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENHANCING COST, FEE, AND OTHER DISCLOSURES TO SHAREHOLDERS

Sec. 101. Improved transparency of mutual fund costs.
Sec. 102. Obligations regarding certain distribution and soft dollar arrangements.
Sec. 103. Definition of no-load mutual fund.
Sec. 104. Disclosure of incentive compensation and mutual fund sales.

TITLE II—MUTUAL FUND GOVERNANCE

Sec. 201. Independent mutual fund boards.
Sec. 202. Audit committee requirements for investment companies.
Sec. 203. Informing directors of significant deficiencies.
Sec. 204. Certification by chairman and chief compliance officer.

TITLE III—PREVENTING ABUSIVE MUTUAL FUND PRACTICES

Sec. 301. Prevention of fraud; internal compliance and control procedures.
Sec. 302. Ban on joint management of mutual funds and hedge funds.
Sec. 303. Restrictions on short term trading and mandatory redemption fees.
Sec. 304. Elimination of stale prices.
Sec. 305. Formal policies and procedures related to market timing.
Sec. 306. Prevention of late trades.
Sec. 307. Disclosure of insider transactions.

TITLE IV—STRENGTHENING MUTUAL FUND INDUSTRY OVERSIGHT

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## TITLE I—ENHANCING COST, FEE, AND OTHER DISCLOSURES TO SHAREHOLDERS

### SEC. 101. IMPROVED TRANSPARENCY OF MUTUAL FUND COSTS.

(a) REGULATION REVISION REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Company Act of 1940, or any combination thereof, to require, consistent with the protection of investors and the public interest, improved disclosure with respect to an open-end management investment company, in the quarterly statement or other periodic report to shareholders or other appropriate disclosure document, of—

(A) the actual dollar amount, borne by each shareholder, of the expenses of the company;

(B) the structure of, method used to determine, and the total amount of the compensation of individuals employed by the investment adviser of the company to manage the portfolio of the company, and the ownership interest of such individuals in the securities of the company, including when such individuals have no ownership interest in the company;

(C) whether the chairman of the board of directors of the open-end management investment company or any directors of the investment adviser of such company employed to manage the portfolio of the company do not own any securities of the company;

(D) the estimated total annual dollar amount of fees, costs, expenses, taxes, and any other payments made by the company for any purpose, excluding only pro rata distributions to shareholders, and set forth in a manner that facilitates comparison among different companies;

(E) information concerning the company's policies and practices with respect to the payment of commissions for effecting securities transactions to a member of an exchange, broker, or dealer who—

(i) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(ii) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(iii) facilitates the sale and distribution of the company's shares;

(F) information concerning payments by any person other than the company that are intended to facilitate the sale and distribution of the company's shares; and

(G) information concerning discounts on front-end sales loads for which investors may be eligible, including the minimum purchase amounts required for such discounts.

(2) RULES AND REGULATIONS.—

(A) OTHER MANAGEMENT AND SERVICE-RELATED COST.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules or regulations defining ''fees, costs, expenses, taxes, and any other payments made by the company'' for purposes of paragraph (1)(D). Such definition shall include any management fees, transfer agency expenses, custodial fees, shareholder servicing fees, portfolio transaction costs (including commissions, market impact, spread, and opportunity costs, fees charged under a plan adopted pursuant to rule 12b–1 of the rules of the Securities and Exchange Commission (17 C.F.R. 270.12b–1), and other distribution expenses, directors' fees, and registration fees.

(B) MANNER THAT FACILITATES COMPARISON AMONG INVESTMENT COMPANIES.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules or regulations defining ''manner that facilitates comparison amount investment companies'' for purposes of paragraph (1)(D). Such definition shall include definitions of functional categories of fees, costs, expenses, taxes, and other payments disclosed under paragraph (1)(D) that shall not be based on the contract under which or with whom the services are provided, and shall instead be based on the nature of the services provided.

(ii) DISPLAY.—Each category of costs under clause (i) shall be presented in a graphical display (such as a bar or pie chart) that shows each category as a percentage of the total dollar amount under paragraph (1)(D).

(C) CERTIFICATION.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules or regulations requiring the independent audit of the estimate required under paragraph (1)(D) and certification by the investment adviser and the chairman of the board of directors of the open-end investment company.

(b) APPROPRIATE DISCLOSURE DOCUMENT.—

(1) IN GENERAL.—For purposes of subsection (a)(1), a disclosure shall not be considered to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or statement of additional information, or both such documents.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), the disclosures required by paragraph (1)(B), (C), and (E) of subsection (a) may be considered to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or statement of additional information, or both such documents.

### SEC. 102. OBLIGATIONS REGARDING CERTAIN DISTRIBUTION AND SOFT DOLLAR ARRANGEMENTS.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following:

''(g) OBLIGATIONS REGARDING CERTAIN DISTRIBUTION AND SOFT DOLLAR ARRANGEMENTS.—

''(1) REPORTING REQUIREMENTS.—Each investment adviser to a registered investment company shall, not less frequently than annually, submit to the board of directors of the company a report on—

''(A) payments during the reporting period by the adviser (or an affiliated person of the adviser) that were directly or indirectly made for the purpose of promoting the sale of shares of the investment company (referred to in paragraph (2) as a 'revenue sharing arrangement');

''(B) services to the company provided or paid for by a broker or dealer or an affiliated person of the broker or dealer (other than brokerage and research services) in exchange for the direction of brokerage to the broker or dealer (referred to in paragraph (2) as a 'directed brokerage arrangement'); and

''(C) research services obtained by the adviser (or an affiliated person of the adviser) during the reporting period from a broker or dealer, the receipt of which may reasonably be attributed to securities transactions effected on behalf of the company or any other company that is a member of the same group of investment companies (referred to in paragraph (2) as a 'soft dollar arrangement').

''(2) FIDUCIARY DUTY OF BOARD OF DIRECTORS.—The board of directors of a registered investment company shall have a fiduciary duty—

''(A) to review the investment adviser's direction of the company's brokerage transactions, including directed brokerage arrangements and soft dollar arrangements, and that the direction of such brokerage adheres to the Fund's stated policies and is in the best interests of the shareholders of the company; and

''(B) to review any revenue sharing arrangements to ensure compliance with this Act and the rules adopted thereunder, and that such revenue sharing arrangements adheres to the Fund's stated policies and are in the best interests of the shareholders of the company.

''(3) SUMMARIES OF REPORTS IN ANNUAL REPORTS TO SHAREHOLDERS.—In accordance

with regulations prescribed by the Commission under paragraph (4), annual reports to shareholders of a registered investment company shall include a summary of the most recent report submitted to the board of directors under paragraph (1).

''(4) REGULATIONS.—The Commission shall adopt rules and regulations implementing this section, which rules and regulations shall, among other things, prescribe the content of the required reports.

''(5) DEFINITION.—For purposes of this subsection—

''(A) the term 'brokerage and research services' has the same meaning as in section 28(e)(3) of the Securities Exchange Act of 1934; and

''(B) the term 'research services' means the services described in subparagraphs (A) and (B) of such section.''.

**SEC. 103. DEFINITION OF NO-LOAD MUTUAL FUND.**

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule adopted by the Commission or a self-regulatory organization (or both)—

(1) clarify the definition of ''no-load'' as such term is used by investment companies that impose any fee under a plan adopted pursuant to rule 12b–1 of the rules of the Securities and Exchange Commission (17 C.F.R. 270.12b–1); and

(2) require disclosure to prevent investors from being misled by the use of such terminology by the company or its adviser or principal underwriter.

**SEC. 104. DISCLOSURE OF INCENTIVE COMPENSATION AND MUTUAL FUND SALES.**

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to customers that purchase the shares of an open-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the amount of any compensation received or to be received by the broker in connection with such transaction from any sources, including—

''(I) the amount and source of sales fees, payments by persons other than the investment company that are intended to facilitate the sale and distribution of the securities, and commissions for effecting portfolio securities transactions, or other payments, paid to such broker or dealer, or municipal securities broker or dealer, or associated person thereof in connection with such sale;

''(II) any commission or other fees or charges the investor has paid or will or might be subject to, including as a result of purchases or redemptions;

''(III) any conflicts of interest that any associated person of the broker, dealer, or municipal securities broker or dealer of the investor may face due to the receipt of differential compensation in connection with such sale; and

''(IV) information about the estimated amount of any asset-based distribution expenses incurred, or to be incurred, by the investment company in connection with the purchase of securities by the investor; and

''(ii) such other information as the Commission determines appropriate.

''(B) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be made to a customer not later than as of the date of the completion of the transaction.

''(C) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of an open-end company; or

''(ii) any other filing of an open-end company with the Commission.

''(D) COMMISSION AUTHORITY.—Not later than 1 year after the date of enactment of the Mutual Fund Investor Confidence Restoration Act of 2003, the Commission shall, by rule, establish, to the extent practicable, standards for the disclosures required under subparagraph (A).

''(E) DEFINITION OF OPEN-END COMPANY.—In this paragraph, the term 'open-end company' has the same meaning as in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5).

''(F) DEFINITIONS OF DIFFERENTIAL COMPENSATION AND MUNICIPAL FUND SECURITY.—

''(i) DIFFERENTIAL COMPENSATION.—In this paragraph, an associated person of a broker or dealer shall be considered to receive differential compensation if such person receives any increased or additional remuneration, in whatever form—

''(I) for sales of the securities of an investment company or municipal fund security that is affiliated with, or otherwise specifically designated by, such broker or dealer or municipal securities broker or dealer, as compared with the remuneration for sales of securities of an investment company or municipal fund security offered by such broker or dealer or municipal securities broker or dealer that are not so affiliated or designated; or

''(II) for the sale of any class of securities of an investment company or municipal fund security as compared with the remuneration for the sale of a class of securities of such investment company or municipal fund security (offered by such broker or dealer or municipal securities broker or dealer) that charges a sales load (as defined in section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(35)) only at the time of such a sale.

''(ii) MUNICIPAL FUND SECURITY.—In this paragraph, a municipal fund security is any municipal security issued by an issuer that, but for the application of section 2(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(b)), would constitute an investment company within the meaning of section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).''.

## TITLE II—MUTUAL FUND GOVERNANCE

**SEC. 201. INDEPENDENT MUTUAL FUND BOARDS.**

(a) DIRECTOR INDEPENDENCE.—

(1) IN GENERAL.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(A) by striking ''more than 60 per centum'' and inserting ''more than 25 percent''; and

(B) by striking the period at the end and inserting '', and such company shall not have as a member of its board of directors any person—

''(1) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(2) unless such director is an interested person or has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(2) CHAIRMAN; FINANCIAL EXPERT; INDEPENDENT COMMITTEE.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) CHAIRMAN.—No registered investment company shall have as chairman of its board of directors an interested person of such registered company.

''(j) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors; and

''(B) adopting qualification standards for the nomination of directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.

''(k) FINANCIAL EXPERT.—

''(1) IN GENERAL.—Each registered investment company shall have as a member of its board of directors not less than 1 member who is a financial expert, as such term is defined by the Commission.

''(2) RULES DEFINING FINANCIAL EXPERT.—In defining the term 'financial expert' for purposes of paragraph (1), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or principal financial officer, comptroller, or principal accounting officer of a registered investment company, or from a position involving the performance of similar functions—

''(A) an understanding of generally accepted accounting principles and financial statements; and

''(B) experience in the preparation or auditing of financial statements of general comparable registered investment companies.

''(3) DEADLINE FOR RULEMAKING.—Not later than 180 days after the date of enactment of the Mutual Fund Investor Confidence Restoration Act of 2003, the Commission shall issue rules under paragraph (2).''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider; or

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.''; and

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Mutual Fund Investor Confidence Restoration Act of 2003, the Securities and Exchange Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

**SEC. 202. AUDIT COMMITTEE REQUIREMENTS FOR INVESTMENT COMPANIES.**

(a) AMENDMENTS.—Section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

''(1) such accountant shall have been selected at a meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of the members of the audit committee of such registered company;

''(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of the members of the audit committee of such registered company, cast in person at a meeting called for the purpose of voting on such action;''; and

(B) by adding at the end the following new sentence: ''The Commission, by rule, regulation, or order, may exempt a registered management company or registered face-amount certificate company subject to this subsection from the requirement in paragraph (1) that the votes by the members of the audit committee be cast at a meeting in person when such a requirement is impracticable, subject to such conditions as the Commission may require.''; and

(2) by adding at the end the following:

''(d) AUDIT COMMITTEE REQUIREMENTS.—

''(1) REQUIREMENTS AS PREREQUISITE TO FILING FINANCIAL STATEMENTS.—Any registered management company or registered face-amount certificate company that files with the Commission any financial statement signed or certified by an independent public accountant shall comply with the requirements of paragraphs (2) through (6) of this subsection and any rule or regulation of the Commission issued thereunder.

''(2) RESPONSIBILITY RELATING TO INDEPENDENT PUBLIC ACCOUNTANTS.—The audit committee of the registered company, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any independent public accountant employed by such registered company (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing the audit report or related work, and each such independent public accountant shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the registered company shall be a member of the board of directors of the company, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of a registered company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the registered company or the investment adviser or principal underwriter of the registered company; or

''(ii) be an 'interested person' of the registered company, as such term is defined in section 2(a)(19).

''(4) COMPLAINTS.—The audit committee of the registered company shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the registered company regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the registered company and its investment adviser or principal underwriter of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—The audit committee of the registered company shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—The registered company shall provide appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the independent public accountant employed by the registered company for the purpose of rendering or issuing the audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).

''(7) AUDIT COMMITTEE.—For purposes of this subsection, the term 'audit committee' means—

''(A) a committee (or equivalent body) established by and among the board of directors of a registered investment company for the purpose of overseeing the accounting and financial reporting processes of the company and audits of the financial statements of the company; and

''(B) if no such committee exists with respect to a registered investment company, the entire board of directors of the company.''.

(b) CONFORMING AMENDMENT.—Section 10A(m) (15 U.S.C. 78j–1(m)) of the Securities Exchange Act of 1934 is amended by adding at the end the following:

''(7) EXEMPTION FOR INVESTMENT COMPANIES.—Effective 1 year after the date of enactment of the Mutual Fund Investor Confidence Restoration Act of 2003, for purposes of this subsection, the term 'issuer' shall not include any investment company that is registered under section 8 of the Investment Company Act of 1940.''.

(c) IMPLEMENTATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to carry out section 32(d) of the Investment Company Act of 1940, as added by subsection (a) of this section.

(2) INCENTIVES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule, establish—

(A) a program of incentives to encourage the filing of meritorious complaints under section 32(d)(4)(A) of the Investment Company Act of 1940; and

(B) appropriate penalties for the willful filing of materially false complaints under such section.

**SEC. 203. INFORMING DIRECTORS OF SIGNIFICANT DEFICIENCIES.**

Section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–41) is amended by adding at the end the following:

''(f) INFORMING DIRECTORS OF SIGNIFICANT DEFICIENCIES.—

''(1) IN GENERAL.—If the report of an inspection by the Commission of a registered investment company identifies significant deficiencies in the operations of such company, or of its investment adviser or principal underwriter, the company shall provide such report to the directors of such company.

''(2) DISCLOSURE OF DEFICIENCIES.—The Commission shall, on an annual basis, review all inspection reports of registered investment companies and publicly disclose the 10 most common deficiencies cited in those reports.''.

**SEC. 204. CERTIFICATION BY CHAIRMAN AND CHIEF COMPLIANCE OFFICER.**

(a) IN GENERAL.—Subsection (j) of section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17(j)), as amended by section 301 of this Act, is amended by adding at the end the following:

''(4) CERTIFICATION BY CHAIRMAN.—The rules and regulations established under paragraph (1) shall require the chairman of the board of directors of each registered open-end investment company to certify, in the periodic report to shareholders, or other appropriate disclosure document, that—

''(A) procedures are in place for verifying that the determination of current net asset value of any redeemable security issued by the company used in computing periodically the current price for the purpose of purchase, redemption, and sale complies with the requirements of the Investment Company Act of 1940 and the rules and regulations thereunder, and the company is in compliance with such procedures;

''(B) procedures are in place for the oversight of the flow of funds into and out of the securities of the company, and the company is in compliance with such procedures;

''(C) procedures are in place to ensure that investors are receiving any applicable discounts on front-end sales loads that are disclosed in the company's prospectus;

''(D) procedures are in place to ensure that, if the company's shares are offered as different classes of shares, such classes are designed in the interests of investors, and could reasonably be an appropriate investment option for an investor;

''(E) procedures are in place to ensure that information about the company's portfolio securities is not disclosed in violation of the securities laws or the company's code of ethics;

''(F) the members of the board of directors who are not interested persons of the company have reviewed and approved the compensation of the company's portfolio manager in connection with their consideration of the investment advisory contract under section 15(c);

''(G) the company has established and enforces a code of ethics as required by paragraph (2) of this subsection;

''(H) the company is in compliance with the additional requirements of paragraph (3) of this subsection;

''(I) the report submitted to the board of directors under section 15(g)(1) is complete and accurate; and

''(J) the board of directors has fulfilled its obligations under section 15(g)(2).''

''(5) CERTIFICATION BY CHIEF COMPLIANCE OFFICER.—The rules and regulations established under paragraph (1) shall require the chief compliance officer of each registered open-end investment company to certify, on an annual basis, that—

''(A) appropriate internal controls are in place for the review required under subparagraphs (A) through (H) of paragraph (4); and

''(B) such internal controls have been reviewed, and determined to reasonably achieve their stated purpose, by the chief compliance officer.

''(6) REVIEW OF ADVISORY CONTRACTS.—The rules and regulations established under paragraph (1) shall require that the chairman of the board of directors and the chief compliance officer of a registered open-end investment company certify, on an annual basis, that any advisory contract entered into by the company and associated management fees have been negotiated and are in the best interests of the company.''.

(b) DEADLINE FOR RULES.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe—

(1) rules to implement subsection (a); and

(2) minimum standards for compliance with the certification requirements of paragraphs (4) and (5) of section 17(j) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(j)).

## TITLE III—PREVENTING ABUSIVE MUTUAL FUND PRACTICES

### SEC. 301. PREVENTION OF FRAUD; INTERNAL COMPLIANCE AND CONTROL PROCEDURES.

(a) AMENDMENT.—Subsection (j) of section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17(j)) is amended to read as follows:

''(j) DETECTION AND PREVENTION OF FRAUD.—

''(1) COMMISSION RULES TO PROHIBIT FRAUD, DECEPTION, AND MANIPULATION.—It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company, or any security issued by such registered investment company or by an affiliated registered investment company, in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative.

''(2) CODES OF ETHICS.—The rules and regulations established under paragraph (1) shall include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business. Such rules and regulations shall require each such registered investment company to disclose such codes of ethics (and any changes therein) in the periodic report to shareholders of such company, and to disclose such code of ethics and any waivers and material violations thereof on a readily accessible electronic public information facility of such company and in such additional form and manner as the Commission shall require by rule or regulation.

''(3) ADDITIONAL COMPLIANCE PROCEDURES.—The rules and regulations established under paragraph (1) shall—

''(A) require each investment company and investment adviser registered with the Commission to adopt and implement policies and procedures reasonably designed to prevent violation of the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), subchapter II of chapter 53 of title 31, United States Code, chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

''(B) require each such company and adviser to review such policies and procedures annually for their adequacy and the effectiveness of their implementation;

''(C) require each such company to appoint a chief compliance officer to be responsible for overseeing such policies and procedures, ensuring that the practices of the company adhere to those policies and procedures, and promote the interest of shareholders—

''(i) whose compensation shall be approved by the members of the board of directors of the company who are not interested persons of such company;

''(ii) who shall report directly to the members of the board of directors of the company who are not interested persons of such company, privately as such members request, but no less frequently than annually; and

''(iii) whose report to such members shall include any violations or waivers of, and any other significant issues arising under, such policies and procedures; and

''(D) require each such company to establish policies and procedures reasonably designed to protect any officer, director, employee, contractor, subcontractor, or agent of such company from retaliation, including discharge, demotion, suspension, harassment, or any other manner of discrimination in the terms and conditions of employment, because of any lawful act done by such officer, director, employee, contractor, subcontractor, or agent to provide information, cause information to be provided, or otherwise assist in an investigation that relates to any conduct which such officer, director, employee, contractor, subcontractor, or agent reasonably believes constitutes a violation of the securities laws or the code of ethics of such investment company.''.

(b) DEADLINE FOR RULES.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules to implement subsection (a).

### SEC. 302. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.

(a) AMENDMENT.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is further amended by adding at the end the following:

''(h) BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.—

''(1) PROHIBITION OF JOINT MANAGEMENT.—It shall be unlawful for any individual to serve or act as the portfolio manager or investment adviser of a registered open-end investment company if such individual also serves or acts as the portfolio manager or investment adviser of an investment company that is not registered, or of such other categories of companies as the Commission shall prescribe by rule in order to prohibit conflicts of interest, such as conflicts in the selection of the portfolio securities.

''(2) EXCEPTIONS.—Notwithstanding paragraph (1), the Commission may, by rule, regulation, or order, permit joint management by a portfolio manager in exceptional circumstances when necessary to protect the interest of investors, provided that such rule, regulation, or order requires—

''(A) enhanced disclosure by the registered open-end investment company to investors of any conflicts of interest raised by such joint management; and

''(B) fair and equitable policies and procedures for the allocation of securities to the portfolios of the jointly managed companies, and certification by the members of the board of directors who are not interested persons of such registered open-end investment company, in the periodic report to shareholders, or other appropriate disclosure document, that such policies and procedures of such company are fair and equitable.

''(3) DEFINITION.—For purposes of this subsection, the term 'portfolio manager' means the individual or individuals who are designated as responsible for decision-making in connection with the securities purchased and sold on behalf of a registered open-end investment company, but shall not include individuals who participate only in making research recommendations or executing transactions on behalf of such company.''.

(b) DEADLINE FOR RULES.—The Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section within 90 days after the date of enactment of this Act.

### SEC. 303. RESTRICTIONS ON SHORT TERM TRADING AND MANDATORY REDEMPTION FEES.

(a) SHORT TERM TRADING PROHIBITED.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17) is amended by adding at the end the following:

''(k) SHORT TERM TRADING PROHIBITED.—It shall be unlawful for any officer, director, partner, or employee of a registered investment company, any affiliated person, investment adviser, or principal underwriter of such company, or any officer, director, partner, or employee of such an affiliated person, investment adviser, or principal underwriter, to engage in short-term transactions, as such term is defined by the Commission by rule, in any securities of which such company, or any affiliate of such company, is the issuer, except that this subsection shall not prohibit transactions in money market funds, other funds the investment policy of which expressly permits short-term transactions, or such other categories of registered investment companies as the Commission shall specify by rule.''.

(b) MANDATORY REDEMPTION FEES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule, require that any investment company that does not allow for market timing practices to charge a redemption fee upon the short-term redemption of any securities of such company.

(c) DEADLINE FOR RULES.—Not later than 180 days after the date of enactment of this

Act, the Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section.

**SEC. 304. ELIMINATION OF STALE PRICES.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe, by rule or regulation, standards concerning the obligation of registered open-end investment companies under the Investment Company Act of 1940 to apply and use fair value methods of determination of net asset value when market quotations are unavailable or do not accurately reflect the fair market value of the companies' portfolio securities, in order to prevent dilution of the interests of long-term investors or as necessary in the other interests of investors. Such rule or regulation shall identify, in addition to significant events, the conditions or circumstances from which such obligation will arise, such as the need to value securities traded on foreign exchanges, and the methods by which fair value methods shall be applied in such events, conditions, and circumstances.

(b) FORMAL POLICIES AND PROCEDURES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule or regulation—

(A) require that each registered open-end investment company and registered investment advisor establish formal policies with respect to compliance with the regulations established under subsection (a);

(B) require such policies to be publicly disclosed to shareholders;

(C) require the adoption of internal procedures to ensure compliance with such policies;

(D) require that such policies be subject to ongoing review by the company or investment adviser; and

(E) require, on an annual basis, a certification by the chief executive officer of the company or investment adviser that such policies are being adhered to.

(2) CHANGES TO POLICIES.—Any policies adopted by a registered open-end company or registered investment adviser under paragraph (1) shall not be altered without the prior approval of a majority of the shareholders of such company or adviser.

**SEC. 305. FORMAL POLICIES AND PROCEDURES RELATED TO MARKET TIMING.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule—

(1) require that each registered open-end investment company and registered investment advisor establish formal policies with respect to whether it permits market timing and short term trading, and under what circumstances such practices will be permitted;

(2) require such policies to be publicly disclosed in any prospectus delivered by the company or investment advisor;

(3) require the adoption of internal procedures reasonably designed to ensure compliance with such policies;

(4) require that such policies be subject to ongoing review by the company or investment advisor; and

(5) require, on an annual basis, a certification by the chief executive officer of the investment adviser, and chairman of the board of directors and chief compliance officer of the company that such policies are being adhered too by the investment adviser or the company.

**SEC. 306. PREVENTION OF LATE TRADES.**

(a) ADDITIONAL RULES REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue rules to prevent transactions in the securities of any registered open-end investment company in violation of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22), including after-hours trades that are executed at a price based on a net asset value that was determined as of a time prior to the actual execution of the transaction.

(b) TRADES COLLECTED BY INTERMEDIARIES.—

(1) IN GENERAL.—The rules established under subsection (a) shall permit execution of after-hours trades that are provided to the registered open-end investment company by a broker-dealer, retirement plan administrator, insurance company, or other intermediary, after the time as of which such net asset value was determined, if the late trading and detection procedures and policies of such intermediary are subject to inspection by the Commission (in this subsection, a ''permitted intermediary'').

(2) RULES.—The Commission, by rule, shall—

(A) require each permitted intermediary to certify that it has policies and procedures in place to prevent and detect late-trades, and that such policies have been adhered too by the permitted intermediary;

(B) require each permitted intermediary to submit an independent annual audit verifying that its policies and procedures do not permit the acceptance of late order trading; and

(C) provide that any intermediary that is not a permitted intermediary shall be required to submit all transactions to the open-end investment company before the determination of the related net asset value.

**SEC. 307. DISCLOSURE OF INSIDER TRANSACTIONS.**

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule, require—

(1) that any senior executive officer of an open-end management investment company publicly disclose, prior to the actual time of purchase, any intended sale or purchase of securities of an open-end management investment company that employs the same investment adviser as the company with whom such senior executive officer is employed; and

(2) that any such securities purchased be held by the senior executive officer for not less than 6 months.

## TITLE IV—STRENGTHENING MUTUAL FUND INDUSTRY OVERSIGHT

**SEC. 401. STUDY OF MUTUAL FUND OVERSIGHT BOARD.**

(a) IN GENERAL.—The General Accounting Office shall conduct a study to determine the feasibility of, and assess what, if any, benefits to shareholders, mutual fund governance and mutual fund supervision would result from establishing a Mutual Fund Oversight Board that would—

(1) have inspection, examination, and enforcement authority over mutual fund boards of directors;

(2) be funded by assessments against mutual fund assets or management fees;

(3) have members selected by Commission; and

(4) have rulemaking authority.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall submit a report on the study required under paragraph (1) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

**SEC. 402. STUDY OF COORDINATION OF ENFORCEMENT EFFORTS.**

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the coordination of enforcement efforts related to allegations of misconduct by open-end management companies between the headquarters of the Securities and Exchange Commission, the regional offices of the Commission, and appropriate State regulatory and law enforcement entities, such as State attorney generals and the North American Securities Administrators Association.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall submit a report on the study required under subsection (a) to Congress.

**SEC. 403. REVIEW OF COMMISSION RESOURCES.**

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study on the allocation and adequacy of the supervision and enforcement resources of the Commission dedicated to the oversight of open-end management companies.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

**SEC. 404. COMMISSION STUDY AND REPORT REGULATING SOFT DOLLAR ARRANGEMENTS.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the use of soft dollar arrangements by investment advisers as contemplated by section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)).

(2) AREAS OF CONSIDERATION.—The study required by this section shall examine—

(A) the trends in the average amounts of soft dollar commissions paid by investment advisers and investment companies in the past 3 years;

(B) the types of services provided through soft dollar arrangements;

(C) the benefits and disadvantages of the use of soft dollars for investors, including the extent to which use of soft dollar arrangements affects the ability of mutual fund investors to evaluate and compare the expenses of different mutual funds;

(D) the potential or actual conflicts of interest (or both potential and actual conflicts) created by soft dollar arrangements, including whether certain potential conflicts are being managed effectively by other laws and regulations specifically addressing those situations, the role of the board of directors in managing these potential or actual (or both) conflicts, and the effectiveness of the board in this capacity;

(E) the transparency of such soft dollar arrangements to investment company shareholders and investment advisory clients of investment advisers, the extent to which enhanced disclosure is necessary or appropriate to enable investors to better understand the impact of these arrangements, and an assessment of whether the cost of any enhanced disclosure or other regulatory change would result in benefits to the investor; and

(F) whether such section 28(e) should be modified, and whether other regulatory or legislative changes should be considered and adopted to benefit investors.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the study required by subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**SEC. 405. REPORT ON ADEQUACY OF REGULATORY RESPONSE TO LATE TRADING AND MARKET TIMING.**

(a) REPORT REQUIRED.—Not later than 180 days after the date enactment of this Act, the Securities and Exchange Commission shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on market timing and late trading of mutual funds.

(b) REQUIRED CONTENTS OF REPORT.—The report required by this section shall include the following:

(1) The economic harm of market timing and late trading of mutual fund shares on long-term mutual fund shareholders.

(2) The findings by the Commission's Office of Compliance, Inspections and Examinations, and the actions taken by the Commission's Division of Enforcement, regarding—

(A) illegal late trading practices;

(B) illegal market timing practices; and

(C) market timing practices that are not in violation of prospectus disclosures.

(3) When the Commission became aware that the use of market timing practices was harming long-term shareholders, and the circumstances surrounding the Commission's discovery of that activity.

(4) The steps the Commission has taken since becoming aware of market timing practices to protect long-term mutual fund investors.

(5) Any additional legislative or regulatory action that is necessary to protect long-term mutual fund shareholders against the detrimental effects of late trading and market timing practices.

**SEC. 406. STUDY OF ARBITRATION CLAIMS.**

(a) STUDY REQUIRED.—The Securities and Exchange Commission shall conduct a study of the increased rate of arbitration claims and decisions involving mutual funds since 1995 for the purposes of identifying trends in arbitration claim rates and, if applicable, the causes of such increased rates and the means to avert such causes.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required by subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**TITLE V—PROMOTING SHAREHOLDER LITERACY**

**SEC. 501. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.**

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as such term is defined under section 5 of the Investment Company Act of 1940, that are registered under section 8 of such Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

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By Mrs. BOXER:

S. 1972. A bill to amend the Internal Revenue Code of 1986 to provide for a tax credit for small employer-based health insurance coverage in States in which such coverage is mandated, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Mr. President, today, I am introducing the ''Small Business State Mandated Health Insurance Assistance Act.''

The legislation would provide a tax credit to small businesses in states where the law mandates that they provide health insurance to their employees. The credit would be for 50 percent of the amount the employer spends providing health insurance for his or her employees.

In California 6.4 million people are uninsured. That's more than 18 percent of the state. To deal with the issue, the state legislature recently passed a law mandating that employers provide their workers with health insurance.

Many smaller businesses have told me that they do not object to the law itself, but that they will have a hard time financially complying with the mandate—especially in these tough economic times. Furthermore, there is concern that neighboring States without such a mandate will recruit our small businesses entrepreneurs to move to their states where they would not have to provide insurance for their workers.

While businesses can currently deduct from federal taxes, as costs of doing businesses, the costs of the health insurance provided to their employees, this assistance is simply not large enough to provide the help that small businesses truly need. That is why I am introducing this bill today. I encourage my colleagues to join me in this effort.

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By Mr. DASCHLE:

S. 1974. A bill to make improvements to the Medicare Prescriptions Drug, Improvement, and Modernization Act of 2003; to the Committee on Finance.

Mr. DASCHLE. Mr. President, by adopting the Medicare Conference Report today, the Senate has done great harm to one of our most successful and important social programs. As I have said over the past week, I believe that this will not be the end of the issue. I believe this is just the end of the first chapter.

And I predict that the call from beneficiaries and future beneficiaries to repair this damage will be so loud that Congress will be compelled to act. We are hearing already from seniors in South Dakota and all across the country. For that reason, I am introducing today the Medicare Preservation and Drug Price Fairness Act. It is only a first step in addressing some of the many problems in the Republican Medicare bill—but it is an important step.

This summer, the Senate passed a prescription drug bill. It was not perfect. But it was a start at providing the most necessary reform Medicare needs—covering prescription drugs for the program's 41 million beneficiaries. And I reluctantly supported it.

What came back from the Conference was no longer a bill to add a drug benefit to Medicare. It was a vehicle for Republicans to harm Medicare under the guise of ''reforms.''

I am introducing a bill today to address some of the main weaknesses in the Conference bill. It will not be the last of these bills introduced. And it does not repair all of the damage done to Medicare by the Conference bill.

The bill I introduce today is simply an initial effort to carve out some of the more egregious provisions of the Conference bill. It does not address the critical issues of the 2.7 million retirees who will lose their good coverage or the 6 million of the lowest-income seniors who will be worse off than they are now. It does not address the inadequacy of the drug benefit itself. We will come back to those issues in the near future.

The Medicare Preservation and Drug Price Fairness Act is a start toward righting the wrongs done to Medicare today. It repeals the language in the Republican bill that prohibits Medicare from negotiating lower prices on behalf of beneficiaries. It repeals the highly controversial ''premium support'' demonstration projects that would force beneficiaries who do not want to join an HMO to pay higher premiums. It ensures that the guaranteed Medicare fallback is triggered whenever there are not two stand-alone drug plans available in an area so that seniors are not forced to join an HMO if the one that is available to them is priced too high. It repeals the $12 billion slush fund giveaway to HMOs and the $6 billion tax shelters for the wealthy and healthy. And, unlike the Republican bill, it allows Americans to obtain US-made drugs at lower prices safely from other industrialized countries.

I noted earlier today when we voted on the Conference Report that there were few, if any, seniors looking on expectantly from the gallery. And in fact, we have heard from them in large numbers that they do not support the Conference bill. In contrast, the lobbies were full of well-tailored lobbyists—and the big drug companies and the HMOs are the ones celebrating the passage of the Conference bill. The Republicans got it backwards. The Medicare Preservation and Drug Price Fairness Act is a first step toward the bill Congress should have passed—a bill that truly benefits America's seniors.

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

S. 1974

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Medicare Preservation and Drug Price Fairness Act''.

**SEC. 2. AUTHORITY TO NEGOTIATE PRICES.**

Subsection (i) of section 1860D–11, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is repealed.

**SEC. 3. REPEAL OF COMPARATIVE COST ADJUSTMENT (CCA) PROGRAM.**

Subtitle E of title II of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the amendments made by such subtitle, are repealed.

**SEC. 4. PHARMACEUTICAL MARKET ACCESS.**

(a) IMPORTATION OF PRESCRIPTION DRUGS.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended—

(1) in subsection (a)—

(A) by striking ''The Secretary'' and inserting ''Not later than 180 days after the date of the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Secretary''; and

(B) by striking ''pharmacists and wholesalers'' and inserting ''pharmacists, wholesalers, and qualifying individuals'';

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

''(1) require that each covered product imported pursuant to such subsection complies with sections 501, 502, and 505, and other applicable requirements of this Act; and'';

(B) in paragraph (2), by striking '', including subsection (d); and'' and inserting a period; and

(C) by striking paragraph (3);

(3) in subsection (c), by inserting ''by pharmacists and wholesalers (but not qualifying individuals)'' after ''importation of covered products'';

(4) in subsection (d)—

(A) by striking paragraphs (3) and (10);

(B) in paragraph (5), by striking '', including the professional license number of the importer, if any'';

(C) in paragraph (6)—

(i) in subparagraph (C), by inserting ''(if required under subsection (e))'' before the period;

(ii) in subparagraph (D), by inserting ''(if required under subsection (e))'' before the period; and

(iii) in subparagraph (E), by striking ''labeling'';

(D) in paragraph (7)—

(i) in subparagraph (A), by inserting ''(if required under subsection (e))'' before the period; and

(ii) by amending subparagraph (B) to read as follows:

''(B) Certification from the importer or manufacturer of such product that the product meets all requirements of this Act.''; and

(E) by redesignating paragraphs (4) through (9) as paragraphs (3) through (8), respectively;

(5) by amending subsection (e) to read as follows:

''(e) TESTING.—

''(1) IN GENERAL.—Subject to paragraph (2), regulations under subsection (a) shall require that testing referred to in paragraphs (5) through (7) of subsection (d) be conducted by the importer of the covered product, unless the covered product is a prescription drug subject to the requirements of section 505B for counterfeit-resistant technologies.

''(2) EXCEPTION.—The testing requirements of paragraphs (5) through (7) of subsection (d) shall not apply to an importer unless the importer is a wholesaler.'';

(6) in subsection (f), by striking ''or designated by the Secretary, subject to such limitations as the Secretary determines to be appropriate to protect the public health'';

(7) in subsection (g)—

(A) by striking ''counterfeit or''; and

(B) by striking ''and the Secretary determines that the public is adequately protected from counterfeit and violative covered products being imported pursuant to subsection (a)'';

(8) in subsection (i)(1)—

(A) by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—The Secretary shall conduct, or contract with an entity to conduct, a study on the imports permitted pursuant to subsection (a), including consideration of the information received under subsection (d). In conducting such study, the Secretary or entity shall evaluate the compliance of importers with regulations under subsection (a), and the incidence of shipments pursuant to such subsection, if any, that have been determined to be misbranded or adulterated, and determine how such compliance contrasts with the incidence of shipments of prescription drugs transported within the United States that have been determined to be misbranded or adulterated.''; and

(B) in subparagraph (B), by striking ''Not later than 2 years after the effective date of final regulations under subsection (a),'' and inserting ''Not later than 18 months after the date of the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003,'';

(9) in subsection (k)(2)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

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

''(D) The term 'qualifying individual' means an individual who is not a pharmacist or a wholesaler. ''; and

(10) by striking subsections (l) and (m).

(b) USE OF COUNTERFEIT-RESISTANT TECHNOLOGIES TO PREVENT COUNTERFEITING.—

(1) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352; deeming drugs and devices to be misbranded) is amended by adding at the end the following:

''(w) If it is a drug subject to section 503(b), unless the packaging of such drug complies with the requirements of section 505B for counterfeit-resistant technologies.''.

(2) REQUIREMENTS.—Title V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 505A the following:

**''SEC. 505B. COUNTERFEIT-RESISTANT TECHNOLOGIES.**

''(a) INCORPORATION OF COUNTERFEIT-RESISTANT TECHNOLOGIES INTO PRESCRIPTION DRUG PACKAGING.—The Secretary shall require that the packaging of any drug subject to section 503(b) incorporate—

''(1) overt optically variable counterfeit-resistant technologies that are described in subsection (b) and comply with the standards of subsection (c); or

''(2) technologies that have an equivalent function of security, as determined by the Secretary.

''(b) ELIGIBLE TECHNOLOGIES.—Technologies described in this subsection—

''(1) shall be visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

''(2) shall be similar to that used by the Bureau of Engraving and Printing to secure United States currency;

''(3) shall be manufactured and distributed in a highly secure, tightly controlled environment; and

''(4) should incorporate additional layers of non-visible covert security features up to and including forensic capability.

''(c) STANDARDS FOR PACKAGING.—

''(1) MULTIPLE ELEMENTS.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to section 503(b), manufacturers of the drugs shall incorporate the technologies described in subsection (b) into multiple elements of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

''(2) LABELING OF SHIPPING CONTAINER.—Shipments of drugs described in subsection (a) shall include a label on the shipping container that incorporates the technologies described in subsection (b), so that officials inspecting the packages will be able to determine the authenticity of the shipment. Chain of custody procedures shall apply to such labels and shall include procedures applicable to contractual agreements for the use and distribution of the labels, methods to audit the use of the labels, and database access for the relevant governmental agencies for audit or verification of the use and distribution of the labels.''.

(c) REPEAL.—Subtitle C of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the amendments made by such subtitle, are repealed.

**SEC. 5. ASSURING ACCESS TO COVERAGE.**

Paragraph (3) of section 1860D–3(a), as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended to read as follows:

''(3) QUALIFYING PLAN DEFINED.—For purposes of this section, the term 'qualifying plan' means a prescription drug plan offered by a PDP sponsor.''.

**SEC. 6. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.**

(a) IN GENERAL.—Section 1858 of the Social Security Act, as added by section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and

(3) in subsection (e), as so redesignated, by striking ''subject to subsection (e),''.

(b) CONFORMING AMENDMENT.—Section 1851(i)(2) of the Social Security Act (42 U.S.C. 1395w–21(i)(2)), as amended by section 221(d)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking''1858(h)'' and inserting ''1858(g)''.

**SEC. 7. REPEAL OF HEALTH SAVINGS ACCOUNTS.**

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the amendments made by such section, are repealed.

**SEC. 8. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendments made by this Act shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(b) APPLICATION OF LAWS.—If any amendment to any provision of any Act is repealed by this Act, such provision shall be applied and administered as if the amendment had never been enacted.

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

S. 1975. A bill to amend the Internal Revenue Code of 1986 to deny a deduction for securities-related fines, penalties, and other amounts, and to provide that revenues resulting from such denial be transferred to Fair Funds for the relief of victims; to the Committee on Finance.

Mr. DODD. Mr. President, I rise today to introduce important legislation designed to ensure that corporate wrongdoers are held fully responsible for their illegal actions and that investors are given fair compensation for such actions.

As most of my colleagues are aware, in April of this year, 10 large securities firms agreed to pay a total of $1.4 billion in fines and payments for giving their investment clients tainted and misleading advice—advice which cost those clients hundreds of millions of dollars.

The ''global settlement'' was initially lauded as a historic victory against corporate wrongdoers. And indeed, thanks to the efforts of Federal and State securities regulators, and New York State Attorney General Eliot Spitzer, the settlement has the potential to fundamentally change pervasive business practices that were so harmful to so many.

But the settlement's impact could be significantly weakened by a loophole that would allow the firms to avoid paying taxes on nearly $900 million of the penalties—by deducting them as standard business costs.

Only one-third of the total settlement is specifically prohibited by law from being tax-deductible. If the firms are able to write off the remainder of the costs as business expenses, then the total price tag of the settlement will be much smaller than advertised.

However, there is much more at stake. America's financial markets are the most vibrant in the world for one reason—investor confidence. The securities laws of the 1930's built the foundation for the deepest, most liquid markets in the world. They have created a public trust in our markets among investors worldwide who know that we have a zero-tolerance policy towards corporate malfeasance.

If we allow firms to write off fines as the cost of doing business, then we will perpetuate the idea that fraud is no longer a crime, but an accepted business practice. And we will compromise the very principles on which our markets are based—credibility, honesty, and responsibility.

We need to send the strongest possible message to corporate America that defrauding people of their life savings can never, under any circumstances, be considered ''business as usual.'' Our tax code should not reward these practices—it should discourage and punish them, to the greatest extent possible. Otherwise, the victims of corporate misconduct will include not only individual investors, but the credibility of our capital markets. And if our markets suffer, so will America's place in the world economy.

That is why I rise today to introduce my legislation. This legislation takes two important steps towards fixing this problem. First, it expressly prohibits any tax deduction on payments for violations of securities laws, including those required by the global settlement. Second, it directs all of the tax revenues gained from those payments into existing funds administered by the Securities and Exchange Commission which repay money to defrauded investors. Under my bill, the perpetrators of corporate misdeeds will be fairly punished, and the victims will be fairly compensated.

Everyone agrees that restoring investor confidence is a crucial part of getting our economy back on the right track. The vitality of 10 largest securities firms represent an important piece of this puzzle. But Americans will only be willing to entrust them with their hard-earned money if they can be sure that they are being dealt with ethically and honestly.

The global settlement represents a tremendous opportunity to help mend the tattered relationship between corporate America and the American people. We can't afford to lose that opportunity in a tax loophole. We need to show Americans that corporate fraud is a real crime—not business as usual. I urge my colleagues to support this bill.

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By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mrs. MURRAY, Mr. JEFFORDS, Ms. CANTWELL, Mr. AKAKA, Mr. REED, Mr. CHAFEE, and Mr. INOUYE):

S. 1976. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State children's health insurance program for any fiscal year for certain medical expenditures, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation with Senators DOMENICI, MURRAY, JEFFORDS, CANTWELL, AKAKA, REED, CHAFEE, and INOUYE entitled the ''Children's Health Equity Technical Amendments Act of 2003.''

Since the passage of the Children's Health Insurance Program, or CHIP, in 1997, a group of States that expanded coverage to children in Medicaid prior to the enactment of CHIP have been unfairly penalized for that expansion. States are not allowed to use the enhanced matching rate available to other States for children at similar levels of poverty under the act. As a result, a child in the States of New York, Florida, and Pennsylvania, because they were grandfathered in the original act or in Iowa, Montana, or a number of other States at 134 percent of poverty is eligible for an enhanced matching rate in CHIP but that has not been the case for States such as New Mexico, Vermont, Washington, Rhode Island, Hawaii, and a number of others, including Connecticut, Tennessee, Minnesota, New Hampshire, Wisconsin, and Maryland.

As the health policy statement by the National Governors' Association reads, ''The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage of the majority of uninsured children in their states.

For six years, our group of States have sought to have this inequity addressed. Early this year, I introduced the ''Children's Health Equity of 2003'' with Senators JEFFORDS, MURRAY, LEAHY, and Ms. CANTWELL and we worked successfully to get a compromise worked out for inclusion in S. 312 by Senators ROCKEFELLER, and CHAFEE. This compromise extended expiring CHIP allotments only for fiscal years 1998 through 2001 in order to meet budgetary caps.

The compromise allowed States to be able to use up to 20 percent of our State's CHIP allotments to pay for Medicaid eligible children about 150 percent of poverty that were part of our State's expansions prior to the enactment of CHIP. That language was maintained in conference and included in H.R. 2854 that was signed by the President as Public Law 108–74. Unfortunately, a slight change was made in the conference language that excluded New Mexico and Hawaii, Maryland, and Rhode Island needed specific changes so an additional bill was passed, H.R. 3288, and signed into law as Public Law 108–107, on November 17, 2003. This second bill included language from legislation that I introduced with Senator DOMENICI, S. 1547, to address the problem caused to New Mexico by the conference committee's change.

Unfortunately, one major problem with the compromise was that it would allow the 10 States flexibility with its CHIP funds for allotments between 1998 and 2001 and not in the future. Therefore, the inequity continues with CHIP allotments last year, this year, and into the future. This legislation would address that problem and ensure that all future allotments give these 11 States the flexibility to use up to 20 percent of our CHIP allotments to pay for health care services of children above 150 percent of poverty in our respective state Medicaid programs.

This rather technical issue has real and negative consequences in States such as New Mexico. In fact, due to the CHIP inequity, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2002, and yet, has only been able to spend slightly over $26 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its federal CHIP allocations.

With the passage of H.R. 2854 and H.R. 3288, that situations will improve somewhat. Unfortunately, the change was not made permanent and does not apply to future CHIP allotments. This legislation would correct this problem.

It is important to note that this initiative includes strong maintenance of effort language as well as incentives for our State to conduct outreach and

enrollment efforts and program simplification to find and enroll uninsured kids because we feel strongly that they must receive the health coverage for which they are eligible.

The bill does not take money from other States's CHIP allotments. It simple allows our States to spend our States' specific CHIP allotments from the Federal government on our uninsured children—just as other States across the country are doing.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1976

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Children's Health Equity Technical Amendments Act of 2003''.

**SEC. 2. AUTHORITY FOR QUALIFYING STATES TO USE PORTION OF SCHIP ALLOTMENT FOR ANY FISCAL YEAR FOR CERTAIN MEDICAID EXPENDITURES.**

(a) IN GENERAL.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) (as added by section 1(b) of Public Law 108–74) is amended by striking '', 1999, 2000, or 2001'' and inserting ''and any fiscal year thereafter''.

(b) SPECIAL RULE FOR USE OF ALLOTMENTS FOR FISCAL YEAR 2002 OR THEREAFTER.—Section 2105(g) of the Social Security Act (42 U.S.C. 1397ee(g)) (as so added and as amended by Public Law 108–127) is amended—

(1) in paragraph (2), by striking ''In this subsection'' and inserting ''Subject to paragraph (4), in this subsection''; and

(2) by adding at the end the following:

''(4) SPECIAL RULE REGARDING AUTHORITY TO USE PORTION OF ALLOTMENTS FOR FISCAL YEAR 2002 OR THEREAFTER.—Notwithstanding paragraph (2), the authority provided under paragraph (1)(A) with respect to any allotment under section 2104 for fiscal year 2002 or any fiscal year thereafter (insofar as the allotment is available under subsections (e) and (g) of such section), shall only apply to a qualifying State if the State has implemented at least 3 of the following policies and procedures (relating to coverage of children under title XIX and this title):

''(A) UNIFORM, SIMPLIFIED APPLICATION FORM.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A), the State uses the same uniform, simplified application form (including, if applicable, permitting application other than in person) for purposes of establishing eligibility for benefits under title XIX and this title.

''(B) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under section 1902(l) or this title with respect to children.

''(C) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State provides that eligibility shall not be regularly redetermined more often than once every year under this title or for children described in section 1902(a)(10)(A).

''(D) SAME VERIFICATION AND REDETERMINATION POLICIES; AUTOMATIC REASSESSMENT OF ELIGIBILITY.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A), the State provides for initial eligibility determinations and redeterminations of eligibility using the same verification policies (including with respect to face-to-face interviews), forms, and frequency as the State uses for such purposes under this title, and, as part of such redeterminations, provides for the automatic reassessment of the eligibility of such children for assistance under title XIX and this title.

''(E) OUTSTATIONING ENROLLMENT STAFF.—The State provides for the receipt and initial processing of applications for benefits under this title and for children under title XIX at facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(l)(2)(B) consistent with section 1902(a)(55).''.

(c) CONFORMING AMENDMENT.—Section 2105(g)(3) of the Social Security Act (42 U.S.C. 1397ee(g)(3)) is amended by striking ''paragraphs (1) and (2)'' and inserting ''this subsection''.

(d) EFFECTIVE DATE.—The amendments made by this section take effect as if enacted on October 1, 2003.

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By Ms. SNOWE (for herself and Mr. VOINOVICH):

S. 1977. A bill to promote the manufacturing industry in the United States by establishing an Assistant Secretary for Manufacturing within the Department of Commerce, an Interagency Manufacturing Task Force, and a Small Business Manufacturing Task Force, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to introduce the ''Small Manufacturers Assistance, and Trade (SMART) Act,'' which responds to the needs of America's small manufacturers. This bill offers a new emphasis on programs and services within the Federal Government that will provide small companies a better opportunity to survive in these challenging times and compete in our global economy. The SMART Act introduces new resources, improves existing programs, and expands those programs that work to serve a larger constituency. It is critical that we revitalize our country's manufacturing base and establish an environment for economic growth and job creation.

Small manufacturers constitute over 98 percent of our Nation's manufacturing enterprises, employ 12 million people, and supply more than 50 percent of the value-added U.S. production. It is a sector we cannot afford to ignore. In addition, no industry has witnessed a more profound erosion of jobs.

The damage manufacturing has sustained is nothing short of alarming. Since July 2000, almost 2.8 million U.S. manufacturing jobs have been eliminated. New England alone lost more than 214,000 jobs between June 1993 through June 2003, with 78 percent of those losses, 166,000 jobs, occurring since January of 2001.

In my home State of Maine, we've been shedding jobs at a startling rate over the past decade—and even more so in the past 2 years. Between July 2000 and June 2003 an astounding 17,300 manufacturing jobs were lost.

The bottom line is that we must bolster our manufacturing industry, especially with the current 6.0 percent unemployment rate in the United States. To ensure that the road to recovery is robust, we have a special obligation to provide the investment to allow small companies to grow. In fact, it has been reported that for every dollar of final manufacturing output, an additional $1.26 is created in other industry sectors such as suppliers of raw materials, marketing, and retail industries.

Looking even more broadly, a healthy manufacturing base is essential to the preservation of our Nation's security and its status as a world power. We must end the trend of becoming increasingly dependent upon other countries for the products we use and rely upon. Now is the crucial time for everyone—industry representatives, Congress, the President, Republicans and Democrats alike—to work together toward the common goal of revitalizing this industry.

As the Chair of the Committee on Small Business, I have been focusing considerable attention on the concerns of small business manufacturers and efforts to aid in their recovery. Last month, I held a field hearing on this critical subject in Lewiston, ME. I invited Grant Aldonas, Under Secretary for International Trade of the Commerce Department, and Pamela Olson, Assistant Secretary for Tax Policy of the Treasury Department, to participate and explored with them ways to strengthen and expand this vital industry. Their testimony and comments confirmed that we cannot delay and must act quickly to support our small manufacturing base.

Additionally, I heard from a number of small businesses in the manufacturing industry. Their testimony confirmed the damage sustained by our country's manufacturing sector, and the sense of urgency that we need to act immediately to assist them. The SMART Act is a vital first step toward helping them do what they do best—create jobs.

The bill I introduce today starts by establishing a strong and influential voice for manufacturers within the Federal Government through the creation of an Assistant Secretary for Manufacturing within the U.S. Department of Commerce. The new Assistant Secretary will be responsible for identifying and addressing the concerns of small manufacturers at the highest level of our Federal Government. Senator VOINOVICH has introduced S. 1326, which similarly creates an Assistant Secretary for Manufacturing. I support that bill and Senator VOINOVICH's efforts to assisting our country's manufacturers.

To ensure that the government acts on the needs of manufacturers, the SMART Act creates an Interagency Manufacturing Task Force (IMTF). The mission of the IMTF will be to encourage the Federal departments and agencies to coordinate their efforts by identifying and addressing manufacturing concerns collectively. The IMTF will

be chaired by the Commerce Department's new Assistant Secretary for Manufacturing and will be comprised of representatives from the Federal departments and agencies that directly affect this sector of our economy. In addition, the IMTF will be tasked with the duty of submitting an annual report on their findings and recommendations to the President and the Senate and House Small Business Committees.

In conjunction with this government-wide task force, the SMART Act also continues to improve the Federal infrastructure supporting the industry by establishing a Small Business Manufacturing Task Force (SBMTF) within the Small Business Administration (SBA). The SBA has a wide spectrum of programs and services available to small manufacturers. The mission of the new SBMTF will be to refocus the agency's programs and services to ensure that they respond to the particular needs of small manufacturers while still serving all aspects of the small business community.

Adding to the information gained from the Committee's hearing, we have reviewed the SBA's programs and services that are geared specifically toward manufacturing and international trade. I was alarmed to learn, during this hearing, that small manufacturers were unfamiliar with the SBA programs that can assist them. These findings revealed that the SBA needs to realign its efforts specifically to include manufacturers in the delivery of the agency's program and services.

In order to improve existing SBA small business development programs, the agency needs to take its services beyond the traditional small business enterprise. The SMART Act improves the SBA's entrepreneurial development programs and services so that small manufacturers can grow their business operation, expand their facilities, and purchase new equipment—all of which will result in creating jobs throughout the industry and its supply chain.

Partnerships developed between SBA related organizations and non-SBA related entities will be an additional asset for these producers. The SMART Act directs the SBA to develop partnerships with the Manufacturing Extension Partnership (MEP), community economic development organizations, and the agency's resource partners—such as Small Business Development Centers and SCORE—to create new outreach and training programs for small manufacturers and small businesses in the manufacturing supply chain.

The SMART Act requires SCORE, with its long established expertise in counseling, to extend its reach to small manufacturers and exporters through its online counseling services and its community based offices. The Act also directs SCORE to recruit more counselors with manufacturing and international trade expertise and increase its partnerships with manufacturing and exporting related organizations, which will help increase the marketing capabilities of these small producers and exporters.

I have also learned that small and medium sized companies are often hesitant to engage in the export of their product as a way to grow their small business, because they are often fearful of the many unfamiliar intricacies involved in doing business in a foreign market. Small businesses currently account for almost $300 billion of yearly export sales—nearly one-third of total U.S. exports. However, according to an Administration survey through the SBA's Export Trade Assistance Partnership, approximately 30 percent of non-exporting small businesses are interested in exporting their products and services. These businesses hold the potential to be a major source for even more economic activity and job growth.

The SBA is a pivotal resource in delivering financial and business development tools to businesses seeking to export. The SMART Act improves the SBA's international trade and exporting programs to assist small businesses and manufacturers expand into the export market and play an even greater role in the balance of U.S. trade.

The SMART Act also requires the SBA to establish annual goals that are linked to its trade promotion activities, and to develop programs that will help small businesses compete against imports. This objective will be more easily obtained by incrementally increasing the number of SBA representatives at the U.S. Export Assistance Centers (USEACs) over the next 3 years. To ensure that all States have the same services available, the SBA Office of International Trade will have at least one financial specialist dedicated to the international loan programs and providing oversight of trade financing issues.

The SBA's financing programs have helped American small businesses create and retain jobs, even as other sources of financing have become more scarce. This bill provides improvements to the SBA's 7(a), 504, and Surety Bond programs.

From Fiscal Year 1999 through Fiscal Year 2002, the 7(a) loan program helped small businesses create more than 1.3 million new jobs by making $37.7 billion in financing available to more than 182,000 small businesses. This bill increases the maximum size of 7(a) loans for small exporters from $2 million to $2.6 million by increasing the maximum amount guaranteed by the SBA from $1 million to $1.3 million.

During that same period, the 504 loan program provided more than 20,000 new loans to small businesses, allowing those businesses to create or retain almost 450,000 jobs. The SMART Act increases 504 loan sizes in two ways. First, the bill increases the maximum loan size for manufacturing projects by increasing the SBA's maximum guarantee, which is 40 percent of the total loan size, from $1 million to $4 million. Second, for loans to exporters, the bill increases the maximum loan size from $3.25 million to $5 million by increasing the SBA's maximum guarantee from $1.3 million to $2 million.

Finally, the bill clarifies that under the SBA's Surety Bond Guarantee Program, the SBA may guarantee bonds for specific contracts of $2 million or less, even if the total range of affiliated contracts may exceed $2 million.

These SBA financing programs have helped to create millions of jobs in America, and manufacturers and exporters have been an important part of that success. This bill will increase small companies' and exporters' ability to obtain vital capital that will help them compete in a very difficult international environment and enable them to create more jobs for American workers.

I am drawing these provisions from another bill I have authored, the Small Business Administration 50th Anniversary Reauthorization Act of 203 (S. 1375), which the Committee and the Senate unanimously approved earlier this year. While we are waiting for the House of Representatives to pass an SBA reauthorization bill, I believe that given the importance of these financing provisions, they must be included in this bill as well to increase their chance of being signed into law.

Because Federal assistance for small manufacturers should extend beyond the SBA, the SMART Act will also establish a new Assistant United States Trade Representatives for Small Business within the Office of the United States Trade Representatives (USTR). This office will be tasked with focusing on small businesses', including small manufacturers, concerns in trade negotiations and promoting their exports.

There are currently 21 Assistant USTRs covering issues from services to telecommunications to labor. While small businesses face many of the same issues that serve as barriers to trade as many of the largest multinational corporations, they do not have the same resources to overcome these barriers, thus blocking them from reaping the benefits of international trade. In particular, small businesses do not have the resources necessary to settle private trade disputes in a timely and cost effective fashion, meet physical presence requirements in other countries, conform to complex customs procedures, or meet off-set exclusions in government procurement. By establishing a new Assistant U.S. Trade Representative, we will ensure that the views and concerns of small businesses will have an appropriate seat at the negotiating table and help secure the competitiveness of our small exporters abroad.

The Small Manufacturers Assistance, Recovery, and Trade Act answers the call for help that I have heard too often of late from small manufacturers in this country. These improvements to existing resources within the Federal

government will give these companies a better opportunity to survive in these challenging times and compete in the global economy.

This bill is a critical starting point to revitalize our country's manufacturing base and create an environment that allows them to grow and create jobs again. We must help these businesses access the global marketplace through expanded exporting opportunities and assistance. I intend to work with all groups and interested parties that are committed to improving and passing this bill. There are still many needs that face our Nation's manufacturers—and this is just the beginning.

I look forward to working with my colleagues in the Senate to ensure that the provisions of this bill are enacted so that these companies can continue to grow and reach their full potential.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 1977

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Small Manufacturers Assistance, Recovery, and Trade Act'' or ''SMART Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MANUFACTURING AND TRADE REPRESENTATIVES AND TASK FORCE

Sec. 101. Assistant Secretary of Commerce for Manufacturing.
Sec. 102. Interagency Manufacturing Task Force.
Sec. 103. Assistant United States Trade Representative for Small Business.

TITLE II—SMALL BUSINESS ADMINISTRATION

Subtitle A—Manufacturing and Entrepreneurial Development

Sec. 201. Small Business Manufacturing Task Force.
Sec. 202. Entrepreneurial development programs and services.

Subtitle B—Small Business Loan Programs

Sec. 211. Increased loan amounts for exporters.
Sec. 212. Debenture size.
Sec. 213. Job creation or retention standards.
Sec. 214. Clarification of maximum surety bond guarantee.

Subtitle C—International Trade

Sec. 221. Office of International Trade.

## TITLE I—MANUFACTURING AND TRADE REPRESENTATIVES AND TASK FORCE

### SEC. 101. ASSISTANT SECRETARY OF COMMERCE FOR MANUFACTURING.

(a) ESTABLISHMENT.—There shall be in the Department of Commerce, in addition to the Assistant Secretaries of Commerce provided by law as of the date of enactment of this Act, 1 additional Assistant Secretary of Commerce, to be known as the Assistant Secretary of Commerce for Manufacturing, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate; and

(2) be compensated at the rate of pay provided for under level IV of the Executive Schedule (5 U.S.C. 5315).

(b) DUTIES.—The Assistant Secretary of Commerce for Manufacturing shall—

(1) identify and address the concerns of manufacturers;

(2) represent and advocate for the interests of United States manufacturers;

(3) aid in the development of policies that promote the vitality and expansion of United States manufacturing;

(4) review policies that adversely impact manufacturers;

(5) identify and address issues that are unique to small manufacturers and those that are exacerbated by the size or limited capital of small manufacturers; and

(6) perform such other duties as the Secretary of Commerce may prescribe.

(c) REPORTING REQUIREMENTS.—The Assistant Secretary of Commerce for Manufacturing shall submit to Congress an annual report that contains—

(1) an overview of the state of the manufacturing sector in the United States;

(2) a forecast of the future state of the manufacturing sector in the United States; and

(3) an analysis of current and significant laws, regulations, and policies that adversely impact the manufacturing sector in the United States.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking ''Assistant Secretaries of Commerce (11)'' and inserting ''Assistant Secretaries of Commerce (12)''.

### SEC. 102. INTERAGENCY MANUFACTURING TASK FORCE.

(a) ESTABLISHMENT.—There is established an Interagency Manufacturing Task Force (referred to in this section as the ''IMTF'') for the purposes of—

(1) maximizing the efforts and resources of Federal agencies in assisting the manufacturing industry;

(2) improving interagency cooperation in their efforts to assist the manufacturing industry;

(3) encouraging additional efforts to assist United States manufacturers;

(4) coordinating the agencies' efforts to assist the manufacturing industry; and

(5) identifying and addressing collective manufacturing concerns.

(b) MEMBERSHIP.—The IMTF shall be composed of 14 members, including—

(1) the Assistant Secretary of Commerce for Manufacturing, who shall serve as chair of the IMTF;

(2) a representative of the Department of the Treasury, to be designated by the Secretary of the Treasury;

(3) a representative of the Department of Defense, to be designated by the Secretary of Defense;

(4) a representative of the Department of Education, to be designated by the Secretary of Education;

(5) a representative of the Department of Energy, to be designated by the Secretary of Energy;

(6) a representative of the Department of Health and Human Services, to be designated by the Secretary of Health and Human Services;

(7) a representative of the Department of Homeland Security, to be designated by the Secretary of Homeland Security;

(8) a representative of the Department of Labor, to be designated by the Secretary of Labor;

(9) a representative of the Environmental Protection Agency, to be designated by the Administrator of the Environmental Protection Agency;

(10) a representative of the Office of the United States Trade Representative, to be designated by the United States Trade Representative;

(11) a representative of the Small Business Administration, to be designated by the Administrator of the Small Business Administration;

(12) a representative of the Executive Office of the President, to be designated by the President; and

(13) 2 additional members, to be designated by the President.

(c) DUTIES.—Under the direction of the Assistant Secretary of Commerce for Manufacturing, the IMTF shall—

(1) provide advice and counsel to the President and Congress on matters of importance to manufacturers;

(2) monitor, coordinate, and promote the plans, programs, and operations of the departments and agencies of the Federal Government that may contribute to the growth of the United States manufacturing industry;

(3) develop and promote new public sector initiatives, policies, programs, and plans designed to foster the manufacturing industry;

(4) review, monitor, and coordinate plans and programs developed in the public sector, which affect the ability of manufacturers to obtain capital, credit, and access to technology;

(5) identify and address regulations that are needlessly burdensome on manufacturers; and

(6) design a comprehensive plan for a joint public-private sector effort to facilitate the growth and development of the United States manufacturing industry.

(d) MEETINGS.—

(1) FREQUENCY.—The IMTF shall meet not less than 4 times per year to perform the duties under subsection (c).

(2) QUORUM.—A majority of the members of the IMTF shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) FEDERAL EMPLOYEES.—Each member of the IMTF who is an officer or employee of the Federal Government shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(B) OTHER MEMBERS.—Each member of the IMTF who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent for level IV of the Executive Schedule (5 U.S.C. 5315) for each day (including travel time) during which such member is engaged in the performance of the duties of the IMTF.

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

(3) DETAIL OF FEDERAL EMPLOYEES.—Any employee of the Federal Government may be detailed to the IMTF without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORTS.—

(1) FINDINGS AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the IMTF shall submit a report containing the findings and recommendations described in paragraphs (1) through (5) of subsection (c) to—

(A) the President;

(B) the Committee on Small Business and Entrepreneurship of the Senate; and

(C) the Committee on Small Business of the House of Representatives.

(2) GROWTH PLAN.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Manufacturing shall submit the plan prepared pursuant to subsection (c)(6) to—

(A) the President;

(B) the Committee on Small Business and Entrepreneurship of the Senate; and

(C) the Committee on Small Business of the House of Representatives.

**SEC. 103. ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR SMALL BUSINESS.**

Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by adding at the end the following:

''(6)(A) There is established within the Office the position of Assistant United States Trade Representative for Small Business, which shall be appointed by the United States Trade Representative.

''(B) The Assistant United States Trade Representative for Small Business shall—

''(i) promote the trade interests of small businesses, including manufacturers;

''(ii) identify and address foreign trade barriers that impede small business exporters;

''(iii) enforce existing trade agreements beneficial to small businesses;

''(iv) maintain an open line of communication with the Small Business Administration concerning small business trade issues;

''(v) ensure that small business concerns are considered in trade negotiations and agreements; and

''(vi) perform such other duties as the United States Trade Representative may direct.

''(C) The Assistant United States Trade Representative for Small Business shall be paid at the level of a member of the Senior Executive Service with equivalent time and service.''.

## TITLE II—SMALL BUSINESS ADMINISTRATION

### Subtitle A—Manufacturing and Entrepreneurial Development

**SEC. 201. SMALL BUSINESS MANUFACTURING TASK FORCE.**

(a) ESTABLISHMENT.—The Administrator of the Small Business Administration (referred to in this subtitle as the ''Administrator'') shall establish a Small Business Manufacturing Task Force (referred to in this section as the ''Task Force'') to address the concerns of small manufacturers.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall be composed of a representative from—

(A) the Office of Capital Access;

(B) the Office of Entrepreneurial Development;

(C) the Office of Administration and Management;

(D) the Office of Government Contracting and Business Development; and

(E) any other employee of the Small Business Administration, on a temporary basis, as determined necessary by the Administrator to carry out the goals of the Task Force.

(2) CHAIR.—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) DUTIES.—The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) ensure that the Small Business Administration implements the small business manufacturing training programs established under section 202;

(3) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(4) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) MEETINGS.—

(1) FREQUENCY.—The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) DETAIL OF SBA EMPLOYEES.—Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

(1) the President;

(2) the Committee on Small Business and Entrepreneurship of the Senate; and

(3) the Committee on Small Business of the House of Representatives.

**SEC. 202. ENTREPRENEURIAL DEVELOPMENT PROGRAMS AND SERVICES.**

(a) MANUFACTURING OUTREACH AND TRAINING PROGRAMS.—The Office of Entrepreneurial Development of the Small Business Administration shall develop new outreach and training programs for small manufacturers and small businesses in the manufacturing supply chain, in partnership with 1 or more of the following:

(1) The Manufacturing Extension Partnership.

(2) Community economic development organizations.

(3) Small Business Development Centers.

(4) The Service Corps of Retired Executives.

(5) Women's Business Centers.

(b) REPORTING REQUIREMENT.—The Small Business Administration shall include ''manufacturing'' as a category on the scorecard that tracks the goals of the Small Business Administration on its annual performance report to Congress.

(c) MANUFACTURING WORKSHOPS.—The Office of Entrepreneurial Development of the Small Business Administration, in consultation with manufacturing and economic development organizations, shall develop workshops to be conducted by district offices, in conjunction with the entities listed in paragraphs (1) through (5) of subsection (a), addressing—

(1) product design and testing;

(2) the patent process;

(3) prototype demonstrations;

(4) product production;

(5) market research; and

(6) business financing.

(d) SCORE.—The Service Corps of Retired Executives shall—

(1) make their counseling services available to small manufacturers and exporters through their on-line counseling services and community-based offices;

(2) recruit counselors with manufacturing and international trade expertise; and

(3) develop additional partnerships with manufacturing and exporting organizations.

(e) ENTREPRENEURIAL DEVELOPMENT PROGRAM IMPROVEMENTS.—The Office of Entrepreneurial Development of the Small Business Administration shall develop programs and services to strengthen small business vendors and suppliers that participate in the manufacturing supply chain.

(f) SIMPLIFIED REPORTING REQUIREMENTS.—The Small Business Administration shall review and simplify, as appropriate, its reporting requirements for the Small Business Development Centers, the Service Corps of Retired Executives, and Women's Business Centers so that these organizations can maximize the time spent assisting their clients.

(g) DISTRICT OFFICES.—The Small Business Administration shall provide district offices with adequate resources, including budget allocations for travel and materials used to conduct outreach and training activities.

### Subtitle B—Small Business Loan Programs

**SEC. 211. INCREASED LOAN AMOUNTS FOR EXPORTERS.**

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A), by inserting before the semicolon at the end the following: ''and paragraph (14)''; and

(B) in subparagraph (B), by striking ''$1,250,000'' and inserting ''$1,300,000''; and

(2) in paragraph (14), by adding at the end the following:

''(D) The total amount of financings under this paragraph that are outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established under this Act may not exceed $1,300,000 and the gross loan amount under this paragraph may not exceed $2,600,000.''.

**SEC. 212. DEBENTURE SIZE.**

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended—

(1) by striking ''$1,300,000'' and inserting ''$2,000,000''; and

(2) by inserting before the period at the end the following: '', and loans for which the loan proceeds will be directed toward manufacturing projects, which shall be limited to $4,000,000 for each such identifiable small business concern''.

**SEC. 213. JOB CREATION OR RETENTION STANDARDS.**

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

''(e) JOB CREATION OR RETENTION FOR MANUFACTURING PROJECTS.—A manufacturing project being funded by the debenture is deemed to satisfy the job creation or retention requirement under subsection (d)(1) if the project creates or retains 1 job opportunity for every $100,000 guaranteed by the Administration.''.

**SEC. 214. CLARIFICATION OF MAXIMUM SURETY BOND GUARANTEE.**

Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking ''contract up to'' and inserting ''total work order or contract amount at the time of bond execution that does not exceed''.

### Subtitle C—International Trade

**SEC. 221. OFFICE OF INTERNATIONAL TRADE.**

Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking ''SEC. 22'' and inserting the following:

**''SEC. 22. OFFICE OF INTERNATIONAL TRADE.'';**

(2) in subsection (a)—

(A) by inserting ''ESTABLISHMENT.—'' after ''(a)''; and

(B) by inserting ''(referred to in this section as the 'Office'),'' after ''Trade'';

(3) in subsection (b)—

(A) by striking ''The Office'' and inserting the following:

''(b) TRADE DISTRIBUTION NETWORK.—The Office, including United States Export Assistance Centers (referred to as 'one-stop shops' in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)) and as 'Export Centers' in this section),''; and

(B) by amending paragraph (1) to read as follows:

''(1) assist in maintaining a distribution network using regional and local offices of the Administration, the Small Business Development Center network, the Women's Business Center network, and Export Centers for—

''(A) trade promotion;

''(B) trade finance;

''(C) trade adjustment;

''(D) trade remedy assistance; and

''(E) trade data collection.'';

(4) in subsection (c)—

(A) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9);

(B) by inserting before paragraph (2), as redesignated, the following:

''(1) establish annual goals within the Office relating to—

''(A) enhancing the exporting ability of small business concerns and small manufacturers;

''(B) facilitating technology transfers;

''(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently against foreign entities;

''(D) increasing the access to capital by small business concerns;

''(E) disseminating information concerning Federal, State, and private programs and initiatives;

''(F) ensuring that the interests of small business concerns are adequately represented in trade negotiations;'';

(C) in paragraph (2), as redesignated, by striking ''mechanism for'' and all that follows through ''(D)'' and inserting the following: ''mechanism for—

''(A) identifying subsectors of the small business community with strong export potential;

''(B) identifying areas of demand in foreign markets;

''(C) prescreening foreign buyers for commercial and credit purposes; and

''(D)''; and

(D) in paragraph (9), as redesignated—

(i) by striking ''full-time export development specialists to each Administration regional office and assigning'';

(ii) by striking ''office. Such specialists'' and inserting ''office and providing each Administration regional office with a full-time export development specialist, who'';

(iii) in subparagraph (D), by striking ''and'' at the end;

(iv) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(v) by adding at the end the following:

''(F) participate jointly with employees of the Office in an annual training program that focuses on current small business needs for exporting; and

''(G) jointly develop and conduct training programs for exporters and lenders in cooperation with the United States Export Assistance Centers, the Department of Commerce, Small Business Development Centers, and other relevant Federal agencies.'';

(5) in subsection (d)—

(A) by inserting ''EXPORT FINANCING PROGRAMS.—'' after ''(d)'';

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E); and

(C) by striking ''To accomplish this goal, the Office shall work'' and inserting ''To accomplish this goal, the Office shall—

''(1) designate at least 1 individual within the Administration as a trade financial specialist to oversee the international loan programs and assist Administration employees with trade finance issues; and

''(2) work'';

(6) in subsection (e), by inserting ''TRADE REMEDIES.—'' after ''(e)'';

(7) by amending subsection (f) to read as follows:

''(f) REPORTING REQUIREMENT.—The Office shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

''(1) a description of the progress of the Office in implementing the requirements under this section;

''(2) the destinations and benefits to the Administration and to small business concerns of travel by Office staff; and

''(3) a description of the participation by the Office in trade negotiations.'';

(8) in subsection (g), by inserting ''STUDIES.—'' after ''(g)''; and

(9) by adding at the end the following:

''(h) EXPORT ASSISTANCE CENTERS.—

''(1) ADDITIONAL CENTERS.—The Administration, in accordance with the March 29, 2002, agreement with the Department of Commerce and the Export-Import Bank, shall assign not less than 4 additional employees to Export Centers during each of the fiscal years 2004 through 2006.

''(2) PLACEMENT.—The Administration shall use the resource allocation methodology, used by the Department of Commerce as of the date of enactment of this subsection, to strategically assign Administration employees to all Export Centers based on the needs of exporters.

''(3) GOALS.—The Office shall work with the Department of Commerce and the Export-Import Bank to establish shared annual goals for the Export Centers.

''(4) OVERSIGHT.—The Office shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Centers.''.

## TITLE 1. MANUFACTURING AND TRADE REPRESENTATIVES AND TASK FORCE

*Section 101. Assistant Secretary of Commerce for Manufacturing.*

This section establishes an Assistant Secretary of Commerce for Manufacturing within the Department of Commerce. The Assistant Secretary shall be responsible for identifying and addressing manufacturers' concerns and representing and advocating for their interests. A person shall be appointed to this position by the President of the United States, in accordance with the Constitution, and shall serve at the discretion of the President of the United States.

*Section 102. The Interagency Manufacturing Task Force.*

This provision establishes an Interagency Manufacturing Task Force (IMTF). The IMTF will be chaired by the new Assistant Secretary of Commerce for Manufacturing and will be comprised of representatives of the Departments of Treasury, Defense, Education, Energy, Health and Human Services, Homeland Security, and Labor, the Environmental Protection Agency, the Small Business Administration, the United States Trade Representative, a representative of the Executive staff of the President and two additional members designated by the President.

Under the Chair's direction, the IMTF shall: (a) identify and address regulations that are needlessly burdensome on manufacturers; (b) provide advice and counsel to the President and Congress on matters of importance to manufacturers; (c) monitor, coordinate and promote the plans, programs and operations of the departments and agencies of the Federal Government that may contribute to the U.S. manufacturing industry's growth; (d) develop and promote new public-sector initiatives, policies, programs and plans designed to foster the manufacturing industry; (e) review, monitor and coordinate plans and programs developed in the public sector that affect manufacturers' ability to obtain capital, credit and access to technology; and (f) design a comprehensive plan for a joint public-private sector effort to facilitate the growth and development of the U.S. manufacturing industry, which shall be submitted, not later than 1 year after the effective date of the bill, to the President and the Senate and House Small Business Committees. This section also instructs the IMTF to submit a report of its findings and recommendations to the President and the Senate and House Small Business Committees not later than 1 year after the effective date of the bill and annually thereafter.

*Section 103. Assistant United States Trade Representative for Small Business.*

This section establishes a new Assistant United States Trade Representative for Small Business, within the Office of the United States Trade Representative (USTR). This new position shall promote trade interest for small businesses and ensure that their concerns are considered in trade negotiations and agreements.

## TITLE II—SMALL BUSINESS ADMINISTRATION

### SUBTITLE A—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

*Section 201. The Small Business Manufacturing Task Force.*

This section establishes a Small Business Manufacturing Task Force (SBMTF) within the Small Business Administration (SBA), which will be comprised of the SBA personnel appointed by the SBA Administrator. The SBMTF will: (a) evaluate and identify whether existing programs and services are sufficient to serve small manufacturers' needs, or whether additional programs or services are necessary; (b) ensure that the SBA implements the small business manufacturing training initiatives referenced in this legislation; (c) actively promote the SBA's programs and services that serve small manufacturers; and (d) identify and study the unique conditions of small manufacturers and develop and propose policy initiatives to support and assist them. This section also instructs the SBMTF to submit a report of its findings and recommendations to the President and the Senate and House Small Business Committees not later than 12 months after the effective date of the bill and annually thereafter.

*Section 202. Entrepreneurial development programs and services.*

This section: (a) directs the SBA to create new outreach and training programs for small manufacturers and small businesses in the manufacturing supply chain by developing partnerships with other manufacturing and business-assistance organizations and SBA's resource partners; (b) directs the SBA to include ''manufacturing'' on their scorecard that tracks the goals of the SBA and to report this information to Congress; (c) directs the SBA to consult with manufacturing and economic development organizations to develop and conduct specialized workshops to address important aspects of the manufacturing business; (d) requires SCORE to expand and improve their present counseling services for small manufacturers and exporters; (e) directs the SBA's Office of Entrepreneurial Development to develop programs

and services to strengthen small business vendors and suppliers that participate in the manufacturing supply chain; (f) directs the SBA to review and simplify its reporting requirements for the Small Business Development Centers, SCORE, and Women's Business Centers; and (g) directs the SBA to provide adequate resources to the district offices for outreach and training activities.

SUBTITLE B—SMALL BUSINESS LOAN PROGRAMS

*Section 211. Increased loan amounts for exporters.*

This section increases the maximum size of a loan that an exporter may receive under the SBA's 7(a) Export Working Capital Program (EWCP) to $2.6 million (instead of the current maximum loan size of $2 million) by increasing the maximum SBA guarantee to $1.3 million (instead of the current maximum SBA guarantee of $1 million). In order to conform the size of the guaranteed portion of an EWCP loan to that of a loan under the SBA's 7(a) International Trade Loan Program, the section also increases the maximum SBA-guaranteed portion of an ITL Program loan from $1.25 million to $1.3 million.

*Section 212. Debenture size.*

This section increases the maximum loan guarantee amount from $1.3 million to $2 million for loans that support a public policy goal, which includes loans to exporters. The guaranteed amount of $2 million represents 40 percent of the total loan size, so small businesses will be able to receive loans of up to $5 million for these types of projects. This section also increases the maximum size of the SBA's guarantee from $1 million to $4 million for loans that will be used for manufacturing projects (leading to a maximum loan size of $10 million for small manufacturers, because the guarantee represents 40 percent of the maximum loan size).

*Section 213. Job creation or retention standards.*

This section modifies the job retention or creation standard for small manufacturers (currently one job per $35,000 guaranteed by the SBA) so that the small manufacturers must create or retain one job for each $100,000 guaranteed by the SBA.

*Section 214. Clarification of maximum surety bond guarantee.*

This section clarifies that the SBA may guarantee surety bonds for specific contracts of $2 million or less when the total range of affiliated contracts exceeds $2 million, or has the potential to exceed $2 million. The surety's bond liability, however, may not exceed $2 million.

SUBTITLE C—INTERNATIONAL TRADE

*Section 221. Office of International Trade.*

This section: (a) establishes annual goals for the Office of International Trade—specifically, to enhance the export ability of small businesses and small manufacturers, to facilitate technological transfers, to enhance the ability of small business and small manufacturers to compete against foreign corporations, to increase small businesses' access to capital, to disseminate information on programs and initiatives, and to ensure that small businesses are represented in trade negotiations; (b) instructs the Office of International Trade and district office export development specialist to participate in an annual training program that focuses on current small business needs for exporting; (c) instructs the district offices to jointly develop and conduct training programs for exporters and lenders in cooperation with USEACs, the Department of Commerce, Small Business Development Centers and other relevant Federal agencies; (d) amends the Office of International Trade's reporting requirements to include a description and justification for the Office of International Trade's expenditures on travel and participation in trade negotiations; and (e) requires that the SBA increase the number of SBA representatives at the United States Export Assistance Centers (USEACs) over the next 3 years according to the Commerce Department's resource allocation methodology and to designate an individual within the SBA to oversee the agency's participation as well as to work with the USEACs partners to establish annual goals for the Export Centers.

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

S. 1979. A bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today we introduce a bill to fight tax fraud. I am not talking about just moving around a few numbers on a tax return. Today we will begin closing the loop holes that have created millions of gallon and billions of dollars of missing fuel and missing tax dollars. This problem not only robs the U.S. Treasury it also robs the American Taxpayer.

We rely on these tax dollars to fund not only the Highway Trust Fund, which is charged with constructing and maintaining our national transportation system, this also robs money from our Airport Trust Fund.

In light of investigations completed since September 11th, the safety and soundness of maintaining our nation's transportation infrastructure is now more than ever of the utmost importance. These issues are not just tax fraud—not only are we concerned with the tax loss, but where else is this money going—is it being used to fund terrorism? We need to know where all of this fuel is going. What makes us think that if we cannot find the fuel to collect the tax, that we could find the fuel to stop the terrorists acts. A missing barge could hold ninety tanker truck loads of fuel, that's about $500,000 in Federal and State excise taxes left uncollected, its also hundreds of thousands of gallons that we cannot account. That cannot happen, and this bill should help our enforcement officers close the loop holes and collect the tax that builds our highways.

Mr. BAUCUS. Mr. President, today Senator GRASSLEY and I introduce a bill that is the essence of good government. For a few years now the Senate Finance Committee has been working to increase the revenue into the Highway Fund Trust so we can fund a strong national highway program.

The committee has also been looking at preventing several schemes, scams and cons against the federal government. These are schemes that are used by participants in the fuel distribution chain to evade federal and state fuel taxes, fuel fraud prevention marries both those goals-fighting fraud and increasing revenue into the Highway Trust Fund.

It is crucial to ensure that all the taxes that are due to the Trust Fund are actually getting there, not being diverted as part of some scam to defraud the Federal Government.

That is why I am proud to introduce today the Fuel Fraud Prevention Act of 2003.

I am aware that this is a very controversial subject, but one that we must address. This fraud represents money that the federal government is losing while crooked individuals are getting rich on the backs of good honest citizens.

Uncovering this kind of corruption is what we mean by practicing good government. We need to catch these folks and make sure the money is going where it should.

This is money that goes to transportation projects and creates transportation jobs. That is important to Montana and to all states.

As a result of both TEA 21 and AIR 21, revenues collected by the Trust Funds are directly tied to spending on surface and air transportation. Therefore adequately funding the nation's transportation infrastructure—both surface and air—is almost entirely based on actually collecting all the taxes that should be collected by law.

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By Mr. ALLARD (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, and Mr. INHOFE):

S.J. Res. 26. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

Mr. ALLARD. Mr. President, I rise today to submit legislation that would amend the United States Constitution identifying and reaffirming the institution of marriage as a union between a man and a woman. The language I submit today is brief and simple:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, nor State or Federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

This language is simple, direct and to the point. This union is sacred and must remain so.

This resolution is a starting point for a more comprehensive discussion. I look forward to having an involved, informed debate with the other members of this chamber.

I am pleased to be joined in this effort by my colleagues Senator SAM BROWNBACK and Senator JEFF SESSIONS who are original cosponsors of this Resolution.

I ask unanimous consent that the text of this Resolution be printed in the RECORD.

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

S.J. RES. 26

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article

is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

''ARTICLE—

''Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, nor State or Federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.''.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 275—TO AFFIRM THE DEFENSE OF MARRIAGE ACT

Mr. NICKLES (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, Mr. CORNYN, Mr. SANTORUM, and Mr. ALLARD) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 275

Whereas, marriage is a fundamental social institution that has been tested and reaffirmed over thousands of years;

Whereas, historically marriage has been reflected in our law and the law of all jurisdictions in the United States as the union of a man and a woman, and the everyday meaning of marriage and the legal meaning of marriage has always been defined as the legal union of a man and a woman as husband and wife;

Whereas, families consisting of the legal union of one man and one woman for the purpose of bearing and raising children remains the basic unit of our civil society;

Whereas, in Goodridge v. Department of Public Health, the Supreme Judicial Court of Massachusetts ruled 4 to 3 that the Constitution of the State of Massachusetts prohibits the denial of the issuance of marriage licenses to same-sex couples;

Whereas, the power to regulate marriage lies with the legislature and not with the judiciary and the Constitution of the State Massachusetts specifically states that the judiciary ''shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men''; and

Whereas, in 1996, Congress overwhelmingly passed, and President Bill Clinton signed, the Defense of Marriage Act under which Congress exercised its rights under the effects clause of section 1 of Article IV of the United States Constitution: Now, therefore, be it

*Resolved,* That it is the Sense of the Senate—

(1) Congress should take whatever steps necessary to affirm the fact that marriage in the United States shall consist only of the union of one man and one woman;

(2)(A) same-sex marriage is not a right, fundamental or otherwise, recognized in this country; and

(B) neither the United States Constitution nor any Federal law shall be construed to require that marital status or legal incidents thereof be conferred upon unmarried couples or groups; and

(3) the Defense of Marriage Act is a proper and constitutional exercise of Congress's powers under the effects clause of section 1 of Article IV and that no State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such State, territory, possession, or tribe, or a right or claim arising from such relationship.

### SENATE RESOLUTION 276—EXPRESSING THE SENSE OF THE SENATE REGARDING FIGHTING TERROR AND EMBRACING EFFORTS TO ACHIEVE ISRAELI-PALESTINIAN PEACE

Mrs. FEINSTEIN (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Mr. LEAHY, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 276

Whereas ending the violence and terror that have devastated Israel, the West Bank, and Gaza since September 2000 is in the vital interests of the United States, Israel, and the Palestinians;

Whereas ongoing Israeli-Palestinian conflict strengthens extremists and opponents of peace throughout the region, including those who seek to undermine efforts by the United States to stabilize Iraq and those who want to see conflict spread to other nations in the region;

Whereas more than 3 years of violence, terror, and escalating military engagement have demonstrated that military means alone will not solve the Israeli-Palestinian conflict;

Whereas despite mutual mistrust, anger, and pain, courageous and credible Israelis and Palestinians have come together in a private capacity to develop serious model peace initiatives, like the People's Voice Initiative, One Voice, and the Geneva Accord;

Whereas those initiatives, and other similar private efforts, are founded on the determination of Israelis and Palestinians to put an end to decades of confrontation and conflict and to live in peaceful coexistence, mutual dignity, and security, based on a just, lasting, and comprehensive peace and achieving historic reconciliation;

Whereas those initiatives demonstrate that both Israelis and Palestinians have a partner for peace, that both peoples want to end the current vicious stalemate, and that both peoples are prepared to make necessary compromises in order to achieve peace;

Whereas each of the private initiatives addresses the fundamental requirements of both peoples, including preservation of the Jewish, democratic nature of Israel with secure and defensible borders and the creation of a viable Palestinian state; and

Whereas such peace initiatives demonstrate that there are solutions to the conflict and present precious opportunities to end the violence and restart fruitful peace negotiations: Now, therefore, be it

*Resolved,* That the Senate—

(1) applauds the courage and vision of Israelis and Palestinians who are working together to conceive pragmatic, serious plans for achieving peace;

(2) calls on Israeli and Palestinian leaders to capitalize on the opportunity offered by these peace initiatives; and

(3) urges the President of the United States to encourage and embrace all serious efforts to move away from violent military stalemate toward achieving Israeli-Palestinian peace.

### SENATE RESOLUTION 277—TENDERING THE SINCERE THANKS OF THE SENATE TO THE STAFFS OF THE OFFICES OF THE LEGISLATIVE COUNSEL OF THE SENATE AND THE HOUSE OF REPRESENTATIVES FOR THEIR DEDICATION AND SERVICE TO THE LEGISLATIVE PROCESS

Mr. FRIST (for himself, Mr. GRASSLEY, Mr. HATCH, Mr. BREAUX, Mr. BAUCUS, and Mr. NICKLES) submitted the following resolution; which was considered and agreed to:

S. RES. 277

Whereas the Offices of the Legislative Counsel of the Senate and the House of Representatives have demonstrated great expertise, dedication, professionalism, and integrity in faithfully discharging the duties and responsibilities of their positions;

Whereas legislative drafting is a lengthy, arduous, and demanding process requiring a keen intellect, thorough knowledge, stern constitution, and remarkable patience;

Whereas the staff of the Senate and House Offices of the Legislative Counsel, in particular, Ruth Ann Ernst, John Goetcheus, Peter Goodloe, Edward G. Grossman, Pierre Poisson, and James G. Scott, have performed above and beyond the call of duty in drafting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

Whereas the Senate and House Offices of the Legislative Counsel have met the legislative drafting needs of the Senate and the House of Representatives with unfailing professionalism, exceptional skill, undying dedication, and, above all, patience and good humor as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 passed through the legislative process: Now, therefore, be it

*Resolved,* That the sincere thanks of the Senate are hereby tendered to the staff of both the Office of the Legislative Counsel of the Senate and the Office of the Legislative Counsel of the House of Representatives for their outstanding work and dedication to the United States Congress and the people of the United States of America.

### SENATE RESOLUTION 278—EXPRESSING THE SENSE OF THE SENATE REGARDING THE ANTHRAX AND SMALLPOX VACCINES

Mr. BINGAMAN submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 278

Whereas military personnel are asked to risk and even sacrifice their lives and the well-being of their families in defense of the United States;

Whereas vaccines are an important factor in ensuring force health protection by protecting the military personnel of the United States from both natural health threats and health threats resulting from biological weapons in overseas conflicts;

Whereas vaccines offer significant benefits and protections that must be carefully balanced with the reality that vaccines and drugs generally carry rare but serious adverse events and life-threatening risks;

Whereas in 2002, the insert label for the anthrax vaccine required by the Food and Drug Administration was revised to include approximately 40 serious adverse events with information that ''approximately 6 percent of the reported events were listed as serious.'';

Whereas in 2002, the Food and Drug Administration also compelled the manufacturer of the anthrax vaccine to substantially revise the package insert and changed the risk to pregnant women from Category C (a possible risk) to Category D (a known risk) because of ''positive evidence of human fetal risk based on adverse reaction data from investigational or marketing experience or studies in humans'';

Whereas in 2002, the General Accounting Office reported ''an estimated 84 percent of the personnel who had had anthrax vaccine shots between September 1998 and September 2000 reported having side effects or reactions. This rate is more than double the level cited in the vaccine product insert. Further, about 24 percent of all events were classified as systemic—a level more than a hundred times higher than that estimated in the product insert at the time'';

Whereas in June 2003, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention withdrew its support for expanding the smallpox vaccination program for first-responders after finding that 1 in 500 civilians vaccinated for smallpox had a serious vaccine event;

Whereas in 2002, the General Accounting Office found that 69 percent of experienced pilots and aircrew members in the National Guard and the Reserve reported that the anthrax shot was the major influence in their decision to change their military status in 2000, including leaving the military entirely;

Whereas in the war in Iraq that continues as of the date of enactment of this resolution, the British and Australian militaries have conducted voluntary anthrax vaccine programs, and other allies who have been offered the anthrax vaccine have declined;

Whereas in March 2000, the National Institute of Allergy and Infectious Disease reported in the ''Jordan Report 20th Anniversary: Accelerated Development of Vaccines 2000'' that no data existed to support the effectiveness of the anthrax vaccine against pulmonary (inhalation) anthrax in humans;

Whereas because anthrax can be prevented and treated with antibiotics and other options are either in clinical trials or development, the current anthrax vaccine is not the only choice for force health protection;

Whereas in the 2002 State of the Union address, President Bush placed a national priority on developing a new anthrax vaccine and a newer and safer smallpox vaccine is also in development; and

Whereas the threat of anthrax and smallpox attacks against the deployed troops of the United States has significantly diminished since the overthrow of Saddam Hussein and the disruption of Al Qaeda activity in Afghanistan: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the Secretary of Defense should reconsider the mandatory nature of the anthrax and smallpox vaccine immunization program, pending the development of new and better vaccines that are under development as of the date of enactment of this resolution;

(2) the Secretary of Defense and Board for Correction of Military Records should reconsider adverse actions already taken or intended to be taken against servicemembers for refusing to accept the anthrax or smallpox vaccine;

(3) the Secretary of Defense and the intelligence community should reevaluate the threat of anthrax and smallpox attacks on troops in Iraq and Afghanistan to reflect operational realities as of the date of enactment of this resolution when considering the continuation of a mandatory military vaccination program; and

(4) the Secretary of Veterans Affairs should assess those adverse events being reported with respect to the anthrax and smallpox vaccines, research causal relationships, and estimate a future cost to the Department to treat these conditions.

Mr. BINGAMAN. Mr. President, throughout the conflict in Iraq, our brave soldiers have carried out their duties with strength, with honor, and with courage. They have never faltered in their service to this nation or the world. That is why I am so troubled that some of our servicemembers and their families believe that current Department of Defense policies may be failing them, with grievous consequences.

That is why I rise today to submit a Sense of the Senate Resolution that asks for reconsideration of the policies surrounding the current smallpox and anthrax immunization programs. Specifically it asks the Secretary of Defense to reconsider the mandatory nature of its smallpox and anthrax vaccine immunization programs pending the development of new and better vaccines that are currently under development; reconsider adverse actions taken against servicemembers on the basis of refusal to take the smallpox or anthrax vaccines; and reevaluate, with the intelligence community, the current threat of anthrax and smallpox attacks on our troops, in an effort to reflect current operational realities when considering the continuation of a mandatory vaccination program.

It also urges the Department of Veterans Affairs to assess these adverse events being reported with respect to the smallpox and anthrax vaccines, research causal relationships, and estimate a future cost to the Department of Veterans Affairs to treat these conditions.

Vaccines are an important factor in ensuring protection of our nation's military personnel from health threats—both natural or from biological weapons—in overseas conflicts. However, the current smallpox and anthrax vaccines have real and serious consequences that must be weighed against the potential benefits. This is why the President has made development of a modern anthrax vaccine a national priority in his last two State of the Union addresses and why the Institute of Medicine urged the government to do so in March 2002.

What are the consequences of a policy that makes it mandatory that military personnel get the anthrax and smallpox vaccines? First, there are a growing number of adverse events reported in conjunction with these two vaccines, which is in sharp contrast to other vaccines. Second, there is a morale problem in the military associated with the mandatory nature of requiring military personnel to take these shots that has a serious negative impact on the recruitment and retention of our military personnel. Third, the long-term consequences of the vaccine programs for the health and well-being of our military personnel and our veterans is in question and should be addressed.

Ensuring the health and well-being of our military personnel before, during and after serving our country should always be a top priority of our nation.

The major potential benefit of any vaccine would be force protection. Unfortunately, there are major questions that arise with this argument concerning the anthrax and smallpox vaccines. First, even if there was a threat, such a threat against our troops in the conflicts in Iraq and Afghanistan has been significantly diminished. Second, there are other mechanisms to address any potential exposure, including post-exposure vaccination and antibiotics. This was the effective treatment used in the Senate after the anthrax exposure in 2001. Third, we do not even know if the anthrax vaccine works at all on inhalation anthrax or weaponized anthrax, so the vaccine may be completely ineffective anyway.

For our brave men and women serving in harm's way, all too often the first threat they face is not when their boots hit the ground in Baghdad, Iraq, or Kandahar, Afghanistan—the first threat many servicemembers believe they face may be in line at the home station when they receive their anthrax and smallpox vaccinations.

There is a growing number of disturbing reports about how some of our servicemembers have contracted health problems shortly after receiving the anthrax and smallpox vaccines. These illnesses include mysterious pneumonia-like illnesses, heart problems, blood clots, and other medical conditions that have stricken otherwise young, healthy, and strong military personnel. It has even resulted in death.

This is not entirely surprising, in light of the fact that the Food and Drug Administration, or FDA, has identified a number of adverse reactions associated with these two vaccines. With respect to the anthrax vaccine alone, in 2002 the FDA required the anthrax vaccine product label be revised and it now includes approximately 40 serious adverse events. As it reads, ''Approximately 6% of the reported events were listed as serious. Serious adverse events include those that result in death, hospitalization, permanent disability or are life-threatening.'' The FDA also raised the rate of systemic reactions by up to 175 times over the previous 1999 product label, from 0.2 percent to 5–35 percent

Meanwhile, in light of adverse events that exceed those for other vaccines and other concerns about the smallpox vaccine, both the Institute of Medicine and the Advisory Committee on Immunization Practices recently issued recommendations calling for a pause in the Federal Government's smallpox vaccination program.

Meanwhile, both CBS News and UPI have identified a growing number of deaths and severe illnesses that they

claim point to the anthrax and smallpox vaccines. These include the deaths of Army SP4 Joshua Neusche, Army SGT Michael Tosto, LTC Anthony Sherman, Army SP4 Rachel Lacy, Army SP4 Zeferino Colunga, Army SP4 Cory Hubbell, Army SP4 Levi Kinchen, Army SSG Richard Eaton, Jr., Army PVT Matthew Bush, Army SSG David Loyd, and Army SP4 William Jeffries. Eight of these 11 Army personnel were under the age of 25.

As Dr. Jeffrey Sartin, and infectious disease doctor at the Gundersen Clinic in La Crosse, WI, said, ''I would say that the number of cases among young healthy troops would seem to be unusual.''

The numbers of those with adverse health events is significantly higher. There have been around 700 adverse events reported in just the first 6 months of this year and this is as part of a reporting system that has been found to significantly under-report adverse events.

In addition, there are the reports of problems at both Ft. Stewart and Ft. Knox with respect to sick and injured soldiers who have been waiting weeks and sometimes months for medical treatment. Senators LEAHY and BOND should be commended for drawing attention to those problems and getting the military to move to address it. What remains disturbing is that many of those who are ill and on ''medical hold'' were never deployed. At Ft. Stewart, Senators BOND and LEAHY found that one-third of the 650 soldiers awaiting medical care and follow-up evaluations were not physically qualified for deployment and therefore never deployed overseas.

At Ft. Knox, according to a UPI story, 369 of the 422 soldiers at Ft. Knox did not deploy to Operation Iraqi Freedom because of their illnesses. This includes, according to the story, ''strange clusters of heart problems and breathing problems, as did soldiers at Ft. Stewart and other locations.'' These are health problems that are often cited as adverse events accompanying the anthrax and smallpox vaccines. Once again, there is a surprising number of such cases in what are otherwise a strong, healthy, and young group of people.

We certainly do not know whether these cases have been caused by the anthrax or smallpox vaccines at this point. In fact, these personnel desperately await any medical treatment and that must be addressed. While the military works to address that problem, they should also reconsider the mandatory nature of the anthrax and smallpox vaccines, as they may be contributing heavily to the problem.

In the case of Army SP4 Rachel Lacy, who loved her country and volunteered to deploy to the Persian Gulf, she was ordered to take the anthrax vaccine and did so without objection. Within days, she started to suffer pneumonia and flu-like symptoms. Within weeks, she was dead. The coroner listed ''post-vaccine'' problems on the death certificate for Rachel Lacy and said, ''it's just very suspicious in my mind . . . that she's healthy, gets the vaccinations and then dies a couple weeks later.''

The Army is, according to published reports, conducting an investigation of the 100 or more soldiers that have gotten pneumonia in Iraq and southwestern Asia. Of those 100, 2 have died and another 13 have had to be put on respirators.

According to a story published in both the New York Times and Washington Post on November 19, 2003, as part of that investigation, the Advisory Committee on Immunization Practices and the Armed Services Epidemiology Board said the evidence ''strongly favors'' the belief that vaccines led to the death of Rachel Lacy. It was an important admission and yet the military immediately said its vaccination policies would ''not be changed.''

Rachel's father, Moses Lacy, has asked, ''Let's stop this, re-evaluate what we're doing, re-evaluate the risks.'' That is a reasonable request and our nation's servicemembers and families deserve it. We owe it to the Lacy family and to all our military personnel and their families.

As a result of the concerns of servicemembers and their families that these vaccines are having on their health and well-being, it must also be noted that the anthrax and smallpox vaccines are having serious consequences for our nation's military readiness. In September 2002, the General Accounting Office reported that 69 percent of trained and experienced pilots and aircrew members in the Guard and Reserve reported that the anthrax shot was the major influence in their decision to change their military status in 2002, including leaving the military entirely.

Responding to the serious recruitment and retention problems caused by the mandatory anthrax vaccine policy, in February 2000, my colleague and then Presidential candidate JOHN MCCAIN called for a moratorium of this policy. Unfortunately, the safety concerns Senator MCCAIN noted then have not been resolved. The military continues to deny problems with the vaccine while simultaneously operating a clinic at Walter Reed Army Medical Center to treat the illnesses caused by the vaccine.

Instead of reconsidering its policy, the DOD has, instead, aggressively moved against those who have refused the vaccines. After his testimony before the House Government Reform Committee, Major Sonnie Bates, the highest ranking officer to refuse the anthrax vaccination, was charged under article 15 of the Uniform Code of Military Justice and the Department of Defense moved to court-martial him. After accusations of reprisal came from the Congress, the Department of Defense backed down and discharged Major Bates.

There is also the case of Air Force Captain John Buck, M.D. He was court-martialed for refusing the anthrax vaccine in a trial in which the judge refused to allow the jury to hear the doctor's views on its safety and efficacy. After he was convicted, fined $21,000, and denied a promotion he had earned, Dr. Buck deployed to the Indian Ocean after September 11th to support U.S. military operations in Afghanistan. He was awarded a medal for his service in support of Operation Enduring Freedom and subsequently given an honorable discharge.

In fact, the military has court-martialed soldiers throughout the military for refusing the anthrax vaccine, including a case this spring in New York of Private Rhonda Hazley who refused the vaccine because she was breast-feeding her child. One of the things this resolution asks is for the Department of Defense to reconsider adverse actions taken against servicemembers on the basis of refusal to take the smallpox or anthrax vaccines. The court-martialing of a woman that refused these vaccines because she was breast-feeding is particularly disturbing.

It is important to note that the FDA revised the product label for the anthrax vaccine from ''a possible risk'' to a ''known risk'' to pregnant women because of ''positive evidence of human fetal risk based on adverse reaction data from investigational or marketing experience or studies in humans.'' While Private Hazley was no longer pregnant, the FDA does believe the ''pregnancy and lactation are a clinical continuum.'' Once again, the risks of the vaccine would appear to far outweigh the benefit to a mother and mechanic in the Army.

The DOD's actions in such cases have created a climate of distrust and fear within the ranks of the military. This comply or be discharged or prosecuted policy is of great concern to our brave young men and women in uniform, and in the case of Private Hazley, to her child. Again, due to this policy, many soldiers, sailors, airmen and marines to reevaluate their commitment to the military.

The military has argued that we need a mandatory program with respect to our nation's military personnel as part of ensuring force protection. However, I understand that our allies—both the British and Australians—have not made the anthrax vaccines mandatory in the Iraqi Freedom Operation. As those two nations weighed the potential consequences of requiring all military personnel to get the vaccines versus any potential benefit, they came down on the side of making the vaccine voluntary.

In the case of the British military, more than half the armed forces personnel deployed in the Gulf have refused to be vaccinated against anthrax. The British Ministry of Defense spokesman said that this policy would remain voluntary ''in accordance with

long-standing medical practice.'' Of interest, British army units that would be responsible for dealing with suspect chemical and biological sites are given the smallpox vaccine but still are not required to get the anthrax vaccine.

For those that have agreed to accept the anthrax vaccine among British troops, they are reporting a large number of adverse events. According to a report by the British National Gulf Veterans and Families' Association, they anticipate adverse reaction among ''at least 6,000 new cases as a result of the Iraq conflict—about 30 percent of the 22,000 troops who had the anthrax vaccination.''

In addition to the policy of our allies that military personnel should be able to make their own decisions regarding the anthrax vaccine, another reason they have made the vaccine voluntary is that we do not even know whether the anthrax vaccine is effective against inhalation or weaponized anthrax.

Furthermore, even if we had truly thought there was strong evidence that the Iraqi government had and was preparing to use biological weapons such as anthrax against the United States military, the report by Weapons Inspector David Kay in September indicates that threat has been found to be lacking or non-existent. There appears to be little evidence available that Al Qaeda or Saddam have the capability to deliver anthrax or smallpox against our troops in Iraq or Afghanistan. Even if there was such a threat, it is likely extremely small at this point. Again, if nothing else, this change in the threat to our troops requires an immediate reevaluation of DOD vaccination policy.

Even if you still think there is some potential benefit of these vaccinations, it must be further weighed against whether there is another mechanism available that would have the same effect. We in the Senate, for example, know very well that the treatment of anthrax exposure via antibiotics works very well. The Senate was faced with the choice of having those exposed undergo a course of antibiotics versus getting the anthrax vaccine and the vast majority of those exposed to anthrax choose to take the antibiotic treatment rather than volunteer to take the anthrax vaccine.

In fact, the current Majority Leader, Senator FRIST, said at the time the anthrax vaccine was offered to Senate employees potentially exposed to anthrax, ''I do not recommend widespread inoculation for people with the vaccine in the Hart Building. There are too many side effects and if there is limited chance of exposure the side effects would far outweigh any potential advantage.''

Again, in weighing the potential benefit of the vaccine versus the option of antibiotics, the vast majority decided in support of the latter option. Our military personnel certainly deserve the option that many Senate personnel chose for themselves and what it seems the Secretary of Defense chose for himself when he acknowledged on October 25, 2001—in the midst of the anthrax attacks—that he was not taking the anthrax vaccine.

When the President was running for our Nation's highest office, he said with respect to questions posed to him in the September 2000 issue of U.S. Medicine, ''The Defense Department's Anthrax Immunization Program has raised numerous health concerns and caused fear among the individuals whose lives it touches. I don't feel the current administration's anthrax immunization program has taken into account the effect of this program on the soldiers in our military and their families. Under my administration, soldiers and their families will be taken into consideration.''

Some of our nation's servicemembers and their families believe that the current policy of this Administration does not adequately take soldiers and their families into consideration. They believe we are, in fact, failing to ensure the health and well-being of our military personnel and we must do better.

Before closing, I would like to particularly note the long-standing work by Congressman CHRISTOPHER SHAYS on this issue. In a report issued by the House Committee on Government Reform in April 2000, the report states, ''many members of the armed services do not share that faith [that the DOD places in the anthrax vaccine]. They do not believe merely suggestive evidence of vaccine efficacy outweighs their concerns over the lack of evidence of long term vaccine safety. Nor do they trust DOD has learned the lessons of part military medical mistakes: atomic testing, Agent Orange, Persian Gulf war drugs, and vaccines. Heavy handed, one-sided informational materials only fuel suspicions the program understates adverse reaction risks in order to magnify the relative, admittedly marginal, benefits of the vaccine.''

Many of the findings by Congressman SHAYS, such as the concerns by military servicemembers are even more valid today with the introduction of the smallpox vaccine to the list of vaccines required by the military.

Consequently, I urge the passage of this Sense of the Senate urging the Department of Defense to reconsider the mandatory nature of its smallpox and anthrax vaccination programs and to minimize the use of these vaccines pending the current development of new and better vaccines.

I also plan to introduce legislation early next year, as the Institute of Medicine recommended back in 1999, to establish a National Center for Military Deployment Health Research. Our nation's servicemembers deserve our best efforts to assure their health and well-being. As the IOM said in making the recommendation to establish a National Center for Military Deployment Health Research, ''Veterans' organizations were instrumental in developing the idea for a national center for the study of war-related illness and postdeployment health issues, and these organizations continue to support the national center concept.'' We owe this to our nation's servicemembers and veterans and I look forward to working with them over the coming months in the development of that long-needed legislation.

## SENATE CONCURRENT RESOLUTION 86—CONGRATULATING THE PEOPLE AND GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN ON THE TWELFTH ANNIVERSARY OF THE INDEPENDENCE OF KAZAKHSTAN AND PRAISING THE LONGSTANDING AND GROWING FRIENDSHIP BETWEEN THE UNITED STATES AND KAZAKHSTAN

Ms. LANDRIEU (for herself and Mr. BURNS) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

Whereas, on December 16, 2003, the people of the Republic of Kazakhstan will celebrate 12 years of independence, and on December 25, 2003, the United States and Kazakhstan will mark the 12th anniversary of diplomatic relations between the two countries;

Whereas Kazakhstan in a short period of time has managed to shed totalitarian shackles and become a dynamically developing civil society in which public and private institutions are strong, effective democratic mechanisms and the rule of law are established, and basic human rights are respected;

Whereas Kazakhstan, an open country where citizens of more than 100 ethnic groups enjoy equal rights and opportunities, made a significant contribution to promoting global peace and harmony by hosting in September 2003 the Congress of the World and Traditional Religions, which brought together leaders of world religions seeking to bridge religious differences;

Whereas the Government of Kazakhstan has toughened legislation and taken other concrete steps to prevent human trafficking and end this cruel form of human mistreatment;

Whereas Kazakhstan is confidently moving toward integration with the world economic system by establishing the conditions for developing a true market economy;

Whereas the United States Government, recognizing the economic progress of Kazakhstan, granted to Kazakhstan ''market economy status'', the first such designation of any country in the Commonwealth of Independent States;

Whereas United States businesses actively participate in the development of one of the world's largest energy resources in Kazakhstan and consider the country to be an alternative and reliable source of energy;

Whereas the application to Kazakhstan of chapter 1 of title IV of the Trade Act of 1974 (commonly referred to as the ''Jackson-Vanik amendment'') prevents Kazakhstan from achieving permanent normal trade relations status with the United States;

Whereas an independent and democratic Kazakhstan is the cornerstone of peace, stability, and prosperity in the vitally important region of Central Asia;

Whereas Kazakhstan voluntarily disarmed its nuclear arsenal, the world's fourth largest, and joined the Treaty on Reduction and Limitation of Strategic Offensive Arms, with Annexes, Protocols, and Memorandum of Understanding, signed at Moscow on July 31,

1991 (START Treaty), and in so doing provided an example of a responsible national approach to nonproliferation;

Whereas the people of Kazakhstan, under the leadership of Nursultan Nazarbayev, are providing unconditional and firm support in the ongoing allied campaign in Afghanistan by allowing coalition forces to use the air space of Kazakhstan and the largest airport in Almaty, Kazakhstan;

Whereas Kazakhstan is taking an active part in rehabilitating Iraq and is the only country in the region of Central Asia to send a military contingent of combat engineers who in a few months have neutralized more than 300,000 explosive devices in Iraq, thereby saving thousands of lives;

Whereas, within the framework of growing military cooperation, the United States and Kazakhstan signed an Article 98 Agreement relating to the International Criminal Court;

Whereas the increasing significance of Kazakhstan to United States foreign policy has resulted in the creation of the United States-Kazakhstan Interparliamentary Friendship Group, which is designed to strengthen relations of strategic partnership between the two countries; and

Whereas Kazakhstan is an important friend and strategic ally of the United States: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress—

(1) congratulates the people and Government of the Republic of Kazakhstan on the 12th anniversary of the independence of Kazakhstan and the establishment of diplomatic relations with the United States;

(2) welcomes and supports political and economic transformations achieved by Kazakhstan during its years of independence;

(3) expresses gratitude for the leadership of Kazakhstan in establishing interreligious dialogue to promote peace and harmony in the world;

(4) commends Kazakhstan on toughening measures to stop human trafficking;

(5) recognizes the need to terminate application to Kazakhstan of title IV of the Trade Act of 1974 (commonly known as the ''Jackson-Vanik Amendment'') and extend normal trade relations status to Kazakhstan;

(6) expresses gratitude for the support and assistance of the people of Kazakhstan in the antiterrorist campaign of the United States and coalition countries and for their support for the reconstruction of Iraq;

(7) applauds the wise decision of the leadership of Kazakhstan to renounce the deployment of the nuclear weapons inherited by the country and make the world a safer place;

(8) calls upon the President to actively popularize the example set by Kazakhstan in renouncing the deployment of its nuclear weapons with respect to United States negotiations with countries that are trying to acquire, develop, or deploy nuclear weapons; and

(9) urges further strengthening of strategically important relations between Kazakhstan and the United States on all other issues of importance between the two countries.

## AMENDMENTS SUBMITTED & PROPOSED

SA 2217. Mr. CRAIG (for Mr. FRIST) proposed an amendment to the concurrent resolution H. Con. Res. 339, providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

SA 2218. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1727, to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978; which was ordered to lie on the table.

SA 2219. Mr. BURNS (for himself, Mr. WYDEN, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

SA 2220. Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPECTER, Mr. JEFFORDS, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 1961, to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; which was referred to the Committee on Commerce, Science, and Transportation.

SA 2221. Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties.

SA 2222. Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, supra.

SA 2223. Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, supra.

SA 2224. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1839, to extend the Temporary Extended Unemployment Compensation Act of 2002; which was referred to the Committee on Finance.

SA 2225. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes; which was ordered to lie on the table.

SA 2226. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 910, to ensure the continuation of nonhomeland security functions of Federal agencies transferred to the Department of Homeland Security; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 2217.** Mr. CRAIG (for Mr. FRIST) proposed an amendment to the concurrent resolution H. Con. Res. 339, providing for the sine die adjournment of the first session of the One Hundred Eighth Congress; as follows:

On page 1, line 2, strike ''That'' and all that follows through page 3, line 3, and insert:

''That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns at the close of business on any day from Monday, November 24, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered by its Majority Leader or his designee, it stand adjourned sine die, or stand recessed or adjourned until such day and time as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first''.

**SA 2218.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1727, to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978; which was ordered to lie on the table; as follows:

At the end of the bill, insert:

**''SECTION 2. PARTICIPATION BY PROJECT BENEFICIARIES.**

''(1) Section 2 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 506) is amended by adding at the end the following:

'(b) Upon identifying a Bureau of Reclamation facility for modification, the Secretary shall notify in writing every project contractor, irrigation district, drainage district, water conservation or conservancy district, or similar special purpose political subdivision or multi-agency authority (hereafter referred to as ''project beneficiaries'') that has a contract for repayment, water service, operation, or maintenance for or from that facility. The Secretary's communication shall:

'(1) explain why the facility has been identified for possible modification;

'(2) summarize the administrative and statutory requirements to which Reclamation must adhere in the planning, design, value-engineering review, procurement, construction, and management of the modification; and

'(3) invite the project beneficiaries to participate with the Bureau of Reclamation in the planning, design, value-engineering review, cost containment, procurement, construction and management (hereafter referred to as ''joint oversight'') of the modification.

'(c) Each project beneficiary must notify the Bureau, in writing, within 30 days of its receipt of the Secretary's letter, as to its intent to participate in the joint oversight of the modification.

'(d) If a project beneficiary elects to participate in the joint oversight of the modification, the Secretary, acting through the Commissioner of Reclamation, shall enter into an agreement with project beneficiaries for the joint oversight of the modification. Reasonable costs incurred by the project beneficiaries resulting from participation in the joint oversight of the modification shall be credited toward repayment of the reimbursable costs under this Act.

'(e) Prior to submitting the modification reports required in section 5, the Secretary shall consider, and where appropriate implement, alternatives recommended by any project beneficiary that has chosen to participate in the joint oversight of the modification (hereafter referred to as ''participating project beneficiary''). Within 30 days after receiving such recommendations, the Secretary shall provide to the participating project beneficiaries a written response detailing proposed actions to address the recommendations. The Secretary's response to the participating project beneficiaries shall be included in the modification reports required by section 5.'

''(2) Section 4 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508) is amended by adding at the end:

'(e) During the construction phase of the modification, the Secretary shall consider and, where appropriate, implement alternatives recommended by participating

project beneficiaries concerning cost-containment measures and construction management techniques needed to carry out such modification. The Secretary shall keep all project beneficiaries, regardless of whether they have elected to participate in joint oversight, regularly informed of the costs and status of such modification.'''

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**SA 2219.** Mr. BURNS (for himself, Mr. WYDEN, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003'', or the ''CAN–SPAM Act of 2003''.

**SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

(a) FINDINGS.—The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or ''opt-out'' of) receipt of commercial electronic mail from such senders in the future, other senders provide no such ''opt-out'' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) AFFIRMATIVE CONSENT.—The term ''affirmative consent'', when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term ''commercial electronic mail message'' does not include a transactional or relationship message.

(C) REGULATIONS REGARDING PRIMARY PURPOSE.—Not later than 12 months after the date of the enactment of this Act, the Commission shall issue regulations pursuant to section 13 defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DOMAIN NAME.—The term ''domain name'' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term ''electronic mail address'' means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part''), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term ''electronic mail message'' means a message sent to a unique electronic mail address.

(7) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than 1 person may be considered to have initiated a message.

(10) INTERNET.—The term ''Internet'' has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(12) PROCURE.—The term ''procure'', when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

(13) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(14) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) ROUTINE CONVEYANCE.—The term ''routine conveyance'' means the transmission,

routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) SENDER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''sender'', when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this Act.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—

(A) IN GENERAL.—The term ''transactional or relationship message'' means an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms or features of;

(II) notification of a change in the recipient's standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) MODIFICATION OF DEFINITION.—The Commission by regulation pursuant to section 13 may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this Act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this Act.

**SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E–MAIL.**

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

**''§ 1037. Fraud and related activity in connection with electronic mail**

''(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

''(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

''(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

''(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

''(4) registers, using information that materially falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

''(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

''(b) PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

''(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

''(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

''(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

''(A) the offense is an offense under subsection (a)(1);

''(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

''(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

''(D) the offense caused loss to 1 or more persons aggregating $5,000 or more in value during any 1-year period;

''(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

''(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

''(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

''(c) FORFEITURE.—

''(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

''(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

''(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

''(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

''(d) DEFINITIONS.—In this section;

''(1) LOSS.—The term 'loss' has the meaning given that term in section 1030(e) of this title.

''(2) MATERIALLY.—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

''(3) MULTIPLE.—The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

''(4) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CANSPAM Act of 2003.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''Sec.
''1037. Fraud and related activity in connection with electronic mail.''.

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, in eluding offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United

States Code (relating to racketeering), as appropriate.

**SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.**

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading.

For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

(B) a ''from'' line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The person initiating a commercial electronic mail message may comply with sub paragraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(4) PROHIBITION OF TRANSMISSION OF COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—

(A) IN GENERAL.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or

(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(B) SUBSEQUENT AFFIRMATIVE CONSENT.—A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN COMMERCIAL ELECTRONIC MAIL.—

(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) MATERIALLY.—For purposes of paragraph (1), the term ''materially'', when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person—who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

(b) AGGRAVATED VIOLATIONS RELATING TO COMMERCIAL ELECTRONIC MAIL.—

(1) ADDRESS HARVESTING AND DICTIONARY ATTACKS.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) DISCLAIMER.—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).

(3) RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.—It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by regulation, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of lawful commercial electronic mail; and

(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—

(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRIOR AFFIRMATIVE CONSENT.—Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(3) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this bet, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(4) DEFINITION.—In this subsection, the term ''sexually oriented material'' means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(5) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

**SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.**

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which in violation of section 5(a)(1) if that person—

(1) knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the ''third party'') that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (f) and (g) of section 7 do not apply to violations of this section.

(d) SAVINGS PROVISION.—Except as provided in section 7(f)(8), nothing in this section may be construed to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.

**SEC. 7. ENFORCEMENT GENERALLY.**

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this Act shall be exercised by the Commission in accordance with subsection (a);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) {except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties is though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and node a part of that subtitle.

(e) AVAILABILITY OF CEASE-AND-DESIST ORDERS AND INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 5(a), who violates section 5(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 5(a), of this Act, the attorney general, official, or agency of the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (3).

(2) AVAILABILITY OF INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 5(a)(1)(C), section 5(a)(2), clause (ii),

(iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3).

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to $250.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $2,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 5(b).

(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance the practices and procedures to which reference is made in clause (i).

(4) ATTORNEY FEES.—In the case of any suc cessful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(5) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(6) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.—

(7) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(8) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission, or other appropriate Federal agency under subsection (b), has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(9) REQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.—Except as provided in section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this Act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(g) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5(a)(1), 5(b), or 5(d), or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 5(a), may bring a civil action in any district court of the United States with jurisdiction over the defendant—

(A) to enjoin further violation by the defendant; or

(B) to recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (3).

(2) SPECIAL DEFINITION OF ''PROCURE''.—In any action brought under paragraph (1), this Act shall be applied as if the definition of the term ''procure'' in section 3(12) contained, after ''behalf'' the words ''with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this Act''.

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5 (b)(1)(A)(i), treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) up to $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 5(b).

(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or—

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in clause (i).

(4) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

**SEC. 8. EFFECT ON OTHER LAWS.**

(a) FEDERAL LAW.—

(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) STATE LAW NOT SPECIFIC TO ELECTRONIC MAIL.—This Act shall not be construed to preempt the applicability of—

(A) State laws that are not specific to electronic mail, including State trespass, contract, or tort law; or

(B) other State laws to the extent that those laws relate to acts of fraud or computer crime.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

**SEC. 9. DO-NOT-E-MAIL REGISTRY.**

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

**SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.**

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the

effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

**SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.**

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters ''ADV'' in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

**SEC. 12. RESTRICTIONS ON OTHER TRANSMSSIONS.**

Section 227(b)(1) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting '', or any person outside the United States if the recipient is within the United States'' after ''United States''.

**SEC. 13. REGULATIONS.**

(a) IN GENERAL.—The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with section 553 of title 5, United States Code.

(b) LIMITATION.—Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 5(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).

**SEC. 14. APPLICATION TO WIRELESS.**

(a) EFFECT ON OTHER LAW.—Nothing in this Act shall be interpreted to preclude or override the applicability of section 227 of the Communications Act of 1934 (7 U.S.C. 227) or the rules prescribed under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

(b) FCC RULEMAKING.—The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The Federal Communications Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to paragraph (1), the relationship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this Act, to allow subscribers to indicate a desire not to receive future mobile service commercial messages from the provider—

(A) at the time of subscribing to such service; and

(B) in any billing mechanism; and

(4) determine a sender of mobile service commercial messages may comply with the provisions of this Act, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

(C) OTHER FACTORS CONSIDERED.—The Federal Communications Commission shall consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.

(d) MOBILE SERVICE COMMERCIAL MESSAGE DEFINED.—In this section, the term ''mobile service commercial message'' means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) in connection with such service.

**SEC. 15. SEPARABILITY.**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainer of this Act and the application of such provision to other persons or circumstances shall not be affected.

**SEC. 16. EFFECTIVE DATE.**

The provisions of this Act, other than section 9, shall take effect on January 1, 2004.

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**SA 2220.** Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPECTER, Mr. JEFFORDS, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 1961, to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; which was referred to the Committee on Commerce, Science, and Transportation; as follows:

**TITLE VIII—RAIL INFRASTRUCTURE TAX CREDIT BONDS**

**SEC. 801. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.**

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding at the end the following new subpart:

**''Subpart H—Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds**

''See. 54. Credit to holders of qualified rail infrastructure bonds.

**''SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.**

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified rail infrastructure bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified rail infrastructure bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate, equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

''(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15.

Such term includes the last day on which the bond is outstanding.

''(5) SPECIAL, RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under this part (other than this subpart and subpart C).

''(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall he treated as interest income.

''(e) QUALIFIED RAIL INFRASTRUCTURE BOND.—For purposes of this part, the term 'qualified rail infrastructure bond' means any bond issued as part of an issue if—

''(1) the bond is issued by the Rail Infrastructure Finance Corporation and is in registered form,

''(2) the term of each bond which is part of such issue does not exceed 20 years,

''(3) the payment of principal with respect to such bond is the obligation of the Rail Infrastructure Finance Corporation and not an obligation of the United States,

''(4) all proceeds from the sale of the issue are used for the purposes set forth in section 507(c)(5) of the Arrive 21 Act, and

''(5) 95 percent or more of the net spendable proceeds from the sale of such issue are to be used for expenditures incurred after the date of enactment of this section for any qualified project described in section 601, 602, or 603 of the Arrive 21 Act subject to the limitations established by that Act.

''(f) SPECIAL RULES RELATING TO NET SPENDABLE PROCEEDS.—

''(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if, as of 6 years after the date of issuance, the issuer reasonably expects—

''(A) to award grants under sections 501, 502, and 503 of the Arrive 21 Act in a total amount that is at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 6-year period beginning on such date,

''(B) to incur a binding commitment with a third party—

''(i) to spend at least 10 percent of the net spendable proceeds of the issue, or to commence construction, with respect to such projects within the 12-month period beginning on such date, and

''(ii) to proceed with due diligence to complete such projects, and

''(C) to expend the total amount of the net spendable proceeds of the issue.

''(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 6-YEAR DETERMINATION.—If at least 95 percent of the net spendable proceeds of the issue is not awarded as grants to be expended for 1 or more qualified projects within the 6-year period beginning 6 years after the date of issuance, but the requirements of paragraph (1) are otherwise met, an issue shall be treated as continuing to meet the requirements of paragraph (1) if either the requirement under subparagraph (A) or the requirements under subparagraph (B) are met, as follows:

''(A) The issuer uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of such 6-year period and disburses any remaining net spendable proceeds to the Secretary of Treasury within 30 days after the end of such 6-year period.

''(B) The issuer—

''(i) awards in grants under sections 501, 502, and 503 of the Arrive 21 Act at least 75 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 6-year period beginning 6 years after the date of issuance, and

''(ii) awards in grants under sections 501, 502, and 503 of the Arrive 21 Act at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 7-year period beginning 6 years after the date of issuance.

''(g) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

''(1) IN GENERAL.—If any bond which when issued purported to be a qualified rail infrastructure bond ceases to be such a qualified bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

''(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

''(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

''(2) NONCULPABLE DISQUALIFICATIONS.—If a qualified rail infrastructure bond ceases to qualify, as such a bond due to action taken by the recipient of a grant made under section 601, 602, or 603 of the Arrive 21 Act, the issuer may seek compensation under paragraph (1) of this subsection.

''(h) RAIL INFRASTRUCTURE FINANCE TRUST.—

''(1) IN GENERAL.—The following amounts shall be held in a trust account by the Rail Infrastructure Finance Corporation:

''(A) An amount of the proceeds from the sale of all bonds designated for purposes of this section that, when combined with amounts described in subparagraphs (B), (C), and (D), is sufficient—

''(1) to ensure the Corporation's ability to redeem all bonds upon maturity; and

''(ii) to pay the administrative expenses of the Corporation and the Rail Infrastructure Finance Trust.

''(B) The amount of any on-Federal contributions required under section 604(b) of the Arrive 21 Act.

''(C) The temporary period investment earnings on proceeds from the sale of such bonds.

''(D) Any earnings on any amounts described in subparagraph (A), (B), or (C).

''(2) USE OF FUNDS.— Amounts in the trust account may be used only for investment purposes to generate sufficient funds to redeem qualified rail infrastructure bonds at maturity and pay the administrative expenses of the Corporation and the Trust.

''(3) USE OF REMAINING FUNDS ON TRUST ACCOUNT.—If the Corporation determines that the amount in the trust account exceeds the amount required to comply with paragraph (2), the Corporation may transfer the excess to the Rail Infrastructure Investment account to be available for awarding grants as provided for in section 507(c)(5)(B) of the Arrive 21 Act.

''(4) REVERSION OF REMAINING PROCEEDS.—Upon retirement of all bonds issued by the Corporation, any remaining proceeds from the sale of such bonds shall be covered into the general fund of the Treasury of the United States as miscellaneous receipts.

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

''(1) BOND.—The term 'bond' includes any obligation.

''(2) NET SPENDABLE PROCEEDS.—The term 'net spendable proceeds' has the meaning give such term in section 507(c)(6) of the Arrive 21 Act.

''(3) QUALIFIED PROJECT.—The term 'qualified project' means any project that is eligible for grant funding under section 601, 602, or 603 of the Arrive 21 Act.

''(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

''(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified rail infrastructure bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(6) REPORTING.—Issuers of qualified rail infrastructure bonds shall submit reports similar to the reports required under section 149(e).''.

(b) AMENDMENTS TO OTHER CODE SECTIONS.—

(1) REPORTING.—Subsection (d) of section 6049 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

''(8) REPORTING OF CREDIT ON QUALIFIED RAIL INFRASTRUCTURE BONDS.—

''(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

''(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

''(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.''.

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall he treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(13) CORPORATE.—Section 6655 of such Cole (relating to failure by corporation to pay estimated income tax) is amended by adding at the end of subsection (g) the following new paragraph:

''(5) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart H. Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds.''.

(2) Section 6401(b)(1) is amended by striking ''and G'' and inserting ''G, and H''.

**SEC. 802. ISSUANCE OF REGULATIONS.**

The Secretary of the Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 not later than 90 days after the date of the enactment of this Act.

**SEC. 803. EFFECTIVE DATE.**

The amendments made by section 701 shall apply to obligations issued after the date of enactment of this Act.

On page 3, at the end of the matter appearing before line 1, insert the following:

TITLE VIII—RAIL INFRASTRUCTURE TAX CREDIT BONDS

Sec. 801. Credit to holder of qualified rail infrastructure bonds.
Sec. 802. Issuance of regulations.
Sec. 803. Effective date.

**SA 2221.** Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

On page 3, strike lines 2 through 4 and insert the following: ''forefathers, to be placed in a location in the Senate wing to be determined by the chairman and ranking member of the Committee on Rules and Administration.''.

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**SA 2222.** Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

Amend the preamble to read as follows:

Whereas on July 16, 1787, the framers of the United States Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of congressional representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the ''Great Compromise'' or the ''Connecticut Compromise''; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United States Senate should be placed in the Senate wing of the Capitol: Now, therefore, be it

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**SA 2223.** Mr. MCCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

Amend the title so as to read: ''To direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties.''.

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**SA 2224.** Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1839, to extend the Temporary Extended Unemployment Compensation Act of 2002; which was referred to the Committee on Finance; as follows:

Starting on page 1, line one, strike all that follows and replace with the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Unemployment Compensation Extension Act of 2003''.

**SEC. 2. REFERENCES.**

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 26 U.S.C. 3304 note).

**SEC. 3. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.**

(a) FOUR-MONTH EXTENSION OF PROGRAM.—Section 208 is amended to read as follows:

**''SEC. 208. APPLICABILITY.**

''(a) IN GENERAL.—Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending before May 1, 2004.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 203 as of May 1, 2004, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

''(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after October 31, 2004.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 26 U.S.C. 3304 note).

**SEC. 4. ADDITIONAL REVISION TO CURRENT TEUC–X TRIGGER.**

Section 203(c)(2)(B) is amended to read as follows:

''(B) such a period would then be in effect for such State under such Act if—

''(i) section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'; and

''(ii) with respect to weeks of unemployment beginning on or after the date of enactment of this clause—

''(I) paragraph (1)(A) of such section 203(d) did not apply; and

''(II) clause (ii) of section 203(f)(1)(A) of such Act did not apply.''.

**SEC. 5. TEMPORARY STATE AUTHORITY TO WAIVE APPLICATION OF LOOKBACKS UNDER THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970.**

For purposes of conforming with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), a State may, during the period beginning on the date of enactment of this Act and ending on June 30, 2004, waive the application of either subsection (d)(1)(A) of section 203 of such Act or subsection (f)(1)(A)(ii) of such section, or both.

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**SA 2225.** Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. METERED TAXICABS IN THE DISTRICT OF COLUMBIA.**

(a) IN GENERAL.—Except as provided in subsection (b) and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all taxicabs licensed in the District of Columbia to charge fares by a metered system.

(b) DISTRICT OF COLUMBIA OPT OUT.—The Mayor of the District of Columbia may exempt the District of Columbia from the requirement under subsection (a) by issuing an executive order that specifically states that the District of Columbia opts out of the requirement to implement a metered fare system for taxicabs.

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**SA 2226.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 910, to ensure the continuation of non-homeland security functions of Federal agencies transferred to the Department of Homeland Security; which was ordered to lie on the table; as follows:

On page 3, line 1, beginning with the comma strike all through page 4, line 19, and insert a period.

On page 5, line 5, strike the comma and insert ''(except for the Coast Guard),''.

On page 5, strike lines 16 through 21, and insert the following:

(4) the Committee on the Judiciary of the Senate;

(5) the Committee on Environment and Public Works of the Senate;

(6) the Committee on Government Reform of the House of Representatives;

(7) the Select Committee on Homeland Security of the House of Representatives;

(8) the Committee on Appropriations of the House of Representatives;

(9) the Committee on the Judiciary of the House of Representatives;

(10) the Committee on Transportation and Infrastructure of the House of Representatives; and

(11) any other relevant committee of the Senate or House of Representatives that requests a copy of the report.

On page 7, strike lines 16 through 18, and insert the following:

to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on the Judiciary of the Senate;

(D) the Committee on Environment and Public Works of the Senate;

(E) the Committee on Government Reform of the House of Representatives;

(F) the Select Committee on Homeland Security of the House of Representatives;

(G) the Committee on Appropriations of the House of Representatives;

(H) the Committee on the Judiciary of the House of Representatives;

(I) the Committee on Transportation and Infrastructure of the House of Representatives; and

(J) any other relevant committee of the Senate or House of Representatives that requests a copy of the report.

(3) CONTENTS.—The report submitted under paragraph (2) shall contain—

On page 8, strike line 15 and all that follows through page 9, line 13, and insert the following:

(f) APPLICATION OF REQUIREMENTS TO THE SECRET SERVICE.—

(1) IN GENERAL.—The Director of the Secret Service shall submit each report in accordance with subsections (a), (b), and (c).

(2) ANNUAL EVALUATIONS AND PERFORMANCE REPORTS.—Subsections (d) and (e) shall apply with respect to that portion included in each report under paragraph (1).

(g) COAST GUARD REPORTS.—Any report required to be submitted to Congress by the Secretary of Homeland Security, the Commandant of the Coast Guard, or the Inspector General of the Department of Homeland Security under section 348 of the Maritime Transportation Security Act of 2002 (116 Stat. 2111) shall also be submitted to the Governmental Affairs Committee of the Senate and the Committee on Government Reform of the House of Representatives.

## PRIVILEGE OF THE FLOOR

Mr. CORNYN. Madam President, I ask unanimous consent that Candace Shelton and Scott Koelker of my staff be granted floor privileges for the duration of my remarks.

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

## APPOINTING THE DAY FOR THE CONVENING OF THE SECOND SESSION OF THE ONE HUNDRED EIGHTH CONGRESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 80, the convening date of the 102nd Congress; further, that the resolution be read three times and passed and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 80) was read the third time and passed, as follows:

H. J. RES. 80

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DAY FOR CONVENING OF SECOND REGULAR SESSION OF ONE HUNDRED EIGHTH CONGRESS.**

The second regular session of the One Hundred Eighth Congress shall begin at noon on Tuesday, January 20, 2004.

**SEC. 2. AUTHORITY FOR CALLING SPECIAL SESSION BEFORE CONVENING OF SECOND REGULAR SESSION.**

If the Speaker of the House of Representatives (or the designee of the Speaker) and the Majority Leader of the Senate (or the designee of the Majority Leader), acting jointly after consultation with the Minority Leader of the House of Representatives and the Minority Leader of the Senate, determine it is in the public interest for Congress to assemble during the period between the end of the first regular session of the One Hundred Eighth Congress at noon on January 3, 2004, and the convening of the second regular session of the One Hundred Eighth Congress as provided in section 1—

(1) the Speaker and Majority Leader, or their respective designees, shall notify the Members of the House and Senate, respectively, of such determination and of the place and time for Congress to so assemble; and

(2) Congress shall assemble in accordance with that notification.

## CONDEMNING THE TERRORIST ATTACKS IN ISTANBUL, TURKEY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 273 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 273) condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LAUTENBERG. Mr. President, last week's double set of suicide attacks in Istanbul are acts of cowardice targeting both the structures and symbols of Turkish coexistence. I grieve for the families of the 58 victims and wish the 750 injured individuals a speedy recovery.

The terrorists who have attacked Turkey in the name of Islam and its heritage do not know their history. Throughout the Ottoman Empire, Jews, Christians and other minorities were treated with respect and allowed to practice their religion freely. Since Mustafa Kemal Ataturk founded modern Turkey in 1923, Turkey has been admired by western and non-western countries alike as an apotheosis of progressive Muslim democracy.

In Turkey, pride in a rich heritage and faith coexist with a desire to globalize and enhance representative democracy and the freedom it brings.

During World War II, as Hitler's troops were marching from the Balkans and emptying Greek cities of their Jewish populations, Turkey's president, Ismet Inonu, closed its border. The Jews of Turkey were spared by the principled leadership of their government, who refused to be complicit in murder. In my own travels through Turkey—from Istanbul to Idirdne—I have seen the rich fusion of ancient and modern and of religious and secular. I have enjoyed the renowned hospitality offered to all visitors.

The terrorists who attacked the synagogues, consulate, and bank in Istanbul last week seek to undermine the pluralism, diversity, and openness that have long characterized Turkish culture and society. Together, we will prevent the terrorists from achieving this aim. Americans, and particularly New Jerseyans, are intimately familiar with the pain wreaked by a terrorist attack on our homeland.

We in Washington are prepared to offer assistance and support to Prime Minister Recep Tayyip Erdogan and his government in the days ahead as Turkey shores up security and begins healing from these traumatic incidents. The U.S.-Turkish friendship continues to be strong and will stand united in the face of the global threat of terrorism.

Mr. MCCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 273) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 273

Whereas, in Istanbul, Turkey, on November 15, 2003, two explosions set off minutes apart during Sabbath morning services devastated Neve Shalom, the largest synagogue in the city, and the Beth Israel synagogue, about 3 miles away from Neve Shalom;

Whereas the casualties of more than 20 people killed and more than 300 people wounded in the bombing attacks on the synagogues included both Muslims and Jews;

Whereas, on November 20, 2003, two bombs exploded in Istanbul at the Consulate of the United Kingdom and the HSBC Bank;

Whereas the casualties of more than 25 people killed and 450 people wounded in the November 20, 2003, bombing attacks included Muslims and Christians, and Turks, British diplomats, and visitors to the Republic of Turkey;

Whereas troops of the United Kingdom are part of the United States-led coalition that liberated Iraq from the regime of Saddam Hussein and are now present in Iraq under the auspices of the United Nations Security Council;

Whereas the acts of murder committed on November 15 and 20, 2003, in Istanbul, Turkey, were cowardly and brutal manifestations of international terrorism;

Whereas the Government of Turkey immediately condemned the terrorist attacks in the strongest possible terms and has vowed to bring the perpetrators to justice at all costs;

Whereas the United States, the United Kingdom, and Turkey equally abhor and denounce these hateful, repugnant, and loathsome acts of terrorism;

Whereas, in light of the escalation of anti-Semitic activities, the safety and security of Jewish people throughout the world is a matter of serious concern;

Whereas, since Turkey cherishes its traditions of hospitality and religious tolerance, and in particular its history of more than 500 years of good relations between Jews and Muslims, the attacks on synagogues, consular premises, and commercial buildings came as a special shock to the people of Turkey and to their friends throughout the world;

Whereas the United States and Turkey are allied by shared values and a common interest in building a stable, peaceful, and prosperous world;

Whereas Turkey, a predominantly Muslim nation with a secular government, has close relations with Israel and is also the only predominantly Muslim member of the North Atlantic Treaty Organization; and

Whereas the acts of murder committed on November 15 and 20, 2003, demonstrate again

that terrorism respects neither boundaries nor borders: Now, therefore, be it

*Resolved*, That the Senate—

(1) condemns in the strongest possible terms the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003;

(2) expresses its condolences to the families of the individuals murdered in the terrorist attacks, expresses its sympathies to the individuals injured in the attacks, and conveys its hope for the rapid and complete recovery of all such injured individuals;

(3) expresses its condolences to the people and the governments of the Republic of Turkey and the United Kingdom over the losses they suffered in these attacks; and

(4) expresses its solidarity with the United Kingdom, Turkey, and all other countries that stand united against terrorism and work together to bring to justice the perpetrators of these and other terrorist attacks.

## FEDERAL LAW ENFORCEMENT PAY AND BENEFITS PARITY ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 409, S. 1683.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1683) to provide for a report on parity of pay and benefits among Federal law enforcement officers and to establish an exchange program between Federal law enforcement employees and State and local law enforcement employees.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1683) was read the third time and passed, as follows:

S. 1683

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Federal Law Enforcement Pay and Benefits Parity Act of 2003''.

**SEC. 2. LAW ENFORCEMENT PAY AND BENEFITS PARITY REPORT.**

(a) DEFINITION.—In this section, the term ''law enforcement officer'' means an individual—

(1)(A) who is a law enforcement officer defined under section 8331 or 8401 of title 5, United States Code; or

(B) the duties of whose position include the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States; and

(2) who is employed by the Federal Government.

(b) REPORT.—Not later than April 30, 2004, the Office of Personnel Management shall submit a report to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress that includes—

(1) a comparison of classifications, pay, and benefits among law enforcement officers across the Federal Government; and

(2) recommendations for ensuring, to the maximum extent practicable, the elimination of disparities in classifications, pay and benefits for law enforcement officers throughout the Federal Government.

**SEC. 3. EMPLOYEE EXCHANGE PROGRAM BETWEEN FEDERAL EMPLOYEES AND EMPLOYEES OF STATE AND LOCAL GOVERNMENTS.**

(a) DEFINITIONS.—In this section—

(1) the term ''employing agency'' means the Federal, State, or local government agency with which the participating employee was employed before an assignment under the Program;

(2) the term ''participating employee'' means an employee who is participating in the Program; and

(3) the term ''Program'' means the employee exchange program established under subsection (b).

(b) ESTABLISHMENT.—The President shall establish an employee exchange program between Federal agencies that perform law enforcement functions and agencies of State and local governments that perform law enforcement functions.

(c) CONDUCT OF PROGRAM.—The Program shall be conducted in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(d) QUALIFICATIONS.—An employee of an employing agency who performs law enforcement functions may be selected to participate in the Program if the employee—

(1) has been employed by that employing agency for a period of more than 3 years;

(2) has had appropriate training or experience to perform the work required by the assignment;

(3) has had an overall rating of satisfactory or higher on performance appraisals from the employing agency during the 3-year period before being assigned to another agency under this section; and

(4) agrees to return to the employing agency after completing the assignment for a period not less than the length of the assignment.

(e) WRITTEN AGREEMENT.—An employee shall enter into a written agreement regarding the terms and conditions of the assignment before beginning the assignment with another agency.

## FEDERAL RAILROAD SAFETY IMPROVEMENT ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 358, S. 1402.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1402) to authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2004 through 2008, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with amendments as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1402

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Federal Railroad Safety Improvement Act''.

**SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

**SEC. 3. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Amendment of title 49, United States Code.
Sec. 3. Table of contents.
TITLE I—AUTHORIZATION OF APPROPRIATIONS
Sec. 101. Authorization of appropriations.
TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY
Sec. 201. National crossing inventory.
Sec. 202. Grade crossing elimination and consolidation.
Sec. 203. Model legislation for driver behavior.
Sec. 204. Operation Lifesaver.
Sec. 205. Transportation security.
Sec. 206. Railroad accident and incident reporting.
Sec. 207. Railroad radio monitoring authority.
Sec. 208. Recommendations on fatigue management.
Sec. 209. Positive train control.
Sec. 210. Positive train control implementation.
Sec. 211. Survey of rail bridge structures.
Sec. 212. Railroad police.
Sec. 213. Federal Railroad Administration employee training.
*Sec. 214. Report regarding impact on public safety of train travel in communities without grade separation.*
*Sec. 215. Runaway trains emergency response.*
*TITLE III—MISCELLANEOUS PROVISIONS*
*Sec. 301. Technical amendments regarding enforcement by the Attorney General.*
*Sec. 302. Technical amendments to civil penalty provisions.*
*Sec. 303. Technical amendments to eliminate unnecessary provisions.*

**TITLE I—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Section 20117(a) is amended to read as follows:

''(a) GENERAL.—There are authorized to be appropriated to the Secretary of Transportation to carry out this chapter—

''(1) $166,000,000 for the fiscal year ending September 30, 2004;

''(2) $176,000,000 for the fiscal year ending September 30, 2005;

''(3) $185,000,000 for the fiscal year ending September 30, 2006;

''(4) $192,000,000 for the fiscal year ending September 30, 2007; and

''(5) $200,000,000 for the fiscal year ending September 30, 2008.''.

**TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY**

**SEC. 201. NATIONAL CROSSING INVENTORY.**

(a) IN GENERAL.—Chapter 201 is amended by adding at the end the following:

**''§ 20154. National crossing inventory**

''(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or 6 months after a new

crossing becomes operational, whichever occurs later, each railroad carrier shall—

''(1) report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

''(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

''(b) UPDATING OF CROSSING INFORMATION.—(1) On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

''(A) report to the Secretary current information, as specified by the Secretary, concerning each crossing through which it operates; or

''(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

''(2) A railroad carrier that sells a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of enactment of the Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing.

''(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this section.

''(d) DEFINITIONS.—In this section:

''(1) CROSSING.—The term 'crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

''(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

''(B) a dedicated pedestrian pathway that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade- separated.

''(2) STATE.—The term 'State' means a State of the United States, the District of Columbia, or Puerto Rico.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20153 the following:

''20154. National crossing inventory.''.

(c) REPORTING AND UPDATING.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) NATIONAL CROSSING INVENTORY.—

''(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

''(2) PERIODIC UPDATING OF CROSSING INFORMATION.—On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, as specified by the Secretary, concerning each crossing located within its borders.

''(3) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this subsection.

''(4) DEFINITIONS.—In this subsection, the terms 'crossing' and 'State' have the meaning given those terms by section 20154(d)(1) and (2), respectively, of title 49.''.

(d) CIVIL PENALTIES.—

(1) Section 21301(a)(1) is amended—

(A) by inserting ''with section 20154 or '' after ''comply'' in the first sentence; and

(B) by inserting ''section 20154 of this title or'' after ''violating'' in the second sentence.

(2) Section 21301(a)(2) is amended by inserting ''The Secretary shall impose a civil penalty for a violation of section 20154 of this title.'' after the first sentence.

**SEC. 202. GRADE CROSSING ELIMINATION AND CONSOLIDATION.**

(a) CROSSING REDUCTION PLAN.—Within 24 months after the date of enactment of this Act, the Secretary of Transportation shall develop and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a plan for a joint initiative with States and municipalities to systematically reduce the number of public and private highway-rail grade crossings by 1 percent per year in each of the succeeding 10 years. The plan shall include—

(1) a prioritization of crossings for elimination or consolidation, based on considerations including—

(A) whether the crossing has been identified as high risk;

(B) whether the crossing is located on a designated high-speed corridor or on a railroad right-of-way utilized for the provision of intercity or commuter passenger rail service; and

(C) the existing level of protection;

(2) suggested guidelines for the establishment of new public and private highway-rail grade crossings, with the goal of avoiding unnecessary new crossings through careful traffic, zoning, and land use planning; and

(3) an estimate of the costs of implementing the plan and suggested funding sources.

(b) CONSULTATION WITH STATES.—In preparing the plan required by subsection (a), the Secretary shall seek the advice of State officials, including highway, rail, and judicial officials, with jurisdiction over crossing safety, including crossing closures. The Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response time, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

(c) GUIDE TO CROSSING CONSOLIDATION AND CLOSURE.—Within 1 year after the date of enactment of this Act, the Secretary shall update, reissue, and distribute the publication entitled ''A Guide to Crossing Consolidation and Closure''.

(d) INCENTIVE PAYMENTS FOR AT-GRADE CROSSING CLOSURES.—Section 130(i)(3)(B) of title 23, United States Code is amended by striking ''$7,500.'' and inserting ''$15,000.''.

(e) FUNDING FOR PLAN.—From amounts authorized by section 20117(a)(1) of title 49, United States Code, to the Secretary, there shall be available $500,000 for fiscal year 2004 to prepare the plan required by this section, such sums to remain available until the plan is transmitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure as required by subsection (a).

**SEC. 203. MODEL LEGISLATION FOR DRIVER BEHAVIOR.**

(a) IN GENERAL.—Section 20151 is amended—

(1) by striking the section caption and inserting the following:

**''§ 20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals'';**

(2) by striking ''safety,'' in subsection (a) and inserting ''safety and violations of highway-rail grade crossing signals,'';

(3) by striking the second sentence of subsection (a) and inserting ''The evaluation and review shall be completed not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act.''; and

(4) by striking ''MODEL LEGISLATION.—Within 18 months after November 2, 1994, the'' in subsection (c) and inserting ''LEGISLATION FOR VANDALISM AND TRESPASSING PENALTIES.—The''; and

(5) by adding at the end the following:

''(d) MODEL LEGISLATION FOR GRADE-CROSSING VIOLATIONS.—Within 2 years after the date of the enactment of the Federal Railroad Safety Improvement Act, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signals.

''(e) VIOLATION DEFINED.—In this section, the term 'violation of highway-rail grade crossing signals' includes any action by a motorist, unless directed by an authorized safety officer—

''(1) to drive around or through a grade crossing gate in a position intended to block passage over railroad tracks;

''(2) to drive through a flashing grade crossing signal;

''(3) to drive through a grade crossing with passive warning signs without determining that the grade crossing could be safely crossed before any train arrived; and

''(4) in the vicinity of a grade crossing, that creates a hazard of an accident involving injury or property damage at the grade crossing.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by striking the item relating to section 20151 and inserting the following:

''20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals.''.

**SEC. 204. OPERATION LIFESAVER.**

Section 20117(e) is amended to read as follows:

''(e) OPERATION LIFESAVER.—In addition to amounts otherwise authorized by law, from the amounts authorized to be appropriated under subsection (a), there shall be available

for railroad research and development $1,250,000 for fiscal year 2004, $1,300,000 for fiscal year 2005, $1,350,000 for fiscal year 2006, $1,400,000 for fiscal year 2007, and $1,460,000 for fiscal year 2008 to support Operation Lifesaver, Inc.''.

**SEC. 205. TRANSPORTATION SECURITY.**

(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

(b) RAIL SAFETY REGULATIONS.—Section 20103(a) is amended to read as follows:

''(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety, including security, supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary of Transportation.''.

**SEC. 206. RAILROAD ACCIDENT AND INCIDENT REPORTING.**

Section 20901(a) is amended to read as follows:

''(a) GENERAL REQUIREMENTS.—On a periodic basis specified by the Secretary of Transportation but not less frequently than quarterly, a railroad carrier shall file a report with the Secretary on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the specified period. The report shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.''.

**SEC. 207. RAILROAD RADIO MONITORING AUTHORITY.**

Section 20107 is amended by inserting at the end the following:

''(c) RAILROAD RADIO COMMUNICATIONS.—

''(1) IN GENERAL.—To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities at reasonable times:

''(A) Intercepting a radio communication that is broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission, with or without making their presence known to the sender or other receivers of the communication and with or without obtaining the consent of the sender or other receivers of the communication.

''(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

''(C) Receiving or assisting in receiving the communication (or any information therein contained).

''(D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

''(E) Recording the communication by any means, including writing and tape recording.

''(2) LIMITATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary may engage in the activities authorized by paragraph (1) for the purpose of accident prevention, including, but not limited to, accident investigation.

''(3) USE OF INFORMATION.—

''(A) Except as provided in subparagraph (F), information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to sections 5122, 20702(b), 20111, 20112, 20113, or 20114 of this title.

''(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

''(C) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

''(D) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

''(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

''(F) No information obtained by an activity authorized by paragraph (1)(A) that was undertaken solely for the purpose of accident investigation may be introduced into evidence in any administrative or judicial proceeding in which civil or criminal penalties may be imposed.

''(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.

''(d) REASONABLE TIME DEFINED.—In this section, the term 'at reasonable times' means at any time that the railroad carrier being inspected or investigated is performing its rail transportation business.''.

**SEC. 208. RECOMMENDATIONS ON FATIGUE MANAGEMENT.**

(a) WORKING GROUP ESTABLISHED.—The Railroad Safety Advisory Committee of the Federal Railroad Administration shall convene a working group to consider what legislative or other changes the Secretary of Transportation deems necessary to address fatigue management for railroad employees subject to chapter 211 of title 49, United States Code. The working group shall consider—

(1) the varying circumstances of rail carrier operations and appropriate fatigue countermeasures to address those varying circumstances, based on current and evolving scientific and medical research on circadian rhythms and human sleep and rest requirements;

(2) research considered by the Federal Motor Carrier Safety Administration in devising new hours of service regulations for motor carriers;

(3) the benefits and costs of modifying the railroad hours of service statute or implementing other fatigue management countermeasures for railroad employees subject to chapter 211; and

(4) ongoing and planned initiatives by the railroads and rail labor organizations to address fatigue management.

(b) REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this Act, the working group convened under subsection (a) shall submit a report containing its conclusions and recommendations to the Railroad Safety Advisory Committee and the Secretary of Transportation. The Secretary shall transmit the report to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure.

(c) RECOMMENDATIONS.—If the Railroad Safety Advisory Committee does not reach a consensus on recommendations within 24 months after the date of enactment of this Act, the Secretary of Transportation shall, within 36 months after the date of enactment of this Act, submit to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure recommendations for legislative, regulatory, or other changes to address fatigue management for railroad employees.

**SEC. 209. POSITIVE TRAIN CONTROL.**

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall prescribe a final rule addressing safety standards for positive train control systems or other safety technologies that provide similar safety benefits.

**SEC. 210. POSITIVE TRAIN CONTROL IMPLEMENTATION.**

(a) REPORT ON PILOT PROJECTS.—Within 3 months after completion of the North American Joint Positive Train Control Project, the Secretary of Transportation shall submit a report on the progress of on-going and completed projects to implement positive train control technology or other safety technologies that provide similar safety benefits to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure. The report shall include recommendations for future projects and any legislative or other changes the Secretary deems necessary.

(b) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall establish a grant program with a 50 percent match requirement for the implementation of positive train control technology or other safety technologies that provide similar safety benefits. From the amounts authorized to be appropriated for each of fiscal years 2004 through 2008 under section 20117(a) of title 49, United States Code, there shall be made available for the grant program—

(1) $16,000,000 for fiscal year 2004;

(2) $18,000,000 for fiscal year 2005; and

(3) $20,000,000 for each of fiscal years 2006 through 2008.

**SEC. 211. SURVEY OF RAIL BRIDGE STRUCTURES.**

The Secretary of Transportation shall conduct a safety survey of the structural integrity of railroad bridges and railroads' programs of inspection and maintenance of railroad bridges. The Secretary shall issue a report to Congress at the completion of the

survey, including a finding by the Secretary concerning whether the Secretary should issue regulations governing the safety of railroad bridges.

**SEC. 212. RAILROAD POLICE.**

Section 28101 is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

**SEC. 213. FEDERAL RAILROAD ADMINISTRATION EMPLOYEE TRAINING.**

From the amounts authorized to be appropriated for fiscal year 2004 by section 20117(a)(1) of title 49, United States Code, there shall be made available to the Secretary of Transportation $300,000 for the Federal Railroad Administration to perform a demonstration program to provide centralized training for its employees. The Secretary of Transportation shall report on the results of such training and provide further recommendations to the Congress.

***SEC. 214. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.***

*(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.*

*(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study and recommendations for reducing the impact of blocked crossings on emergency response to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.*

***SEC. 215. RUNAWAY TRAINS EMERGENCY RESPONSE.***

*(a) NOTIFICATION PROCEDURES.—*

*(1) REGULATIONS.—The Secretary of Transportation shall prescribe regulations setting forth procedures for a railroad to immediately notify first responders in communities that lie in the path of a runaway train.*

*(2) TIME FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue the final regulations under this section not later than 120 days after the date of enactment of this Act.*

*(3) DEFINITIONS.—In this section, the term ''runaway train'' means a locomotive, train, rail car, or other item of railroad equipment that, at a particular moment in time, is rolling on tracks outside the operations limits of a railroad and is not under the control of the railroad.*

*(b) RESPONSE PROCEDURES.—Not later than 60 days after the Secretary prescribes the regulations under subsection (a), each railroad shall submit to the Department of Transportation for the Secretary's approval the procedures proposed by the railroad for providing the notice described in such subsection.*

*(c) REPORTING OF INCIDENTS REQUIRED.—The Secretary shall require railroads to report to the Department of Transportation each incident of a runaway train.*

## TITLE III—MISCELLANEOUS PROVISIONS

**SEC. 301. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.**

Section 20112(a) is amended—

(1) by inserting ''this part, except for section 20109 of this title, or'' in paragraph (1) after ''enforce,'';

(2) by striking ''21301'' in paragraph (2) and inserting ''21301, 21302, or 21303'';

(3) by striking ''subpena'' in paragraph (3) and inserting ''subpena, request for production of documents or other tangible things, or request for testimony by deposition''; and

(4) by striking ''chapter.'' in paragraph (3) and inserting ''part.''.

**SEC. 302. TECHNICAL AMENDMENTS TO CIVIL PENALTY PROVISIONS.**

(a) GENERAL VIOLATIONS OF CHAPTER 201.—Section 21301(a)(2) is amended—

(1) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(2) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(b) ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER 201; VIOLATIONS OF CHAPTERS 203 THROUGH 209.—

(1) Section 21302(a)(2) is amended—

(A) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(B) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(2) Section 21302 is amended by adding at the end the following:

''(c) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

''(d) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.''.

(c) VIOLATIONS OF CHAPTER 211.—

(1) Section 21303(a)(2) is amended—

(A) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(B) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(2) Section 21303 is amended by adding at the end the following:

''**[**(c)**]** *(d)* SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

''**[**(d)**]** *(e)* DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.''.

**SEC. 303. TECHNICAL AMENDMENTS TO ELIMINATE UNNECESSARY PROVISIONS.**

(a) IN GENERAL.—Chapter 201 is amended—

(1) by striking the second sentence of section 20103(f);

(2) by striking section 20145;

(3) by striking section 20146; and

(4) by striking section 20150.

(b) CONFORMING AMENDMENTS.—The chapter analysis for chapter 201 is amended by striking the items relating to sections 20145, 20146, and 20150 and inserting at the appropriate place in the analysis the following:

''20145. [Repealed].

''20146. [Repealed].

''20150. [Repealed].''.

Mr. MCCONNELL. I ask unanimous consent that the committee amendments be agreed to, the bill as amended be read a third time and passed, the motion to reconsider be laid on the table, en bloc, and any statements relating to the bill be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 1402) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1402

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Federal Railroad Safety Improvement Act''.

**SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

**SEC. 3. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Amendment of title 49, United States Code.
Sec. 3. Table of contents.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

Sec. 101. Authorization of appropriations.

TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY

Sec. 201. National crossing inventory.
Sec. 202. Grade crossing elimination and consolidation.
Sec. 203. Model legislation for driver behavior.
Sec. 204. Operation Lifesaver.
Sec. 205. Transportation security.
Sec. 206. Railroad accident and incident reporting.
Sec. 207. Railroad radio monitoring authority.
Sec. 208. Recommendations on fatigue management.
Sec. 209. Positive train control.
Sec. 210. Positive train control implementation.
Sec. 211. Survey of rail bridge structures.
Sec. 212. Railroad police.
Sec. 213. Federal Railroad Administration employee training.
Sec. 214. Report regarding impact on public safety of train travel in communities without grade separation.
Sec. 215. Runaway trains emergency response.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Technical amendments regarding enforcement by the Attorney General.
Sec. 302. Technical amendments to civil penalty provisions.
Sec. 303. Technical amendments to eliminate unnecessary provisions.

## TITLE I—AUTHORIZATION OF APPROPRIATIONS

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Section 20117(a) is amended to read as follows:

''(a) GENERAL.—There are authorized to be appropriated to the Secretary of Transportation to carry out this chapter—

''(1) $166,000,000 for the fiscal year ending September 30, 2004;

''(2) $176,000,000 for the fiscal year ending September 30, 2005;

''(3) $185,000,000 for the fiscal year ending September 30, 2006;

''(4) $192,000,000 for the fiscal year ending September 30, 2007; and

''(5) $200,000,000 for the fiscal year ending September 30, 2008.''.

**TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY**

**SEC. 201. NATIONAL CROSSING INVENTORY.**

(a) IN GENERAL.—Chapter 201 is amended by adding at the end the following:

**''§ 20154. National crossing inventory**

''(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

''(1) report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

''(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

''(b) UPDATING OF CROSSING INFORMATION.—(1) On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

''(A) report to the Secretary current information, as specified by the Secretary, concerning each crossing through which it operates; or

''(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

''(2) A railroad carrier that sells a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of enactment of the Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing.

''(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this section.

''(d) DEFINITIONS.—In this section:

''(1) CROSSING.—The term 'crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

''(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

''(B) a dedicated pedestrian pathway that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

''(2) STATE.—The term 'State' means a State of the United States, the District of Columbia, or Puerto Rico.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20153 the following:

''20154. National crossing inventory.''.

(c) REPORTING AND UPDATING.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) NATIONAL CROSSING INVENTORY.—

''(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

''(2) PERIODIC UPDATING OF CROSSING INFORMATION.—On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, as specified by the Secretary, concerning each crossing located within its borders.

''(3) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this subsection.

''(4) DEFINITIONS.—In this subsection, the terms 'crossing' and 'State' have the meaning given those terms by section 20154(d)(1) and (2), respectively, of title 49.''.

(d) CIVIL PENALTIES.—

(1) Section 21301(a)(1) is amended—

(A) by inserting ''with section 20154 or '' after ''comply'' in the first sentence; and

(B) by inserting ''section 20154 of this title or'' after ''violating'' in the second sentence.

(2) Section 21301(a)(2) is amended by inserting ''The Secretary shall impose a civil penalty for a violation of section 20154 of this title.'' after the first sentence.

**SEC. 202. GRADE CROSSING ELIMINATION AND CONSOLIDATION.**

(a) CROSSING REDUCTION PLAN.—Within 24 months after the date of enactment of this Act, the Secretary of Transportation shall develop and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a plan for a joint initiative with States and municipalities to systematically reduce the number of public and private highway-rail grade crossings by 1 percent per year in each of the succeeding 10 years. The plan shall include—

(1) a prioritization of crossings for elimination or consolidation, based on considerations including—

(A) whether the crossing has been identified as high risk;

(B) whether the crossing is located on a designated high-speed corridor or on a railroad right-of-way utilized for the provision of intercity or commuter passenger rail service; and

(C) the existing level of protection;

(2) suggested guidelines for the establishment of new public and private highway-rail grade crossings, with the goal of avoiding unnecessary new crossings through careful traffic, zoning, and land use planning; and

(3) an estimate of the costs of implementing the plan and suggested funding sources.

(b) CONSULTATION WITH STATES.—In preparing the plan required by subsection (a), the Secretary shall seek the advice of State officials, including highway, rail, and judicial officials, with jurisdiction over crossing safety, including crossing closures. The Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response time, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

(c) GUIDE TO CROSSING CONSOLIDATION AND CLOSURE.—Within 1 year after the date of enactment of this Act, the Secretary shall update, reissue, and distribute the publication entitled ''A Guide to Crossing Consolidation and Closure''.

(d) INCENTIVE PAYMENTS FOR AT-GRADE CROSSING CLOSURES.—Section 130(i)(3)(B) of title 23, United States Code is amended by striking ''$7,500.'' and inserting ''$15,000.''.

(e) FUNDING FOR PLAN.—From amounts authorized by section 20117(a)(1) of title 49, United States Code, to the Secretary, there shall be available $500,000 for fiscal year 2004 to prepare the plan required by this section, such sums to remain available until the plan is transmitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure as required by subsection (a).

**SEC. 203. MODEL LEGISLATION FOR DRIVER BEHAVIOR.**

(a) IN GENERAL.—Section 20151 is amended—

(1) by striking the section caption and inserting the following:

**''§ 20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals'';**

(2) by striking ''safety,'' in subsection (a) and inserting ''safety and violations of highway-rail grade crossing signals,'';

(3) by striking the second sentence of subsection (a) and inserting ''The evaluation and review shall be completed not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act.''; and

(4) by striking ''MODEL LEGISLATION.—Within 18 months after November 2, 1994, the'' in subsection (c) and inserting ''LEGISLATION FOR VANDALISM AND TRESPASSING PENALTIES.—The''; and

(5) by adding at the end the following:

''(d) MODEL LEGISLATION FOR GRADE-CROSSING VIOLATIONS.—Within 2 years after the date of the enactment of the Federal Railroad Safety Improvement Act, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signals.

''(e) VIOLATION DEFINED.—In this section, the term 'violation of highway-rail grade crossing signals' includes any action by a motorist, unless directed by an authorized safety officer—

''(1) to drive around or through a grade crossing gate in a position intended to block passage over railroad tracks;

''(2) to drive through a flashing grade crossing signal;

''(3) to drive through a grade crossing with passive warning signs without determining that the grade crossing could be safely crossed before any train arrived; and

''(4) in the vicinity of a grade crossing, that creates a hazard of an accident involving injury or property damage at the grade crossing.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by striking the item relating to section 20151 and inserting the following:

''20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals.''.

**SEC. 204. OPERATION LIFESAVER.**

Section 20117(e) is amended to read as follows:

''(e) OPERATION LIFESAVER.—In addition to amounts otherwise authorized by law, from the amounts authorized to be appropriated under subsection (a), there shall be available for railroad research and development $1,250,000 for fiscal year 2004, $1,300,000 for fiscal year 2005, $1,350,000 for fiscal year 2006, $1,400,000 for fiscal year 2007, and $1,460,000 for fiscal year 2008 to support Operation Lifesaver, Inc.''.

**SEC. 205. TRANSPORTATION SECURITY.**

(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

(b) RAIL SAFETY REGULATIONS.—Section 20103(a) is amended to read as follows:

''(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety, including security, supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary of Transportation.''.

**SEC. 206. RAILROAD ACCIDENT AND INCIDENT REPORTING.**

Section 20901(a) is amended to read as follows:

''(a) GENERAL REQUIREMENTS.—On a periodic basis specified by the Secretary of Transportation but not less frequently than quarterly, a railroad carrier shall file a report with the Secretary on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the specified period. The report shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.''.

**SEC. 207. RAILROAD RADIO MONITORING AUTHORITY.**

Section 20107 is amended by inserting at the end the following:

''(c) RAILROAD RADIO COMMUNICATIONS.—

''(1) IN GENERAL.—To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities at reasonable times:

''(A) Intercepting a radio communication that is broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission, with or without making their presence known to the sender or other receivers of the communication and with or without obtaining the consent of the sender or other receivers of the communication.

''(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

''(C) Receiving or assisting in receiving the communication (or any information therein contained).

''(D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

''(E) Recording the communication by any means, including writing and tape recording.

''(2) LIMITATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary may engage in the activities authorized by paragraph (1) for the purpose of accident prevention, including, but not limited to, accident investigation.

''(3) USE OF INFORMATION.—

''(A) Except as provided in subparagraph (F), information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to sections 5122, 20702(b), 20111, 20112, 20113, or 20114 of this title.

''(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

''(C) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

''(D) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

''(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

''(F) No information obtained by an activity authorized by paragraph (1)(A) that was undertaken solely for the purpose of accident investigation may be introduced into evidence in any administrative or judicial proceeding in which civil or criminal penalties may be imposed.

''(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.

''(d) REASONABLE TIME DEFINED.—In this section, the term 'at reasonable times' means at any time that the railroad carrier being inspected or investigated is performing its rail transportation business.''.

**SEC. 208. RECOMMENDATIONS ON FATIGUE MANAGEMENT.**

(a) WORKING GROUP ESTABLISHED.—The Railroad Safety Advisory Committee of the Federal Railroad Administration shall convene a working group to consider what legislative or other changes the Secretary of Transportation deems necessary to address fatigue management for railroad employees subject to chapter 211 of title 49, United States Code. The working group shall consider—

(1) the varying circumstances of rail carrier operations and appropriate fatigue countermeasures to address those varying circumstances, based on current and evolving scientific and medical research on circadian rhythms and human sleep and rest requirements;

(2) research considered by the Federal Motor Carrier Safety Administration in devising new hours of service regulations for motor carriers;

(3) the benefits and costs of modifying the railroad hours of service statute or implementing other fatigue management countermeasures for railroad employees subject to chapter 211; and

(4) ongoing and planned initiatives by the railroads and rail labor organizations to address fatigue management.

(b) REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this Act, the working group convened under subsection (a) shall submit a report containing its conclusions and recommendations to the Railroad Safety Advisory Committee and the Secretary of Transportation. The Secretary shall transmit the report to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure.

(c) RECOMMENDATIONS.—If the Railroad Safety Advisory Committee does not reach a consensus on recommendations within 24 months after the date of enactment of this Act, the Secretary of Transportation shall, within 36 months after the date of enactment of this Act, submit to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure recommendations for legislative, regulatory, or other changes to address fatigue management for railroad employees.

**SEC. 209. POSITIVE TRAIN CONTROL.**

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall prescribe a final rule addressing safety standards for positive train control systems or other safety technologies that provide similar safety benefits.

**SEC. 210. POSITIVE TRAIN CONTROL IMPLEMENTATION.**

(a) REPORT ON PILOT PROJECTS.—Within 3 months after completion of the North American Joint Positive Train Control Project, the Secretary of Transportation shall submit a report on the progress of on-going and completed projects to implement positive train control technology or other safety technologies that provide similar safety benefits to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure. The report shall include recommendations for future projects and any legislative or other changes the Secretary deems necessary.

(b) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall establish a grant program with a 50 percent match requirement

for the implementation of positive train control technology or other safety technologies that provide similar safety benefits. From the amounts authorized to be appropriated for each of fiscal years 2004 through 2008 under section 20117(a) of title 49, United States Code, there shall be made available for the grant program—

(1) $16,000,000 for fiscal year 2004;

(2) $18,000,000 for fiscal year 2005; and

(3) $20,000,000 for each of fiscal years 2006 through 2008.

**SEC. 211. SURVEY OF RAIL BRIDGE STRUCTURES.**

The Secretary of Transportation shall conduct a safety survey of the structural integrity of railroad bridges and railroads' programs of inspection and maintenance of railroad bridges. The Secretary shall issue a report to Congress at the completion of the survey, including a finding by the Secretary concerning whether the Secretary should issue regulations governing the safety of railroad bridges.

**SEC. 212. RAILROAD POLICE.**

Section 28101 is amended by striking ''the rail carrier'' each place it appears and inserting ''any rail carrier''.

**SEC. 213. FEDERAL RAILROAD ADMINISTRATION EMPLOYEE TRAINING.**

From the amounts authorized to be appropriated for fiscal year 2004 by section 20117(a)(1) of title 49, United States Code, there shall be made available to the Secretary of Transportation $300,000 for the Federal Railroad Administration to perform a demonstration program to provide centralized training for its employees. The Secretary of Transportation shall report on the results of such training and provide further recommendations to the Congress.

**SEC. 214. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.**

(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.

(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study and recommendations for reducing the impact of blocked crossings on emergency response to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

**SEC. 215. RUNAWAY TRAINS EMERGENCY RESPONSE.**

(a) NOTIFICATION PROCEDURES.—

(1) REGULATIONS.—The Secretary of Transportation shall prescribe regulations setting forth procedures for a railroad to immediately notify first responders in communities that lie in the path of a runaway train.

(2) TIME FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue the final regulations under this section not later than 120 days after the date of enactment of this Act.

(3) DEFINITIONS.—In this section, the term ''runaway train'' means a locomotive, train, rail car, or other item of railroad equipment that, at a particular moment in time, is rolling on tracks outside the operations limits of a railroad and is not under the control of the railroad.

(b) RESPONSE PROCEDURES.—Not later than 60 days after the Secretary prescribes the regulations under subsection (a), each railroad shall submit to the Department of Transportation for the Secretary's approval the procedures proposed by the railroad for providing the notice described in such subsection.

(c) REPORTING OF INCIDENTS REQUIRED.—The Secretary shall require railroads to report to the Department of Transportation each incident of a runaway train.

**TITLE III—MISCELLANEOUS PROVISIONS**

**SEC. 301. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.**

Section 20112(a) is amended—

(1) by inserting ''this part, except for section 20109 of this title, or'' in paragraph (1) after ''enforce,'';

(2) by striking ''21301'' in paragraph (2) and inserting ''21301, 21302, or 21303'';

(3) by striking ''subpena'' in paragraph (3) and inserting ''subpena, request for production of documents or other tangible things, or request for testimony by deposition''; and

(4) by striking ''chapter.'' in paragraph (3) and inserting ''part.''.

**SEC. 302. TECHNICAL AMENDMENTS TO CIVIL PENALTY PROVISIONS.**

(a) GENERAL VIOLATIONS OF CHAPTER 201.—Section 21301(a)(2) is amended—

(1) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(2) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(b) ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER 201; VIOLATIONS OF CHAPTERS 203 THROUGH 209.—

(1) Section 21302(a)(2) is amended—

(A) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(B) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(2) Section 21302 is amended by adding at the end the following:

''(c) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

''(d) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.''.

(c) VIOLATIONS OF CHAPTER 211.—

(1) Section 21303(a)(2) is amended—

(A) by striking ''$10,000.'' and inserting ''$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''; and

(B) by striking ''$20,000.'' and inserting ''$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).''.

(2) Section 21303 is amended by adding at the end the following:

''(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

''(e) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.''.

**SEC. 303. TECHNICAL AMENDMENTS TO ELIMINATE UNNECESSARY PROVISIONS.**

(a) IN GENERAL.—Chapter 201 is amended—

(1) by striking the second sentence of section 20103(f);

(2) by striking section 20145;

(3) by striking section 20146; and

(4) by striking section 20150.

(b) CONFORMING AMENDMENTS.—The chapter analysis for chapter 201 is amended by striking the items relating to sections 20145, 20146, and 20150 and inserting at the appropriate place in the analysis the following:

''20145. [Repealed].

''20146. [Repealed].

''20150. [Repealed].''.

## AWARD OF CONGRESSIONAL GOLD MEDALS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3287 which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3287) to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown, et al., v. the Board of Education of Topeka, et al.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD without any intervening action or debate.

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

The bill (H.R. 3287) was read the third time and passed.

## STATE CRIMINAL ALIEN ASSISTANCE PROGRAM REAUTHORIZATION ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 460, and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 460) to amend the Immigration and Nationality Act to authorize appropriation for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, without intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 460) was read the third time and passed, as follows:

S. 460

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''State Criminal Alien Assistance Program Reauthorization Act of 2003''.

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2004 THROUGH 2010.**

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking ''appropriated'' and all that follows through the period and inserting the following: ''appropriated to carry out this subsection—

''(A) such sums as may be necessary for fiscal year 2003;

''(B) $750,000,000 for fiscal year 2004;

''(C) $850,000,000 for fiscal year 2005; and

''(D) $950,000,000 for each of the fiscal years 2006 through 2010.''.

## TORTURE VICTIMS RELIEF REAUTHORIZATION ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. 854, and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 854) to authorize a comprehensive program of support for victims of torture, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 854) was read the third time and passed, as follows:

S. 854

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Torture Victims Relief Reauthorization Act of 2003''.

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) there are authorized to be appropriated to the President to carry out section 130 of such Act $11,000,000 for fiscal year 2004, $12,000,000 for fiscal year 2005, and $13,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.**

Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $6,000,000 for fiscal year 2004, $7,000,000 for fiscal year 2005, and $8,000,000 for fiscal year 2006.

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR DOMESTIC TREATMENT CENTERS FOR VICTIMS OF TORTURE.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 5(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for the Department of Health and Human Services for fiscal years 2004, 2005, and 2006, there are authorized to be appropriated to carry out subsection (a) $20,000,000 for fiscal year 2004, $25,000,000 for fiscal year 2005, and $30,000,000 for fiscal year 2006.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect October 1, 2003.

## TORTURE VICTIMS RELIEF REAUTHORIZATION ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of H.R. 1813, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1813) to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1813) was read the third time and passed.

## HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill S. 459, to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

S. 459

*Resolved*, That the bill from the Senate (S. 459) entitled ''An Act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Hometown Heroes Survivors Benefits Act of 2003''.*

***SEC. 2. FATAL HEART ATTACK OR STROKE ON DUTY PRESUMED TO BE DEATH IN LINE OF DUTY FOR PURPOSES OF PUBLIC SAFETY OFFICER SURVIVOR BENEFITS.***

*Section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by adding at the end the following:*

*''(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—*

*''(1) that officer, while on duty—*

*''(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or*

*''(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;*

*''(2) that officer died as a result of a heart attack or stroke suffered—*

*''(A) while engaging or participating as described under paragraph (1);*

*''(B) while still on that duty after so engaging or participating; or*

*''(C) not later than 24 hours after so engaging or participating; and*

*''(3) such presumption is not overcome by competent medical evidence to the contrary.*

*''(l) For purposes of subsection (k), 'nonroutine stressful or strenuous physical' excludes actions of a clerical, administrative, or nonmanual nature.''.*

Mr. LEAHY. Mr. President, I am pleased that the Senate again is taking up and passing the Hometown Heroes Survivors Benefits Act of 2003, S. 459. This bill, as amended and passed by unanimous consent in the House, will improve the Department of Justice's Public Safety Officers Benefits, PSOB, program by allowing survivors of public safety officers who suffer fatal heart attacks or strokes while participating in nonroutine stressful or strenuous physical activities to qualify for Federal survivor benefits.

I want to pay special thanks to Congressman BOB ETHERIDGE, the author of the House companion bill, and House Judiciary Committee Chairman SENSENBRENNER for their leadership and fortitude while negotiating this legislation. Without their perseverance and willingness to find bipartisan compromise language, passage of this bill in the House would not have happened.

I also commend Congressman COBLE, Congressman BOBBY SCOTT, the Fraternal Order of Police, FOP, and the Congressional Fire Services Institute, CFSI, for working with us on bipartisan compromise language so that we could pass the Senate bill through the House. I thank Senate Judiciary Chairman HATCH, Senator LINDSEY GRAHAM, the lead Republican cosponsor of this bill, and Senate leadership for quickly

passing the Senate bill, as amended by the House, and to send it to the President's desk for enactment into law.

I thank Senators COLLINS, JEFFORDS, SARBANES, SCHUMER, DURBIN, LANDRIEU, NELSON of Florida, CLINTON, SNOWE, KOHL, SMITH, STABENOW, KENNEDY, DAYTON, MILLER and KERRY for joining me as cosponsors of this multipartisan legislation.

Public safety officers are our most brave and dedicated public servants. I applaud the efforts of all members of fire, law enforcement and EMS providers nationwide who are the first to respond to more than 1.6 million emergency calls annually—whether those calls involve a crime, fire, medical emergency, spill of hazardous materials, natural disaster, act of terrorism, or transportation accident—without reservation. Those men and women act with an unwavering commitment to the safety and protection of their fellow citizens, and forever willing to selflessly sacrifice their own lives to provide safe and reliable emergency services to their communities.

Sadly, that kind of dedication can result in tragedy, which we all witnessed on September 11th as scores of firefighters, police officers and medics raced into the burning World Trade Center and Pentagon with no other goal than to save lives. Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. And while we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve to collect these funds.

The PSOB program was established in 1976 to authorize a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line of duty deaths. In 2001, Congress improved the PSOB regulations by streamlining the process for families of public safety officers killed or injured in connection with prevention, investigation, rescue or recovery efforts related to a terrorist attack. We also retroactively increased the total benefits available by $100,000 as part of the USA PATRIOT Act. Survivors of first responders killed in the line of duty now receive $267,494 in PSOB.

Unfortunately, the issue of covering heart attack and stroke victims under PSOB regulations was not addressed at that time.

Service-connected heart, lung, and hypertension conditions are silent killers of public safety officers nationwide. The numerous hidden health dangers dealt with by police officers, fire fighters and EMS personnel are widely recognized, but officers face these dangers in order to serve and protect their fellow citizens.

The intent of the legislation Senator GRAHAM and I introduced earlier this year was to cover officers who suffered a heart attack or stroke as a result of nonroutine stressful or strenuous physical activity. As drafted and passed by the Senate by unanimous consent on May 16, however, members of the House Judiciary Committee felt the bill's language would cover officers who did not engage in any physical activity, but merely happened to suffer a heart attack while at work. Chairman SENSENBRENNER, Congressman ETHERIDGE, Congressman COBLE, Congressman SCOTT, FOP, CFSI and I worked out a substitute amendment to address those concerns.

The substitute amendment to S. 459 will create a presumption that an officer who died as a direct and proximate result of a heart attack or stroke died as a direct and proximate result of a personal injury sustained in the line of duty if the following is established:

that officer participated in a training exercise that involved nonroutine stressful or strenuous physical activity or responded to a situation and such participation or response involved nonroutine stressful or strenuous physical law enforcement, hazardous material response, emergency medical services, prison security, fire suppression, rescue, disaster relief or other emergency response activity; that officer suffered a heart attack or stroke while engaging or within 24 hours of engaging in that physical activity; and such presumption cannot be overcome by competent medical evidence.

For the purposes of this act, the phrase ''nonroutine stressful or strenuous physical'' will exclude actions of a clerical, administrative or non-manual nature. Included in the category of ''actions of a clerical, administrative or non-manual nature'' are such tasks including, but not limited to, the following: sitting at a desk; typing on a computer; talking on the telephone; reading or writing paperwork or other literature; watching a police or corrections facility's monitors of cells or grounds; teaching a class; cleaning or organizing an emergency response vehicle; signing in or out a prisoner; driving a vehicle on routine patrol; and directing traffic at or participating in a local parade.

Such deaths, while tragic, are not to be considered in the line of duty deaths. The families of officers who died of such causes would therefore not be eligible to receive PSOB.

For the purposes of this act, the phrase ''nonroutine stressful or strenuous physical'' actions will include, but are not limited to, the following: involvement in a physical struggle with a suspected or convicted criminal; performing a search and rescue mission; performing or assisting with emergency medical treatment; performing or assisting with fire suppression; involvement in a situation that requires either a high speed response or pursuit on foot or in a vehicle; participation in hazardous material response; responding to a riot that broke out at a public event; and physically engaging in the arrest or apprehension of a suspected criminal.

The situations listed above are the types of heart attack and stroke cases that are considered to be in the line of duty. The families of officers who died in such cases are eligible to receive PSOB.

The changes to PSOB law and regulations brought about by the Hometown Heroes Survivors Benefits Act will take effect as soon as the President signs the legislation into law. As a result, the survivors of public safety officers who suffer heart attacks or strokes while performing nonroutine stressful or strenuous physical actions on or after the date the President signs this bill will be eligible to apply for PSOB.

Heart attacks and strokes are a reality of the high-pressure jobs of police officers, firefighters and medics. These are killers that first responders contend with in their jobs, just like speeding bullets and burning buildings. They put their lives on the line for us, and we owe their families our gratitude, our respect and our help. No amount of money can fill the void that is left by these losses, but ending this disparity can help these families keep food on the table and shelter over their heads.

I thank the Senate for taking up and passing the Hometown Heroes Survivors Benefits Act, S. 459, as amended and passed by the House, and showing its support and appreciation for these extraordinarily brave and heroic public safety officers.

Mr. MCCONNELL. I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table with no intevening action or debate.

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

## SENATE COMMISSION ON ART TO SELECT SCENE COMMEMORATING THE GREAT COMPROMISE

Mr. MCCONNELL. I ask unanimous consent that the Rules Committee be discharged from further action on S. Res. 177, and the Senate now proceed to its consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution ( S. Res. 177) to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United State Senate, to be placed in the lunette space in the Senate reception room immediately above the entrance into the Senate chamber lobby, and to authorize the Committee on Rules and Administration to obtain technical advice and assistance in carrying out its duties.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent the amendment at the desk be agreed to; the resolution, as amended, be agreed to; the amendment to the preamble be agreed to; the preamble,

as amended, be agreed to; the amendment to the title be agreed to, the motion to reconsider be laid upon the table en bloc and statements be printed in the RECORD

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

The amendment (No. 2221) was agreed to, as follows:

(Purpose: To permit the painting to be placed in the Senate wing at a location determined by the Committee on Rules and Administration)

On page 3, strike lines 2 through 4 and insert the following: ''forefathers, to be placed in a location in the Senate wing to be determined by the chairman and ranking member of the Committee on Rules and Administration.''.

The amendment (No. 2222) was agreed to, as follows:

Amend the preamble to read as follows:

Whereas on July 16, 1787, the framers of the United States Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of congressional representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the ''Great Compromise'' or the ''Connecticut Compromise''; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United States Senate should be placed in the Senate wing of the Capitol: Now, therefore, be it

The amendment (No. 2223) was agreed to, as follows:

Amend the title so as to read: ''To direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties.''.

The resolution (S. Res. 177), as amended, was agreed to.

The preamble, as amended, was agreed to.

The title amendment, as amended, was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 177

Whereas on July 16, 1787, the framers of the United States Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of congressional representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the ''Great Compromise'' or the ''Connecticut Compromise''; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United States Senate should be placed in the Senate wing of the Capitol: Now, therefore, be it

*Resolved,*

**SECTION 1. COMMEMORATION OF THE GREAT COMPROMISE.**

(a) IN GENERAL.—The Senate Commission on Art, established under section 901 of the Arizona-Idaho Conservation Act of 1988 (40 U.S.C. 188b) (in this section referred to as the ''Commission'') shall select an appropriate scene commemorating the Great Compromise of our forefathers, to be placed in a location in the Senate wing to be determined by the chairman and ranking member of the Committee on Rules and Administration.

(b) CONSULTATION AUTHORIZED.—The Commission is authorized to seek the advice of and recommendations from historians and other sources in carrying out this section, and to reimburse such sources for travel expenses, in accordance with Senate Travel Regulations.

(c) TIMING.—The Commission shall make its selection pursuant to this section, and shall commission an artist to begin work, not later than the close of the 2d session of the 108th Congress.

(d) DELEGATION AUTHORITY.—For purposes of making the selection required by this section, a member of the Commission may designate another Senator to act in place of that member.

(e) FUNDING.—The expenses of the Commission in carrying out this section shall be made available from appropriations under the subheading ''MISCELLANEOUS ITEMS'' under the heading ''CONTINGENT EXPENSES OF THE SENATE'', on vouchers signed by the Secretary of the Senate and approved by the Committee on Rules and Administration.

**SEC. 2. TECHNICAL ADVICE AND ASSISTANCE.**

(a) IN GENERAL.—The Chairman of the Committee on Rules and Administration may seek technical advice and assistance to the Committee in carrying out its duties from individuals from the public and private sectors, who shall serve without compensation, at the pleasure of the Chairman.

(b) NON-GOVERNMENTAL STATUS.—Individuals providing advice and assistance described in subsection (a) shall not be deemed to be—

(1) Members, officers, or employees of the Senate; or

(2) providing services to the Senate, for purposes of the Senate Code of Official Conduct.

(c) EXPENSES.—Upon submission to the Committee on Rules and Administration of a routine voucher for actual transportation expenses incurred in the performance of providing advice and assistance to the Committee, individuals described in subsection (a) may be reimbursed in accordance with Senate Travel Regulations.

## PRINTING THE PRAYERS OF REVEREND LLOYD JOHN OGILVIE

Mr. MCCONNELL. I ask unanimous consent that the Rules Committee be discharged from further consideration of S. Res. 157, and the Senate now proceed to its consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 157) to authorize the printing of the prayers for the Reverend Lloyd John Ogilvie.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD

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

The resolution (S. Res. 157) was agreed to, as follows:

S. RES. 157

**SECTION 1. AUTHORIZATION OF PRINTING.**

(a) IN GENERAL.—There shall be printed with an appropriate illustration as a Senate document, the prayers by the Reverend Lloyd John Ogilvie, Doctor of Divinity, the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the One Hundred and Fifth Congress, One Hundred and Sixth Congress, One Hundred and Seventh Congress, and One Hundred and Eighth Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate.

(b) ADDITIONAL COPIES.—There shall be printed such additional copies not to exceed $3,000 in cost of such documents for the use of the Joint Committee on Printing.

**SEC. 2. OVERSIGHT OF PRINTING.**

The copy of the document authorized under section 1 shall be prepared under the direction of the Joint Committee on Printing.

## PHARMACY EDUCATION AID ACT OF 2003

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 370, S. 648.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 648) to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy.

There being no objection, the Senate proceeded to consider the bill. which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 648

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

**[SECTION 1. SHORT TITLE.**

[This Act may be cited as the ''Pharmacy Education Aid Act of 2003''.

**[SEC. 2. FINDINGS.**

[Congress makes the following findings:

[(1) Pharmacists are an important link in our Nation's health care system. A critical shortage of pharmacists is threatening the ability of pharmacies to continue to provide important prescription related services.

[(2) In the landmark report entitled ''To Err is Human: Building a Safer Health System'', the Institute of Medicine reported that medication errors can be partially attributed to factors that are indicative of a shortage of pharmacists (such as too many customers, numerous distractions, and staff shortages).

[(3) Congress acknowledged in the Healthcare Research and Quality Act of 1999 (Public Law 106–129) a growing demand for pharmacists by requiring the Secretary of Health and Human Services to conduct a study to determine whether there is a shortage of pharmacists in the United States and, if so, to what extent.

[(4) As a result of Congress' concern about how a shortage of pharmacists would impact

the public health, the Secretary of Health and Human Services published a report entitled ''The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists'' in December of 2000.

[(5) ''The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists'' found that ''While the overall supply of pharmacists has increased in the past decade, there has been an unprecedented demand for pharmacists and for pharmaceutical care services, which has not been met by the currently available supply'' and that the ''evidence clearly indicates the emergence of a shortage of pharmacists over the past two years''.

[(6) The same study also found that ''The factors causing the current shortage are of a nature not likely to abate in the near future without fundamental changes in pharmacy practice and education.'' The study projects that the number of prescriptions filled by community pharmacists will increase by 20 percent by 2004. In contrast, the number of community pharmacists is expected to increase by only 6 percent by 2005.

[(7) The demand for pharmacists will increase as prescription drug use continues to grow.]

**[SEC. 3. HEALTH PROFESSIONS PROGRAM RELATED TO THE PRACTICE OF PHARMACY.**

[Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.) is amended by adding at the end the following:

**[''Subpart 3—Pharmacy Workforce Development**

**[''SEC. 781. LOAN REPAYMENT PROGRAM.**

[''(a) IN GENERAL.—In the case of any individual—]

[''(1) who has received a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from an accredited program; and

[''(2) who obtained an educational loan for pharmacy education costs;

the Secretary may enter into an agreement with such individual who agrees to serve as a full-time pharmacist for a period of not less than 2 years at a health care facility with a critical shortage of pharmacists, to make payments in accordance with subsection (b), for and on behalf of that individual, on the principal of and interest on any loan of that individual described in paragraph (2) which is outstanding on the date the individual begins such service.

[''(b) MANNER OF PAYMENTS.—

[''(1) IN GENERAL.—The payments described in subsection (a) may consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

[''(A) tuition expenses;

[''(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

[''(C) reasonable living expenses as determined by the Secretary.

[''(2) PAYMENTS FOR YEARS SERVED.—

[''(A) IN GENERAL.—For each year of obligated service that an individual contracts to serve under subsection (a)(3) the Secretary may pay up to $35,000 on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

[''(i) affects the ability of the Secretary to maximize the number of agreements that may be provided under this section from the amounts appropriated for such agreements;

[''(ii) provides an incentive to serve in areas with the greatest shortages of pharmacists; and]

[''(iii) provides an incentive with respect to the pharmacist involved remaining in the area and continuing to provide pharmacy services after the completion of the period of obligated service under agreement.

[''(B) REPAYMENT SCHEDULE.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made not later than the end of the fiscal year in which the individual completes such year of service.

[''(3) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

[''(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

[''(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

[''(4) PAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under this section to establish a schedule for the making of such payments.

[''(c) PREFERENCES.—In entering into agreements under subsection (a), the Secretary shall give preference to qualified applicants with the greatest financial need.

[''(d) REPORTS.—

[''(1) ANNUAL REPORT.—Not later than 18 months after the date of enactment of the Pharmacy Education Aid Act, and annually thereafter, the Secretary shall prepare and submit to Congress a report describing the program carried out under this section, including statements regarding—

[''(A) the number of enrollees, loan repayments, and recipients;

[''(B) the number of graduates;

[''(C) the amount of loan repayments made;]

[''(D) which educational institution the recipients attended;

[''(E) the number and placement location of the loan repayment recipients at health care facilities with a critical shortage of pharmacists;

[''(F) the default rate and actions required;

[''(G) the amount of outstanding default funds of the loan repayment program;

[''(H) to the extent that it can be determined, the reason for the default;

[''(I) the demographics of the individuals participating in the loan repayment program; and

[''(J) an evaluation of the overall costs and benefits of the program.

[''(2) 5-YEAR REPORT.—Not later than 5 years after the date of enactment of the Pharmacy Education Aid Act, the Secretary shall prepare and submit to Congress a report on how the program carried out under this section interacts with other Federal loan repayment programs for pharmacists and determining the relative effectiveness of such programs in increasing pharmacists practicing in areas with a critical shortage of pharmacists.]

[''(e) BREACH OF AGREEMENT.—

[''(1) IN GENERAL.—In the case of any program under this section under which an individual makes an agreement to provide health services for a period of time in accordance with such program in consideration of receiving an award of Federal funds regarding education as a pharmacist (including an award for the repayment of loans), the following applies if the agreement provides that this subsection is applicable:

[''(A) In the case of a program under this section that makes an award of Federal funds for attending an accredited program of pharmacy (in this section referred to as a 'pharmacy program'), the individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual—

[''(i) fails to maintain an acceptable level of academic standing in the pharmacy program (as indicated by the program in accordance with requirements established by the Secretary);

[''(ii) is dismissed from the pharmacy program for disciplinary reasons; or

[''(iii) voluntarily terminates the pharmacy program.

[''(B) The individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to provide health services in accordance with the program under this section for the period of time applicable under the program.

[''(2) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such subsection if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

[''(3) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

[''(4) AVAILABILITY.—Amounts recovered under paragraph (1) with respect to a program under this section shall be available for the purposes of such program, and shall remain available for such purposes until expended.

[''(f) DEFINITION.—In this section, the term 'health care facility' means an Indian Health Service health center, a Native Hawaiian health center, a hospital, a pharmacy, a Federal qualified health center, a rural health clinic, a nursing home, a home health agency, a hospice program, a public health clinic, a State or local department of public health, a skilled nursing facility, an ambulatory surgical center, or any other facility determined appropriate by the Secretary.

[''(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of payments under agreements entered into under subsection (a), there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

**[''SEC. 782. PHARMACIST FACULTY LOAN PROGRAM.**

[''(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with any school of pharmacy for the establishment and operation of a student loan fund in accordance with this section, to increase the number of qualified pharmacy faculty.

[''(b) AGREEMENTS.—Each agreement entered into under subsection (a) shall—

[''(1) provide for the establishment of a student loan fund by the school involved;

[''(2) provide for deposit in the fund of—

[''(A) the Federal capital contributions to the fund;

[''(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such school;

[''(C) collections of principal and interest on loans made from the fund; and

[''(D) any other earnings of the fund;

[''(3) provide that the fund will be used only for loans to students of the school in accordance with subsection (c) and for costs of collection of such loans and interest thereon;

[''(4) provide that loans may be made from such fund only to students pursuing a full-time course of study or, at the discretion of the Secretary, a part-time course of study; and

[''(5) contain such other provisions as are necessary to protect the financial interests of the United States.

[''(c) LOAN PROVISIONS.—Loans from any student loan fund established by a school pursuant to an agreement under subsection (a) shall be made to an individual on such terms and conditions as the school may determine, except that—

[''(1) such terms and conditions are subject to any conditions, limitations, and requirements prescribed by the Secretary;

[''(2) in the case of any individual, the total of the loans for any academic year made by schools of pharmacy from loan funds established pursuant to agreements under subsection (a) may not exceed $35,000, plus any amount determined by the Secretary on an annual basis to reflect inflation;

[''(3) an amount up to 85 percent of any such loan (plus interest thereon) shall be canceled by the school as follows:

[''(A) upon completion by the individual of each of the first, second, and third year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of pharmacy, the school shall cancel 20 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment; and

[''(B) upon completion by the individual of the fourth year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of pharmacy, the school shall cancel 25 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment;

[''(4) such a loan may be used to pay the cost of tuition, fees, books, laboratory expenses, and other reasonable education expenses;

[''(5) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the 10-year period that begins 9 months after the individual ceases to pursue a course of study at a school of pharmacy; and

[''(6) such a loan shall—

[''(A) beginning on the date that is 3 months after the individual ceases to pursue a course of study at a school of pharmacy, bear interest on the unpaid balance of the loan at the rate of 3 percent per annum; or

[''(B) subject to subsection (e), if the school of pharmacy determines that the individual will not complete such course of study or serve as a faculty member as required under the loan agreement under this subsection, bear interest on the unpaid balance of the loan at the prevailing market rate.

[''(d) PAYMENT OF PROPORTIONATE SHARE.—Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

[''(e) REVIEW BY SECRETARY.—At the request of the individual involved, the Secretary may review any determination by a school of pharmacy under subsection (c)(6)(B).

[''(f) INFORMATION TECHNOLOGY.—The Secretary may make awards of grants or contracts to qualifying schools of pharmacy for the purpose of assisting such schools in acquiring and installing computer-based systems to provide pharmaceutical education. Education provided through such systems may be graduate education, professional education, or continuing education. The computer-based systems may be designed to provide on-site education, or education at remote sites (commonly referred to as distance learning), or both.

[''(g) REQUIREMENT REGARDING EDUCATION IN PRACTICE OF PHARMACY.—With respect to the school of pharmacy involved, the Secretary shall ensure that programs and activities carried out with Federal funds provided under this section have the goal of educating students to become licensed pharmacists, or the goal of providing for faculty to recruit, retain, and educate students to become licensed pharmacists.

[''(h) DEFINITIONS.—For purposes of this section:

[''(1) SCHOOL OF PHARMACY.—the term 'school of pharmacy' means a college or school of pharmacy (as defined in section 799B) that, in providing clinical experience for students, requires that the students serve in a clinical rotation in which pharmacist services (as defined in section 331(a)(3)(E)) are provided at or for—

[''(A) a medical facility that serves a substantial number of individuals who reside in or are members of a medically underserved community (as so defined);

[''(B) an entity described in any of subparagraphs (A) through (L) of section 340B(a)(4) (relating to the definition of covered entity);

[''(C) a health care facility of the Department of Veterans Affairs or of any of the Armed Forces of the United States;

[''(D) a health care facility of the Bureau of Prisons;

[''(E) a health care facility operated by, or with funds received from, the Indian Health Service; or

[''(F) a disproportionate share hospital under section 1923 of the Social Security Act.

[''(2) PHARMACIST SERVICES.—The term 'pharmacist services' includes drug therapy management services furnished by a pharmacist, individually or on behalf of a pharmacy provider, and such services and supplies furnished incident to the pharmacist's drug therapy management services, that the pharmacist is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided for by State law).

[''(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized [to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.''.]

***[SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Pharmacy Education Aid Act of 2003''.*

***SEC. 2. FINDINGS.***

*Congress makes the following findings:*

*(1) Pharmacists are an important link in our Nation's health care system. A critical shortage of pharmacists is threatening the ability of pharmacies to continue to provide important prescription related services.*

*(2) In the landmark report entitled ''To Err is Human: Building a Safer Health System'', the Institute of Medicine reported that medication errors can be partially attributed to factors that are indicative of a shortage of pharmacists (such as too many customers, numerous distractions, and staff shortages).*

*(3) Congress acknowledged in the Healthcare Research and Quality Act of 1999 (Public Law 106–129) a growing demand for pharmacists by requiring the Secretary of Health and Human Services to conduct a study to determine whether there is a shortage of pharmacists in the United States and, if so, to what extent.*

*(4) As a result of Congress' concern about how a shortage of pharmacists would impact the public health, the Secretary of Health and Human Services published a report entitled ''The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists'' in December of 2000.*

*(5) ''The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists'' found that ''While the overall supply of pharmacists has increased in the past decade, there has been an unprecedented demand for pharmacists and for pharmaceutical care services, which has not been met by the currently available supply'' and that the ''evidence clearly indicates the emergence of a shortage of pharmacists over the past two years''.*

*(6) The same study also found that ''The factors causing the current shortage are of a nature not likely to abate in the near future without fundamental changes in pharmacy practice and education.'' The study projects that the number of prescriptions filled by community pharmacists will increase by 20 percent by 2004. In contrast, the number of community pharmacists is expected to increase by only 6 percent by 2005.*

*(7) Regarding access to pharmacy services in rural areas, the study found that ''Remoteness, isolation from other professionals, lower economic returns, reduced opportunities for advancement, and other rural practice characteristics remain obstacles'' to attracting pharmacists.*

*(8) The demand for pharmacists will increase as prescription drug use continues to grow.*

***SEC. 3. HEALTH PROFESSIONS PROGRAMS RELATED TO THE PRACTICE OF PHARMACY.***

*Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.) is amended by adding at the end the following:*

***''Subpart 3—Pharmacy Workforce Development***

***''SEC. 781. LOAN REPAYMENT PROGRAM FOR PHARMACISTS SERVING IN CRITICAL SHORTAGE FACILITIES.***

*''(a) IN GENERAL.—In the case of any individual—*

*''(1) who has received a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from an accredited program;*

*''(2) who obtained an educational loan for pharmacy education costs; and*

*''(3) who is licensed without restrictions in the State in which the designated health care facility is located;*

*the Secretary may enter into an agreement with such individual who agrees to serve as a full-time pharmacist for a period of not less than 2 years at a designated health care facility, to make payments in accordance with subsection (b), for and on behalf of that individual, on the principal of and interest on any loan of that individual described in paragraph (2) which is outstanding on the date the individual begins such service.*

*''(b) MANNER OF PAYMENTS.—*

*''(1) IN GENERAL.—The payments described in subsection (a) may consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—*

*''(A) tuition expenses;*

*''(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or*

*''(C) reasonable living expenses as determined by the Secretary.*

''(2) PAYMENTS FOR YEARS SERVED.—

''(A) IN GENERAL.—For each year of obligated service that an individual contracts to serve under subsection (a) the Secretary may pay up to $35,000 on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

''(i) affects the ability of the Secretary to maximize the number of agreements that may be provided under this section from the amounts appropriated for such agreements;

''(ii) provides an incentive to serve in areas with the greatest shortages of pharmacists; and

''(iii) provides an incentive with respect to the pharmacist involved remaining in the area and continuing to provide pharmacy services after the completion of the period of obligated service under agreement.

''(B) REPAYMENT SCHEDULE.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made not later than the end of the fiscal year in which the individual completes such year of service.

''(3) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

''(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

''(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

''(4) PAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under this section to establish a schedule for the making of such payments.

''(c) PREFERENCES.—In entering into agreements under subsection (a), the Secretary shall give preference to qualified applicants with the greatest financial need.

''(d) REPORTS.—

''(1) ANNUAL REPORT.—Not later than 18 months after the date of enactment of the Pharmacy Education Aid Act, and annually thereafter, the Secretary shall prepare and submit to Congress a report describing the program carried out under this section, including statements regarding—

''(A) the number of applicants and contract recipients;

''(B) the amount of loan repayments made;

''(C) which educational institution the recipients attended;

''(D) the number and practice locations of the loan repayment recipients at health care facilities with a critical shortage of pharmacists;

''(E) the default rate and actions required;

''(F) the amount of outstanding default funds of the loan repayment program;

''(G) to the extent that it can be determined, the reason for the default;

''(H) the demographics of the individuals participating in the loan repayment program; and

''(I) an evaluation of the overall costs and benefits of the program.

''(2) 5-YEAR REPORT.—Not later than 5 years after the date of enactment of the Pharmacy Education Aid Act, the Secretary shall prepare and submit to Congress a report on how the program carried out under this section interacts with other Federal loan repayment programs for pharmacists and determining the relative effectiveness of such programs in increasing pharmacists practicing in underserved areas.

''(e) APPLICATION OF CERTAIN PROVISIONS.—

''(1) IN GENERAL.—The provisions of section 338C, 338G, and 338I shall apply to the program established under this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program under subpart III of part D of title III, including the applicability of provisions regarding reimbursements for increased tax liability and bankruptcy.

''(2) BREACH OF AGREEMENT.—An individual who enters into an agreement under subsection (a) shall be liable to the Federal Government for the amount of the award under such agreement (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to provide health services in accordance with the program under this section for the period of time applicable under the program.

''(3) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual or health facility making an agreement for purposes of subsection (a), the Secretary shall provide for the waiver or suspension of liability under paragraph (2) if compliance by the individual or the health facility, as the case may be, with the agreement involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

''(4) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (3), any amount that the Federal Government is entitled to recover under paragraph (2) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

''(5) AVAILABILITY.—Amounts recovered under paragraph (2) with respect to a program under this section shall be available for the purposes of such program, and shall remain available for such purposes until expended.

''(f) DEFINITION.—In this section, the term 'health care facility' means a facility with a critical shortage of pharmacists as determined by the Secretary.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of payments under agreements entered into under subsection (a), there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

**''SEC. 782. PHARMACY FACULTY LOAN REPAYMENT PROGRAM.**

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which the Secretary will enter into contracts with individuals described in subsection (b) and such individuals will agree to serve as faculty members of schools of pharmacy in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such individuals.

''(b) ELIGIBLE INDIVIDUALS.—An individual is described in this subsection if such individual—

''(1) has a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from an accredited program; or

''(2) is enrolled as a full-time student—

''(A) in an accredited pharmacy program; and

''(B) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from such a school.

''(c) REQUIREMENTS REGARDING FACULTY POSITIONS.—The Secretary may not enter into a contract under subsection (a) unless—

''(1) the individual involved has entered into a contract with a school of pharmacy to serve as a member of the faculty of the school for not less than 2 years; and

''(2) the contract referred to in paragraph (1) provides that—

''(A) the school will, for each year for which the individual will serve as a member of the faculty under contract with the school, make payments of the principal and interest due on the educational loans of the individual for such year in an amount equal to the amount of such payments made by the Secretary for the year;

''(B) the payments made by the school pursuant to subparagraph (A) on behalf of the individual will be in addition to the compensation that the individual would otherwise receive for serving as a member of such faculty; and

''(C) the school, in making a determination of the amount of compensation to be provided by the school to the individual for serving as a member of the faculty, will make the determination without regard to the amount of payments made (or to be made) to the individual by the Federal Government under subsection (a).

''(d) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338C, 338G, and 338I shall apply to the program established in subsection (a) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

**''SEC. 783. DEFINITIONS.**

''In this subpart:

''(1) SCHOOL OF PHARMACY.—The term 'school of pharmacy' means a college or school of pharmacy (as defined in section 799B) that, in providing clinical experience for students, requires that the students serve in a clinical rotation in which pharmacist services (as defined in section 331(a)(3)(E)) are provided at or for—

''(A) a medical facility that serves a substantial number of individuals who reside in or are members of a medically underserved community (as so defined);

''(B) an entity described in any of subparagraphs (A) through (L) of section 340B(a)(4) (relating to the definition of covered entity);

''(C) a health care facility of the Department of Veterans Affairs or of any of the Armed Forces of the United States;

''(D) a health care facility of the Bureau of Prisons;

''(E) a health care facility operated by, or with funds received from, the Indian Health Service; or

''(F) a disproportionate share hospital under section 1923 of the Social Security Act.

''(2) PHARMACIST SERVICES.—The term 'pharmacist services' includes drug therapy management services furnished by a pharmacist, individually or on behalf of a pharmacy provider, and such services and supplies furnished incident to the pharmacist's drug therapy management services, that the pharmacist is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided for by State law).''.

Mr. MCCONNELL. I ask unanimous consent the committee substitute amendment be agreed to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 648), as amended, was read the third time and passed.

## MEDICAL DEVICES TECHNICAL CORRECTIONS ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 412, S. 1881.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1881) to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1881

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

**[SECTION 1. SHORT TITLE.**

[This Act may be cited as the ''Medical Devices Technical Corrections Act''.

**[SEC. 2. TECHNICAL CORRECTIONS REGARDING PUBLIC LAW 107–250.**

[(a) TITLE I; FEES RELATING TO MEDICAL DEVICES.—Part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as added by section 102 of Public Law 107–250 (116 Stat. 1589), is amended—

[(1) in section 737—

[(A) in paragraph (4)(B), by striking ''and for which clinical data are generally necessary to provide a reasonable assurance of safety and effectiveness'' and inserting ''and for which substantial clinical data are necessary to provide a reasonable assurance of safety and effectiveness'';

[(B) in paragraph (4)(D), by striking ''manufacturing,'';

[(C) in paragraph (5)(J), by striking ''a premarket application'' and all that follows and inserting ''a premarket application or premarket report under section 515 or a premarket application under section 351 of the Public Health Service Act.''; and

[(D) in paragraph (8), by striking ''The term 'affiliate' means a business entity that has a relationship with a second business entity'' and inserting ''The term 'affiliate' means a business entity that has a relationship with a second business entity (whether domestic or international)''; and

[(2) in section 738—

[(A) in subsection (a)(1)—

[(i) in subparagraph (A)—

[(I) in the matter preceding clause (i) by striking ''subsection (d),'' and inserting ''subsections (d) and (e),'';

[(II) in clause (iv), by striking ''clause (i),'' and all that follows and inserting ''clause (i).''; and

[(III) in clause (vii), by striking ''clause (i),'' and all that follows and inserting ''clause (i), subject to any adjustment under subsection (e)(2)(C)(ii).''; and

[(ii) in subparagraph (D), in each of clauses (i) and (ii), by striking ''application'' and inserting ''application, report,'';

[(B) in subsection (d)(2)(B), beginning in the second sentence, by striking ''firms. which show'' and inserting ''firms, which show'';

[(C) in subsection (e)—

[(i) in paragraph (1), by striking ''Where'' and inserting ''For fiscal year 2004 and each subsequent fiscal year, where''; and

[(ii) in paragraph (2)—

[(I) in subparagraph (B), beginning in the second sentence, by striking ''firms. which show'' and inserting ''firms, which show''; and

[(II) in subparagraph (C)(i), by striking ''Where'' and inserting ''For fiscal year 2004 and each subsequent fiscal year, where'';

[(D) in subsection (f), by striking ''for filing''; and

[(E) in subsection (h)(2)—

[(i) by striking subparagraph (A)(ii) and inserting the following:

[''(ii) shall only be collected and available to defray increases in the costs of the resources allocated for the process for the review of device applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs for fiscal year 2002 when multiplied by the adjustment factor (the determination of the costs of the resources allocated for the process for the review of device applications for fiscal year 2003 through 2007, for purposes of this subparagraph, shall not include costs paid from fees collected under this section).''; and

[(ii) in subparagraph (B)—

[(I) in clause (ii), by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;

[(II) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

[(III) by striking ''The Secretary'' and inserting the following:

[''(i) IN GENERAL.—The Secretary''; and

[(IV) by adding at the end the following:

[''(ii) MORE THAN 5 PERCENT.—To the extent such costs are more than 5 percent below the specified level in subparagraph (A)(ii), fees may not be collected under this section for that fiscal year.''.

[(b) TITLE II; AMENDMENTS REGARDING REGULATION OF MEDICAL DEVICES.—

[(1) INSPECTIONS BY ACCREDITED PERSONS.—Section 704(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(g)), as added by section 201 of Public Law 107–250 (116 Stat. 1602), is amended—

[(A) in paragraph (1), in the first sentence, by striking ''conducting inspections'' and all that follows and inserting ''conducting inspections of establishments that manufacture, prepare, propagate, compound, or process class II or class III devices, which inspections are required under section 510(h) or are inspections of such establishments required to register under section 510(i).'';

[(B) in paragraph (6)(A)—

[(i) in clause (i), by striking ''of the establishment pursuant to subsection (h) or (i) of section 510'' and inserting ''described in paragraph (1)'';

[(ii) in clause (ii)—

[(I) in the matter preceding subclause (I)—

[(aa) by striking ''each inspection'' and inserting ''inspections''; and

[(bb) by inserting ''during a 2-year period'' after ''person''; and

[(II) in subclause (I), by striking ''such a person'' and inserting ''an accredited person'';

[(iii) in clause (iii)—

[(I) in the matter preceding subclause (I), by striking ''and the following additional conditions are met:'' and inserting ''and 1 or both of the following additional conditions are met:'';

[(II) in subclause (I), by striking ''under subclause (II) of this clause'' and inserting ''under clause (ii)(II)''; and

[(III) in subclause (II), by inserting ''or by a person accredited under paragraph (2)'' after ''by the Secretary'';

[(iv) in clause (iv)(I)—

[(I) in the first sentence—

[(aa) by striking ''the two immediately preceding inspections of the establishment'' and inserting ''inspections of the establishment during the previous 4 years''; and

[(bb) by inserting ''section'' after ''pursuant to''; and

[(II) in the third sentence—

[(aa) by striking ''the petition states a commercial reason for the waiver;''; and

[(bb) by inserting ''not'' after ''the Secretary has not determined that the public health would''; and

[(v) in clause (iv)(II)—

[(I) by inserting ''of a device establishment required to register'' after ''to be conducted''; and

[(II) by inserting ''section'' after ''pursuant to'';

[(C) in paragraph (6)(B)(iii)—

[(i) in the first sentence, by striking '', and data otherwise describing whether the establishment has consistently been in compliance with sections 501 and 502''; and

[(ii) in the second sentence—

[(I) by striking ''inspections'' and inserting ''inspectional findings''; and

[(II) by striking '', together with all other compliance data the Secretary deems necessary'';

[(D) in paragraph (6)(C)(ii), by striking ''in accordance with section 510(h), or has not during such period been inspected pursuant to section 510(i), as applicable'';

[(E) in paragraph (10)(B)(iii), by striking ''a reporting'' and inserting ''a report''; and

[(F) in paragraph (12)—

[(i) by striking subparagraph (A) and inserting the following:

[''(A) the number of inspections conducted by accredited persons pursuant to this subsection and the number of inspections conducted by Federal employees pursuant to section 510(h) and of device establishments required to register under section 510(i);''; and

[(ii) in subparagraph (E), by striking ''obtained by the Secretary'' and all that follows and inserting ''obtained by the Secretary pursuant to inspections conducted by Federal employees;''.

[(2) OTHER CORRECTIONS.—Section 502(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)), as amended by section 206 of Public Law 107–250 (116 Stat. 1613), is amended, in the last sentence—

[(A) by inserting ''or by a health care professional and required labeling for in vitro diagnostic devices intended for use by health care professionals or in blood establishments'' after ''in health care facilities'';

[(B) by inserting a comma after ''means'';

[(C) by striking ''requirements of law and, that'' and inserting ''requirements of law, and that'';

[(D) by striking ''the manufacturer affords health care facilities the opportunity'' and inserting ''the manufacturer affords such users the opportunity''; and

[(E) by striking ''the health care facility''.

[(c) TITLE III; ADDITIONAL AMENDMENTS.—Section 510(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(o)), as added by section 302(b) of Public Law 107–250 (116 Stat. 1616), is amended—

[(1) in paragraph (1)(B), by striking '', adulterated'' and inserting ''or adulterated''; and

[(2) in paragraph (2)—

[(A) in subparagraph (B), by striking '', adulterated'' and inserting ''or adulterated''; and

[(B) in subparagraph (E), by striking ''semicritical'' and inserting ''semi-critical''.

[(d) MISCELLANEOUS CORRECTIONS.—

[(1) CERTAIN AMENDMENTS TO SECTION 515.—

[(A) IN GENERAL.—

[(i) TECHNICAL CORRECTION.—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)), as amended by sections 209 and 302(c)(2)(A) of Public Law 107–250 (116

Stat. 1613, 1618), is amended by redesignating paragraph (3) (as added by section 209 of such Public Law) as paragraph (4).

[(ii) MODULAR REVIEW.—Section 515(c)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)(4)(B)) is amended by striking ''unless an issue of safety'' and inserting ''unless a significant issue of safety''.

[(B) CONFORMING AMENDMENT.—Section 210 of Public Law 107–250 (116 Stat. 1614) is amended by striking '', as amended'' and all that follows through ''by adding'' and inserting ''is amended in paragraph (3), as redesignated by section 302(c)(2)(A) of this Act, by adding''.

[(2) CERTAIN AMENDMENTS TO SECTION 738.—

[(A) IN GENERAL.—Section 738(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(a)), as amended by subsection (a), is amended—

[(i) in the matter preceding paragraph (1)—

[(I) by striking ''(a) TYPES OF FEES.—Beginning on'' and inserting the following:

[''(a) TYPES OF FEES.—

[''(1) IN GENERAL.—Beginning on''; and

[(II) by striking ''this section as follows:'' and inserting ''this section.''; and

[(ii) by striking ''(1) PREMARKET APPLICATION,'' and inserting the following: ''(2) PREMARKET APPLICATION,''.

[(B) CONFORMING AMENDMENTS.—Section 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j), as amended by subparagraph (A), is amended—

[(i) in subsection (d)(1), in the last sentence, by striking ''subsection (a)(1)(A)'' and inserting ''subsection (a)(2)(A)'';

(ii) in subsection (e)(1), by striking ''subsection (a)(1)(A)(vii)'' and inserting ''subsection (a)(2)(A)(vii)'';

[(iii) in subsection (e)(2)(C)—

[(I) in each of clauses (i) and (ii), by striking ''subsection (a)(1)(A)(vii)'' and inserting ''subsection (a)(2)(A)(vii)''; and

[(II) in clause (ii), by striking ''subsection (a)(1)(A)(i)'' and inserting ''subsection (a)(2)(A)(i)''; and

[(iv) in subsection (j), by striking ''subsection (a)(1)(D),'' and inserting ''subsection (a)(2)(D),''.

[(C) ADDITIONAL CONFORMING AMENDMENT.—Section 102(b)(1) of Public Law 107–250 (116 Stat. 1600) is amended, in the matter preceding subparagraph (A), by striking ''section 738(a)(1)(A)(ii)'' and inserting ''section 738(a)(2)(A)(ii)''.

[(3) PUBLIC LAW 107–250.—Public Law 107–250 is amended—

[(A) in section 102(a) (116 Stat. 1589), by striking ''(21 U.S.C. 379F et seq.)'' and inserting ''(21 U.S.C. 379f et seq.)'';

[(B) in section 102(b) (116 Stat. 1600)—

[(i) by striking paragraph (2);

[(ii) in paragraph (1), by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

[(iii) by striking:

[''(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—

[''(1) IN GENERAL.—A person submitting a premarket report'' and inserting:

[''(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—A person submitting a premarket report'';

[(C) in section 212(b)(2) (116 Stat. 1614), by striking '', such as phase IV trials,''; and

[(D) in section 301(b) (116 Stat. 1616), by striking ''18 months'' and inserting ''36 months''.

**[SEC. 3. HUMANITARIAN DEVICE EXEMPTION AND PEDIATRIC PRODUCTS.**

[(a) AMENDMENT TO FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Section 520(m)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)(3)) is amended to read as follows:

[''(3) Excluding devices intended for the treatment or diagnosis of diseases or conditions that affect pediatric patients, no person granted an exemption under paragraph (2) with respect to a device may sell the device for an amount that exceeds the costs of research and development, fabrication, and distribution of the device. The exclusion from the prohibition under the previous sentence for devices intended for the treatment or diagnosis of diseases or conditions that affect pediatric patients, shall not apply in the case of a request for an exemption under paragraph (2) made on or after October 1, 2007. In this paragraph, the term 'pediatric patient' means a patient who is 14 years of age or younger at the time of diagnosis or treatment.''.

[(b) REPORT.—Not later than October 1, 2006, the Comptroller General of the United States, in consultation with the Secretary of Health and Human Services, shall submit to Congress a report that addresses the effectiveness of section 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)) in ensuring the development of devices designed to treat or diagnose diseases or conditions that affect fewer than 4,000 pediatric patients in the United States. Such report shall include the number and importance of devices for pediatric patients that are receiving exemptions under section 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)).]

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Medical Devices Technical Corrections Act''.*

***SEC. 2. TECHNICAL CORRECTIONS REGARDING PUBLIC LAW 107–250.***

*(a) TITLE I; FEES RELATING TO MEDICAL DEVICES.—Part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as added by section 102 of Public Law 107–250 (116 Stat. 1589), is amended—*

*(1) in section 737—*

*(A) in paragraph (4)(B), by striking ''and for which clinical data are generally necessary to provide a reasonable assurance of safety and effectiveness'' and inserting ''and for which substantial clinical data are necessary to provide a reasonable assurance of safety and effectiveness'';*

*(B) in paragraph (4)(D), by striking ''manufacturing,'';*

*(C) in paragraph (5)(J), by striking ''a premarket application'' and all that follows and inserting ''a premarket application or premarket report under section 515 or a premarket application under section 351 of the Public Health Service Act.''; and*

*(D) in paragraph (8), by striking ''The term 'affiliate' means a business entity that has a relationship with a second business entity'' and inserting ''The term 'affiliate' means a business entity that has a relationship with a second business entity (whether domestic or international)''; and*

*(2) in section 738—*

*(A) in subsection (a)(1)—*

*(i) in subparagraph (A)—*

*(I) in the matter preceding clause (i) by striking ''subsection (d),'' and inserting ''subsections (d) and (e),'';*

*(II) in clause (iv), by striking ''clause (i),'' and all that follows and inserting ''clause (i).''; and*

*(III) in clause (vii), by striking ''clause (i),'' and all that follows and inserting ''clause (i), subject to any adjustment under subsection (e)(2)(C)(ii).''; and*

*(ii) in subparagraph (D), in each of clauses (i) and (ii), by striking ''application'' and inserting ''application, report,'';*

*(B) in subsection (d)(2)(B), beginning in the second sentence, by striking ''firms. which show'' and inserting ''firms, which show'';*

*(C) in subsection (e)—*

*(i) in paragraph (1), by striking ''Where'' and inserting ''For fiscal year 2004 and each subsequent fiscal year, where''; and*

*(ii) in paragraph (2)—*

*(I) in subparagraph (B), beginning in the second sentence, by striking ''firms. which show'' and inserting ''firms, which show''; and*

*(II) in subparagraph (C)(i), by striking ''Where'' and inserting ''For fiscal year 2004 and each subsequent fiscal year, where'';*

*(D) in subsection (f), by striking ''for filing''; and*

*(E) in subsection (h)(2)(B)—*

*(i) in clause (ii), by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;*

*(ii) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;*

*(iii) by striking ''The Secretary'' and inserting the following:*

*''(i) IN GENERAL.—The Secretary''; and*

*(iv) by adding at the end the following:*

*''(ii) MORE THAN 5 PERCENT.—To the extent such costs are more than 5 percent below the specified level in subparagraph (A)(ii), fees may not be collected under this section for that fiscal year.''.*

*(b) TITLE II; AMENDMENTS REGARDING REGULATION OF MEDICAL DEVICES.—*

*(1) INSPECTIONS BY ACCREDITED PERSONS.—Section 704(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(g)), as added by section 201 of Public Law 107–250 (116 Stat. 1602), is amended—*

*(A) in paragraph (1), in the first sentence, by striking ''conducting inspections'' and all that follows and inserting ''conducting inspections of establishments that manufacture, prepare, propagate, compound, or process class II or class III devices, which inspections are required under section 510(h) or are inspections of such establishments required to register under section 510(i).'';*

*(B) in paragraph (6)(A)—*

*(i) in clause (i), by striking ''of the establishment pursuant to subsection (h) or (i) of section 510'' and inserting ''described in paragraph (1)'';*

*(ii) in clause (ii)—*

*(I) in the matter preceding subclause (I)—*

*(aa) by striking ''each inspection'' and inserting ''inspections''; and*

*(bb) by inserting ''during a 2-year period'' after ''person''; and*

*(II) in subclause (I), by striking ''such a person'' and inserting ''an accredited person'';*

*(iii) in clause (iii)—*

*(I) in the matter preceding subclause (I), by striking ''and the following additional conditions are met:'' and inserting ''and 1 or both of the following additional conditions are met:'';*

*(II) in subclause (I), by striking ''under subclause (II) of this clause'' and inserting ''under clause (ii)(II)''; and*

*(III) in subclause (II), by inserting ''or by a person accredited under paragraph (2)'' after ''by the Secretary'';*

*(iv) in clause (iv)(I)—*

*(I) in the first sentence—*

*(aa) by striking ''the two immediately preceding inspections of the establishment'' and inserting ''inspections of the establishment during the previous 4 years''; and*

*(bb) by inserting ''section'' after ''pursuant to'';*

*(II) in the third sentence—*

*(aa) by striking ''the petition states a commercial reason for the waiver;''; and*

*(bb) by inserting ''not'' after ''the Secretary has not determined that the public health would''; and*

*(III) in the fourth sentence, by striking ''granted until'' and inserting ''granted or deemed to be granted until''; and*

*(v) in clause (iv)(II)—*

*(I) by inserting ''of a device establishment required to register'' after ''to be conducted''; and*

*(II) by inserting ''section'' after ''pursuant to'';*

*(C) in paragraph (6)(B)(iii)—*

*(i) in the first sentence, by striking '', and data otherwise describing whether the establishment has consistently been in compliance with sections 501 and 502''; and*

*(ii) in the second sentence—*

*(I) by striking ''inspections'' and inserting ''inspectional findings''; and*

*(II) by inserting ''relevant'' after ''together with all other'';*

*(D) in paragraph (6)(C)(ii), by striking ''in accordance with section 510(h), or has not during such period been inspected pursuant to section 510(i), as applicable'';*

*(E) in paragraph (10)(B)(iii), by striking ''a reporting'' and inserting ''a report''; and*

*(F) in paragraph (12)—*

*(i) by striking subparagraph (A) and inserting the following:*

*''(A) the number of inspections conducted by accredited persons pursuant to this subsection and the number of inspections conducted by Federal employees pursuant to section 510(h) and of device establishments required to register under section 510(i);''; and*

*(ii) in subparagraph (E), by striking ''obtained by the Secretary'' and all that follows and inserting ''obtained by the Secretary pursuant to inspections conducted by Federal employees;''.*

*(2) OTHER CORRECTIONS.—*

*(A) PROHIBITED ACTS.—Section 301(gg) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(gg)), as amended by section 201(d) of Public Law 107–250 (116 Stat. 1609), is amended to read as follows:*

*''(gg) The knowing failure to comply with paragraph (7)(E) of section 704(g); the knowing inclusion by a person accredited under paragraph (2) of such section of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.''.*

*(B) ELECTRONIC LABELING.—Section 502(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)), as amended by section 206 of Public Law 107–250 (116 Stat. 1613), is amended, in the last sentence—*

*(i) by inserting ''or by a health care professional and required labeling for in vitro diagnostic devices intended for use by health care professionals or in blood establishments'' after ''in health care facilities'';*

*(ii) by inserting a comma after ''means'';*

*(iii) by striking ''requirements of law and, that'' and inserting ''requirements of law, and that'';*

*(iv) by striking ''the manufacturer affords health care facilities the opportunity'' and inserting ''the manufacturer affords such users the opportunity''; and*

*(v) by striking ''the health care facility''.*

*(c) TITLE III; ADDITIONAL AMENDMENTS.—*

*(1) EFFECTIVE DATE.—Section 301(b) of Public Law 107–250 (116 Stat. 1616), is amended by striking ''18 months'' and inserting ''36 months''.*

*(2) PREMARKET NOTIFICATION.—Section 510(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(o)), as added by section 302(b) of Public Law 107–250 (116 Stat. 1616), is amended—*

*(A) in paragraph (1)(B), by striking '', adulterated'' and inserting ''or adulterated''; and*

*(B) in paragraph (2)—*

*(i) in subparagraph (B), by striking '', adulterated'' and inserting ''or adulterated''; and*

*(ii) in subparagraph (E), by striking ''semicritical'' and inserting ''semi-critical''.*

*(d) MISCELLANEOUS CORRECTIONS.—*

*(1) CERTAIN AMENDMENTS TO SECTION 515.—*

*(A) IN GENERAL.—*

*(i) TECHNICAL CORRECTION.—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)), as amended by sections 209 and 302(c)(2)(A) of Public Law 107–250 (116 Stat. 1613, 1618), is amended by redesignating paragraph (3) (as added by section 209 of such Public Law) as paragraph (4).*

*(ii) MODULAR REVIEW.—Section 515(c)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)(4)(B)) is amended by striking ''unless an issue of safety'' and inserting ''unless a significant issue of safety''.*

*(B) CONFORMING AMENDMENT.—Section 210 of Public Law 107–250 (116 Stat. 1614) is amended by striking '', as amended'' and all that follows through ''by adding'' and inserting ''is amended in paragraph (3), as redesignated by section 302(c)(2)(A) of this Act, by adding''.*

*(2) CERTAIN AMENDMENTS TO SECTION 738.—*

*(A) IN GENERAL.—Section 738(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(a)), as amended by subsection (a), is amended—*

*(i) in the matter preceding paragraph (1)—*

*(I) by striking ''(a) TYPES OF FEES.—Beginning on'' and inserting the following:*

*''(a) TYPES OF FEES.—*

*''(1) IN GENERAL.—Beginning on''; and*

*(II) by striking ''this section as follows:'' and inserting ''this section.''; and*

*(ii) by striking ''(1) PREMARKET APPLICATION,'' and inserting the following: ''(2) PREMARKET APPLICATION,''.*

*(B) CONFORMING AMENDMENTS.—Section 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j), as amended by subparagraph (A), is amended—*

*(i) in subsection (d)(1), in the last sentence, by striking ''subsection (a)(1)(A)'' and inserting ''subsection (a)(2)(A)'';*

*(ii) in subsection (e)(1), by striking ''subsection (a)(1)(A)(vii)'' and inserting ''subsection (a)(2)(A)(vii)'';*

*(iii) in subsection (e)(2)(C)—*

*(I) in each of clauses (i) and (ii), by striking ''subsection (a)(1)(A)(vii)'' and inserting ''subsection (a)(2)(A)(vii)''; and*

*(II) in clause (ii), by striking ''subsection (a)(1)(A)(i)'' and inserting ''subsection (a)(2)(A)(i)''; and*

*(iv) in subsection (j), by striking ''subsection (a)(1)(D),'' and inserting ''subsection (a)(2)(D),''.*

*(C) ADDITIONAL CONFORMING AMENDMENT.—Section 102(b)(1) of Public Law 107–250 (116 Stat. 1600) is amended, in the matter preceding subparagraph (A), by striking ''section 738(a)(1)(A)(ii)'' and inserting ''section 738(a)(2)(A)(ii)''.*

*(3) PUBLIC LAW 107–250.—Public Law 107–250 is amended—*

*(A) in section 102(a) (116 Stat. 1589), by striking ''(21 U.S.C. 379F et seq.)'' and inserting ''(21 U.S.C. 379f et seq.)'';*

*(B) in section 102(b) (116 Stat. 1600)—*

*(i) by striking paragraph (2);*

*(ii) in paragraph (1), by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and*

*(iii) by striking:*

*''(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—*

*''(1) IN GENERAL.—A person submitting a premarket report'' and inserting:*

*''(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—A person submitting a premarket report''; and*

*(C) in section 212(b)(2) (116 Stat. 1614), by striking '', such as phase IV trials,''.*

***SEC. 3. REPORT ON BARRIERS TO AVAILABILITY OF DEVICES INTENDED FOR CHILDREN.***

*Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the barriers to the availability of devices intended for the treatment or diagnosis of diseases and conditions that affect children. The report shall include any recommendations of the Secretary of Health and Human Services for changes to existing statutory authority, regulations, or agency policy or practice to encourage the invention and development of such devices.*

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1881), as amended, was read the third time and passed.

## COMMEMORATING THE 25TH ANNIVERSARY OF VIETNAM VETERANS OF AMERICA

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 120 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 120) commemorating the 25th anniversary of Vietnam Veterans of America.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The resolution (S. Res. 120) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 120

Whereas the year 2003 marks the 25th anniversary of the founding of Vietnam Veterans of America;

Whereas the history of Vietnam Veterans of America is a story of the United States' gradual recognition of the tremendous sacrifices of its Vietnam-era veterans and their families;

Whereas Vietnam Veterans of America is dedicated to advocating on behalf of its members;

Whereas Vietnam Veterans of America raises public and member awareness of critical issues affecting Vietnam-era veterans and their families;

Whereas the local grassroots efforts of Vietnam Veterans of America chapters, such as Chapter One in Rutland, Vermont, which was founded 23 years ago in April of 1980, have greatly contributed to the quality of the lives of veterans in our Nation's communities;

Whereas Vietnam Veterans of America promotes its principles through volunteerism, professional advocacy, and claims work; and

Whereas the future of Vietnam Veterans of America will rely not only on its past accomplishments, but also on the future accomplishments of its members, and these will ensure that Vietnam Veterans of America remains a leader among veterans advocacy organizations: Now, therefore, be it

*Resolved,* That the Senate—

(1) commemorates the 25th anniversary of the founding of Vietnam Veterans of America, and commends it for its efforts in the advancement of veterans rights, which set the standard for all other veterans organizations around the country;

(2) asks all Americans to join in the celebration of the 25th anniversary of Vietnam Veterans of America, and its 25 years of advocacy on behalf of Vietnam veterans; and

(3) encourages Vietnam Veterans of America to continue to represent and promote its goals in the veterans' community and on Capitol Hill, and to continue to keep its national membership—consisting of 45,000 members and 600 chapters—strong.

## MEASURES DISCHARGED

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of the following: S. 99, S. 1130, S. 103, S. 848, and S. 541, and that the Senate proceed to their immediate consideration en bloc.

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

The Senate will proceed to the consideration of the measures en bloc.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the bills be read three times and passed en bloc, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to these measures be printed in the RECORD.

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

## FOR THE RELIEF OF JAYA GULAB TOLANI AND HITESH GULAB TOLANI

The bill (S. 99) for the relief of Jaya Gulab Tolani and Hitesh Gulab Tolani, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 99

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

**SECTION 1. PERMANENT RESIDENCE.**

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

**SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.**

Upon the granting of permanent residence to Jaya Gulab Tolani and Hitesh Gulab Tolani, as provided in section 1, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

## FOR THE RELIEF OF ESIDRONIO ARREOLA-SAUCEDO, MARIA ELANA COBIAN ARREOLA, NAYELY BIBIANA ARREOLA, AND CINDY JAEL ARREOLA

The bill (S. 1130) for the relief of Esidronio Arreola-Saucedo, Maria Elana Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1130

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

**SECTION 1. PERMANENT RESIDENT STATUS FOR ESIDRONIO ARREOLA-SAUCEDO, MARIA ELENA COBIAN ARREOLA, NAYELY BIBIANA ARREOLA, AND CINDY JAEL ARREOLA.**

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola shall be eligible for the issuance of immigrant visas or for adjustment of status to that of aliens lawfully admitted for permanent residence upon filing an application for issuance of immigrant visas under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola enter the United States before the filing deadline specified in subsection (c), Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of immigrant visas or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas or permanent residence to Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, the Secretary of State shall instruct the proper officer to reduce by 4, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of that Act.

## FOR THE RELIEF OF LINDITA IDRIZI HEATH

The bill (S. 103) for the relief of Lindita Idrizi Heath, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 103

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

**SECTION 1. PERMANENT RESIDENT STATUS FOR LINDITA IDRIZI HEATH.**

(a) IN GENERAL.—Notwithstanding section 101(b)(1) and subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Lindita Idrizi Heath shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Lindita Idrizi Heath enters the United States before the filing deadline specified in subsection (c), Lindita Idrizi Heath shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Lindita Idrizi Heath, the Secretary of State shall instruct the proper officer to reduce by one, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 202(e) of that Act.

**SEC. 2. ELIGIBILITY FOR CITIZENSHIP.**

For purposes of section 320 of the Immigration and Nationality Act (8 U.S.C. 1431; relating to the automatic acquisition of citizenship by certain children born outside the United States), Lindita Idrizi Heath shall be considered to have satisfied the requirements applicable to adopted children under section 101(b)(1) of that Act (8 U.S.C. 1101(b)(1)).

**SEC. 3. LIMITATION.**

No natural parent, brother, or sister, if any, of Lindita Idrizi Heath shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

## FOR THE RELIEF OF DANIEL KING CAIRO

The bill (S. 848) for the relief of Daniel King Cairo, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 848

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

**SECTION 1. PERMANENT RESIDENCE.**

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

**SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.**

Upon the granting of permanent residence to Daniel King Cairo, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of

the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

## FOR THE RELIEF OF ILKO VASILEV IVANOV, ANELIA MARINOVA PENEVA, MARINA ILKOVA IVANOVA, AND JULIE ILKOVA IVANOVA

The bill (S. 541) for the relief of Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julie Ilkova Ivanova, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 541

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

**SECTION 1. PERMANENT RESIDENCE.**

In the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julia Ilkova Ivanova shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

**SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.**

Upon the granting of permanent residence to Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julia Ilkova Ivanova as provided in this Act, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under subsection (a) of section 203 of the Immigration and Nationality Act (8 U.S.C. 1153).

## THANKING STAFF OF LEGISLATIVE COUNSEL

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 277 introduced earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 277) tendering the sincere thanks of the Senate to the staffs of the Offices of the Legislative Counsel of the Senate and the House of Representatives for their dedication and service to the legislative process.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 277) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 277

Whereas the Offices of the Legislative Counsel of the Senate and the House of Representatives have demonstrated great expertise, dedication, professionalism, and integrity in faithfully discharging the duties and responsibilities of their positions;

Whereas legislative drafting is a lengthy, arduous, and demanding process requiring a keen intellect, thorough knowledge, stern constitution, and remarkable patience;

Whereas the staff of the Senate and House Offices of the Legislative Counsel, in particular, Ruth Ann Ernst, John Goetcheus, Peter Goodloe, Edward G. Grossman, Pierre Poisson, and James G. Scott, have performed above and beyond the call of duty in drafting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

Whereas the Senate and House Offices of the Legislative Counsel have met the legislative drafting needs of the Senate and the House of Representatives with unfailing professionalism, exceptional skill, undying dedication, and, above all, patience and good humor as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 passed through the legislative process: Now, therefore, be it

*Resolved,* That the sincere thanks of the Senate are hereby tendered to the staff of both the Office of the Legislative Counsel of the Senate and the Office of the Legislative Counsel of the House of Representatives for their outstanding work and dedication to the United States Congress and the people of the United States of America.

## BAN ON UNDETECTABLE FIREARMS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3348 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3348) to reauthorize the ban on undetectable firearms.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, it is gratifying that Congress is finally acting to renew one of the Nation's essential protections against terrorism.

The Undetectable Firearms Act—also known as the ''plastic gun'' law—makes it illegal to manufacture, import, possess, or transfer a firearm that is not detectable by walk-through metal detectors or airport x-ray machines. Only firearms necessary for certain military and intelligence uses are exempt.

This law was first enacted in 1988, long before the attacks on 9/11, and it is more important than ever now. It has been extended once since it was first enacted, but it is scheduled to expire on December 10th. Its expiration would result in Americans in all parts of the Nation becoming needlessly vulnerable to gun violence in airlines, airports, schools, office buildings, and many other places, and even to terrorist attacks.

The technology of gun manufacturers has significantly improved since the 1980's—and the determination of terrorists to attack Americans has soared. We know that terrorists are exploiting the weaknesses and loopholes in our gun laws. In 2000, a member of the Middle East terrorist group Hezbollah was convicted in Detroit on gun charges and conspiracy to ship guns and ammunition to Lebanon. He had purchased many of those weapons at gun shows in Michigan. In the war in Afghanistan, American soldiers discovered a terrorist training manual entitled ''How Can I Train Myself for Jihad'' in a house in that country. One part of the manual stated: ''In other countries, e.g. some states of USA . . . it is perfectly legal for members of the public to own certain types of firearms. If you live in such a country, obtain an assault rifle legally . . . learn how to use it properly and go and practice in the areas allowed for such training.''

Last month, I introduced a bill, S. 1774, to renew the Undetectable Firearms Act and repeal the sunset provision. The bill now before us, H.R. 3348, extends the sunset provision for another 10 years. The danger to security from undetectable firearms won't sunset, and the law that bans them shouldn't sunset either. Nevertheless, I am encouraged that Congress is taking action, and I look forward to the renewal of this gun ban being signed into law.

This measure is only one of several steps that Congress should take to protect our citizens from gun violence. We also need to strengthen criminal background checks for gun purchases under the Brady Law, renew the assault weapons ban, and close the ''gun show loophole'' once and for all. Each of these gun-safety measures is needed to protect our people in communities across the country. I urge my colleagues to support the pending bill, and to act on these other vital measures as well.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3348) was read the third time and passed.

## BANKRUPTCY EXTENSION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1920 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1920) to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing legislation to extend family farmer bankruptcy protection through June 30, 2004.

Senator GRASSLEY and I introduced S. 1920 to temporarily extend these protections that our farmers have come to rely upon for another 6 months because Chapter 12 of the Bankruptcy Code is set to expire on January 1, 2004. But this is just a short term fix. We need to stop playing politics and permanently reauthorize the Chapter 12 family farmer protections.

Too many family farmers have been left in legal limbo in bankruptcy courts across the country because Chapter 12 of the Bankruptcy Code is still a temporary measure. This is the seventh time that Congress must act to restore or extend basic bankruptcy safeguards for family farmers because Chapter 12 is still a temporary provision despite its first passage into law in 1986. Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and 2001, for example, the Senate, then as now controlled by the other party, failed to take up a House-passed bill to retroactively renew Chapter 12. As a result, family farmers lost Chapter 12 bankruptcy protection for eight months. Another lapse of Chapter 12 lasted more than six months in the previous Congress. At the end of June, Chapter 12 lapsed once again.

It is time to end this absurdity and make these bankruptcy protections permanent. Everyone agrees that Chapter 12 has worked. It is time for Congress to make Chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our Nation's family farmers.

I will continue to work hard with Senator GRASSLEY, Senator FEINGOLD and others on both sides of the aisle to pass legislation that once and for all assures our farmers of permanent bankruptcy protection to keep their farms. In the meantime, we should quickly pass this legislation and prevent another lapse in this basic bankruptcy protection for our family farmers.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the billing be printed in the RECORD.

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

The bill (S. 1920) was read the third time and passed, as follows:

S. 1920

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

**SECTION 1. SIX-MONTH EXTENSION OF PERIOD FOR WHICH CHAPTER 12 OF TITLE 11, UNITED STATES CODE IS REENACTED.**

(a) AMENDMENTS.—Section 149 of title I of division C of Public Law 105 09277 (11 U.S.C. 1201 note) is amended—

(1) by striking ''January 1, 2004'' each place it appears and inserting ''July 1, 2004''; and

(2) in subsection (a)—

(A) by striking ''June 30, 2003'' and inserting ''December 31, 2003''; and

(B) by striking ''July 1, 2003'' and inserting ''January 1, 2004''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2004.

## IMPROVING THE UNITED STATES CODE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1437 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1437) to improve the United States Code.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time, and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The bill (H.R. 1437) was read the third time and passed.

## AUTHORIZATION FOR MAJORITY LEADER TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS DURING SENATE'S ADJOURNMENT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that, during the Senate's adjournment, the majority leader be authorized to sign enrolled bills and joint resolutions.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, we have been working this afternoon trying to clear the Executive Calendar, regrettably with little or no success. I had a conversation with the Democratic leader about this just a few moments ago. He can represent his own position. But let me say, from my point of view, what is customarily done at the end of the session is we work out understandings under which we are able to, for the most part, except for extremely controversial nominees, clear the calendar. But alas, that will not be the case today. It is a result of another round of obstructionism. As we adjourn today, a grand total of 95 nominees will be languishing here on the Executive Calendar awaiting approval. I hoped that entering the holiday season, we would be able to put aside our differences and work together. Instead, the politics seems to have overtaken reason once again.

This level of obstructionism on the other side has reached a really stunning new low. An example of the positions that will be left languishing here, dealing with the national security of this country, is the Deputy Attorney General, the Ambassador to Saudi Arabia, a very important country in the war on terrorism, the Under Secretary of State for Public Diplomacy and the International Trade Commission—all obstructed as we bring this session to an end. From those positions all the way down to such things as members of the African Development Foundation, the U.S. Postal Service, the Chemical Safety and Hazard Investigation Board, even the National Commission on Libraries and Information Science—all obstructed.

On a day when the Senate delivered on a 38-year-old promise to 40 million seniors to provide a prescription drug benefit, we end the day woefully short of our obligations. It is somewhat ironic that two of the victims of obstructionist are nominees to the U.S. Institute of Peace.

I hope we can get serious about doing our work around here. Our work includes, at the very least, confirming nominations that are not controversial. This is disturbing. We have an Executive Calendar full of innocent people who are not caught up in any of the games around here who are being held up at the very least until we come back on December 9. And who knows, maybe until next year and maybe forever, positions from extremely important positions such as the Ambassador to Saudi Arabia all the way down to boards that are arguably not of any great consequence. It is a sad conclusion to the session.

Hopefully, sometime over the next few weeks we can figure out a way to clear these nominations, these people who deserve better treatment by the Senate. We abuse people and abuse people and abuse people. It is a wonder that anyone is willing to enter into public service anymore if they have to go through the confirmation process.

Mr. DASCHLE. Mr. President, I rise to note my disappointment with the impasse over nominations. Earlier this afternoon I made clear to the Republican leadership that the Democratic Caucus was ready to confirm the following nominees today for important ambassadorships around the world:

David C. Mulford to be Ambassador to India, William Hudson to be Ambassador to the Republic of Tunisia, Jon

Purnell to be Ambassador to the Republic of Uzbekistan, Margaret Scobey to be Ambassador to the Syrian Arab Republic, and Thomas Riley to be Ambassador to Morocco.

These are important posts to the war on terrorism, Mr. President, and I regret that the Republicans were unable to clear them in order for the full Senate to give its advice and consent to their confirmation. Again, the record should reflect that these nominees would have been confirmed today but for Republican objections.

## ORGAN DONATION AND RECOVERY IMPROVEMENT ACT

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 410, S. 573.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 573) to amend the Public Health Service Act to promote organ donation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pension with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 573

**[SECTION 1. SHORT TITLE.**

[This Act may be cited as the ''Organ Donation and Recovery Improvement Act''.

**[TITLE I—ORGAN DONATION AND RECOVERY**

**[SEC. 101. INTERAGENCY TASK FORCE ON ORGAN DONATION.**

[Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended—

[(1) by redesignating section 378 (42 U.S.C. 274g) as section 378E; and

[(2) by inserting after section 377 (42 U.S.C. 274f) the following:

**[''SEC. 378. INTER-AGENCY TASK FORCE ON ORGAN DONATION AND RESEARCH.**

[''(a) IN GENERAL.—The Secretary shall establish an inter-agency task force on organ donation and research (referred to in this section as the 'task force') to improve the coordination and evaluation of—

[''(1) federally supported or conducted organ donation efforts and policies; and

[''(2) federally supported or conducted basic, clinical and health services research (including research on preservation techniques and organ rejection and compatibility).

[''(b) COMPOSITION.—

[''(1) IN GENERAL.—The task force shall be composed of—

[''(A) the Surgeon General, who shall serve as the chairperson; and

[''(B) representatives to be appointed by the Secretary from relevant agencies within the Department of Health and Human Services (including the Health Resources and Services Administration, Centers for Medicare & Medicaid Services, National Institutes of Health, and Agency for Healthcare Research and Quality).

[''(2) OTHER EX OFFICIO MEMBERS.—The Secretary shall invite the following individuals to serve as ex officio members of the task force:

[''(A) A representative from the Department of Transportation.

[''(B) A representative from the Department of Defense.

[''(C) A representative from the Department of Veterans Affairs.

[''(D) A representative from the Office of Personnel Management.

[''(E) A physician representative from the board of directors of the Organ Procurement and Transplantation Network.

[''(F) Representatives of other Federal agencies or departments as determined to be appropriate by the Secretary.

[''(c) ANNUAL REPORT.—In addition to activities carried out under subsection (a), the task force shall support the development of the annual report under section 378D(c).

[''(d) TERMINATION.—The task force may be terminated at the discretion of the Secretary following the completion of at least 2 annual reports under section 378D(c). Upon such termination, the Secretary shall provide for the on-going coordination of federally supported or conducted organ donation and research activities.''.

**[SEC. 102. DEMONSTRATION PROJECTS, EDUCATION, AND PUBLIC AWARENESS.**

[Part H of title III of the Public Health Service Act (42 U.S.C 273 et seq.) is amended by inserting after section 378, as added by section 101, the following:

**[''SEC. 378A. DEMONSTRATION PROJECTS, EDUCATION, AND PUBLIC AWARENESS.**

[''(a) GRANTS TO INCREASE DONATION RATES.—The Secretary shall award peer-reviewed grants to public and non-profit private entities, including States, to carry out studies and demonstration projects to increase organ donation and recovery rates, including living donation.

[''(b) ORGAN DONATION PUBLIC AWARENESS PROGRAM.—The Secretary shall establish a public education program in cooperation with existing national public awareness campaigns to increase awareness about organ donation and the need to provide for an adequate rate of such donations.

[''(c) DEVELOPMENT OF CURRICULA AND OTHER EDUCATION ACTIVITIES.—

[''(1) IN GENERAL.—The Secretary, in coordination with the Organ Procurement and Transplantation Network and other appropriate organizations, shall support the development and dissemination of model curricula to train health care professionals and other appropriate professionals (including religious leaders in the community, funeral directors, and law enforcement officials) in issues surrounding organ donation, including methods to approach patients and their families, cultural sensitivities, and other relevant issues.

[''(2) HEALTH CARE PROFESSIONALS.—For purposes of subparagraph (A), the term 'health care professionals' includes—

[''(A) medical students, residents and fellows, attending physicians (through continuing medical education courses and other methods), nurses, social workers, and other allied health professionals;

[''(B) hospital- or other health care-facility based chaplains; and

[''(C) emergency medical personnel.

[''(d) LIMITED DEMONSTRATION PROJECTS.—

[''(1) REPORTS.—Not later than 1 year after the date of enactment of this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report evaluating the ethical implications of proposals for demonstration projects to increase cadaveric donation.

[''(2) AUTHORITY.—Notwithstanding section 301 of the National Organ Transplant Act (42 U.S.C. 274e), upon the submission of and consistent with the report by the Secretary under paragraph (1), the Secretary may conduct up to 3 demonstration projects to increase cadaveric donation.

[''(3) DURATION.—Each project shall last no more than 3 years, and shall be conducted in a limited number of sites or areas.

[''(4) REVIEW.—The Secretary shall provide for the ongoing ethical review and evaluation of such projects to ensure that such projects are administered effectively as possible and in accordance with the stated purpose of this subsection under paragraph (2).

[''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 2004, and such sums as may be necessary for each of the fiscal years 2005 through 2008.

**[''SEC. 378B. GRANTS REGARDING HOSPITAL ORGAN DONATION COORDINATORS.**

[''(a) AUTHORITY.—

[''(1) IN GENERAL.—The Secretary may award grants to qualified organ procurement organizations under section 371 to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 371. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.

[''(2) ELIGIBLE HOSPITAL.—For purposes of this section, an eligible hospital is a hospital that performs significant trauma care, or a hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.

[''(b) ADMINISTRATION OF COORDINATION PROGRAM.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that the program under such subsection will be carried out jointly—

[''(1) by representatives from the eligible hospital and the qualified organ procurement organization with respect to which the grant is made; and

[''(2) by such other entities as the representatives referred to in paragraph (1) may designate.

[''(c) EVALUATIONS.—Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs carried out pursuant to subsection (a) in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved. Such evaluation shall include recommendations on whether the program should be expanded to include other grantees, such as hospitals.

[''(d) MATCHING REQUIREMENT.—The Secretary may not award a grant to a qualifying organ donation entity under this section unless such entity agrees that, with respect to costs to be incurred by the entity in carrying out activities for which the grant was awarded, the entity shall contribute (directly or through donations from public or private entities) non-Federal contributions in cash or in kind, in an amount equal to not less than 30 percent of the amount of the grant awarded to such entity.

[''(e) FUNDING.—For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.''.

**[SEC. 103. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.**

[Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 378B, as added by section 102, the following:

[''SEC. 378C. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

[''(a) DEVELOPMENT OF SUPPORTIVE INFORMATION.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and the Director of the Agency for Healthcare Research and Quality shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.

[''(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

[''(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;

[''(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

[''(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and

[''(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.

[''(c) RESEARCH, DEMONSTRATIONS, AND TRAINING.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research, demonstrations, and training as appropriate, to—

[''(1) develop a uniform clinical vocabulary for organ recovery;

[''(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;

[''(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and

[''(4) assess specific organ recovery, preservation, and transportation technologies.

[''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.''.

[SEC. 104. REPORTS.

[Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 378C, as added by section 103, the following:

[''SEC. 378D. REPORTS.

[''(a) IOM REPORT ON BEST PRACTICES.—

[''(1) IN GENERAL.—The Secretary shall enter into a contract with the Institute of Medicine to conduct an evaluation of the organ donation practices of organ procurement organizations, States, other countries, and other appropriate organizations.

[''(2) CONSIDERATIONS.—In conducting the evaluation under paragraph (1), the Institute of Medicine shall examine—

[''(A) existing barriers to organ donation, including among minority populations; and

[''(B) best donation and recovery practices, including—

[''(i) mandated choice and presumed consent;

[''(ii) organ procurement organization and provider consent practices (including consent best practices);

[''(iii) the efficacy and reach of existing State routine notification laws with respect to organ procurement organizations;

[''(iv) the impact of requests for consent in States where registry registration constitutes express consent under State law; and

[''(v) recommendations with respect to achieving higher donation rates, including among minority populations.

[''(3) REPORT.—Not later than 18 months after the date of enactment of this section, the Institute of Medicine shall submit to the Secretary a report concerning the evaluation conducted under this subsection. Such report shall include recommendations for administrative actions and, if necessary, legislation in order to replicate the best practices identified in the evaluation and to otherwise increase organ donation and recovery rates.

[''(b) IOM REPORT ON LIVING DONATIONS.—

[''(1) IN GENERAL.—The Secretary shall enter into a contract with the Institute of Medicine to conduct an evaluation of living donation practices and procedures. Such evaluation shall include, but is not limited to an assessment of issues relating to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).

[''(2) REPORT.—Not later than 18 months after the date of enactment of this section, the Institute of Medicine shall submit to the Secretary a report concerning the evaluation conducted under this subsection.

[''(c) REPORT ON DONATION AND RECOVERY ACTIVITIES.—

[''(1) IN GENERAL.—The Secretary as part of the report specified in 274d shall submit an evaluation concerning federally supported or conducted organ donation and recovery activities, including donation and recovery activities evaluated or conducted under the amendments made by the Organ Donation and Recovery Improvement Act to increase organ donation and recovery rates.

[''(2) REQUIREMENTS.—To the extent practicable, each evaluation submitted under paragraph (1) shall—

[''(A) evaluate the effectiveness of activities, identify best practices, and make recommendations regarding the adoption of best practices with respect to organ donation and recovery; and

[''(B) assess organ donation and recovery activities that are recently completed, ongoing, or planned.''.

[SEC. 105. TECHNICAL AMENDMENT CONCERNING ORGAN PURCHASES.

[Section 301(c)(2) of the National Organ Transplant Act (42 U.S.C. 274e(c)(2)) is amended by adding at the end the following: ''Such term does not include familial, emotional, psychological, or physical benefit to an organ donor, recipient, or any other party to an organ donation event.''.

## [TITLE II—LIVING DONATION EXPENSES

[SEC. 201. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.

[Section 377 of the Public Health Service Act (42 U.S.C. 274f) is amended to read as follows:

[''SEC. 377. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.

[''(a) IN GENERAL.—The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 371, or other public or private entities for the purpose of—

[''(1) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred as 'donating individuals'); and

[''(2) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

[''(b) PREFERENCE.—The Secretary shall, in carrying out subsection (a), give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.

[''(c) CERTAIN CIRCUMSTANCES.—The Secretary may, in carrying out subsection (a), consider—

[''(1) the term 'donating individuals' as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

[''(2) the term 'qualifying expenses' as including the expenses of having relatives or other individuals, not to exceed 2, who accompany or assist the donating individual for purposes of subsection (a) (subject to making payment for only such types of expenses as are paid for donating individual).

[''(d) RELATIONSHIP TO PAYMENTS UNDER OTHER PROGRAMS.—An award may be made under subsection (a) only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

[''(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

[''(2) by an entity that provides health services on a prepaid basis; or

[''(3) by the recipient of the organ.

[''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.''.

## [TITLE III—ORGAN REGISTRIES

[SEC. 301. ADVISORY COMMITTEE.

[Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 371 the following:

[''SEC. 371A. ADVISORY COMMITTEE.

[''(a) IN GENERAL.—Not later than 6 months after enactment, the Secretary shall establish an advisory committee to study existing organ donor registries and make recommendations to Congress regarding the costs, benefits, and expansion of such registries.

[''(b) MEMBERSHIP.—The committee shall be composed of 10 members of whom—

[''(1) at least 1 member shall be a physician with experience performing transplants;

[''(2) at least 1 member shall have experience in organ recovery;

[''(3) at least 1 member shall be representative of an organization with experience conducting national awareness campaigns and donor outreach;

[''(4) at least 1 member shall be representative of a State with an existing donor registry;

[''(5) at least 1 member shall have experience with national information systems where coordination occurs with State-based systems; and

[''(6) at least 1 member shall represent donor families, transplant recipients, and those awaiting transplantation.

[''(c) INITIAL MEETING.—Not later than 30 days after the date on which all members of the committee have been appointed, the committee shall hold its first meeting.

[''(d) MEETINGS.—The committee shall meet at the call of the Chairman who shall be selected by the Secretary.

[''(e) COMPENSATION.—Each member of the committee shall not receive compensation for services provided under this section.

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

[''(g) ADMINISTRATIVE SUPPORT.—The Secretary shall ensure that the committee is provided with administrative support or any other technical assistance that such committee needs in carrying out its duties.

[''(h) PERMANENT COMMITTEE.—Section 14 of the Federal Advisory Committee Act shall not apply to the committee established under this section.

[''(i) REPORT.—Not later than 1 year after the date on which the committee is established under subsection (a), the committee shall prepare and submit to Congress a report regarding the status of organ donor registries, current best practices, the effect of organ donor registries on organ donation rates, the merits of expanding organ donor registries, issues relating to consent, the efficacy of current privacy protections, potential forms of technical assistance, and recommendations regarding improving the effectiveness and establishing formal linkages between organ donor registries.

[''(j) DEFINITION.—In this section, the term 'organ donor registry' means a listing of individuals who have indicated their desire to donate their organs and tissue upon their death through driver's license preferences or other formal mechanisms.''.

**[SEC. 302. NATIONAL LIVING DONOR REGISTRY.**

[Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.), as amended by section 301, is further amended by inserting after section 371A the following:

**[''SEC. 371B. NATIONAL LIVING DONOR REGISTRY.**

[''The Secretary shall by contract establish and maintain a registry of individuals who have served as living organ donors for the purpose of evaluating the long-term health effects associated with living organ donations.''.

**[SEC. 303. QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.**

[Section 371(a) of the Public Health Service Act (42 U.S.C. 273(a)) is amended by striking paragraph (3).]

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Organ Donation and Recovery Improvement Act''.*

***SEC. 2. SENSE OF CONGRESS.***

*(a) PUBLIC AWARENESS OF NEED FOR ORGAN DONATION.—It is the sense of Congress that the Federal Government should carry out programs to educate the public with respect to organ donation, including the need to provide for an adequate rate of such donations.*

*(b) FAMILY DISCUSSIONS OF ORGAN DONATIONS.—Congress recognizes the importance of families pledging to each other to share their lives as organ and tissue donors and acknowledges the importance of discussing organ and tissue donation as a family.*

*(c) LIVING DONATIONS OF ORGANS.—Congress—*

*(1) recognizes the generous contribution made by each living individual who has donated an organ to save a life; and*

*(2) acknowledges the advances in medical technology that have enabled organ transplantation with organs donated by living individuals to become a viable treatment option for an increasing number of patients.*

***SEC. 3. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.***

*Section 377 of the Public Health Service Act (42 U.S.C. 274f) is amended to read as follows:*

***''SEC. 377. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.***

*''(a) IN GENERAL.—The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 371, or other public or private entities for the purpose of—*

*''(1) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as 'donating individuals'); and*

*''(2) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.*

*''(b) PREFERENCE.—The Secretary shall, in carrying out subsection (a), give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.*

*''(c) CERTAIN CIRCUMSTANCES.—The Secretary may, in carrying out subsection (a), consider—*

*''(1) the term 'donating individuals' as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and*

*''(2) the term 'qualifying expenses' as including the expenses of having relatives or other individuals, not to exceed 2, who accompany or assist the donating individual for purposes of subsection (a) (subject to making payment for only those types of expenses that are paid for a donating individual).*

*''(d) RELATIONSHIP TO PAYMENTS UNDER OTHER PROGRAMS.—An award may be made under subsection (a) only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—*

*''(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;*

*''(2) by an entity that provides health services on a prepaid basis; or*

*''(3) by the recipient of the organ.*

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

*''(1) The term 'donating individuals' has the meaning indicated for such term in subsection (a)(1), subject to subsection (c)(1).*

*''(2) The term 'qualifying expenses' means the expenses authorized for purposes of subsection (a), subject to subsection (c)(2).*

*''(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 2004 through 2008.''.*

***SEC. 4. PUBLIC AWARENESS; STUDIES AND DEMONSTRATIONS.***

*Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377 the following:*

***''SEC. 377A. PUBLIC AWARENESS; STUDIES AND DEMONSTRATIONS.***

*''(a) ORGAN DONATION PUBLIC AWARENESS PROGRAM.—The Secretary shall, directly or through grants or contracts, establish a public education program in cooperation with existing national public awareness campaigns to increase awareness about organ donation and the need to provide for an adequate rate of such donations.*

*''(b) STUDIES AND DEMONSTRATIONS.—The Secretary may make peer reviewed grants or contracts to public and nonprofit private entities for the purpose of carrying out studies and demonstration projects to increase organ donation and recovery rates, including living donation.*

*''(c) GRANTS TO STATES.—The Secretary may make grants to States for the purpose of assisting States in carrying out organ donor awareness, public education and outreach activities, and programs designed to increase the number of organ donors within the State, including living donors. To be eligible, each State shall—*

*''(1) submit an application to the Department in the form prescribed;*

*''(2) establish yearly benchmarks for improvement in organ donation rates in the State; and*

*''(3) report to the Secretary on an annual basis a description and assessment of the State's use of these grant funds, accompanied by an assessment of initiatives for potential replication in other States.*

*Funds may be used by the State or in partnership with other public agencies or private sector institutions for education and awareness efforts, information dissemination, activities pertaining to the State donor registry, and other innovative donation specific initiatives, including living donation.*

*''(d) EDUCATIONAL ACTIVITIES.—The Secretary, in coordination with the Organ Procurement and Transplantation Network and other appropriate organizations, shall support the development and dissemination of educational materials to inform health care professionals and other appropriate professionals in issues surrounding organ, tissue, and eye donation including evidence-based proven methods to approach patients and their families, cultural sensitivities, and other relevant issues.*

*''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2004, and such sums as may be necessary for each of the fiscal years 2005 through 2008. Such authorization of appropriations is in addition to any other authorizations of appropriations that are available for such purpose.*

***''SEC. 377B. GRANTS REGARDING HOSPITAL ORGAN DONATION COORDINATORS.***

*''(a) AUTHORITY.—*

*''(1) IN GENERAL.—The Secretary may award grants to qualified organ procurement organizations and hospitals under section 371 to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 371. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.*

*''(2) ELIGIBLE HOSPITAL.—For purposes of this section, an eligible hospital is a hospital that performs significant trauma care, or a hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.*

*''(b) ADMINISTRATION OF COORDINATION PROGRAM.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that the program under such subsection will be carried out jointly—*

*''(1) by representatives from the eligible hospital and the qualified organ procurement organization with respect to which the grant is made; and*

*''(2) by such other entities as the representatives referred to in paragraph (1) may designate.*

*''(c) REQUIREMENTS.—Each entity receiving a grant under subsection (a) shall—*

*''(1) establish joint organ procurement organization and hospital designated leadership responsibility and accountability for the project;*

*''(2) develop mutually agreed upon overall project performance goals and outcome measures, including interim outcome targets; and*

*''(3) collaboratively design and implement an appropriate data collection process to provide ongoing feedback to hospital and organ procurement organization leadership on project progress and results.*

*''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to interfere with regulations in force on the date of enactment of the Organ Donation and Recovery Improvement Act.*

*''(e) EVALUATIONS.—Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs*

*carried out pursuant to subsection (a) in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved.*

*''(f) MATCHING REQUIREMENT.—The Secretary may not award a grant to a qualifying organ donation entity under this section unless such entity agrees that, with respect to costs to be incurred by the entity in carrying out activities for which the grant was awarded, the entity shall contribute (directly or through donations from public or private entities) non-Federal contributions in cash or in kind, in an amount equal to not less than 30 percent of the amount of the grant awarded to such entity.*

*''(g) FUNDING.—For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.''.*

***SEC. 5. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.***

*Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377B, as added by section 4, the following:*

***''SEC. 377C. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.***

*''(a) DEVELOPMENT OF SUPPORTIVE INFORMATION.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.*

*''(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—*

*''(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;*

*''(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;*

*''(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and*

*''(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.*

*''(c) RESEARCH AND DISSEMINATION.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research and dissemination of findings, to—*

*''(1) develop a uniform clinical vocabulary for organ recovery;*

*''(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;*

*''(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and*

*''(4) assess specific organ recovery, preservation, and transportation technologies.*

*''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.''.*

***SEC. 6. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.***

*Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377C, as added by section 5, the following:*

***''SEC. 377D. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.***

*''(a) IN GENERAL.—Not later than December 31, 2005, and every 2 years thereafter, the Secretary shall report to the appropriate committees of Congress on the activities of the Department carried out pursuant to this part, including an evaluation describing the extent to which the activities have affected the rate of organ donation and recovery.*

*''(b) REQUIREMENTS.—To the extent practicable, each report submitted under subsection (a) shall—*

*''(1) evaluate the effectiveness of activities, identify effective activities, and disseminate such findings with respect to organ donation and recovery;*

*''(2) assess organ donation and recovery activities that are recently completed, ongoing, or planned; and*

*''(3) evaluate progress on the implementation of the plan required under subsection (c)(4).*

*''(c) INITIAL REPORT REQUIREMENTS.—The initial report under subsection (a) shall include the following:*

*''(1) An evaluation of the organ donation practices of organ procurement organizations, States, other countries, and other appropriate organizations including an examination across all populations, including those with low organ donation rates, of—*

*''(A) existing barriers to organ donation; and*

*''(B) the most effective donation and recovery practices.*

*''(2) An evaluation of living donation practices and procedures. Such evaluation shall include an assessment of issues relating to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).*

*''(3) An evaluation of—*

*''(A) federally supported or conducted organ donation efforts and policies, as well as federally supported or conducted basic, clinical, and health services research (including research on preservation techniques an organ rejection and compatibility); and*

*''(B) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.*

*''(4) An evaluation of the costs and benefits of State donor registries, including the status of existing State donor registries, the effect of State donor registries on organ donation rates, issues relating to consent, and recommendations regarding improving the effectiveness of State donor registries in increasing overall organ donation rates.*

*''(5) A plan to improve federally supported or conducted organ donation and recovery activities, including, when appropriate, the establishment of baselines and benchmarks to measure overall outcomes of these programs. Such plan shall provide for the ongoing coordination of federally supported or conducted organ donation and research activities.''.*

***SEC. 7. NATIONAL LIVING DONOR MECHANISMS.***

*Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.), is amended by inserting after section 371 the following:*

***''SEC. 371A. NATIONAL LIVING DONOR MECHANISMS.***

*''The Secretary is authorized to establish and maintain mechanisms to evaluate the long-term effects associated with living organ donations by individuals who have served as living donors.''.*

***SEC. 8. STUDY.***

*Not later than December 31, 2004, the Secretary of Health and Human Services, in consultation with appropriate entities, including advocacy groups representing those populations that are likely to be disproportionately affected by proposals to increase cadaveric donation, shall submit to the appropriate committees of Congress a report that evaluates the ethical implications of such proposals.*

***SEC. 9. QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.***

*Section 371(a) of the Public Health Service Act (42 U.S.C. 273(a)) is amended by striking paragraph (3).*

AFRICAN AMERICANS ON THE ORGAN TRANSPLANT WAITING LIST

Mr. KENNEDY. Mr. President, I wish to engage in a colloquy with the distinguished majority leader, the Senator from Tennessee, Mr. FRIST. I appreciate his efforts on the bill before us today, and agree that this is a vitally important area. I believe this bill represents a good first step, but I would point out that minorities comprise over 40 percent of the organ transplant waiting list, even though they represent approximately 25 percent of the population. Half of the patients who needlessly die while awaiting a transplant are minorities.

African Americans are more likely to have end stage renal disease because they have the highest rate of hypertension in the world. Almost 40 percent of Americans on the waiting list for kidneys are African American, but they receive only 20 percent of available kidneys.

Evidence suggests that African Americans may face discrimination during the transplantation process. White patients are 5 times more likely than African Americans to receive transplants, even when they are equally qualified.

We must increase our commitment to ending health disparities. I believe that more must be done to improve the rates of organ donation among minority communities and focus specifically among these populations to determine what the barriers to organ donation and transplantation currently are, as well as devise mechanisms to reduce or eliminate such barriers.

I am disappointed that the legislation did not include provisions to directly address the disparity in organ donation and transplantation and the special needs of minority populations. I had hoped to include these provisions.

Nonetheless, the need to enhance organ donation is too compelling to ignore, and for that reason, I am supporting the current legislation. It is our expectation that recipients of grant awards and contracts authorized under this Act will include consideration of minority concerns in all activities.

I hope to work with the majority leader next year to address this critical issue.

Mr. FRIST. I appreciate the remarks of the Senator from Massachusetts. As the Senator knows, the question of health care disparities is a keenly important issue to me. He and I have successfully worked in this area in the past, and I hope will be able to similarly collaborate in the future.

Much work in the area of minorities and organ donation is happening today.

These issues were strong recommendations of the Secretary's Advisory Committee on Transplantation, and COT in fact went further and requested a study from NIH to define the reasons for African Americans to have diminished graft survival. And just earlier this fall, HRSA announced 8 grants that it was funding to test social and behavioral interventions to increase organ and tissue donation—five of these, totaling more than $1.6 million, focused on minority and underserved populations.

And we have a bill today that has been developed through a bipartisan, bicameral process intended to allow us to make quick action on the bill. I appreciate the Senator's willingness to support this bill, and look forward to working with him in this area next year.

Mr. KENNEDY. I commend his work and congratulate him on passage of this bill. I look forward to working with the Senator from Tennessee and others to build on this important start and draft bipartisan legislation in the next session to address the unique health and health care needs of minority and underserved populations.

Mr. MCCONNELL. I ask unanimous consent that the committee substitute be agreed to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 573), as amended, was read the third time and passed.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Nos. 478, 490, 495 through 508, and all nominations on the Secretary's desk.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

NOMINATIONS

DEPARTMENT OF HOMELAND SECURITY

Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security.

DEPARTMENT OF HOMELAND SECURITY

James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security.

AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., section 601:

*To be lieutenant general*

Maj. Gen. William Welser, III, 0000

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

*To be brigadier general*

Colonel Paul F. Capasso, 0000
Colonel Floyd L. Carpenter, 0000
Colonel William A. Chambers, 0000
Colonel Paul A. Dettmer, 0000
Colonel David K. Edmonds, 0000
Colonel Jack B. Egginton, 0000
Colonel David J. Eichhorn, 0000
Colonel David W. Eidsaune, 0000
Colonel Burton M. Field, 0000
Colonel Alfred K. Flowers, 0000
Colonel Randal D. Fullhart, 0000
Colonel Marke F. Gibson, 0000
Colonel Robert H. Holmes, 0000
Colonel Stephen L. Hoog, 0000
Colonel Larry D. James, 0000
Colonel Ralph J. Jodice, II, 0000
Colonel Jan Marc Jouas, 0000
Colonel Jay H. Lindell, 0000
Colonel Kay C. McClain, 0000
Colonel Robert H. McMahon, 0000
Colonel Stephen P. Mueller, 0000
Colonel William J. Rew, 0000
Colonel Katherine E. Roberts, 0000
Colonel Kip L. Self, 0000
Colonel Michael A. Snodgrass, 0000
Colonel David M. Snyder, 0000
Colonel Larry O. Spencer, 0000
Colonel Robert P. Steel, 0000
Colonel Thomas J. Verbeck, 0000
Colonel James A. Whitmore, 0000
Colonel Bobby J. Wilkes, 0000
Colonel Robert M. Worley, II, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

*To be brigadier general*

Col. Stephen L. Lanning, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brigadier General Robin E. Scott, 0000

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be lieutenant general*

Maj. Gen. Larry J. Dodgen, 0000

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be lieutenant general*

Maj. Gen. John M. Curran, 0000

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brig. Gen. Keith M. Huber, 0000

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

*To be major general*

Brig. Gen. Dennis E. Hardy, 0000

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

*To be major general*

Brig. Gen. James R. Sholar, 0000

*To be brigadier general*

Col. Henry J. Ostermann, 0000

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be vice admiral*

Rear Adm. Walter B. Massenburg, 0000

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

*To be rear admiral*

Rear Adm. (lh) Robert E. Cowley, III, 0000
Rear Adm. (lh) Steven W. Maas, 0000

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

*To be rear admiral (lower half)*

Capt. Brian G. Brannman, 0000

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

*To be rear admiral (lower half)*

Capt. Raymond K. Alexander, 0000

The following named officers for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

*To be rear admiral*

Rear Adm. (lh) Donald K. Bullard, 0000
Rear Adm. (lh) Albert M. Calland, III, 0000
Rear Adm. (lh) Robert T. Conway, Jr., 0000
Rear Adm. (lh) John J. Donnelly, 0000
Rear Adm. (lh) Bruce B. Engelhardt, 0000
Rear Adm. (lh) Charles S. Hamilton, II, 0000
Rear Adm. (lh) John C. Harvey, Jr., 0000
Rear Adm. (lh) Carlton B. Jewett, 0000
Rear Adm. (lh) Matthew G. Moffit, 0000
Rear Adm. (lh) Michael P. Nowakowski, 0000
Rear Adm. (lh) Harold D. Starling, II, 0000
Rear Adm. (lh) James Stavridis, 0000
Rear Adm. (lh) Michael C. Tracy, 0000
Rear Adm. (lh) John J. Waickwicz, 0000

AIR FORCE

PN1073 Air Force nomination of Gary H. Sharp, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1074 Air Force nomination of Jeffrey N. Leknes, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1075 Air Force nomination of Samuel B. Echaure, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1076 Air Force nominations (2) beginning THOMAS E. JAHN, and ending RODNEY D. LEWIS, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1077 Air Force nominations (5) beginning SAMUEL C. FIELDS, and ending KEVIN C. ZEECK, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1116 Air Force nomination of Robert G. Cates, III, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1117 Air Force nomination of Mary J. Quinn, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1118 Air Force nominations (2) beginning CHRISTOPHER C. ERICKSON, and ending MARK A. MCCLAIN, which nominations were received by the Senate and appeared in

the Congressional Record of November 17, 2003.

ARMY

PN1087 Army nomination of Lance A. Betros, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1088 Army nominations (69) beginning THOMAS B. SWEENEY, and ending PAUL L. ZANGLIN, which nominations were received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1120 Army nominations (2) beginning JOHN D. MCGOWAN, II, and ending KENNETH E. NETTLES, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1121 Army nominations (2) beginning VERNAL G. ANDERSON, and ending DONALD J. KERR, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1122 Army nominations (3) beginning GASTON P. BATHALON, and ending PAULA J. RUTAN, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1123 Army nomination of William B. Carr, Jr., which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1124 Army nominations (3) beginning JOHN E. ATWOOD, and ending WILLIAM E. ZOESCH, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1125 Army nominations (2) beginning CHERYL KYLE, and ending TERRY C. WASHAM, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1126 Army nominations (9) beginning MICHAEL A. BULEY, and ending GARY M. ZAUCHA, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1129 Army nomination of Gary R. McMeen, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

COAST GUARD

PN1095 Coast Guard nominations (13) beginning Jeffrey L. Busch, and ending John S. Welch, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1096 Coast Guard nominations (270) beginning William D. Adkins, and ending Michael S. Zidik, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

MARINE CORPS

PN326 Marine Corps nomination of Michael S. Nisley, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN328 Marine Corps nominations (2) beginning LEONARD HALIK, III, and ending ERNEST R. HINES, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN1089 Marine Corps nomination of David B. Morey, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

NAVY

PN1090 Navy nomination of Patrick J. Moran, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1091 Navy nomination of Lawrence J. Chick, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1098 Navy nomination of Robert E. Vincent, II, which was received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1099 Navy nominations (56) beginning RODNEY A. BOLLING, and ending JAY S. VIGNOLA, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PUBLIC HEALTH SERVICE

PN1010 Public Health Service nominations (174) beginning Vincent A. Berkley, and ending James A. Syms, which nominations were received by the Senate and appeared in the Congressional Record of October 2, 2003.

## NOMINATION OF ADMIRAL JAMES LOY TO BE DEPUTY SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Mr. LIEBERMAN. Mr. President, I commend Admiral Loy for his willingness to take on the position of Deputy Secretary of the Department of Homeland Security, one of the most important and also most difficult jobs in the federal government. The fledgling Department of Homeland Security is a critical undertaking for our government and our country. We know that we face real and ongoing threats to our domestic security from terrorism, and the Department is our best hope of bringing the critical focus, resources and leadership to bear on these new and insidious threats. It is a momentous undertaking fraught with challenges, and we must give the Department every support we can to achieve its vital task. Unfortunately, in the face of numerous expert reports chronicling the terrorist threat to United States citizens)—and the need for a dramatic infusion of new federal funds—President Bush has consistently failed to embrace the challenge of homeland security with vision or resources.

As Deputy Secretary, Admiral Loy will be second-in-command and have influence over the full array of DHS policies and practices. As such, I hope he will work forcefully to close the existing gaps in our security—and in the administration's efforts on homeland security. I have detailed some of my concerns in other floor statements and in numerous letters to Secretary Ridge and other DHS officials. We are, to quote a distinguished report sponsored by the Council on Foreign Relations, ''drastically underfunded, dangerously unprepared'' with respect to our state and local first responders and the federal government's efforts here are falling far short. The administration is thwarting a critical congressional mandate to create a true intelligence fusion center within DHS. On critical infrastructure protection, our government has yet to complete vital threat and risk assessments, much less implement forceful measures to protect these critical assets. I will not repeat all those concerns here, but instead focus on the dangerous gaps I perceive with respect to transportation security—the issue that has been Admiral Loy's direct responsibility as head of the Transportation Security Administration, TSA, and one over which he will continue to exercise considerable influence.

TSA was created in the aftermath of 9/11 in response to the tragic weaknesses in the air security realm that were exposed by the attacks. Indeed, TSA has made important strides to improve certain aspects of aviation security, such as passenger and baggage screening. But critical deficiencies exist in these and other areas of air security, and the agency has barely begun to tackle its broader transportation security mandate. Although Admiral Loy will be leaving his post as Administrator of TSA, I believe it is essential that he continue to place a high priority on resolving these critical issues.

By law, the Transportation Security Administration is responsible for security in all modes of transportation. But TSA has thus far focused almost exclusively on commercial aviation, leaving treacherous weaknesses in other transportation systems—a problem I outlined in a July 9 letter to Secretary Ridge. For fiscal year 2004, the administration sought $4.3 billion for passenger aviation security, but only $86 million for TSA's maritime and land security efforts. Congressional appropriators added some additional resources for maritime and land security, but there is still very little money available for these critical needs.

For instance, with respect to maritime transportation, the Coast Guard has identified billions of dollars worth of necessary improvements—and Congress has mandated greater security—yet the administration requested no money for port security grants to help make the changes and only $125 million for this purpose was ultimately included in the DHS appropriations bill. Indeed, there is not even enough funding for Coast Guard employees to review the security plans mandated under the Maritime Transportation Security Act. This even as expert upon expert has identified the Nation's 360 commercial ports as a leading cause for concern on the homeland front—in large part because of the valuable goods and energy imports channeled through these ports and because the millions of containers that enter this country by sea can hide untold dangers.

Mass transit systems are another grave source of concern. We all remember the 1995 attack on the Tokyo subway, when members of a Japanese cult released sarin, a lethal chemical nerve gas, on five subway trains during rush hour. Twelve people were killed and thousands injured. Only mistakes by the terrorists kept the death toll from being far higher. Here in the United States, our transit systems remain vulnerable to such an attack. In many cases, transit officials have already identified steps to make the system more secure, but simply cannot afford to take them. Transit systems typically struggle just to meet operating costs and are simply not in a position to fund major new security investments on their own. A December 2002 GAO report concluded that ''insufficient funding is the most significant

challenge in making . . . transit systems as safe and secure as possible.'' The administration did recently award some grants to help a number of urban transit systems, but nowhere near the kind of commitment that is needed to confront the problem.

Nor do we see a commitment to improve rail security, although vast quantities of hazardous materials are shipped by rail.

Given this vast amount of work to be done by TSA in all modes of transportation, it is inexplicable to me why the administration actually sought to decrease the agency's budget in FY 04.

But it is not simply a matter of money. TSA has not formulated the essential strategic plans needed to guide transportation security efforts. Admiral Loy testified last May that the agency was close to finishing such a document—the National Transportation System Security Plan or NTSSP. GAO has testified that this national plan is a ''prerequisite'' to investing wisely in transportation security. Yet as part of the hearing process for this nomination, Admiral Loy stated that such a plan is still months away, at best.

Even in the area of passenger aviation, where TSA has focused virtually all its resources, troubling gaps remain. Although TSA spent hundreds of millions to recruit and train screeners, thousands of these employees are gone due to layoffs and attrition and we now face serious screener shortages at some airports. While I recognize that this is a complex question, it simply is not clear that TSA has control of this issue and is implementing a staffing level needed to assure adequate security. There have been other problems. For example, TSA failed to complete background checks of many of the screeners hired before they were trained and deployed, resulting in the discovery last spring that over 1200 screeners had felony convictions or other disqualifying problems that required their termination. Investigations by the DHS Inspector General and TSA's Office of Internal Affairs into the baggage screener training program found that trainees were given the questions and answers to the final certification exam and that some of the test questions were ''inane'' or simply ''gave away'' the correct response. GAO has reported that TSA has not yet fully developed or deployed recurrent or supervisory training programs to ensure that screeners are effectively trained and supervised.

Moreover, despite considerable attention to the safety of air passengers and their baggage, TSA has not developed a reliable system to screen commercial cargo loaded onto the very same planes. This cargo is still not being screened for explosives and TSA currently is relying on the airlines to implement a ''known shipper'' program as the primary method of ensuring the security of this cargo, despite the numerous vulnerabilities GAO and the Department of Transportation Inspector General have identified in this approach. TSA has still taken only preliminary steps toward assessing security technologies that are needed to restrict access to secure areas of airports, despite the requirements of the Aviation and Transportation Security Act that it do so. Airport perimeter security also requires significant improvement, according to GAO, including the need to guard against possible terrorist attacks using shoulder-fired portable missiles from locations near airports. In addition, GAO has raised substantial concerns about the limited progress TSA has made in shoring up security at general aviation airports. To date, general aviation pilots and passengers are not screened before takeoff and the contents of general aviation planes are not screened at any point, leaving general aviation far more open and potentially vulnerable than commercial passenger aviation.

I understand that the administration's failure to seek adequate funding and TSA's deadlines have greatly contributed to the challenges TSA faces in remedying these and other gaps in our aviation security. I pledge to continue my efforts to increase the resources we devote to these needs. However, TSA has also exercised inadequate oversight of the contracts it has entered into to perform many of the essential tasks needed to improve aviation security. The resulting problems include the huge cost overrun of its screener hiring contract with NCS Pearson, which ballooned from an original estimate of $104 million to over $700 million. I intend to watch closely to make sure that TSA implements stringent management controls and procedures so that we can be assured TSA's programs are effective, appropriately focused and achieving expected results.

NOMINATION OF MICHAEL GARCIA

Mr. LIEBERMAN. Mr. President, although I do not intend to object to the confirmation of Michael Garcia to be Assistant Secretary of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, BICE, I do want to take this opportunity to express my concern about his handling of an issue that arose during the Committee on Governmental Affairs' consideration of his nomination. Specifically, I would like to describe my concerns about the way Mr. Garcia responded to questions from the committee related to his bureau's participation in a search for a plane belonging to a Texas state legislator. My concerns about the nominees's answers occurred in the context of problems we have been having getting clear and comprehensive answers from some other nominees for department positions, and from receiving satisfactory answers to inquiries related to our oversight responsibilities. I hope that by calling attention to these concerns, I can encourage the Department of Homeland Security, DHS to work with its oversight committees in a more straightforward and cooperative fashion.

In this statement, I intend to describe in some detail the circumstances that I find troubling. To summarize, I have two main concerns. First, it took Mr. Garcia far too long—until well after the Governmental Affairs Committee reported his nomination—to acknowledge what until then had been a rather uncontroversial fact: that the pendency of an investigation by an agency's Inspector General does not preclude an official of that agency from responding to congressional requests for information about matters that are the subject of the IG's investigation. A significant part of Congress' work involves overseeing how agencies do their jobs, and this committee in particular often conducts investigations of alleged waste, fraud and abuse by agencies. If the pendency of an internal investigation stood as a per se bar to congressional information requests, our oversight work would often be stymied. Mr. Garcia's assertion of virtual immunity from being questioned about matters under internal investigation is unfortunately emblematic of this administration's and this Department's frequent stinginess with sharing information with Congress about matters that are appropriate topics of congressional oversight. That this refusal to provide information occurred in the context of a committee's consideration of a nomination was all the more troubling, because it suggested that even at the moment when the incentive for cooperation was the greatest, the department was urging its officials to resist appropriate requests for information. The department and Mr. Garcia now concede that a pending IG investigation is not grounds for refusing to provide Congress with information; as they acknowledge, Congress frequently inquires into—and receives information about—matters under investigation. Although it came frustratingly late, I appreciate their willingness to revisit their position and look forward to greater cooperation from them on such matters in the future.

Second, I was concerned that Mr. Garcia's answers to written questions were misleading, whether or not he intended them to be, and I am even more disturbed that after I challenged Mr. Garcia's responses, he and his advisers passed up a number of opportunities to clarify his responses. I will describe the back and forth in greater detail below, but in short, Mr. Garcia stated in written answers to the committee that he declined to answer questions about the search for the Texas legislator because the IG's office had directed him not to, even though neither he nor his advisers had even contacted the IG's office about my questions until he had twice declined to answer them. Mr. Garcia continued to maintain that the IG's office directed him not to answer my questions, even after I reported to him that the IG's office did not believe it

had issued such a direction and even after one of his advisers was explicitly told by the Assistant Inspector General heading the Texas investigation that such an answer was inaccurate. After the committee reported his nomination, Mr. Garcia ultimately expressed his regret for these events, explaining that he did not intend to mislead the committee, which is why I will not stand in the way of his nomination. But I once again am forced to observe that this exchange was nowhere near the frank and honest effort at providing requested information that Congress has a right to expect from agency officials. It instead appears to have been an effort at finding any excuse for declining to answer questions and then, when it became apparent that the excuse could not stand, seeking to find any way possible to avoid correcting the mistaken assertion. As mentioned, Mr. Garcia has subsequently expressed his regret for how he answered these questions, and has pledged to better cooperate with the Committee in the future. I am hopeful that both he and the department will live up to that pledge.

To provide more detail: when the Committee on Governmental Affairs received the nomination of Michael Garcia on March 26, 2003, he was already serving as Acting Assistant Secretary for BICE. He was leading the Bureau when, on May 12, 2003, it assisted in a search for the plane belonging to a member of the Texas legislature; the search had been initiated by leaders from the opposing party, as part of a highly political and partisan intrastate redistricting feud. At the time of these events it struck me as inappropriate that homeland security resources were diverted for this purpose, especially as it set a disturbing precedent of misusing the department's powers and authority to pursue American citizens who had broken no laws. So, as part of the committee's consideration of Mr. Garcia's nomination, I submitted a series of written questions about the incident, in my capacity as ranking member of the Committee on Governmental Affairs.

Over the course of several weeks, Mr. Garcia provided answers that were unresponsive, unsatisfactory, and inconsistent. Mr. Garcia's legal advisers at the Department of Homeland Security appear to have compounded the problem by looking for ways to avoid the questions rather than clear up misunderstandings that became increasingly apparent.

In written questions sent on May 16, 2003, before Mr. Garcia's committee hearing, I asked the following questions:

On May 15, 2003, the Bureau acknowledged that its Air and Marine Interdiction Coordination Center, AMICC, had earlier that week participated in the search for the airplane of a Texas legislator.

1. What action was requested of the AMICC, and by whom?

2. What action, if any, was actually taken by the AMICC? Which federal officials were involved in directing that action be taken?

3. What other federal agencies were involved, if any, and what actions did they take?

4. If any action was taken by the Homeland Security Department, please explain how these actions fall within the Department's mission?

5. If actions were taken in error, or in contravention of Department policy, what steps will be taken to ensure that similar mistakes will not happen again?''

On May 30, 2003, Mr. Garcia responded that because BICE had referred the underlying issues to the Office of the Inspector General, OIG, ''it would be inappropriate to offer comment on the questions above.'' He attached to his answer a press release BICE had earlier issued, offering comment on the matter, including conclusions that BICE had acted appropriately in the incident. Concerned by the suggestion that the existence of an IG investigation serves as an absolute bar to an Executive Branch official providing any information to Congress, my staff on June 2, 2003, again asked Mr. Garcia about the issue at the bipartisan interview Committee staff routinely conduct in the course of considering nominations. Mr. Garcia again declined to answer the questions. At the staff interview Mr. Garcia was informed that Congress routinely seeks information and testimony about matters under criminal investigation, and is routinely provided the information.

Apparently in response to the concerns raised at the staff interview, on June 2 the Chief Legal Counselor to the Department of Homeland Security, Lucy Clark, contacted the Counsel to the department's Acting Inspector General, Richard Reback. According to Mr. Reback, Ms. Clark told him that Mr. Garcia would be appearing for his confirmation hearing and asked how he should respond if questioned about the Texas matter. At Ms. Clark's request, on June 4, Mr. Reback sent by e-mail a hypothetical question and proposed answer, in which Reback suggested that Mr. Garcia, if asked ''what actions are you taking on the issue of diversion of Department of Homeland Security resources to search for Texas State legislators?'', could respond, ''The OIG has asked that any questions relating to this matter be directed to them.'' Mr. Reback later made clear in a letter to me that he was not aware at the time ''that specific questions were pending or had been posed.'' Ms. Clark did not tell Mr. Reback that Mr. Garcia had already declined to answer questions on two occasions, or that he had been informed by Committee staff that his answer was unsatisfactory. Mr. Reback later explained that he was not directing Mr. Garcia not to answer inquiries from Congress. Rather, it was his hope that a referral to his Office could be the beginning of a dialogue with Congress, not the end of the dialogue.

After Mr. Garcia's nomination hearing, on June 5, 2003, I remained concerned by the suggestion that an IG investigation could immunize Executive Branch officials from Congressional information requests. I therefore submitted post-hearing questions, which included the following inquiries about why Mr. Garcia believed he could decline to answer my questions on the Texas matter:

a. Why do you believe it would be inappropriate to comment?

b. Did the Office of Inspector General ask you not to comment?

c. Will you refuse to provide Congress with information on any matter being investigated by an inspector general? If your willingness to provide information to Congress would depend on the circumstances, please specify in what circumstances you would refuse to provide information.

d. As Acting Assistant Secretary for BICE at the time the incident occurred, do you have any knowledge of the circumstances of your bureau's involvement, either direct or second-hand? Did you take any steps to learn about the bureau's role? Were you involved in deciding how the Bureau should respond to the incident, and to the news reports that described the incident?''

On Friday, June 13, 2003, Mr. Garcia sent his responses to the post-hearing questions. Mr. Garcia stated that he had ''received direction from the Inspector General's Office to refer all inquiries regarding this matter to that office.'' He also stated that ''the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office,'' and ''in this case I was directed to refer all inquiries to the Inspector General's Office.'' Mr. Garcia's answers did not specify who had directed him not to answer, nor did they describe the nature of the communications with the IG's office. In response to the question about whether he would refuse to provide Congress with information on any matter being investigated by an inspector general, Mr. Garcia responded ''(g)enerally, I would defer to the IG's office for direction on inquiries relating to any matter actively being investigated by that office.'' He declined to answer whether he had any knowledge of the circumstances of his Bureau's involvement in the incident, and what actions he took in its aftermath.

Aware of no law, custom or precedent that would allow an IG to direct an Executive Branch official to decline to answer Congressional information requests, I had my staff contact the Department of DHS Office of Inspector General to learn more about the IG's views of this issue. On the afternoon of June 13, Lisa Redman, the assistant Inspector General responsible for the investigation into the Texas incident, denied to my staff that anyone from the IG's office had directed Mr. Garcia not to comment on the issue. She also informed Committee staff that the IG's office had no policy that would have precluded him from answering questions about his role in the incident, or from giving answers based on information provided by personnel at BICE.

Concerned by this discrepancy, on the evening of June 13, I sent Mr. Garcia another set of post-hearing questions, seeking clarification regarding

the apparently contradictory information received from the IG's office. My questions also informed Mr. Garcia that both the Congressional Research Service and the Senate Legal Counsel had confirmed that an ongoing IG's investigation did not provide a legal basis for someone to refuse to provide information to Congress.

As we later learned from Ms. Redman in a letter responding to my inquiries, on the morning of June 16, while Mr. Garcia and his staff were preparing answers to my questions, Ms. Redman received a telephone call from Mark Wallace, who was then Mr. Garcia's principal legal adviser at BICE. According to Ms. Redman, Mr. Wallace ''was very agitated and stated that the OIG had provided answers [to the Committee] inconsistent to those he provided on Mr. Garcia's behalf.'' Ms. Redman informed Mr. Wallace that no one from the IG's office had ''directed'' Mr. Garcia not to answer questions from Congress, that the IG's office had never been told about Mr. Garcia's written responses to my questions, and that Mr. Wallace should have cleared Mr. Garcia's answers with the IG's office before submitting them. She also pointed out that the IG's office cannot direct Mr. Garcia to do anything. According to Ms. Redman, Mr. Wallace ''became quite angry and demanded that we make our responses consistent with his,'' and he ''said it was the OIG's fault that Mr. Garcia was now in this situation because we were not consistent in our responses.'' Ms. Redman refused to change her story.

According to correspondence I received from Mr. Reback, Mr. Wallace also contacted Reback on June 16, in an e-mail ''in which [Wallace] stated that the OIG had provided inconsistent guidance to Mr. Garcia on responding to questions regarding the Texas matter.'' Mr. Reback said that he responded in an e-mail to Mr. Wallace, in which he said he explained that ''I had been asked for guidance on what Mr. Garcia could say if asked a question [on] the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my June 4th e-mail to Ms. Clark.'' Mr. Reback also told Mr. Wallace that he was ''unaware that Mr. Garcia ever had received any written questions on the matter and had not seen or cleared on [sic] any of his written responses.'' Late in the evening of June 16, Mr. Reback was contacted by Ms. Clark and another adviser at BICE, Tim Haugh, who provided him a copy of draft responses to the questions I sent Mr. Garcia on June 13th. Mr. Reback did not review or comment on all of the draft responses, but did request that ''with respect to questions that implicated OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses.''

At 11:00 p.m. on June 16, less than 12 hours before the committee met to consider his nomination, Mr. Garcia provided additional responses in which he continued to maintain that he had in fact been directed not to answer. For the first time, he referred the committee to the e-mail message Mr. Reback sent to Lucy Clark on June 4, 2003, but he made no mention of Ms. Redman's different interpretation of that communication, or of the IG's authority. Despite Ms. Redman's statements to his adviser, Mr. Garcia did not correct his earlier assertions that the Inspector General has the authority to instruct someone not to cooperate with Congress; he cited his legal advisers at DHS and the IG's office as the sources of his conclusion.

At the committee mark-up on the morning of June 17, I expressed my concerns about Mr. Garcia's refusal to answer questions about the Texas incident, and I questioned whether his reliance on supposed instructions from the IG's office were factually accurate or legally sound. I entered into an agreement with Chairman COLLINS that I would not object to the committee reporting Mr. Garcia's nomination, but that Mr. Garcia's nomination would not go to the Senate floor until my questions and concerns had been satisfactorily resolved.

I subsequently sent letters seeking additional information from Mr. Reback, Ms. Redman, and Mr. Garcia. I have already described the information I received from Mr. Reback and Ms. Redman. Mr. Garcia, for his part, maintained that all of his answers had been accurate, and that he had reasonably interpreted Mr. Reback's e-mail as equivalent to being directed by the IG's office not to respond. He concluded that at all times he was ''guided by a sincere desire not to in any way interfere with an ongoing criminal investigation'': ''At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. I responded based on what I reasonably believed was the guidance from the OIG and counsel.''

Although I am troubled by how Mr. Garcia and his advisers at the Department dealt with this issue, I have nevertheless decided not to oppose this otherwise qualified nominee. Still, I felt that the issues raised during his nomination process were important enough that they deserved to be fully aired.

One of the principal functions of the Committee on Governmental Affairs, like all Senate committees, is to ensure that qualified, capable and responsible people are ultimately appointed to the highest positions in our government, and to conduct oversight over the departments and agencies within its jurisdiction. Through both the confirmation and oversight processes, we ensure ourselves and the American people that our government is functioning as it should be. As part of these processes, we regularly engage in dialogues with nominees, including through written questions; the integrity of our process requires that nominees fully and forthrightly answer the questions asked.

It appears to me that Mr. Garcia and his legal advisers at DHS provided answers to the Committee that were misleading factually and misstated the legal reasons a nominee could refuse to answer questions. For example, Mr. Garcia did not have any communications with any official from the IG's office until June 4, 2003, after he had already, on two occasions, declined to answer questions about the Texas matter. Nevertheless, his answers to my post-hearing questions stated that he had declined to answer the questions because ''the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office.'' Whatever Mr. Garcia's intention, that answer was not a factually accurate way of explaining answers given before he or his advisers spoke with the IG's office about the issue.

Furthermore, it is now clear that Mr. Garcia never was ''directed'' not to answer the questions by the Office of Inspector General—an assertion he repeatedly made in his written responses to my questions. Regardless of whether Mr. Reback's June 4 e-mail could have been interpreted as something stronger than intended, Mr. Garcia's legal adviser, Mr. Wallace, knew prior to Mr. Garcia's submission of his final set of answers that the IG's office was not directing him not to answer questions and had never intended to do so. Nevertheless, Mr. Garcia submitted written answers on June 16 in which he continued to assert that the IG's office had directed him not to answer the questions, referring to Mr. Reback's e-mail. Nothing in the answers gave any indication that the IG's office had explicitly rejected this interpretation of Mr. Reback's e-mail.

Mr. Garcia's rationale for not answering the questions raised important institutional issues. As a general matter, I find it unacceptable for agency officials to argue that the pendency of an IG investigation categorically precludes them from responding to congressional information requests. Congress often seeks information—and sometimes even conducts parallel investigations—on matters also under review by IG offices. Were the pendency of IG investigations a basis for an agency official or employee to decline to respond to Congressional inquiries, numerous Congressional inquiries conducted by the Governmental Affairs Committee and other Committees would be inappropriately stymied.

The notion that an Inspector General could ''direct'' a Department official not to cooperate with Congress was itself troubling. Officials at the Inspector General's office understood that they did not have the authority to ''direct'' Department officials not to answer questions, but neither Mr. Garcia nor his legal advisers consulted with IG officials on their choice of words until after they had already sent the Committee Mr. Garcia's answers. I was especially disturbed, in this context, to

learn that Mr. Garcia's legal adviser, Mark Wallace, apparently berated the Assistant Inspector General and attempted to get her to change her version of events to make it ''consistent'' with the answers he had previously prepared. If true, this is highly improper behavior for a government attorney, and might itself have been worthy of an investigation.

Subsequent to the Committee's reporting of Mr. Garcia's nomination, my staff met with him to discuss these issues and my concerns about these events as well as with other examples of DHS nominees providing less than adequate answers to questions posed during the nomination process. In light of Mr. Garcia's statement in that meeting that he did not intend to mislead the Committee and now understood the need to better cooperate with Congress, I am prepared to move forward with his nomination. I could not do so, however, without leaving a complete record of my concern over these events.

Mr President, I thank my colleague, Chairman COLLINS, for working with me towards a satisfactory resolution of this issue. I am glad that we have had the opportunity to share with Mr. Garcia and with other DHS officials our concerns about how this nomination was handled. I hope that in the future the Department of Homeland Security will endeavor to work constructively with all senators to avoid misunderstandings of the type we experienced in this case, and to take seriously its obligations to provide Congress with the accurate, timely and complete information it needs.

In the interest of fairness to all parties, I ask unanimous consent that the text of letters from Mr. Reback, Ms. Redman, and Mr. Garcia, be printed in the RECORD following my remarks. Space limitations prevent me from including the full text of the pre-hearing and post-hearing questions asked of Mr. Garcia, and his answers, but those may be found in the Committee's hearing record.

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

DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL,

*Washington, DC, June 26, 2003.*

Hon. JOSEPH I. LIEBERMAN,

*Senate Committee on Governmental Affairs, Dirsken Senate Office Building, Washington, DC.*

DEAR SENATOR LIEBERMAN: Thank you for your letter to me dated June 23, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee's consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are below:

(1) Did you have any communications with Mr. Garcia about how to respond to questions regarding the Texas matter? If so, please state when each communication occurred, who initiated the communication and who else was present, and please describe the content of the conversation or communication.

Response: No.

(2) Did you have communications with any DHS official or employees seeking information on Mr. Garcia's behalf on how to respond to Congressional information requests about the Texas matter or otherwise involved in the drafting of Mr. Garcia's responses? If so, please state the person with whom you had each communication (including his or her title), who initiated the communication, when the communication occurred, and describe the content of the communication.

Response: Yes. I had telephone conversations with Lucy Clark, DHS Chief Legal Counselor, on the afternoon of June 2, on June 4, and possibly on June 3, 2003. These conversations were initiated by Ms. Clark and each conversation was very brief—I would estimate the total time for all my telephone conversations with Ms. Clark on these days was approximately five to ten minutes.

Ms. Clark told me that Mr. Garcia would be appearing for his confirmation hearing and asked me how he should respond if questioned about the Texas matter. I replied that Mr. Garcia should state that the matter was under investigation by the OIG and questions should be referred to the OIG. I told Ms. Clark that since the OIG had an open criminal investigation, we did not want people talking about the case. Ms. Clark subsequently asked me to put my comments in writing and I sent her the e-mail on June 4th that has been provided to you. Ms. Redman, Assistant Inspector General for Investigations, reviewed and concurred with my e-mail before I sent it. Mr. Richard Skinner, Deputy Inspector General, reviewed and concurred with my e-mail after I had sent it.

On June 16th, I received an e-mail from Mark Wallace, Principal Legal Adviser to Mr. Garcia, in which he stated that the OIG had provided inconsistent guidance to Mr. Garcia on responding to questions regarding the Texas matter. Mr. Wallace attached a copy of eight questions from Senator Lieberman to Mr. Garcia. I responded to Mr. Wallace via e-mail in which I stated that I had been asked for guidance on what Mr. Garcia could say if asked a question about the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my June 4th e-mail to Ms. Clark. I further stated that I was unaware that Mr. Garcia ever had received any written questions on the matter and had not seen or cleared on any of his written responses. I also stated that I heard nothing more about Mr. Garcia's response to questions on the Texas matter until the afternoon of June 13th, when the Assistant Inspector General for Investigations, Ms. Redman, had received oral questions from some of the Committee's minority staff regarding Mr. Garcia's responses. Finally, I stated that the OIG investigation was closed, there was no criminal enforcement action and that Mr. Garcia could answer any questions about the Texas matter. I heard nothing further from Mr. Wallace.

Late that evening (June 16th), I had conversations with Ms. Clark and with Mr. Tim Haugh, Director of Congressional Relations, Bureau of Immigration and Customs Enforcement, about questions Mr. Garcia had received from the Senate Committee on Governmental Affairs and which Mr. Garcia intended to respond to that day. My conversations were primarily with Mr. Haugh, who provided me a copy of draft responses to those questions. I did not review or comment on all of the responses. I did however, request that with respect to questions that implicated OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia's responses occurred before June 4, 2003.

Response: Please see answer above.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with DHS personnel acting on Mr. Garcia's behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am unaware of any other person employed by the OIG having such discussions other than my conversations on June 2nd and possibly June 3rd as discussed above.

(5) Mr. Garcia attached your e-mail to Lucy Clark to substantiate his assertion that the IG's office ''directed'' him not to respond to the questions sent to him.

(a) Please provide in as much detail as you can recall the contents of any communications you had with Ms. Clark that led to you drafting the e-mail provided to the Committee. Who initiated the conversation? What specifically did Ms. Clark tell you about the questions sent to Mr. Garcia? What did she ask you to do?

Response: Please see my response to question 2 above. As stated, I did not know that Mr. Garcia had received any written questions nor that he had appeared for a Committee staff interview on June 2, 2003.

(b) Was anyone other than Ms. Clark involved in these communications? If so, state who was involved (including the person's title) and the nature and content of their involvement.

Response: Please see my response to questions above.

(c) Did you tell Ms. Clark that you were ''directing'' Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: I did not use the terms ''direct'' or ''directing.'' However, in my conversations with Ms. Clark, I believe it was clear that the OIG did not ant DHS personnel discussing a matter that was under criminal investigation by the OIG without first coordinating with the OIG.

(d) Did you believe your e-mail was ''directing'' Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: Please see my response above.

(e) The question attached to your e-mail does not use language encompassing all questions related to the Texas matter, but rather asks only what action Mr. Garcia is currently taking on it. The bulk of my questions, in contrast, asked about past events, not Mr. Garcia's current actions. Did you tell Ms. Clark that Mr. Garcia should refer all Congressional questions, including seeking Mr. Garcia's knowledge about underlying events, to the IG's office.

Response: My conversations with Ms. Clark did not involve that level of specificity. I was unaware of your prior questions to Mr. Garcia at the time I had my conversations on June 2nd-June 4th.

(f) Did you believe the attachment to your e-mail suggested that Mr. Garcia should not answer the questions reprinted at the bottom of page 1 of this letter?

Response: At the time I sent the e-mail, I was not aware that specific questions were pending or had been posed. My advice was inthe context of a potential inquiry along the lines stated in my June 4th e-mail.

(g) Did Ms. Clark (or any other person involved in these communications with you) ask you to provide a different answer than the one you gave to her? If so, that was her or their proposal, and why did you not agree to it? Please describe in full the discussion on this matter.

Response: At no time during our conversations on June 2nd–4th did Ms. Clark or anyone else ask me to provide a different answer than the one I provided.

(6) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? (If your previous answers dispose of this and/or any of the following questions in their entirety, feel free to so indicate).

Response: No. Please see my responses to questions above.

(7) Are you aware of any other OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to a answer questions from Congress on the Texas matter? If so, please identify the individuals involved, when they issued the direction, to whom they gave it, and the content of any communications related to such direction.

Response: No. Please see my responses to questions above.

(8) Do you believe you or anyone in the IG's office had the authority to ''direct'' Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No.

(9) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be ''inappropriate to offer comment'' in response to Congressional questions regarding BICE's involvement in the Texas matter? If so, please identify the person to whom you made this statement, when you made it and the basis for your making that statement.

Response: I do not remember if I used those exact words. However, it would have been reasonable for Ms. Clark to infer that I believed it would be prudent for Mr. Garcia to check with the OIG before offering comment about the OIG's investigation of BICE's involvement in the Texas matter.

At the time, the OIG had an open criminal investigation. Generally, we seek to avoid public discussion of open criminal matters to avoid jeopardizing the success of a potential future prosecution, impeding our ability to gather all relevant information, affecting the impartiality and perceived impartiality of our work, and other such concerns. We also try to discourage speculation about the outcome of a pending investigation.

(10) Had you seen Mr. Garcia's answers to the questions sent to him by the Committee prior to receiving this letter? If so, in what context did you see them? Who showed them to you and when? Were you shown any of Mr. Garcia's written responses before he sent them to the Committee? Regardless of when you saw them, did you believe the answers to be accurate in their representation of the IG office's statements and views? If not, did you communicate that belief to anyone in DHS? If so, to whom? When? What were the contents of that conversation?

Response: I saw a draft of Mr. Garcia's June 16th answers on the evening of June 16th; I did not see the final document until after it had been sent to the Committee. I believe the responses received by the Committee are accurate in their representation of OIG statements, namely, I sent the June 4, 2003, email to Ms. Clark. I did not offer any comment on the responses in any other respect. I did not see the written responses to any of the other sets of questions until provided them by Committee's minority staff in the course of responding to these questions.

Examining the responses after the fact, I believe that the scope of the OIG guidance may have been misunderstood. The OIG had not intended, and did not direct that no Congressional requests be answered. Instead, we asked that questions be referred to the OIG because the OIG had an open criminal investigation. We did not intend that to be the end of the dialogue with the Congress.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: Legal authority supports the general position that an OIG can withhold certain confidential information from Congress during the course of an open criminal investigation. See 13 Op. Off. Legal Counsel 77 (1989). In my experience, I have found Congressional staff members sensitive to these issues and willing to accommodate OIG concerns.

Sincerely,

RICHARD N. REBACK,
*Counsel to the Acting Inspector General.*

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DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL,

*Washington, DC, June 26, 2003.*

Hon. JOSEPH I. LIEBERMAN,
*Ranking Minority Member, Senate Office Building, U.S. Senate, Washington, DC.*

DEAR SENATOR LIEBERMAN: Thank you for your letter to me dated June 23, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee's consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are provided below:

(1) Did you have any communications with Mr. Garcia about how to respond to questions regarding the Texas matter? If so, please state when each communication occurred, who initiated it and who else was present, and please describe the content of the communication.

Response: No.

(2) Did you have communications with any DHS official or employee seeking information on Mr. Garcia's behalf on how to respond to Congressional information requests about the Texas matter or otherwise involved in the drafting of Mr. Garcia's responses? If so, please identify the person with whom you had each communication (including his or her title), state who initiated the communication, indicate when the communication occurred, and describe the content of the communication.

Response: No, not until June 16th and that conversation was with Mark Wallace after he had sent responses to the Committee on Mr. Garcia's behalf.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia's responses occurred before June 4, 2003.

Response: I had no communications outside the OIG prior to June 4, 2003, regarding Mr. Garcia's responses.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with Mr. Garcia or with DHS personnel acting on Mr. Garcia's behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am aware that OIG Counsel Richard Reback was contacted by DHS General Counsel Lucy Clark on June 4th or perhaps June 3rd; during which contact Ms. Clark sought advice from Counsel Reback as to what Mr. Garcia should say if asked about the OIG Texas investigation. Mr. Reback advised me that Ms. Clark initiated contact with him and he provided an email to her in response as to suggested language Mr. Garcia might use. That is the same email previously provided to your staff. Mr. Reback showed me his proposed email before he sent it and I concurred with its contents.

(5) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please describe when that happened, to whom you gave that direction, who initiated the communication, and the details of your direction.

Response: No direction was provided by me to Mr. Garcia or anyone acting on his behalf on any matter.

(6) Are you aware of any OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please describe when that happened, who gave the direction and to whom that direction was given, who initiated the communication, and the details of the direction.

Response: I am not aware of any OIG contact with Mr. Garcia or anyone on his behalf directing him as to what to say or not to say.

(7) Do you believe you or anyone in the IG's office had the authority to ''direct'' Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No, I do not believe the OIG has the authority to ''direct'' Mr. Garcia or anyone else in DHS to answer or not answer questions from Congress.

(8) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be ''inappropriate to offer comment'' in response to Congressional questions regarding BICE's involvement in the Texas matter? If so, please identify the person to whom you made this statement, when you made it and the basis for your making that statement.

Response: No, I never made that statement to Mr. Garcia or anyone on his behalf.

(9) Had you seen or discussed Mr. Garcia's answers to the questions sent to him by the Committee prior to receiving this letter? If so, in what context did you see them? Who showed them to you and when? Were you shown any of Mr. Garcia's written responses before he sent them to the Committee? Regardless of when you saw them, did you believe the answers to be accurate in their representation of the IG office's statements and views? If not, did you communicate that belief to anyone in DHS? If so, to whom? When? What were the contents of that conversation?

Response: the first time I saw any questions for Mr. Garcia was on the morning of June 16th. Those questions were e-mailed to me by Mark Wallace, who identified himself as Mr. Garcia's Principal Legal Advisor. He sought assistance in preparing responses to those questions on Mr. Garcia's behalf and asked for ''urgent'' help at 9:41 am. I did not see any responses he drafted to those questions until the morning of June 17th. A faxed copy of his responses was under my door when I arrived at work. I e-mailed Mr. Reback at 8:32 am on June 17th and advised him that the responses prepared by Mr. Wallace to Questions 2 and 3 were not accurate as they purported to represent a conversation Wallace and I had the morning of June 16th. I was subsequently told by Mr. Reback that those responses did not get sent to the committee; instead a new (second) set of responses was drafted by the night before and those responses were the ones sent to you by Lucy Clark. The set of responses you received was accurate.

(10) You indicated to my staff that on Friday, June 13, you had a conversation with the individual who drafted Mr. Garcia's responses to the questions regarding the Texas matter and that you told him that the IG's office had not ''directed'' Mr. Garcia not to respond to the questions. To the extent that you have not already done so in response to the questions above, please answer the following questions with respect to that conversation:

(a) With whom did you have this conversation (please identify the individual's name and title)?

Response: I did say in a meeting with your staff on June 19th that I had such a conversation on Friday, June 13th. However, I was mistaken and realized that mistake in reviewing my e-mails and telephone notes. On the afternoon and early evening of Friday, June 13th I had several telephone conversations with Kevin Landy of your staff from whom I learned for the first time that questions and answers had been provided to the Committee by Mr. Garcia. The conversation to which you refer actually occurred on Monday, June 16th between 9:41 and 9:54 am between myself and Mark Wallace, Principal Legal Advisor to Mr. Garcia.

(b) Because Mr. Garcia sent answers to the questions on that date (DHS staff emailed them to Committee staff at 12:29 p.m.), please identify to the most precise extent you can recall when in the day that conversation occurred.

Response: as indicated above, I misspoke and I did not have any conversations with Mr. Wallace until Monday, June 16th, not Friday, June 13th. My June 13th conversations were with Kevin Landy, not Mark Wallace.

(c) Who initiated the conversation?

Response: the conversation on June 16th was initiated by Mark Wallace. He called the main number, asked for Mr. Reback, then Mr. Skinner, and finally me after learning the other two were not available.

(d) Who else was involved in it?

Response: No one else was involved in this conversation.

(e) Please describe in the greatest detail possible, the contents of the conversation.

Response: Mr. Wallace was very agitated and stated that the OIG had provided answers inconsistent to those he provided on Mr. Garcia's behalf. I asked him to which questions he was referring and he said he submitted a number of responses for the record on Friday (June 13th) and also prior to Mr. Garcia's hearing. I told him that he should have coordinated those responses with the OIG because his responses, as described to me by Kevin Landy on the 13th, were not accurate. He said his answers were accurate, mine were not, and this inconsistency would only make me and the OIG ''look bad.'' I told Wallace that no one had ''directed'' Garcia or anyone else as to what to say and I was not going to state otherwise. He said we had directed Garcia in the form of Mr. Reback's email to Lucy Clark and I disputed that claim. He became quite angry and demanded that we make our responses consistent with his. I told him that he would not be in this situation if he had cleared his answers with the OIG prior to submission. I further said it is not a good idea to speak for the OIG; that is our job. He insisted that ''direct'' is the same thing as ''ask'' if it comes from the OIG and I told him that was not correct and that it was not his right to interpret what he thought the OIG meant. Further, I told Wallace that Mr. Reback's email was clear as to the position of the OIG. The conversation ended as abruptly as it had begun.

(f) Did the individual show you or describe to you my questions to Mr. Garcia or the answers he had given or proposed to give? If so, what did he say about them?

Response: Mr. Wallace did not share any prior responses with me. I saw responses for the first time on the morning of June 17th, which were not correct and were not ultimately submitted to the committee. Those responses were to questions Wallace said he received from you sometime between the 13th and the 16th. He did orally confirm during our conversation of the 16th that he was being questioned by you, in writing, as to responses he submitted on Mr. Garcia's behalf on the 13th, because I told him I understood that he had submitted questions that we had not seen.

(g) Did you tell the individual with whom you spoke that the IG's office had not ''directed'' Mr. Garcia not to respond to questions about the Texas matter?

Response: Yes, I was very adamant on that point and that was why he called me on June 16th. He said we needed to be consistent with responses he had already submitted and that we had ''directed'' Mr. Garcia not to answer questions. I told Wallace that was flat-out incorrect and no one in the OIG had had any communication with Mr. Garcia, let alone ''directed'' him on any matter, nor did we know until the 13th (from Kevin Landy to me) that any questions had been submitted in the first place.

(h) What did you tell the individual with whom you spoke about whether the IG's office had authority to give such a direction?

Response: I told Wallace that he well knew from his time in the OIG community (he previously worked at FEMA) that an OIG cannot direct anyone (other than OIG employees) to do anything.

(i) What did that individual ask you to do or say?

Response: Wallace demanded that we assist him in drafting responses to new questions he had received because it was our fault he had gotten the questions. He said it was the OIG's fault that Mr. Garcia was now in this situation because we were not consistent in our responses.

(j) What did you say in response?

Response: I told Wallace that if we had seen his draft responses before he sent them then we could have prevented him from using such a poor choice of language. Prior coordination would have resulted in consistent responses.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: Mr. Wallace left DHS employ on June 18th. He advised Mr. Reback that he had accepted a position as Deputy Campaign Manager for the President's re-election campaign.

Sincerely,

ELIZABETH M. REDMAN,
*Assistant Inspector General for Investigations, Office of Inspector General, Department of Homeland Security.*

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DEPARTMENT OF HOMELAND SECURITY, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,
*Washington, DC, July 30, 2003.*

Hon. JOSEPH LIEBERMAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR LIEBERMAN: This letter is in response to your letter of July 8, 2003, requesting further clarification regarding information previously provided in response to questions for the record involving the Air and Marine Interdiction Coordination Center.

Please find enclosed responses to each of your questions. Thank you for the opportunity to address your further questions regarding this matter. I would be happy to discuss this matter with you further if you feel such a meeting would be helpful.

Sincerely,

MICHAEL J. GARCIA,
*Acting Assistant Secretary.*

Enclosure.

(1) On May 30, 2003, when you first responded to my questions that because BICE had referred the underlying issues to the Office of the Inspector General, ''it would be inappropriate to offer comment on the questions above,'' did you believe you had been ''directed'' by the IG's office not to answer the questions? If so, what was the basis for that belief? Who told you about such direction and when?

Response: I think it would be helpful in clarifying the record to set forth the responses made to your inquiries regarding the Air and Marine Interdiction Coordination Center (''AMICC'') and in doing this to detail the substance and chronology of those answers and the basis for the position taken.

On May 30, 2003, I responded to the first set of questions regarding events at AMICC by stating that the matter had been referred to the Inspector General and that ''[t]herefore it would be inappropriate to offer comment on the questions above.'' At this time I based my statement on the fact that this was a potential criminal investigation and on my experience as a Federal prosecutor. In sum, I was motivated by the belief that it would be inappropriate to offer my comments on this ongoing IG matter. I was also aware that before the House Select Homeland Security Committee on May 20, 2003, Secretary Ridge had stated, ''we thought it was very appropriate, based on the multiple inquiries that we received from members of Congress, including yours, that we deploy the means with which Congress has given us. And that's an inspector general within our department.'' He went on to say ''. . . it's not appropriate to be passing that information out right now'' when referring to a request to release the audiotapes. My responses were reviewed by the Department of Homeland Security prior to being sent to the Committee. On June 2, 2003, I was interviewed by staff members for the Committee. At that time, Minority Counsel asked me about my May 30 answers to the AMICC questions, specifically my basis for declining to answer with specifics. I explained that I based this response on my experience as a prosecutor and my concern about commenting on an ongoing, potentially criminal, investigation. Minority Counsel disagreed with this analogy—my experience as a Federal prosecutor—and stated that the law regarding inquiries by Congress made such comment possible. I replied that I was not aware of that legal authority.

As a result of the statements by Minority Counsel and the continuing interest in this area of inquiry by the Committee as manifested by his questions, I asked my Principal Legal Advisor to get clarification. I understood that he worked through Lucy Clark, Chief Legal Counselor to DHS. I used this avenue of communication with the IG—through counsel—given that the most appropriate medium for communicating with an agency conducting an ongoing criminal investigation into activities by a component of my agency is through legal counsel.

A subsequent e-mail (previously provided to the Committee) authorized by the Office of Inspector General stated: ''Attached is the language Mr. Garcia can use if questioned on the Texas State legislators issue.'' The attachment read: ''My office referred this matter to the Department's Office of Inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them.'' I received a copy of this e-mail prior to my confirmation hearing on June 5, 2003. It is my understanding that the OIG counsel who provided this e-mail knew that this guidance was being sought in the context of my confirmation hearing. I also received confirmation from Lucy Clark that it would be inappropriate to make any comments and I should refer any questions on this matter during the confirmation process to the OIG. (See Letter from Lucy Clark to Senator JOSEPH LIEBERMAN, dated June 16, 2003). The

AMICC matter was not raised at the June 5, 2003 hearing.

On June 13, I submitted responses to your post-hearing questions. At that time, in response to the question regarding why I believed it inappropriate to comment, I responded, ''I received direction from the Inspector General's (IG's) Office to refer all inquiries regarding this matter to that office.'' In response to the next question, ''Did the Office of the Inspector General ask you not to comment?'' I responded, ''As noted above, the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office.'' I based these answers on the e-mail from the IG counsel referenced above which stated that the OIG ''has asked that any question relating to this matter be directed to them'' as well as the guidance from Lucy Clark, who I knew to be in contact with the IG's office, that it would be inappropriate to make any comments on this matter during the confirmation process other than to refer such questions to the OIG. These answers were again cleared at the Department level.

Later that evening of June 13, 2003, I received additional questions on this issue. Those questions referenced a conversation between your staff and the OIG to the effect that referring questions to the OIG regarding an OIG criminal investigation was not consistent with the policy of the OIG and that the Assistant IG conducting the investigation had stated that no one at the IG's office had ever had any communications with me. You then posed several questions related to this ''contradiction.''

I responded to the first question related to any communications with the IG's office by providing the e-mail discussed above and outlined the method of communication I used to obtain that guidance, namely through my Principal Legal Advisor and the DHS Chief Legal Counselor. While I never had any direct communication with the OIG on this matter, the communication from the OIG's Chief Counsel clearly was intended as guidance for ''Mr. Garcia'' in the confirmation process. I also noted that my answers were cleared through the Chief Legal Counselor for DHS based upon her understanding of her direct communications with the OIG.

This round of questions raised for the first time an issue with respect to the clear guidance offered by that OIG e-mail and the Chief Legal Counselor. Let me state that I believe that this guidance was the topic of much discussion, at the time, in order to attempt to ensure a coordinated approach to Congress. I understood that my Principal Legal Advisor, as well as Tim Haugh of my Congressional Affairs Office, discussed the issue of referring to the OIG questions regarding the investigation with the OIG Chief Counsel in order to clarify the position and to insure that the responses were accurate. At this time, I also answered the substantive questions about the AMICC matter. My understanding is that both the OIG's Chief Counsel and the Assistant IG assigned to investigate this matter agree that the June 16 responses are accurate with respect to communications with that office.

(2) According to Richard Reback, Counselor to the Acting Inspector General, Lucy Clark, the DHS Chief Legal Counselor, first called him on the afternoon of June 2, 2003, and spoke with him a final time on June 4, 2003. On June 4, Mr. Reback sent Lucy Clark the e-mail which you provided to the Committee on June 16.

(a) Were you aware of these conversations between Lucy Clark and Richard Reback? If so, when did you learn of the conversations, from whom, and what were you told about the conversations?

(b) Did you ever see the text of the e-mail that Mr. Reback sent on June 4? If so, when did you first see it, who showed it to you, and how did you interpret the guidance it contained?

Response: I was aware that Lucy Clark was in contact with Richard Reback prior to my June 5 confirmation hearing. Prior to my June 5 confirmation, I received a copy of this e-mail, I believe through my Principal Legal Advisor. On advice of DHS counsel, I interpreted this e-mail and the guidance that it would be inappropriate to answer any questions other than to refer the questioner to the OIG as directed in the e-mail.

(3) On what did you base your statement that you had been directed not to answer the questions?

Response: I based my answer on the e-mail from the OIG counsel stating that I should respond to questions by stating ''The OIG has asked that any questions relating to this matter be directed to them,'' and on advice of the Chief Legal Counselor that ''in the context of his confirmation hearing, the OIG responded [in response to a request from the Office of General Counsel] that Mr. Garcia should refer all questions related to this matter to the OIG.'' Moreover, I was advised ''it would be inappropriate for him to make any comments on this matter during the confirmation process other than to refer such questions to the OIG.'' (See, Letter of Lucy Clark, Chief Legal Counsel to DHS, to Senator Joseph Lieberman, dated June 16, 2003.)

(4) Lisa Redman says she told Mark Wallace on the morning of June 16 that he had misrepresented the position of the Office of the Inspector General in preparing your earlier answers. She refused his request to change her responses to make them consistent with your answers. The answers you submitted later that night did not reflect this conversation, but instead held to the answers the IG's office had rejected. The questions I sent you on June 13 specifically noted that the IG's office had denied having the communications you earlier described.

(a) Were you ever aware of the conversation between Mark Wallace and Lisa Redman? If so, when did you learn of the conversation, from whom, and what were you told about the conversation?

Response: At some point on June 16, I became aware that the ICE Principal Legal Advisor was engaged in conversation with the Office of Inspector General and was in contact with the Department's Chief Legal Counselor. I was not aware of the substance of the particular conversation referenced in your July 8 questions. I was aware of the conflicting interpretations of the OIG policy as outlined in your June 13 letter. As I understood it, the point of the conversations between the Department's Chief Legal Counselor, my Principal Legal Advisor, and the Office of Inspector General were aimed at clarifying the OIG position regarding questions related to the Texas matter and to ensure that the answers submitted on June 16 were accurate. I understand that the OIG agrees that the June 16 answers are accurate.

(b) Why did you claim in your answers of June 16 that Mr. Reback's e-mail was the basis for your understanding that you had been ''directed'' not to answer questions on the Texas matter, despite Lisa Redman's disavowal of that claim?

Response: Mr. Reback's earlier e-mail (stating that I could use the following questions if asked about the State legislator issue: ''The Office of Inspector General (OIG) has asked that any questions relating to this matter be directed to them.'') was the primary basis for my earlier answers, in addition to the guidance of the Department's Chief Legal Counselor. At the time I answered the June 13 questions, I had no indication that Ms. Redmon or anyone else at the OIG interpreted that guidance in any other way nor, given the plain language of that text, did I have any reason to do so. The June 16 questions were directed to the basis for my June 13 answers. I understand that Ms. Redmon of the OIG did not express her view regarding OIG policy until June 16—not June 13 as she had erroneously claimed previously.

(c) Why did your answers of June 16 refer to the e-mail Lucy Clark received from Richard Reback, but fail to mention the conversation Mark Wallace had with Lisa Redman?

Response: The e-mail from Reback appeared to state plainly the OIG position (''The Office of Inspector General (OIG) has asked that any questions relating to this matter be directed to them.''). At no time prior to June 16 did I have any indication that Ms. Redmon interpreted that guidance to mean I was free to answer questions based upon my personal knowledge or what others had said to me. Nor was such leeway in any way apparent from the text of the e-mail. My June 16 answers were in response to questions aimed at tracking the basis for my June 13 responses (and as stated the basis for those was the Reback e-mail and guidance from Lucy Clark).

Please indicate whether you are aware of any other person employed by the IG's office discussing this matter with you or with DHS personnel acting on your behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred, and, to the extent you know, the contents of the discussion.

Response: No, only Lisa Redman and Richard Reback.

(6) What role did Mark Wallace play in drafting each set of your written answers? Who else contributed to the drafting of the answers relating to this matter? What efforts did you make to independently confirm the accuracy of the answers you provided on May 30, June 13, and June 16 with respect to the Texas matter?

Response: as stated, following standard procedure, the written answers like all testimony were cleared through the following DHS offices: Legislative Affairs, Office of General Counsel, and Office of the Secretary. Additionally, ICE Legislative Affairs (Tim Haugh, Acting Director, and ICE Legal (Mark Wallace, Principal Legal Advisor) reviewed the draft answers. In answering the questions related to the Texas matter, I relied upon the advice of legal counsel, the OIG e-mail, and the fact that the answers were ''cleared'' through DHS.

(7) With respect to each of the answers you provided on May 30, June 13, and June 16 relating to the Texas matter, do you now believe the answers you submitted were accurate? Please explain the basis for your conclusions.

Response: Yes—for the reasons explained above.

Based on what you now know, do you still believe that ''the IG's office directed that it would not be appropriate to comment on this issue''? If so, how do you explain the statements to the contrary by officials from the Office of the Inspector General? Please explain the basis for your conclusion.

Response: The Office of Inspector General stated in an e-mail in response to a request for guidance as follows: ''Attached is the language Mr. Garcia can use if questioned on the Texas State legislators issue.'' The attachment read: ''My office referred this matter to the department's Office of inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them.'' I believe that I took the appropriate step by having counsel seek guidance from the AMICC

regarding the appropriate answer to questions related to an investigation the OIG was conducting. Given that the OIG guidance at the time ''asked'' for question to be ''directed to them'' and an OIG only subsequently suggested different guidance, I believe that directing questions to the OIG was appropriate at the time. I also believe that better communication between OIG and ICE, especially when presented with an inquiry from Congress, is critical and I am committed to facilitating such communication in the future.

(9) Both the IG's Counsel and the Assistant IG for Investigations have stated that they don't have the authority to direct a Department employee not to answer Congressional inquiries. Do you still believe that an IG's office has the authority to direct you not to provide information to Congress? If so, what is the legal basis for that claim?

Response: I will be guided by the OIG's interpretation regarding its authority and will ensure proper coordination with that office.

(10) As you may know, Congress has frequently conducted inquiries into agency matters in which there were also IG investigations. Do you nevertheless believe that the pendency of an IG investigation precludes you or other agency officials from responding to Congressional information requests? If so, what is the legal basis for that claim?

Response: I would be guided by the OIG with respect to commenting on such matters. Again, I believe better internal coordination on this issue would avoid any conflict in providing responsive answers to Congress.

(11) Please provide any additional information you believe might be helpful to clarify the Committee's record on this matter.

Response: I would add that at all times in responding to your questions I was guided by a sincere desire not to in any way interfere with an ongoing criminal investigation, one of high sensitivity and one which I had referred to the IG. At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. I responded based upon what I reasonably believed was the guidance from the OIG and counsel. I would be happy to discuss this matter with you further if you feel that such a meeting would be helpful.

Mr. FRIST. Mr. President, as the 108th Congress draws to a close, I would like to take a few moments to reflect on the tremendous progress this Senate has made in moving America forward. Leading the Senate is an honor and a pleasure, made all the more so by working with such talented people. I thank my fellow Senators for their dedication. It has been an exceptional legislative year.

Back in January, we set an ambitious agenda. We resolved to put the economy back on track; lend critical support to the war on terror; and promote public health here at home and abroad. Our mission was to expand freedom and opportunity, and strengthen America's security.

In 11 short months we have made major strides towards those goals. And we did so by respecting the longstanding Senate values of civility and trust, by building strong and reliable relationships, and by committing ourselves to action. Each of us can go home this holiday season proud of our accomplishments.

We first set to work passing spending bills left undone by the previous Congress. We passed 11 of those bills in just 3 weeks.

We also passed a budget to establish a blueprint for creating jobs, investing in homeland security and education, providing Medicare prescription drug coverage and offering health insurance for our most vulnerable citizens, America's children.

With that unfinished business of the last Congress complete, we turned our attention to the President's jobs and growth agenda.

Under the President's leadership, we passed $350 billion in tax relief, the third largest tax cut in history. We cut taxes, across the board, for 136 million hard-working, tax-paying Americans.

For America's families, we increased the child tax credit from $600 per child to $1000 per child, and made sure that money was sent out right away. As a result, this summer, 25 million families received checks from the United States Treasury of up to $400 per child. In total, we returned $13.7 billion to families across the country.

But that was just the start.

Under the Jobs and Growth Act of 2003, a family of four making $40,000 will see their taxes reduced by $1,133 this year.

Of the $350 billion in tax cuts and fiscal relief, nearly $200 billion, fully 60 percent, is provided this year and next.

Some critics of the tax cut say $1,300 is not a lot of money, that it would not make much difference if the bureaucrats took it away again. Tell that to the family working hard to raise their children, keep up with household expenses, and have a something left over for a family vacation. I am fairly certain the United States Treasury did not get a flurry of child tax credit checks in the mail from families who said they didn't need it.

Small business owners, too, got a major boost from the tax package. Twenty-three million small business owners who pay taxes at the individual rate saw their taxes lowered. And we quadrupled the expense deduction for small business investment.

Small business owners are the heart of the American marketplace. Workers and consumers depend on the small business sector to generate jobs, products, and services. These innovators create 60 to 80 percent of new jobs nationwide, and they generate more than 50 percent of the gross domestic product.

By cutting their taxes and encouraging investment, we have helped unleash their tremendous economic power.

Taken together, this year's tax cut and the tax cuts of 2001 are providing an astonishing $1.7 trillion in tax relief over the next decade. And we are already beginning to see the results. We are now in the midst of a strong economic recovery. Consumers have more money in their pockets. And businesses are, once again, optimistic about the direction of the economy.

Economic growth in the third quarter soared at an incredible 8.2 percent annual rate. This is the largest third quarter increase since 1984.

Real disposable income is up 7.2 percent for the third quarter, and consumer spending is up a whopping 6.6 percent, the biggest third quarter growth since 1988.

Last month, sales of previously owned homes hit their third-highest level on record. The National Association of Realtors reports that previously owned home sales rose 3.6 percent to a record annual rate of nearly 7 million units in September. Meanwhile, housing starts are nearing a 17 year high.

The association credits this phenomenal growth to ''the powerful fundamentals that are driving the housing market, household growth, low interest rates and an improving economy.''

This is great news for America's families and for America's businesses. When a family buys a home, that not only benefits the community, it sets off a chain of purchases that fuel the economy: living room furniture, kitchen appliances, washer and dryer, and on and on. In short, many other industries benefit from the one family's momentous and gratifying decision to buy a home.

Not only is individual consumption up, the business sector is showing impressive signs of recovery, as well. Nonresidential investment is up more than 10 percent. Business investment went up 11.1 percent in the third quarter, and productivity soared by 8.1 percent, its highest level in two decades.

Businesses are rebuilding their inventories and retooling their factories. And all of this economic activity is ultimately leading to more jobs. Indeed, the labor market appears to be stabilizing and the economy is finally creating much needed jobs.

Over the past 3 months, 286,000 new jobs have come on line. In October alone, 126,000 jobs were added.

Meanwhile, since the tax cut, initial claims for unemployment insurance have gone down more than 10 percent. For the seek ending November 1, unemployment claims hit a 34-month low. There is more progress to be made on this front, but we are on our way towards putting Americans back to work.

And, finally, there is good news for individual State treasuries. Their budget gap of nearly $20 billion at the beginning of last fiscal year has now declined to a budget gap of less than $3 billion for the beginning of this fiscal year. States are beginning to see ''revenue surprises'' in their estimates.

Consumers and businesses, alike, are optimistic about the America's economic direction. Inflation and interest rates are low. American taxpayers have more of their hard earned money to spend and save as they choose.

We will continue to champion policies that strengthen the economy and create jobs. We will continue to pursue fair and free trade policies that increase consumer buying power and stoke the economic furnace.

This session we passed the free trade agreements with Chile and Singapore.

Simultaneously, export grew 9.3 percent in the third quarter, another marker of our renewed economy.

We will continue to fulfill our mission to maximize freedom and expand opportunity.

Which leads me to national security. Our mission to expand freedom and opportunity applies not just to our economy, but to our national security, as well. Freedom cannot find its fullest expression under the threat of terror. But, likewise, terror can not spread where freedom reigns.

That is why, this year, America took the extraordinary action of toppling Saddam Hussein and his terrorist-sponsoring regime. In 3 short weeks, the men and women of the United States military, with the support of 49 nations, swept to Baghdad, ending three decades of ruthless Ba'ath Party rule and support for terror.

In the months since, our soldiers have worked tirelessly, under dangerous conditions, to help the Iraqi people build a democracy.

Our soldiers have rebuilt schools, hospitals, electrical grids, pipelines, and roads. They are training Iraqi police forces to patrol the streets and hunt down terrorists. Everyday, our troops are helping the people of Iraq and Afghanistan move toward becoming free and open societies.

To support their efforts, we passed the President's $87 billion war supplemental. We did so because we recognize that investing in the future of Iraq and Afghanistan is an investment in our security. September 11 taught us a cruel lesson. We learned that we cannot wait while storms gather. As the President has said, ''the Middle East region will either become a place of progress and peace, or it will remain a source of violence and terror.''

This Senate took bold action to support the war on terror because we are determined that progress and peace take root.

The Middle East is not the only region where we are working to bring stability. This session, we passed the Burmese Freedom Act and the Clean Diamond Act.

And we also took the historic action of dedicating $15 billion to drive back the HIV/AIDS virus.

As a Senator, as a doctor, and as a medical missionary, I am especially gratified by the Senate's demonstration of compassion on this issue. Millions of lives around the world have been cut short by the scourge of one tiny virus. Countries have seen entire swaths of their populations wiped out and children orphaned, because of the HIV virus that causes AIDS.

By passing the Global HIV/AIDS bill, we help to prevent 7 million new infections; provide antiretroviral drugs for 2 million HIV-infected people; care for 10 million HIV-infected individuals and AIDS orphans; and bring hope to millions of people around the world who are living in the shadow of this devastating disease.

Our work in passing this critical legislation demonstrates that we are a country that places a high value on life. History will judge how we chose to respond. We can proudly say that we made the right choice and took the necessary actions to put an end to one of the worst plagues in recorded history.

We also made the right choice to end partial birth abortion. Partial birth abortion is a fringe procedure. It is not taught in medical schools. And now, it never will be. With an overwhelming majority, we voted to end an immoral procedure, and said ''yes'' to life.

Indeed, this Senate can be proud of our efforts to protect the most vulnerable among us. In January, we passed legislation to establish a national AMBER Alert. Law enforcement will now have another tool to work with the public to find missing children. In June, we passed legislation to protect victims of child abuse. We also voted to extend welfare reform to help lift families out of poverty.

But perhaps the most historic and far reaching legislative accomplishment of the 108th Senate happened this morning, when an overwhelming, bipartisan majority voted to enact prescription drug coverage for our nation's 40 million seniors and individuals with disabilities.

For the first time in its 40-year history, Medicare will offer true, comprehensive health care coverage. This worthy program will finally be able to keep pace with modern medicine.

I am deeply thankful for the cooperation, hard work and dedication of my colleagues to overcome years of partisan gridlock and finally offer America's seniors the security they need and the choices they deserve.

Medicare reform, the Jobs and Growth tax cuts, the Iraqi war supplemental, the global HIV bill—we set our sights high and we more than exceeded expectations.

We are moving America forward, and we will continue to do so in the coming months. There is much yet to be done.

Critically, we must pass the energy bill. We have been debating national energy for three years. During the last Congress, we spent a total of 7 weeks debating energy on the Senate floor. In this Congress, we spent more time debating energy than any other bill. And yet, despite all of this, a few in the Senate continue to obstruct progress. And while they insist on more debate, natural gas prices continue to rise.

U.S. chemical companies are closing plants, laying off workers, and looking to expand production abroad. The U.S. is expected to import approximately $9 billion more in chemicals than it exports this year. American consumers are getting hit with higher electric bills, and small businesses are struggling to contain costs. All because of rising energy prices. We must pass the energy plan.

Not only will it lower prices, it will save jobs and create thousands more. It is estimated that this energy package will create at least half of a million jobs. The Alaskan pipeline alone will create at least 400,000. The hundreds of millions of dollars that will be invested in research and development of new technologies will not only benefit the environment, but will create new jobs in engineering, math, chemistry, physics, and science.

We cannot allow the obstruction of a few in the Senate continue to harm the interests of millions of Americans. And I use the word ''obstruction,'' because we have seen it used to an alarming degree in this Congress, nowhere more so than in the consideration of the President's judicial nominees.

Only 2 weeks ago, we had an historic, around the clock, 40 hour debate. And after 40 full hours of debate, the minority continued to block an up or down vote. This is partisan obstruction pure and simple. A minority of Senators is denying all 100 our Constitutional duty to advise and consent.

When we return in January, we will continue to press this issue. Nothing less than the United States Constitution is at stake.

We will also continue to press for policies that expand and strengthen our economy. This session, we passed smart, pro-growth fiscal policy. We are already beginning to see the results. But there is still much to do.

Frivolous lawsuits are clogging the State courts, wasting taxpayer dollars, and inhibiting the innovation and entrepreneurship so critical to creating jobs. When it comes to medical malpractice, frivolous lawsuits are destroying access to quality health care and, literally, imperiling lives.

America is country that values fairness, and we will return fairness to the litigation process.

We will also work to return fairness to the tax system. We will continue to press for reforms that simplify the tax code. Tax payers shouldn't have to hire a consultant to file a tax return.

We will also begin the exciting work of constructing the long awaited National Museum for African American History and Culture. America will finally have a museum worthy of America's sons and daughters who sacrificed so much and have given so profoundly.

There is much more to do in the year ahead, and I will speak to that when we resume in January.

Each day I walk into this great institution, I am humbled and inspired, humbled by the great men and women who have come before, and inspired by their example.

In his 1862 address to Congress, President Lincoln told the assembled legislators that America is the world's last, best hope. Those words have never been more true than they are today. I am confident that we will face the challenges ahead with honor and courage, for the simple reason that we are Americans.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

## ORDERS FOR TUESDAY, DECEMBER 9, 2003

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 9. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

## PROGRAM

Mr. McCONNELL. The Senate will reconvene on Tuesday, December 9, and it is our hope that we will be able to consider the omnibus appropriations conference report that day. The conference report has been filed and this will give ample time for Members to review that measure. We will also consider any legislative or executive items that can be cleared by unanimous consent. I hope among those will be some of these 95 innocent nominees who were caught up in the obstructionism in the Senate. Hopefully, during the Thanksgiving recess, we will come back with a different attitude and clear the nominees. One issue we need to address is the pension rate bill, and we will continue to work toward finishing that bill when we return.

I will announce, no rollcall votes will occur that day. So obviously on that day what we will be able to do will be done by consent.

We wish everyone a pleasant Thanksgiving holiday and hope when we come back on December 9 we will be able to do some of the Nation's unfinished business.

## ADJOURNMENT UNTIL TUESDAY, DECEMBER 9, 2003, AT 10 A.M.

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 339.

There being no objection, the Senate, at 6:15 p.m., adjourned until Tuesday, December 9, 2003, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate November 25, 2003:

### DEPARTMENT OF TRANSPORTATION

LINDA MORRISON COMBS, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE DONNA R. MCLEAN, RESIGNED.

### SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

JACK EDWIN MCGREGOR, OF CONNECTICUT, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION, VICE VINCENT J. SORRENTINO.

SCOTT KEVIN WALKER, OF WISCONSIN, TO BE A MEMBER OF THE ADVISORY BOARD OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION, VICE ANTHONY S. EARL.

### DEPARTMENT OF THE TREASURY

MARK J. WARSHAWSKY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE RICHARD CLARIDA, RESIGNED.

### INTER-AMERICAN FOUNDATION

ROGER W. WALLACE, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 2008, VICE FRED P. DUVAL.

### THE JUDICIARY

MARCIA G. COOKE, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA, VICE WILKIE D. FERGUSON, JR., DECEASED.

CURTIS V. GOMEZ, OF VIRGIN ISLANDS, TO BE JUDGE FOR THE DISTRICT COURT OF THE VIRGIN ISLANDS FOR A TERM OF TEN YEARS, VICE THOMAS K. MOORE, TERM EXPIRED.

### IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be colonel*

DAVID S FEIGIN, 0000
VICTOR B LEBEDOVYCH, 0000
ROBERT A VIGERSKY, 0000

*To be lieutenant colonel*

ANTONIO G BALINGIT, 0000
LEON R BYBEE, 0000
CRAIG HARTRANFT, 0000
DEAN A INOUYE, 0000
JEROME H KIM, 0000
WILLARD F QUIRK, 0000

*To be major*

DIANE DEVITA, 0000
JOHN E HARTMANN, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be lieutenant colonel*

JOSEPH L. CRAVER, 0000
WILLIAM HANN, 0000

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY CHAPLAIN CORPS UNDER TITLE 10, U.S.C., SECTIONS 531,AND 3064:

*To be major*

CAROL ANN MITCHELL, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTIONS 531, AND 3064:

*To be major*

CAROL A. BOSSONE, 0000

*To be captain*

ROBERT S. DOLE, 0000
CHRISTOPHER S. GAMBLE, 0000
CURTIS M. KLAGES, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

CONSTANCE A BELL, 0000
ROBERT C CONRAD, 0000
EMERY B FEHL, 0000
RICHARD GONZALES, 0000
VICKIE L TUTEN, 0000
HOBERT W WELLS III, 0000

*To be captain*

MICHAEL V ARNETT, 0000
DREW G BELNAP, 0000
JOHN H BODEN, 0000
MATTHEW A BORGMAN, 0000
ALEXANDER W BROWN, 0000
CRAIG M BUSH, 0000
MICHAEL S CAHILL, 0000
BRIAN J CARR, 0000
MATTHEW S CHAMBERS, 0000
STUART J COHEN, 0000
ROBERT J CORNFELD, 0000
CARLOS E CORREDOR, 0000
MARK S CRAIG, 0000
KEVIN M CRON, 0000
KEVIN L CUMMINGS, 0000
DAVID A DJURIC, 0000
PATRICK A GARLAND, 0000
ANDREW R GILBERT, 0000
WILLIAM P GORDON JR., 0000
KARA M HACK, 0000
JORDAN M HALL, 0000
BRANDON G HAMILTON, 0000
TRISTAN M HARRISON, 0000
NATHAN E HARTVIGSEN, 0000
CHRISTOPHER C HIGGINS, 0000
THOMAS N HOFFMANN, 0000
JOHN D HORTON, 0000
BRUCE L JAMES, 0000
BRYAN M JOHNSON, 0000
ERIK R JOHNSON, 0000
ANDREW KAGEL, 0000
THERESA A KEHL, 0000
MICHAEL J KILBOURNE, 0000
CAMILO Y KIM, 0000
EUGENE H KIM, 0000
ADRIAN T KRESS, 0000
MICHAEL J LICATA, 0000
JEFFREY R LIMJUCO, 0000
JEFFREY R LIVEZEY, 0000
ROMARIUS L LONGMIRE, 0000
ERIK S MANNINEN, 0000
ALEX J MCKINLAY, 0000
BRIAN C MCLEAN, 0000
MARCY MEYER, 0000
PAUL M MICHAUD, 0000
CHRISTOPHER S MURPHY, 0000
DAYNE M NELSON, 0000
PHU T NGUYEN, 0000
ROBERT L OAK, 0000
JOSHUA C PACKARD, 0000
JISOO PARK, 0000
JENNIFER H PERKINS, 0000
MICHAEL P PERKINS, 0000
NADER Z RABIE, 0000
HIPOLITO C REY, 0000
JAMIE C RIESBERG, 0000
JOSHUA S RITENOUR, 0000
THOMAS M ROUNTREE, 0000
DENNIS M SARMIENTO, 0000
DANIEL C SESSIONS, 0000
BENJAMIN H SMITH, 0000
DARREN C SPEARMAN, 0000
KAREN B TARM, 0000
DANIEL J TOLSON, 0000
CHRISTOPHER J TUCKER, 0000
AMY E VERTREES, 0000
DUVEL W WHITE, 0000
TODD A WICHMAN, 0000
SCOTT G WILLIAMS, 0000
AGNIESZKA O WOJCIEHOWSKI, 0000
DAVID A WONDERLICH, 0000
KIMBERLY J WONDERLICH, 0000
YANG XIA, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

DANIEL G RENDEIRO, 0000

*To be captain*

ROGER J BANNON, 0000
WILLIAM J BOWMAN, 0000
RICHARD CAPO, 0000
MICHAEL J COOTE, 0000
GEORGE J DEVITA, 0000
MICHAEL E FRANCO, 0000
EDWARD A HAIRSTON, 0000
DANNY H HEIDENREICH, 0000
CYNTHIA A JONES, 0000
LARRY T LINDSAY, 0000
LARRY T LONG, 0000
ROBERTO E MARIN, 0000
GAIL L MAXWELL, 0000
MICHAEL K MCELHERAN, 0000
DONNA F MOULTRY, 0000
JAMES G PAIRMORE, 0000
DENIS L ROBERT, 0000
MARTIN P ROSE, 0000
RAYMOND A STERLING, 0000
RANDY B THOMAS, 0000
YUN Y UGAITAFA, 0000

*To be first lieutenant*

DIANE K PATTERSON, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be captain*

MICHAEL T ENDRES, 0000
LISA G JACKSON, 0000
DETRA T JACKSONCONNER, 0000
ROBERT E LAJERET, 0000
TERRENCE M MARK, 0000
STACEY E NAPPERREED, 0000
ANGELA R REDMOND, 0000
EDITHA D RUIZ, 0000
ROBERT D SWINFORD, 0000
PHYLLIS R SYKES, 0000

*To be first lieutenant*

JAMES A CHERVONI, 0000

### IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant commander*

CRAIG L ABRAHAM, 0000
EDWARD C AGU, 0000
ROBIN M ALLEN, 0000
BRIAN J ANDERSON, 0000
MICHAEL V BENEDETTO, 0000
FERDINAND B BEREDO, 0000
ROGER L BILLINGS, 0000
RODNEY D BLEVINS, 0000
GEORGE E BRESNIHAN, 0000
CHAD E BUERMELE, 0000
JOHN A CARDILLO, 0000
JASON R CASSANO, 0000
EDWARD M CAVINS, 0000
JAMES CHEATHAM, 0000
KEVIN E CHESHURE, 0000
TODD R CHIPMAN, 0000
WILLIAM H CLARKE, 0000
DENNIS W CONNORS, 0000
SCOTT A DAVIS, 0000
BRENT L DESSING, 0000
KIRK B DIAL, 0000
STANLEY S DIMIRACK, 0000
FREDERICK M DINI, 0000
DEBBIE R DOLIC, 0000
PAMELA C DOZIER, 0000
MICHAEL A DUBE, 0000
JOHN S DUENAS, 0000
CHIPMAN S ELLIOTT, 0000
JOSEPH C ESPINO, 0000
JAMES G FABBY, 0000
JOSE L FELIZ, 0000
TERREL J FISHER, 0000
JASON B FITCH, 0000
KENNETH L FLAHERTY, 0000
PHILLIP K FRAME JR., 0000
NATASHA A GAMMON, 0000
MARK R GARRIGUS, 0000
EDMOND J GAWARAN, 0000
JAMES R S GAYTON, 0000
TONY V GILES, 0000
TRAVIS N GOODWIN, 0000
TROY M GRONBERG, 0000
ANTONIO B HARLEY, 0000
DOUGLAS W HAROLD, 0000
MICHAEL E HAVENS, 0000
TERENCE B HAYES, 0000
JULIE M HUNTER, 0000
JEFF T IHLENFIELD, 0000
MICHAEL N JEFFERSON, 0000
HOMER L JOHNSON JR., 0000
JAYSON E KIELAR, 0000
WALTER R LEAVY, 0000
WILLIAM N LI, 0000
JADON LINCOLN, 0000
JOHN S LUGO, 0000
DOUGLAS S MACKENZIE, 0000
ALEXANDER S MAITRE, 0000
JEFFERSON E MCCOLLUM, 0000
JOSEPH A MCGAHA, 0000
WILLIAM P MCKINLEY, 0000
GARY MILTON, 0000
THOMAS J NEVILLE III, 0000
COLIN J OBRIEN, 0000
ARVIS OWENS, 0000
ROBERT D PEREZ, 0000
CRAIG A RETZLAFF, 0000
MARK A REYES, 0000
WILLIAM M REYNOLDS, 0000
DAVID J RHONE, 0000
MARK C RICE, 0000
KIMBERLY C ROBERTSON, 0000
CHRISTOPHER M RODRIGUES, 0000
JOAQUIN A SANCHEZ, 0000
JOSE L SANCHEZ, 0000
TERRENCE SIMMONS, 0000
LANDON C SMITH JR., 0000
DONALD M STYER, 0000
JOHN G TENCER III, 0000
JOEL D M TIU, 0000
AARON S TRAVER, 0000
MILTON W TROY III, 0000
JAY S TUCKER, 0000
DENNIS J TURNER, 0000
MARCO A TURNER, 0000
DONALD C TYER, 0000
LEROY H WEBER, 0000
KEITH A WEIDENBACH, 0000
BRETT K WILCOX, 0000
ROBERT R WINTERS, 0000
CHRISTOPHER M WISE, 0000
JOSEPH P WOODS, 0000
SARAH L WRIGHT, 0000

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. FRANK R. CARLINI, 0000

THE JUDICIARY

JUAN R. SANCHEZ, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE JAY C. WALDMAN, DECEASED.

## CONFIRMATIONS

Executive nominations confirmed by the Senate November 25, 2003:

DEPARTMENT OF HOMELAND SECURITY

MICHAEL J. GARCIA, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY.
JAMES M. LOY, OF VIRGINIA, TO BE DEPUTY SECRETARY OF HOMELAND SECURITY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSULTED COMMITTEE OF THE SENATE.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. WILLIAN WELSER III

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COLONEL PAUL F. CAPASSO
COLONEL FLOYD L. CARPENTER
COLONEL WILLIAM A. CHAMBERS
COLONEL PAUL A. DETTMER
COLONEL DAVID K. EDMONDS
COLONEL JACK B. EGGINTON
COLONEL DAVID J. EICHHORN
COLONEL DAVID W. EIDSAUNE
COLONEL BURTON M. FIELD
COLONEL ALFRED K. FLOWERS
COLONEL RANDAL D. FULLHART
COLONEL MARKE F. GIBSON
COLONEL ROBERT H. HOLMES
COLONEL STEPHEN L. HOOG
COLONEL LARRY D. JAMES
COLONEL RALPH J. JODICE II
COLONEL JAN MARC JOUAS
COLONEL JAY H. LINDELL
COLONEL KAY C. MCCLAIN
COLONEL ROBERT H. MCMAHON
COLONEL STEPHEN P. MUELLER
COLONEL WILLIAM J. REW
COLONEL KATHERINE E. ROBERTS
COLONEL KIP L. SELF
COLONEL MICHAEL A. SNODGRASS
COLONEL DAVID M. SNYDER
COLONEL LARRY O. SPENCER
COLONEL ROBERT P. STEEL
COLONEL THOMAS J. VERBECK
COLONEL JAMES A. WHITMORE
COLONEL BOBBY J. WILKES
COLONEL ROBERT M. WORLEY II

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. STEPHEN L. LANNING

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIGADIER GENERAL ROBIN E. SCOTT

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. LARRY J. DODGEN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. JOHN M. CURRAN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIG. GEN. KEITH M. HUBER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIG. GEN. DENNIS E. HARDY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIG. GEN. JAMES R. SHOLAR

*To be brigadier general*

COL. HENRY J. OSTERMANN

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

REAR ADM. WALTER B. MASSENBURG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral*

REAR ADM. (LH) ROBERT E. COWLEY III
REAR ADM. (H) STEVEN W. MAAS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. BRIAN G. BRANNMAN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*TO BE REAR ADMIRAL (LOWER HALF)*

CAPT. RAYMOND K. ALEXANDER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral*

REAR ADM. (LH) DONALD K. BULLARD
REAR ADM. (LH) ALBERT M. CALLAND III
REAR ADM. (LH) ROBERT T. CONWAY, JR.
REAR ADM. (LH) JOHN J. DONNELLY
REAR ADM. (LH) BRUCE B. ENGLEHARDT
REAR ADM. (LH) CHARLES S. HAMILTON II
REAR ADM. (LH) JOHN C. HARVEY, JR.
REAR ADM. (LH) CARLTON B. JEWETT
REAR ADM. (LH) MATTHEW G. MOFFIT
REAR ADM. (LH) MICHAEL P. NOWAKOWSKI
REAR ADM. (LH) HAROLD D. STARLING II
REAR ADM. (LH) JAMES STAVRIDIS
REAR ADM. (LH) MICHAEL C. TRACY
REAR ADM. (LH) JOHN J. WAICKWICZ

AIR FORCE NOMINATION OF GARY H. SHARP.
AIR FORCE NOMINATION OF JEFFREY N. LEKNES.
AIR FORCE NOMINATION OF SAMUEL B. ECHAURE.
AIR FORCE NOMINATIONS BEGINNING THOMAS E. JAHN AND ENDING RODNEY D. LEWIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 23, 2003.
AIR FORCE NOMINATIONS BEGINNING SAMUEL C. FIELDS AND ENDING KEVIN C. ZEECK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 23, 2003.
AIR FORCE NOMINATION OF ROBERT G. CATES III.
AIR FORCE NOMINATION OF MARY J. QUINN.
AIR FORCE NOMINATIONS BEGINNING CHRISTOPHER C. ERICKSON AND ENDING MARK A. MCCLAIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATION OF LANCE A. BETROS.
ARMY NOMINATIONS BEGINNING THOMAS B. SWEENEY AND ENDING PAUL L. ZANGLIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 30, 2003.
ARMY NOMINATIONS BEGINNING JOHN D. MCGOWAN II AND ENDING KENNETH E. NETTLES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATIONS BEGINNING VERNAL G. ANDERSON AND ENDING DONALD J. KERR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATIONS BEGINNING GASTON P. BATHALON AND ENDING PAULA J. RUTAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATION OF WILLIAM B. CARR, JR.
ARMY NOMINATIONS BEGINNING JOHN E. ATWOOD AND ENDING WILLIAM E. ZOESCH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATIONS BEGINNING CHERYL KYLE AND ENDING TERRY C. WASHAM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATIONS BEGINNING MICHAEL A. BULEY AND ENDING GARY M. ZAUCHA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.
ARMY NOMINATION OF GARY R. MCMEEN.
COAST GUARD NOMINATIONS BEGINNING JEFFREY L. BUSCH AND ENDING JOHN S. WELCH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 3, 2003.
COAST GUARD NOMINATIONS BEGINNING WILLIAM D. ADKINS AND ENDING MICHAEL S. ZIDIK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 3, 2003.
MARINE CORPS NOMINATION OF MICHAEL S. NISLEY.
MARINE CORPS NOMINATIONS BEGINNING LEONARD HALIK III AND ENDING ERNEST R. HINES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.
MARINE CORPS NOMINATION OF DAVID B. MOREY.
NAVY NOMINATION OF PATRICK J. MORAN.
NAVY NOMINATION OF LAWRENCE J. CHICK.
NAVY NOMINATION OF ROBERT E. VINCENT II.
NAVY NOMINATIONS BEGINNING RODNEY A BOLLING AND ENDING JAY S VIGNOLA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 3, 2003.
PUBLIC HEALTH SERVICE NOMINATIONS BEGINNING VINCENT A. BERKLEY AND ENDING JAMES A. SYMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 2, 2003.