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Senate

The Senate met at 9:30 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:

Let us pray.

O Thou great God, who made us in Your image. Thank You for creating us but little lower than the angels. Enable us to see Your divine image in every human being. Help us to look beyond poverty and pathology to the goodness even in the unlovely. Teach us to look beneath superficial differences of accents, of language, of color, and of position to see the true worth of all people.

Bless Your servants in the legislative branch of Government. Bring to the surface the goodness within each of them. As they think together and work together in the Chamber, in committee rooms, and in their offices, help them to treat others with the reverence, respect, and kindness that You desire for all of Your children.

We pray for our military men and women. Keep them safe. Give them the will to pursue mercy as well as justice. We also pray for our enemies and their loved ones. Lord, give all of us insight into Your will and the courage to do it.

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.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Democratic leader or his designee.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, we will begin today's session with a 1-hour period of morning business. Following that time, the Senate will resume debate on the emergency supplemental appropriations bill. Last night we agreed to a time limit of 40 minutes with respect to the pending Durbin amendment relating to the National Guard. If we are able to yield back some of that debate time, we would have a vote on the Durbin amendment by 10:50 this morning. If the debate continues past that point, then we will likely delay the vote on the amendment until sometime after noon today, after discussion with the Democratic leader. There are two additional pending amendments at this time, and we anticipate other amendments being offered throughout the day. Chairman COCHRAN will be here this morning to prepare to have the Senate debate and dispose of these amendments during today's session. I expect we will make considerable progress on the appropriations bill with rollcall votes as necessary over the course of the day.

Just as a reminder to our colleagues, the Secretary of State will be giving a briefing to Senators today from 3 to 4 this afternoon for those interested.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ORDER OF BUSINESS

Mr. REID. Through the Chair to my distinguished colleague, are we expected to work through the Condoleezza Rice hour?

Mr. FRIST. Through the Chair, our expectation is to work through that hour. As the Democratic leader knows, and as our colleagues should know, we are trying to do briefings on a regular basis to make the opportunity available for people to come to these briefings. We do not need to stop action on the Senate floor. So we will be working through that period.

TRIBUTE TO POPE JOHN PAUL II

Mr. FRIST. Mr. President, I wish to comment on the passing of Pope John Paul II last week. A number of us had the opportunity to represent the United States, represent this body in Rome. It was a moving experience, an emotional experience, and one that I briefly want to share.

The passing of Pope John Paul II was moving. It was a historical event that riveted the world. Millions of Catholics and non-Catholics alike were touched and influenced by this great man. He leaves an extraordinary legacy that all of us have reflected upon over the last week.

In his 26-year reign as head of the Catholic Church, the third longest pontificate in history, Pope John Paul was seen by more people than any other individual in history. He influenced more lives than many kings and presidents before him.

Together with Ronald Reagan and Margaret Thatcher, Pope John Paul helped vanquish the Soviet Union, expose the brutality of communism, and free hundreds of millions of people around the world.

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

He, indeed, was a hinge of history, one of the great leaders of the 20th century who helped make our world over on the pillars of faith, freedom, liberty, and human dignity.

As I mentioned, I had the real privilege of leading a delegation of 14 Senators to pay tribute to this great leader. We left last Wednesday. As we soared over the Atlantic, all of us shared our thoughts and stories and reflected upon the Pope's remarkable life. Not only did he live through the great upheavals of the 20th century, but he helped bring about many of its greatest achievements.

As a young man in war-torn Poland, he lived under those heavy boots of fascism and communism, and yet even then he possessed an enduring hope and commitment to man's redemption.

To our great fortune, Karol Woljtyla ascended the world's stage and, as the 264th Pope of the Catholic Church, pressed belief into global action.

In the Catholic Church, he grew its religious following from 757 million faithful when he began his papacy in 1978 to over 1 billion today.

We arrived as a delegation in Rome on Thursday morning. The weather was truly glorious that day; one might even say Heaven-sent weather—clear blue skies, sunshine, a gentle wind.

After a brief moment to organize, we went to Vatican City. As we drove along the roadways, posters lined the city walls with giant pictures of John Paul emblazoned with the words ''grazie'' and ''a dio.'' As we pulled closer to St. Peter's Square, priests, monks, pilgrims, and well-wishers from around the world, many Americans, would come up and say hello to us, all crowding those stone streets around the Basilica.

On that first day, our delegation was escorted into St. Peter's to view the Pope's body. We filed into the crowds as they passed respectfully. Many had waited hours and hours, indeed, well over 24 hours on average. They passed by bowing, saying prayers, crossing themselves, and waving small papal flags. As we came around the corner, we came into view of the Holy Father. It was a powerful moment for our entire delegation—the viewing. It was the first of many powerful moments over the remainder of that day and the next day when the service actually occurred.

As we passed by the body, you could not help but to pause and run through a series of your own prayers of thankfulness, as each and every one of us did.

The next day was the funeral. Again, it was a beautiful day—crisp weather, morning sky glistening overhead. The square was full, silent, solemn, and respectful. We were privileged to enter the Square and find our seats. Our seats were out front, probably 50 or 75 yards, both the Senate and House delegations.

The ceremony was about 2½ hours. Many people have had the opportunity to see it on television, but the presence there, that sense of time and place is difficult to describe. You could feel the powerful strength of the man for whom we all gathered and prayed. It was uplifting, it was serious, and a very dignified celebration in many ways.

As the funeral drew to a close, the adoration for Pope John Paul crescendoed to almost an electric pitch. I heard my colleagues who were with us describe it to our other colleagues over the course of the last 48 hours that way off in the distance we began to hear clapping and the roar of the crowd as it came forward, a huge wave all the way up to St. Peter's and then to the Basilica. It was truly a moving and powerful experience.

The crowd did, at the end, begin to chant and begin to cheer as the Pope was held up one last time in that wooden coffin and dipped down to the people in St. Peter's. He was then lifted aloft and carried solemnly into the Basilica for his final burial.

In closing, I know I speak for all my colleagues when I say it was a tremendous honor for those of us who were able to attend on behalf of our fellow Americans and this institution in paying our respects for a momentous and truly historic world figure.

Pope John Paul will be remembered for many things: his intellect, his charisma, his warmth, his steadfast belief in the culture of life. Above all, he will be remembered for his humble dedication to God and his unwavering love for us all, each and every one a child of God.

Mr. President, I yield the floor.

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

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that I be allowed to take up to 20 minutes of the majority time, and I respectfully ask the President pro tempore to notify me when I have 2 minutes remaining.

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

Mr. CHAMBLISS. Mr. President, having heard the words of the majority leader relative to the delegation that was in Rome last week for the burial of Pope John Paul II, I think all Americans, as well as every other individual around the world, were truly moved by the work of this man over the years he served as Pope of the Roman Catholic Church.

Having been to Rome a couple of years ago and been in a service that Pope John Paul II celebrated, I, too, was very moved by the presence of this man. Certainly during his term as Pope he had a tremendous impact on the world, and this man is truly going to be missed as a leader, not just of the religious world but as the world leader that he was.

JUDICIAL NOMINEES

Mr. CHAMBLISS. Mr. President, I rise this morning to discuss an issue that is very dear to my heart. I practiced law for 26 years before I came to Congress and I had the pleasure of trying many cases before any number of judges, both at the State and Federal level, and I am very much concerned about what is happening with our judiciary today. For the last 2 years, I served on the Senate Judiciary Committee and have observed what obviously happened during those 2 years, but during the last few months, as we entered into this new session and approached the confirmation of nominees who are being put forward by the President, I remain concerned about some things that are happening.

I will start by noting again that never before in the history of the Senate has a minority of 41 Senators held up confirmation of a judicial nominee where a majority of Senators has expressed their support for that nominee. It is for this reason, if given the opportunity, I will vote in favor of changing our rules to allow confirmation of a judicial nominee by a simple majority because under the Constitution of the United States, the Senate is required to give its advice and consent to the President on his judicial nominees.

The Senate can say no in regard to any particular nominee, but to do so we need an up-or-down vote to decide what advice we give the President. Failing to answer the question is shirking our constitutional role in the separation of powers scheme. The Constitution spells out in certain areas, such as passage of constitutional amendments and ratification of treaties, where more than a simple majority of Senators is required. Confirmation of judges is not one of these areas.

The Senate rules have changed on several occasions over the years as to whether and in what circumstances a filibuster is allowed, but we have, unfortunately, come to a point in time where the filibuster is being abused to hold up judicial nominees on which we are required to act; that is, to say yes or no. I believe it is in violation of the Constitution.

I want to take a point in fact relative to the circuit in which I practiced for a number of years, and that is what is happening today with regard to the judicial nominee to the Eleventh Circuit Court of Appeals. The Democrats have held up confirmation of the only nominee President Bush has made to the Eleventh Circuit Court which handles Federal appeals in my home State of Georgia as well as Alabama and Florida.

As a result, on February 20 of last year, President Bush exercised his constitutional authority to make a recess appointment of Judge Bill Pryor, the former attorney general of the State of Alabama. This recess appointment is temporary in nature, but President Bush has renominated Judge Pryor in the 109th Congress for a permanent position on the Eleventh Circuit Court of Appeals.

As a former member of the Senate Judiciary Committee, I know we need to review with great care the qualifications of judicial nominees to ensure

that they have established a record of professional competence, integrity, and the proper temperament for judicial service. I intend to vote for confirmation of Judge Pryor's nomination to the Eleventh Circuit for the following reasons: Since his recess appointment, Judge Pryor has gained the respect of his colleagues on the Eleventh Circuit without regard to political persuasions. This is no surprise to me because Judge Pryor is a tremendously selfless public servant who has worked very hard to help others both within and outside the scope of his official duties.

In private life, he established a program called Mentor Alabama which provides adult role models for at-risk children, and he has personally acted as such a mentor. In his service as attorney general for the State of Alabama, Bill Pryor established a record of evenhanded enforcement of the law. A noteworthy example of his fair-minded treatment of his public duties is his enforcement of Alabama abortion laws. Bill Pryor is personally opposed to abortion based on his deeply held faith as a Roman Catholic. However, in 1997, the Alabama Legislature enacted a ban on partial birth abortion that did not comport with the Supreme Court's decision in Planned Parenthood v. Casey. The Alabama statute prohibited abortions prior to as well as following viability of the fetus. Attorney General Pryor ordered law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents which encompassed only postviability situations. In so doing, he adopted the narrowest possible construction of the Alabama statute.

Moreover, in the wake of September 11, 2001, many abortion clinics were receiving letters with threats of anthrax exposure. In response, Attorney General Pryor held a press conference in which he asserted that the Alabama law ''provides stern felony penalties for those who now prey upon the public anxiety over fears of anthrax and other potential dangers. We warn anyone who is tempted to do so that their deeds are not a joke and will not be treated as mild misbehavior, but as a despicable crime against their fellow citizens that will not be tolerated.'' At this crucial time in history, Bill Pryor's statement sent a clear message that anthrax threats against abortion clinics would be prosecuted vigorously.

Despite his personal religious convictions, Bill Pryor has a keen knowledge of the Constitution's requirement that the Government make no law respecting the establishment of religion or prohibiting the free exercise thereof.

In Chandler v. Siegleman, as attorney general he persuaded the Eleventh Circuit to vacate a district court injunction that prohibited student-initiated prayers in school. Acknowledging the constitutional distinction between student-led prayers and teacher-led prayers, Bill Pryor refused to argue on appeal in favor of the constitutionality of teacher-led prayers as was the position of then Alabama Governor Fob James. In addition, General Pryor rejected Governor James' suggestion that the State of Alabama argue that the first amendment was never incorporated by the 14th amendment and thus does not apply to the States.

In sum, Bill Pryor has established an impressive record as a fair, diligent, and competent public servant. His nomination to the Eleventh Circuit enjoys strong bipartisan support in his home State of Alabama, and in my home State, our attorney general, the Honorable Thurbert Baker, a Democrat, has written in support of Bill Pryor's nomination.

I urge my Democratic colleagues to stop holding up the confirmation of President Bush's only nominee to the Eleventh Circuit by voting to move forward with Judge Pryor's nomination when it reaches the floor.

Now let us look at another circuit. I just explained what the situation is with the Eleventh Circuit. Opposition to some of President Bush's nominees in other areas of the country such as the Ninth Circuit strikes me as odd because it directly contradicts what some Democrats have said in the past about the concept of balance on the courts.

My friend from the other side of the aisle, the senior Senator from New York, acknowledged a couple of years ago in a speech on the Senate floor that the Ninth Circuit was ''by far the most liberal court in the country.''

To quote from the CONGRESSIONAL RECORD of March 13, 2003, Senator SCHUMER stated:

> I believe there has to be balance, balance on the courts. And I have said this many times, but there is nothing wrong with a Justice Scalia on the court if he is balanced by a Justice Marshall. I wouldn't want five Scalias, but one might make a good and interesting and thoughtful court with one Brennan. A Rehnquist should be balanced by a Marshall.

Four of President Bush's nominees to the Ninth Circuit—Richard Clifton, Jay Bybee, Consuelo Callahan, and Carlos Bea—have been confirmed and are now sitting on the Ninth Circuit. That is the good news. But Democrats refused to give an up-or-down vote to two of President Bush's nominees to the Ninth Circuit, or one-third of the judges he has nominated. When one considers that 14 out of the 26 active sitting judges on the Ninth Circuit Court of Appeals were appointed by President Clinton and 2 of them were confirmed in the last year of his Presidency, the Judiciary Committee and the Senate in general treated President Clinton fairly with respect to the Ninth Circuit. Moreover, of the 28 total seats on the Ninth Circuit, 17 were Democratic nominees, 14 by President Clinton and 3 by President Jimmy Carter.

We now have two remaining seats on the Ninth Circuit to fill, and we have seen two nominees from President Bush to fill these seats. The fairness that the Senate showed President Clinton's nominees has not been applied to all of President Bush's nominees, as the two nominees, Carolyn Kuhl and Bill Myers, have been filibustered despite their tremendous qualifications.

President Clinton had 8 years in office and was able to put in over half the active judges on the Ninth Circuit Court of Appeals. I might add that some of these active judges turned out to be activist judges. But with due respect to my colleagues on the other side, it is time to balance out 17 Clinton and Carter nominees with qualified individuals such as Carolyn Kuhl and Bill Myers. That is the kind of balance we need on the Ninth Circuit.

One of the reasons the Ninth Circuit needs some balance is the outrageous nature of some of the decisions coming from that bench. For example, in the 1996–1997 term, Judge Reinhart, a Carter appointee, was overturned six times in cases where he was the author of the majority opinion.

To cite specific examples of outrageous cases of judicial activism, the Ninth Circuit Court of Appeals has, first, barred children in public schools from voluntarily reciting the Pledge of Allegiance—that was in Newdow v. U.S. Congress, a 2002 case; second, initially barred California from holding a gubernatorial recall election notwithstanding a clear State statutory scheme and widespread popular support, which was a 2003 decision in the case of Southwest Voter Registration Education Project v. Shelley; third, invented a constitutional right to commit suicide, a 1996 decision, Compassion in Dying v. Glucksberg; and fourth, made it far more difficult to prosecute those who give material support to foreign terrorist organizations, the case of Humanitarian Law Project v. U.S. Department of Justice, a 2003 case.

Also, this court struck down California's three strikes criminal sentencing law in the case of Andrade v. California in 2001 and only implemented the Supreme Court's reversal of that decision by a divided panel with Judge Reinhardt upholding the defendant's sentence only under the Supreme Court's ''compulsion'' and Judge Pregerson stating that ''in good conscience'' he could not follow the Supreme Court's decision.

Lastly, that court held that a foreign national criminal apprehended abroad pursuant to a legally valid indictment was entitled to sue the U.S. Government for money damages, a 2003 case, Alvarez-Machain v. United States.

I could go on, but there is no small wonder, then, that even Senator SCHUMER has stated:

> The Ninth Circuit is by far the most liberal court in the country. Unless this is the kind of activist court that Democrats want to preserve, it's time to at least allow an up-or-down vote on nominees like Carolyn Kuhl and Bill Myers to restore some balance.

There have been two issues that have been raised by the other side during the debate and the filibuster by the

other side of the aisle relative to the judicial nominees sent up by the President. One of those is the fact that filibustering Federal judges is not something that is new, and it is a contention of the other side of the aisle that Republicans initiated a filibuster on the nomination of Judge Abe Fortas back in the Johnson administration. I will once again set the record straight relative to exactly what happened, and I will quote because I want to make sure that we get this exactly right. This is from a statement made by the former chairman of the Judiciary Committee, Senator ORRIN HATCH, in some remarks that were made on the Senate floor on March 1, 2005. Senator HATCH stated as follows:

Some have said that the Abe Fortas nomination for Chief Justice was filibustered. Hardly. I thought it was, too, until I was corrected by the man who led the fight against Abe Fortas, Senator Robert Griffin of Michigan, who then was the floor leader for the Republican side and, frankly, the Democratic side because the vote against Justice Fortas, preventing him from being Chief Justice, was a bipartisan vote, a vote with a hefty number of Democrats voting against him as well. Former Senator Griffin told me and our whole caucus there never was a real filibuster because a majority would have beaten Justice Fortas outright. Lyndon Johnson, knowing that Justice Fortas was going to be beaten, withdrew the nomination. So that was not a filibuster. There had never been a tradition of filibustering majority-supported judicial nominees on the floor of the Senate until President Bush became President.

I think that factual statement by Senator HATCH says it all relative to any issue concerning the contention that this is not the first time we have seen filibusters on the floor of the Senate. As we move into the consideration of these judges for confirmation, I am not sure what is going to come out from the other side.

I have great respect, first of all, for this institution in which we serve. I am very humbled by the fact, as is every one of the 100 Senators here, that our respective States have seen fit to send us here to represent them. But as I traveled around the country last year, campaigning for President Bush, as well as for Senate nominees, I continuously heard from individuals—whether it was in a formal gathering or whether it was in an informal gathering such as, on a lot of occasions, being in airports, or sometimes even walking down the street—it was unbelievable the number of Americans, and I emphasize that these were not Republicans or Democrats in every instance, they were just Americans who were very much concerned about what is happening with respect to the judicial nominees on the floor of the Senate.

The PRESIDENT pro tempore. The Senator now has 2 minutes left, at which time there will be 10 minutes left for the majority.

Mr. CHAMBLISS. I thank the Chair.

This body has a number of rules which have been in place for decades. Those are good and valid rules and need to be followed in most instances. But there comes a time when you have to look the American people in the eye and say: I know Americans sent a majority party to the Senate, and I know you want us to carry out the will of the American people but, unfortunately, even though it only takes 51 votes to confirm one of President Bush's judicial nominees, we have a Senate rule that says you have to have 60 votes before you get to the point where you only have to have 51 votes. It doesn't take a Philadelphia lawyer to figure out something is wrong with that rule, and it needs to be corrected.

As we move into the consideration of these judges, I hope we will reach an accord so the integrity of this institution will be maintained. Hopefully, our rules can be maintained intact. But it is imperative we do the will of the American people, which is move toward the confirmation of the President's judicial nominees as required by the Constitution of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Virginia.

ISSUES CONFRONTING THE SENATE

Mr. ALLEN. Mr. President, I rise to share with my colleagues my observations and urgings on two issues: One, following on the eloquent remarks of the Senator from Georgia, SAXBY CHAMBLISS, on the importance of judges and actions in the Senate; and the second has to do with our National Guard and Reserves who are being called up for duty and what the Federal Government can do to be helpful to them.

JUDGES

First, on judges, I look at four pillars as being essential for a free and just society: freedom of religion, freedom of expression, private ownership of property, and fourth, the rule of law. The rule of law is where judges come in, where you have fair adjudication of disputes, as well as the protection of our God-given rights.

It is absolutely essential we have judges on the bench at the Federal level, and at all levels, who understand their role is to adjudicate disputes, to apply the facts and evidence of the case to the laws, laws made by elected Representatives. We are a representative democracy. That means the judges ought to apply the law, not invent the law, not serve as a superlegislature, not to use their own opinions as to what the law should be but rather apply it. That is absolutely essential for the rule of law, for the credibility and stability one would want to be able to rely on in our representative democracy for investments and, as we advance freedom, to try to have the people of other countries around the world put into place these four pillars of a free and just society.

What we have seen is a break of precedent in the Senate. For 200 years judicial nominees from the President, when they were put forward, were examined by the Judiciary Committee very closely, as they should be, as to their temperament, philosophy, and scholarship. If they received a favorable recommendation from the committee, they would come to the floor and Senators would vote for them or against them. In the last 2 or 3 years, what we have seen is unprecedented obstruction, a requirement, in effect, of a 60-vote margin for judges, particularly at the appellate level. The most egregious in recent years, in my view, was Miguel Estrada. He is an outstanding individual, completely qualified—great scholarship, great experience—a modern-day Horatio Alger story, having come to this country from Central America, applying himself, doing well. Indeed, the American Bar Association unanimously gave him their highest recommendation and endorsement.

That went on for a year. Then it went on for another year. It went on for over 2 years, and he finally had to withdraw, notwithstanding the fact that a vast majority of Senators were actually for Miguel Estrada.

It is not unique to him. It has happened to roughly 10 or so appellate judges, including those nominated for the Ninth Circuit, which is the circuit where you have adventurous, activist judges who ignore the will of the people. For example, the recitation of the Pledge of Allegiance in schools, which they struck down because they are concerned about the words ''under God.'' That is the sort of activist judiciary that is ignoring the will of the people, who are the owners of this Government.

People say: What do we need to do, and they up come with this term, ''nuclear option.'' It is a constitutional option. It shows how out of touch people are in calling this a nuclear option, when all it is is the question of whether it is a majority vote to give advice and consent or to dissent on a particular judicial nomination. It is my view, in the event the minority party continues with the approach of obstructing the opportunity of a nominee to have fair consideration, then this constitutional option must be utilized. We should not be timid. We should not cower. I believe the obstructionist approaches are preventing me from exercising my duty and responsibility to the people of the Commonwealth of Virginia to advise and consent on these judicial nominations. I hope my colleagues will not continue this obstructionist approach. In the event they do, then we have to use the constitutional option. I do not think it is too much to ask Senators to get off their haunches and show the backbone or spine to vote yes or no, but vote, and then explain to their constituents why they voted the way they did on any particular man or woman who has been nominated to a particular judicial position.

I am hopeful we do not have to use it, but if we do, go for it. Do not cower. Do

not be timid. The people, as my colleague from Georgia said, all across this country, whether they are down in Cajun country in Louisiana, whether they are in Florida, whether they are in the Black Hills of South Dakota, or whether they are in the Shenandoah Valley of Virginia, expect action on judges. As much as people care about less taxation and energy security for this country and wanting us to be leaders in innovation, they really expect the Senate to act on judges. It is a values issue. It is a good government issue. It is a responsibility-in-governing issue that needs to be addressed.

AMENDMENT NO. 356

I would like to turn my attention to the amendment pending on the supplemental, one submitted by Senators DURBIN, MIKULSKI, and me. This amendment will eliminate the pay gap that many of our Federal employees who serve in either the National Guard or the Reserves suffer when they are called up for active duty. We need to do everything we can within reason to recruit and retain those who serve in the Guard and Reserves. We, as a Federal Government, and I, as a Senator, encourage private businesses to make up that pay gap.

Many times, when people get called up, their Active-Duty pay is less than they would be getting in the primary job. That is what the pay gap is. It is one of the key factors, top five factors in people not re-upping. It does have an impact on their families. On average, the pay-gap loss is about $368 a month. They still have housing payments, they still have food. Many of those who serve in the Guard and Reserve have families, and those expenses go on.

Out of the 1.2 million members of the National Guard and Reserves, 120,000 are also employees of the Federal Government. As of January 2005, 43,000 Federal employees have been activated since September 11, 2001, and are serving courageously and beneficially for our freedom and our security. Right now there are more than 17,000 on active duty.

There are those firms in the private sector who have made up this pay gap. There are over 900 companies, such as IBM, Sears, General Motors, UPS, Ford, that make up the pay differential. In fact, 23 States have enacted similar legislation to make up the pay difference. I am proud to say one of them is the Commonwealth of Virginia.

The Senate has supported this in the past. I think it makes a great deal of sense that we support not only the members of the Guard and Reserves who are called up to active duty who serve in the Federal Government, but also support their families. I think this amendment, which I am sponsoring along with Senators DURBIN and MIKULSKI, makes a great deal of sense. It is one I hope, when we get to voting on it sometime today, will enjoy the support of all the Members of the Senate. It is very important we do what we can, within reason, to help in the recruitment and retention of those who are serving our country, who are disrupting their lives and, in fact, are being called up more frequently and for longer duration than ever before.

I hope we will see that agreed to on the supplemental some time today. I also hope we will get back to the 200-year history of the Senate on consideration, treatment, and actual voting on outstanding judicial nominees who have come out of the Judiciary Committee with a favorable recommendation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, am I correct that we are in morning business and it is appropriate to address the Senate in morning business?

The PRESIDING OFFICER. The Senate is in a period of morning business. The minority side controls 30 minutes. The Senator is recognized.

THE NOMINATION PROCESS

Mr. NELSON of Florida. Mr. President, yesterday it live the nomination and confirmation process as envisioned by our Constitution with regard to two nominees. The Constitution, of course, provides that it is a two-step process: the President nominates and the Senate then confirms or rejects. In this case, there was quite a contrast between the two nominees.

In one of my committees, the Foreign Relations Committee, we have a highly contentious, highly divisive debate raging over the nominee of the President, Mr. John Bolton, to be the Permanent Representative of the United States to the United Nations. It is a very significant post representing the wishes of the American people, of the U.S. Government, to the world body, the United Nations.

While at the same time those confirmation hearings were occurring in the Senate Foreign Relations Committee, another one of my committees, the Commerce Committee, was considering the nomination of Dr. Michael Griffin to be administrator of NASA. Dr. Griffin's nomination is quite a contrast to Mr. Bolton's nomination, for it is embraced almost unanimously in a bipartisan way. The extraordinary support is shown even to the point that the chair of the Science and Space Subcommittee, Senator HUTCHISON of Texas, and I, the ranking member of that subcommittee, both requested that the chairman of the full committee, Senator STEVENS, accelerate the confirmation process. So that Dr. Griffin could be confirmed by the committee and we could get his nomination to the floor of the Senate this week, putting him in place as the administrator next Monday. NASA desperately needs to have a strong leader in place, particularly as we recover from the disaster to Columbia. We are also going to launch an expected flight for recovery somewhere about the middle of May. That is the contrast between two nominees.

I think one of the things that makes Dr. Griffin so attractive as the head of NASA is not only that he is literally a rocket scientist with six graduate degrees. Not only does he have exceptional experience in the Nation's space program, both the manned and unmanned programs, but he carries with him a demeanor that contains an element of humility, which will serve him well in the NASA family. NASA is a family. We have seen that borne out in the history of our space program in times of tragedy as we have had in the past. The NASA family comes together, and in times of triumph not only with the extraordinary space accomplishments we have had, but in times of extraordinary triumph where in fact it has been said that failure is not an option. The extraordinary success we had with Apollo 13 in which we thought we had three dead men on the way to the Moon when the Apollo module blew up, and how in real time people in a simulator back in Houston, people in mission control, the design engineers—all came together to figure out the fix. Since the main propulsion system had blown up, rapidly losing electricity, and how to design the circumstances which in a trajectory towards outer space they could get back home safely to Earth. And they did that.

That is another illustration of how the NASA family works when it comes together. It wants a leader who has an appreciation of that family, who knows something about the business of that family, and who in fact can comport themselves with humility.

Interestingly, this is a contrast to the other nomination being considered at the same time, on the very same day, in another one of my committees. This is a controversial nomination because of the alleged improprieties which stem not from a sense of humility but from a sense of entitlement, even bordering on arrogance in demanding one's way. Not one's personal beliefs and ideology—we can all debate those because those are differences of issues. But in this particular case, Mr. Bolton is alleged to have berated intelligence analysts and, according to the allegations from some former very high-ranking State Department officials, insisting that they be fired, dismissed, or transferred because their analysis of the intelligence differed with his. Contrast the personalities, the nominee to be NASA administrator and the nominee to be the U.S. Representative to the U.N., contrast of styles, contrast of attitudes, and contrast of capabilities. Thus, it leads to extraordinary differences in the nomination process.

I wish all of the nominations were as Dr. Griffin in NASA, except for one hiccup that I think we are taking care of with the junior Senator from Virginia. It is my hope that today Chairman STEVENS will call the committee, that

we will vote Dr. Griffin out of the Commerce Committee and get his nomination to the floor. At least by tomorrow, so his name can be sent, confirmed, and the President can go ahead and swear him in.

INFORMATION DATA BROKERS

If that were not enough to engage one Senator from the State of Florida in activities, we also saw yesterday a day that started to bring out new revelations on a completely different subject. This time we found from the wire reports that the number of names which had been thought to have been missing or stolen from an information data broker, namely one located in my State, a company called Seisint in Boca Raton, FL, owned by LexisNexis. The company is owned by an international conglomerate located in France, which a month ago announced that 30,000 names were missing—that is 30,000 names and Social Security numbers, and who knows how much other sensitive information. These records are compiled in this company for many law enforcement agencies. We were told yesterday the number is now not 30,000, it is 10 times that; it is over 300,000.

This is one of a series of five or six revelations in the last 2 months of information. Data brokers trade and sell this information about us—information that normally we would be so careful in seeing that it's secured and locked up or shredded so somebody can't get that information and go out and steal our identity. We now find these information brokers—in one case called ChoicePoint—have 12 billion records; they have records on virtually every American.

We have seen over the last couple of months a series of these stories where the information is suddenly missing, or they found that somebody hoodwinked them and bought their information under false pretenses. It is now out in the public domain in somebody else's hands.

Members of the Senate, if we don't do something about this, none of us in America will have any privacy left because our personal identities will be taken from us.

I hope Senators have had an opportunity to experience what I have in talking with victims of identification theft. One of the biggest complaints, aside from the harassment and the financial losses, is they can't get their identity back. They do not know where to go. They go to their local law enforcement. We can't help you. They go to their State agencies. We can't help you. They go here, they go there, and they keep getting referred to somebody else, and all the while somebody else has their identity. Maybe they are put on the watch list, or the do-not-fly list, or suddenly they are getting dinged for $25,000 charges on a credit card, or their driver's license—such as the truck driver's license in Florida which gives the privilege of driving vehicles loaded with hazardous materials. Guess what that would do in the wrong hands.

We find, if we don't do something, that none of us will have any privacy left. It used to be in the old days that we were careful to shred our records, or keep them locked up. Now we know all of this private, personal, and financial information is in the hands of information brokers who have it on computer—billions of bits of information. They are trading it and selling it and buying it. There is something we can do about it. I suggested one way a month ago when I offered a bill that has been referred to the Commerce Committee. Today, Senator SCHUMER of New York and I have taken a number of bills, including mine and his, and we have put them together into a comprehensive package. The bill is being referred to the Commerce Committee, and it is my hope we will get the Senate to start moving on this. As we speak, the Judiciary Committee is having a hearing on this very subject. It is my hope we will get some action so we can protect the personal identity of every American.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

NUCLEAR OPTION

Mrs. MURRAY. Mr. President, I imagine that recently it has been pretty difficult to wake up every morning to read the newspaper if you are a Federal judge. Extremists in and out of Washington, DC, have nearly declared war on the judiciary, from demanding retribution for recent decisions that lawmakers disagree with to suggesting impeachment for judges who do not toe the party line. It is discouraging, it is disheartening, and it is downright wrong.

But what is so concerning about this recent rhetorical assault is it is being backed by action that has nothing to do with judges and everything to do with increasing Republican power at the expense of our Constitution.

I am deeply concerned that Republicans are trying to increase their power by ignoring rules dating to our country's founding. They want to push through radical judicial nominees who will serve a lifetime on the bench by eliminating a 200-year-old American rule allowing each Member in the Senate to speak out on behalf of our constituents and to fight for the ideals we hold dear.

We had an election last year, and it is true, Republicans ended up with a majority in this body. But that does not mean half the country lost its voice. That does not mean tens of millions of Americans will have no say in our democracy. That does not mean Republicans have carte blanche to pack the courts and to ignore the rights of the minority.

In reality, this is not about judges. This is not about a Senate procedural change. This is, plainly and simply, a power grab and an effort to dismantle the checks and balances our Founding Fathers created. Without that system, the Senate would simply become a rubberstamp for the President. It would allow whichever political party is in power, Republican or Democrat, to have the say over our Nation's courts. I will not stand for that.

This is a basic argument about the future of the Senate. It is about how we are going to conduct our business. I believe in giving the people a voice, in standing up for those people who sent me here, and in protecting the rights of minorities everywhere.

One of the first things every child is taught about American Government is the separation of the three branches. This separation and the checks and balances that come with it are fundamental to the greatest system of government ever created. This system is worth protecting. That is exactly what many of my colleagues and I intend to do.

This is not a debate about judicial nominations. It is about increasing the amount of power that is wielded by the majority. We hear a lot about judges in the Senate, so let me put that discussion in context for a minute.

The judges who serve on the Federal bench affect the lives and liberties of every American. These are lifetime appointments. This is not the nomination to a commission or nomination to an ambassadorship; this is a lifetime appointment for a Federal judge whose rulings over the next 30 or 40 or more years will have ramifications for every single American.

As Senators, we are elected to serve our constituents. We are asked to confirm judges whose decisions can change U.S. history and shape the lives of American people for generations to come.

When any citizen, Republican or Democrat, in a blue State or a red State, a man or a woman, no matter what race, color, or creed, comes before a judge, we have a responsibility to ensure they will get a fair shake. That citizen, no matter who or where they are, must know our system will work for them. They have to have confidence in that.

How can we make those assurances to each and every Senator, Republican or Democrat, red or blue State, man or woman, no matter what race, color or creed, if Republicans alone are selecting, considering, and confirming them to the courts? I don't believe we can.

In addition, we expect Federal judges to provide the proper check in our system of checks and balances outlined in our Constitution. Without it, our system does not function properly. We have to ensure each and every nominee for the courts has sufficient experience to sit in judgment of our fellow citizens. We have to ensure every nominee will be fair to everyone who comes before their court. We have to ensure every nominee will be evenhanded in administering justice, and we have to ensure every nominee will protect the rights and the liberties of each and every American.

To determine if a nominee meets those standards, we have to explore their record, we have to ask them questions, we need to weigh their responses. That is a tremendous responsibility of each and every Senator. It is one I take very seriously.

In the Senate we have made a lot of progress in confirming the judges President Bush has nominated. Look at the figures. The Senate has now confirmed 205 judicial nominees of President Bush. In 3 years we have stopped 10 of those whose records raised the highest questions about their abilities to meet the standard of fairness every American expects. Let me repeat that: We have confirmed 205 judicial nominees. That is a confirmation of 95 percent. We have confirmed 205 judges, the best confirmation rate since President Reagan. Today, 95 percent of Federal judicial seats are filled. This is the lowest number of vacancies in 13 years. There are now more Federal judges than ever before.

I have to point out while the majority is complaining today about our confirmation rate, it was a different story during the Clinton administration. Back then, Republicans used many roadblocks to stop or block the confirmation of judges who were nominated by President Clinton. During Clinton's second term, 175 of his nominees were confirmed and 55 were blocked from getting votes. During those years, the majority used the committee process to ensure nominees they disagreed with never came to a vote in the Senate and 55 never received consideration.

The Senate has an impressive record of confirming judges. That is clear in the 98-percent confirmation rate, the 95 percent of Federal judicial seats that are filled, and today the lowest number of vacancies in 13 years.

I will talk about the process we have used in my home State of Washington to confirm judges. We have worked out a system to ensure that Washington judges are nominated and confirmed even when different political parties hold Senate seats or control the White House. For many years I worked with a Republican Senator and a Democratic President to nominate and confirm Federal judges from my State. Today, with a Republican President I am working with my colleague from Washington State on a bipartisan process to recommend judicial candidates. We developed a bipartisan commission process that forwards names to the White House. It has worked very well. Both sides had equal representation on the commission. The commission interviews and vets the candidates.

It worked for Senator Gorton and me when we forwarded names to President Clinton and it is working well for Senator Maria Cantwell and me as we recommend names to President Bush. I am very proud that during President Bush's first term we worked together to confirm five excellent judges through this bipartisan commission.

We, in fact, confirmed Ron Leighton, a distinguished trial lawyer in Tacoma who is now a U.S. district court judge for the western district of Washington in Tacoma.

We confirmed Lonny Suko as a district court judge for the eastern district of my State. He is a distinguished lawyer and a U.S. magistrate judge who has earned the respect of many in his work on some of eastern Washington's most difficult cases.

We also confirmed Judge Ricardo Martinez for a vacancy on the U.S. district court for the western district of Washington State. He, in fact, holds the distinction of becoming the first Latino district judge in the history of our State. For over 5 years he has served as magistrate judge for the U.S. District Court in the western district. Before that, he was a superior court judge for 8 years and a King County prosecutor for 10 years. I will never forget calling him from the Senate floor after we completed his vote on the confirmation. I could hear the cheers in the background from a truly overjoyed, deserving family.

Also during the first term we confirmed Judges Richard Tallman and James Robart. Both of them are now serving lifetime appointments with dignity.

In Washington State, we are making genuine bipartisan progress confirming judges. It is a process that serves the people of my home State well. Our record of bipartisanship makes this current Republican power grab all the more outrageous. The record proves it is not about judges at all. This procedure is about destroying the checks and balances our Founding Fathers created to prevent the abuse of Governmental power and to protect the rights and freedoms of all Americans. Now we are hearing the Republicans want to destroy the independence in Federal judges by rewriting the rules so they can ram through appointment of Federal judges, especially a Supreme Court Justice, who will overreach and roll back the rights of American people.

Recent comments by advocates on the other side and even by some elected officials have left me very worried about the future of the independent judiciary. It seems many in this country are intent on running roughshod over the Constitution, bent on misusing their power to destroy fundamental principles of our great democracy. That is not how America works. It is not what our Founding Fathers intended. In our democracy, no single person and no single political party may impose extreme views on the Nation. The constitutional system of checks and balances was set up for a reason. It has worked for two centuries. There is no reason to destroy this fundamental principle now.

My colleagues and I are standing up to these abuses. We are fighting to protect the historic power of this body to make sure it is not a rubberstamp for sectarian, partisan, special interests. We will continue to do so.

I yield back the remainder of the time on this side and I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, all time is yielded back.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. OBAMA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

Mr. OBAMA. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. OBAMA. Mr. President, I rise today to urge my colleagues to think about the implications of what has been called the nuclear option and what effect that might have on this Chamber and on this country. I urge all of us to think not just about winning every debate but about protecting free and democratic debate.

During my Senate campaign, I had the privilege and opportunity to meet Americans from all walks of life and both ends of the political spectrum. They told me about their lives, about their hopes, about the issues that matter to them, and they also told me what they think about Washington.

Because my colleagues have heard it themselves, I know it will not surprise many of them to learn that a lot of people do not think much gets done around here on issues about which they care the most. They think the atmosphere has become too partisan, the arguments have become too nasty, and the political agendas have become too petty.

While I have not been here too long, I have noticed that partisan debate is sharp, and dissent is not always well received. Honest differences of opinion and principled compromise often seem to be the victim of a determination to score points against one's opponents.

But the American people sent us here to be their voice. They understand that those voices can at times become loud and argumentative, but they also hope we can disagree without being disagreeable. At the end of the day, they expect both parties to work together to get the people's business done.

What they do not expect is for one party, be it Republican or Democrat, to change the rules in the middle of the game so they can make all the decisions while the other party is told to sit down and keep quiet.

The American people want less partisanship in this town, but everyone in this Chamber knows that if the majority chooses to end the filibuster, if they choose to change the rules and put an end to democratic debate, then the fighting, the bitterness, and the gridlock will only get worse.

I understand that Republicans are getting a lot of pressure to do this from factions outside the Chamber, but we

need to rise above ''the ends justify the means'' mentality because we are here to answer to the people—all of the people, not just the ones who are wearing our particular party label.

The fact is that both parties have worked together to confirm 95 percent of this President's judicial nominees. The Senate has accepted 205 of his 214 selections. In fact, we just confirmed another one of the President's judges this week by a vote of 95 to 0. Overall, this is a better record than any President has had in the last 25 years. For a President who received 51 percent of the vote and a Senate Chamber made up of 55 percent of the President's party, I would say that confirming 95 percent of their judicial nominations is a record to be proud of.

Again, I urge my Republican colleagues not to go through with changing these rules. In the long run, it is not a good result for either party. One day Democrats will be in the majority again, and this rule change will be no fairer to a Republican minority than it is to a Democratic minority.

I sense that talk of the nuclear option is more about power than about fairness. I believe some of my colleagues propose this rule change because they can get away with it rather than because they know it is good for our democracy.

Right now we are faced with rising gas prices, skyrocketing tuition costs, a record number of uninsured Americans, and some of the most serious national security threats we have ever had, while our bravest young men and women are risking their lives halfway around the world to keep us safe. These are challenges we all want to meet and problems we all want to solve, even if we do not always agree on how to do it. But if the right of free and open debate is taken away from the minority party and the millions of Americans who ask us to be their voice, I fear the partisan atmosphere in Washington will be poisoned to the point where no one will be able to agree on anything. That does not serve anybody's best interest, and it certainly is not what the patriots who founded this democracy had in mind. We owe the people who sent us here more than that. We owe them much more.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. Mr. President, if I am not mistaken, the pending business is the Durbin amendment which I offered yesterday.

The PRESIDING OFFICER. I have been informed the Senate has not laid down that measure yet.

Mr. DURBIN. I ask unanimous consent to be recognized as in morning business.

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

AMENDMENT NO. 356 TO H.R. 1268

Mr. DURBIN. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors to my amendment: Senators KERRY, LANDRIEU, SARBANES, LEAHY, LINCOLN and LAUTENBERG.

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

Mr. DURBIN. Mr. President, for those who are following the business of the Senate, after morning business we hope to move to closure of debate on my amendment. It is my understanding that Senator STEVENS is returning from the White House and would like to speak on the amendment, and we will have a formal unanimous consent request but it is my intent to protect his right to speak for up to 5 minutes and to protect my right to close for up to 5 minutes. Otherwise, our goal is to try to have a vote at 12:15 on this amendment. I say that even though there has not been a formal consent agreed to, but that is what the discussion leads to.

For those who are following this debate, this is an important bill that is before us. It is the supplemental appropriations bill. The President has come to Congress and asked for money to wage the war in Iraq and Afghanistan. What we find curious is that this amount is not being included in the President's budget. In fact, he is arguing he is moving toward a balanced budget but fails to include the cost of the war.

It is my understanding, and I think I am close on this number, with this additional $81 billion, we will have allocated and spent $210 billion on the war in Iraq and Afghanistan. The President refuses to include this in his budget. If he did, we would have a much deeper deficit than currently stated.

Those of us who believe in at least honesty in accounting cannot understand why we are doing this separately. Why do we have a supplemental bill for this war in Iraq and Afghanistan when we are clearly going to be there for a period of time? I hope for a short period of time but at least for some period of time.

That budget argument aside, I will go to the merits of what we are discussing. The $81 billion for the war in Iraq and Afghanistan is a figure that I will support. I was one of the Senators who joined my great friend and leader Senator ROBERT BYRD in voting against the resolution to authorize the President to use force in this war in Iraq.

Mr. BYRD. Right.

Mr. DURBIN. There were 23 of us on the Senate floor who did that. I believe it was the right vote not because I am making any excuses for Saddam Hussein, a tyrant, a dictator, a man I am glad is out of power, but many of us, particularly those of us sitting on the Intelligence Committee at the time, felt there were representations being made to the American people about the nature of this threat that were just plain wrong.

I listened in the Intelligence Committee as they described the evidence of weapons of mass destruction and was puzzled. I could not understand the statements from the administration which were coming out about all of these weapons of mass destruction in Iraq that threatened us in the Middle East and around the world; the evidence was not there. The people that we needed on the ground to confirm the evidence were not there.

In addition, there was a lot of speculation about nuclear weapons that Saddam Hussein was developing with aluminum tubes to be used in centrifuges. As we listened to the agencies of our own Government in hot debate over whether or not these tubes had anything to do with nuclear weapons, I was puzzled as to how some of the leaders in this administration could be talking about mushroom clouds because Saddam Hussein is going to detonate a nuclear weapon. They talked about some connection between the terrible tragedy of 9/11 on America and Saddam Hussein, and yet there was no evidence—and there still is absolutely no evidence—connecting Saddam Hussein to that terrible tragedy that occurred on 9/11.

As this evidence accumulated, Senator BYRD, myself, and many others said the case that the administration is making for the invasion of Iraq is not there. The evidence is not there. I personally feel one of the worst things that can happen in a democracy is when the leadership of a democratic government misleads the American people into believing there is a threat that does not exist.

I am not arguing that they deliberately misled us. It could have been a sin of omission. I do not know the answer to that. But the fact is those of us who voted against the use of force had serious questions as to the justification for the war, and I might add serious questions about our readiness for that war. Trust me and other Senators, if we needed to call on any military force in the world to perform a mission, I want to dial 911 and find the United States on the other end of the line. We have the very best military in the world. I knew they would acquit themselves very well once the invasion was under way, and I knew they would be successful.

I could not predict how long it would take, and thank goodness it was short-lived. But the military aspects of the war and the success notwithstanding, it is clear that this administration was not prepared for waging the peace that followed. They were unprepared in terms of the number of men and women on the field, in terms of the equipment that is available, such as armor for humvees and body armor for soldiers. We were not prepared for it. Here we are, more than 2 years later in Iraq, in

a position where we need to stay and finish, and we are still arguing over the basics.

I visited Iraq 3 weeks ago, went there after first going to Kuwait and visiting with our troops. I met with the 1644th Illinois National Guard unit, a transport unit that moves humvees and trucks back and forth between Baghdad and Kuwait City every single day at great danger to the men and women driving those vehicles. The first thing they wanted to show me was: get in the truck, sit here and look how cramped it is as we sit here for hours and look around. There is no armored protection for us as we are driving back and forth through these dangerous zones. Two years after the invasion, we still do not have the adequate equipment that our troops need.

This bill will come before us, and I will support it. I had misgivings, and still do, about the initiation of the invasion of Iraq but I do not have any misgivings about providing our soldiers, our marines, our airmen and our sailors the very best equipment and all the resources they need to perform their mission and come home safely.

Look at some other aspect of this war that is equally important. This is a different war than we have ever waged. This is a war that depends on an American fighting force that is largely, or at least to a great extent, composed of men and women in the National Guard and Reserves. We have not done this before, but we have to do it now. Were it not for the 40 percent of the 157,000 or 160,000 men and women in Iraq from Guard and Reserve units, we would not be able to send our soldiers in the field to fight. Thank goodness those Guard and Reserve units are there.

Understand that unlike the Active-Duty military, the Guard and Reserve military come in under different personal and family circumstances. Here is a man or woman in a Guard unit in Illinois or virtually any State who signed up to serve his or her country looking for perhaps some scholarship assistance to go to school, ready to respond to a natural disaster or to be called up for a few weeks at a time, and they are being activated for lengthy periods, for a year to a year and a half and sometimes more. It is creating a terrible hardship for the families of these Guard and Reserve unit members.

The amendment that is pending before us is very basic. We have said to employers across America, if one of their employees is in the Guard or Reserve, and that employee is activated, do your best to stand behind that employee and his family; make certain, if they can, they keep their health insurance in place, if necessary; try to make up the differential in pay between what the military pays and what they were making in the private sector so that soldier who is off risking his life is not worried about the family back home.

And guess what. Almost 1,000 American businesses have stepped forward and said: We accept the challenge. We believe in these men and women. We believe in America. We are going to stand behind them. So when they are activated, these companies step up, as well as units of local government, and make up the difference in pay, giving them the peace of mind to know that even though they are separated from their family while away overseas, they are going to have enough money coming in to make the mortgage payments, pay the utility bills, and all the basics of life.

When it comes to employers, there is one employer that does not meet that obligation; there is one employer in America, the largest single employer of Guard and Reserve soldiers in America, that refuses to make up the difference in pay. There is one employer in America which has said for 2 straight years now, We will not protect the Guard and Reserve soldiers' families while they are overseas fighting. There is one employer in America that coincidentally is praising all of these private-sector employers for standing behind their soldiers and yet refusing to cover their own employees. What is that employer? It is the United States Government. Our Federal Government refuses to make up the pay differential for activated Federal employees who go into the Guard and Reserve. It turns out that some 51 percent of those who are serving overseas today have seen a dramatic cutback in their pay. How can we have Web sites and speeches praising all of the employers across America, the businesses that stand behind their soldiers, while the Federal Government does not?

So for the third time since the invasion of Iraq, I am offering this amendment. It is called the Reservist Pay Security Act, and it says the Federal Government will meet the obligation private sector employers are meeting every day and make up the pay differential for Federal employees who go overseas in the Guard and Reserve. It is not a radical suggestion. It is a commonsense suggestion that we would stand behind these employees and soldiers as we ask others to do.

I see some of my other colleagues are in the Chamber, and I am going to yield the floor at this moment. We are hoping for a vote at around 12:15 or so, but we are going to accommodate the schedules of the Senators and try to ask for a unanimous consent.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1268 which the clerk will report.

The assistant journal clerk read as follows:

A bill (H.R. 1268) making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

Pending:

Kerry amendment No. 333, to extend the period of temporary continuation of basic allowance for housing for dependents of members of the Armed Forces who die on active duty.

Kerry amendment No. 334, to increase the military death gratuity to $100,000, effective with respect to any deaths of members of the Armed Forces on active duty after October 7, 2001.

Durbin amendment No. 356, to ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Senator has the floor.

Mr. BYRD. I ask unanimous consent that I may yield to the distinguished Senator from Massachusetts, Mr. KERRY, for not to exceed 10 minutes, without losing my right to the floor.

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished Senator from West Virginia for his courtesy.

Mr. President, I ask unanimous consent to add Senator LAUTENBERG as a cosponsor to Senate amendment No. 333 and Senate amendment No. 334.

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

AMENDMENTS NOS. 333 AND 334

Mr. KERRY. Mr. President, yesterday I introduced two amendments to help our military families to be able to contend with the death of a loved one and the problems that flow to these families when one of America's service people are lost either in combat or in the course of duty. The disruptions are obviously enormous and unimaginable in many ways, but one of those disruptions is that after a period of 180 days, even in the middle of a school year, a widow would have to move off the base notwithstanding the kids are in the middle of a school year. I can give the names of people I have met in a number of instances over the course of the last couple of years traveling the country, people who talked about the incredible disruption to their family because of this.

What we have learned listening to the commanders in the military and also to the families is that when we recruit, we are not just recruiting individual soldiers, and when we equip, we don't just equip by giving them the weapons and the technology they need to fight a war. We recognize we recruit a whole family and we retain a whole family. We need to have policies that are family thoughtful, family sensitive, so we can retain people in the military, particularly in a volunteer force where we expend enormous public dollars in order to train people to provide us with the superb capacity we have in our military.

One of my amendments would provide an extension of that 180-day period of time so you get a year for the school year issue and other issues of finding a suitable home and figuring out whether you are going to go back and live with your parents, what your job is going to be, and where you are going to live, so all of these things are not providing added pressure to families who are already remarkably disrupted.

The second is an amendment that would extend the death benefits, the total death benefits to families so those families who are unfortunate enough to lose a loved one are not suffering for the rest of their lives as a consequence of that contribution to their Nation.

These amendments would be the first strong steps in what I call the military families bill of rights. I am not going to go through all of the details and the arguments for that, but I would like to say to my colleagues that yesterday I sent out an e-mail asking Americans to send stories in about their personal struggles with these issues, or those of their friends and friends' families that they heard about.

In less than 24 hours over 2,000 families responded. They took the time out of their busy days in the hopes that we would listen, so I would like to share a few of those stories with my colleagues.

The first is a couple in Austin, TX, who e-mailed me about one of their two young children who has Job's syndrome. When their father was called to duty, Home Depot stopped paying his salary and cut his health insurance. His wife, who was a schoolteacher, had to purchase insurance on the open market, leaving her finances in complete disarray. Her daughter was in the hospital so often that she eventually used up all of her sick and vacation days. The school docked her pay for lost time, and her financial situation went from bad to worse.

This is because her husband was serving his country, but the Government did nothing for his family to make up that difference.

I got an e-mail from a pharmacist whose nurses were upset about a woman who could not afford medication for her child because her husband had been called to duty in Iraq. They eventually found a way to get the mother the medication that her daughter needed, but the pharmacist was left questioning his Nation's leadership. Here is what he said:

I was dismayed that there apparently was no help available for this mother whose husband was serving his country.

A guy in Abilene, TX, e-mailed me about his first friend in the world who was shot down in Iraq. He left behind a wife and three children. Over 2,000 people honored him at the memorial service, but that did not do anything to help his parents, who were draining their retirement savings to get health insurance for their grandchildren. This fallen soldier's friend wrote:

Nathan's family is getting by because of their love and faith in God and each other, but after losing a son in service to America, they should not have to struggle to see that his wife and children will get by. His wife has already lost her husband, and his children will already grow up without their father. His daughter Courtney will not have her Dad to walk her down the aisle when she marries. They will not have a Dad at their High School graduations or at the birth of their children. They should not have to sacrifice anymore.

That is what this friend wrote to us, all of us Senators. Finally, I want to share a letter I received in February from Amy Beth Moore from Fort Hood, TX. Her two children, Meghan, age 13, and Sean, age 10, no longer have their father Jim. During his tour in Iraq, Jim was shot at, and his Hummer took a near deadly bullet in the gas tank. When he returned home, he was a senior officer in charge of refitting his unit for the next deployment. This required frequent helicopter flights back and forth from Texarkana.

On November 29, 2004, his Blackhawk crashed, killing Jim and six other soldiers. Listen to what Amy wrote:

Consider our predicament. But for the grace of God, my husband would not have survived a deployment to Iraq and then was working to ready the Fourth Infantry Division for its next deployment. Why should it matter where he was killed while serving proudly in the military? Why should we as his surviving wife and children not be entitled to the increased death gratuity and life insurance? I have been a full time mom, managing the home front of a career soldier and it is now up to me as a widow and a single parent to provide for our children. These benefits would greatly assist me in doing that and frankly, without them, we will have a serious challenge in the days and months and years ahead without Jim. I know that compensation in any form will in no way make up for the loss of a loved husband and father and all the missed moments that we would have shared as a family, but nothing is more important to me right now than trying to take care of my children, and it is on their behalf that I make this request.

We have heard from military families. We have heard from friends. There are thousands more such stories across the Nation. The test is whether we, as a matter of conscience and common sense, are going to do what is right for those who serve our country.

I thank the Appropriations Committee for fixing part of this, for going beyond the administration's request to limit the benefit to combat. But now I ask my colleagues to heed the advice of uniformed military leaders about those on active duty today and their families in the military. We need to provide this benefit to all Active-Duty personnel.

Amy Beth Moore is right. What difference does it make where he was killed? He was killed preparing the troops to do what we need to do in Iraq, and his loss is as real whether he was killed in Iraq or elsewhere. If we fail to adopt these amendments we are going to confirm the greatest fears of Amy Beth Moore and the over 2,000 Americans who e-mailed their stories to me, that Washington talks a good game but doesn't really care about these families.

For the survivors of our Nation's fallen heroes, much of life remains. Although no one can ever put a price on the loss of the life of any loved one, it is up to us to try to be generous, and I think correct, in helping them to put their lives back together. I urge my colleagues to join me in working toward a strong bipartisan military families bill of rights that does right by those who serve and by their families. I hope we can start that by taking the right direction in adopting these two important amendments today.

I thank the distinguished Senator from West Virginia again for his courtesy.

I ask unanimous consent to add Senator DURBIN as a cosponsor.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. BYRD. Madam President, I ask if the Senator will add my name as a cosponsor to both amendments.

Mr. KERRY. I am honored to have the Senator from West Virginia as a cosponsor.

The PRESIDING OFFICER. The Senator from West Virginia retains the floor.

Mr. BYRD. Madam President, the bill before us contains funding for a number of items that can hardly be described as emergencies, despite the fact that they are contained in an emergency supplemental funding bill.

One of those items that fairly leaps off the page is a $36 million earmark, tucked away in the report under military construction for the Army, to build a new, permanent prison at Guantanamo, Cuba. Why is this tucked away as an emergency? It is to house detainees from the war on terrorism.

What struck me about this item is that the American people are being asked to build a permanent prison to house 220 prisoners from the war on terrorism when the courts have not yet determined the legal status of the detainees or whether the United States can continue to hold these individuals indefinitely without charging them with a crime.

We are walking on thin ice here—thin ice. If ever there was a case of putting the cart before the horse, this seems to be it. Construction of a new

permanent prison in Guantanamo assumes that the United States has in place a solid policy and a valid requirement for the long term internment of detainees at that site when in fact neither the policy nor the requirement has been validated.

Ever since the Supreme Court ruled last year that U.S. law applied to Guantanamo, and that prisoners held there could challenge their detentions in Federal Court, the status of the detainees at Guantanamo has been a matter of open debate. A flurry—we have reached beautiful spring weather now, but a flurry of subsequent legal challenges mixed with allegations of prisoner abuse have only muddied the waters further.

In August, a Federal district judge ruled that the military tribunals being conducted at Guantanamo must be halted because they did not provide minimally fair procedures and violated international law. Hey, look out here. Look what we are doing. Where are we going? Meanwhile, another Federal judge recently stopped the Government from transferring detainees from Guantanamo to other countries pending a review of the process.

What is wrong with that? At the heart of the Guantanamo detention controversy is whether the detainees are entitled to prisoner of war status under the 1949 Geneva Convention, or are they, as the administration contends, ''enemy combatants'' who are entitled to no judicial oversight. It is a complex legal debate that is unlikely to be resolved anytime soon.

And yet the White House has determined that the construction of a $36 million maximum security prison at Guantanamo is such an urgent requirement that it cannot allow the courts to rule on the validity of the administration's detainee policy or even wait for the regular appropriations process. Not even wait for the regular bill—put it in the supplemental.

This despite the fact that there is currently no overcrowding at Guantanamo, that the prison population is steadily declining—down to approximately 540 from a high of about 750—and that the Pentagon has already built a $16 million, permanent, state-of-the-art maximum security prison at Guantanamo to hold 100 prisoners. At the same time, according to an article last month in The New York Times, the Defense Department is trying to enlist the aid of the State Department and other agencies to transfer more prisoners out of Guantanamo, in an effort to cut by more than half the current population at Guantanamo.

The fact is, the Pentagon has no idea at this point how many detainees from the war on terrorism are facing long term detention, or where they will eventually end up.

As Defense Secretary Donald Rumsfeld put it at a hearing before the Senate Appropriations Committee in February, ''The Department of Defense would prefer not to have the responsibility for any detainees.''

For once, I agree with Secretary Rumsfeld, particularly given the allegations of abuse that have dogged the Defense Department's treatment of detainees in Iraq and Afghanistan as well as Guantanamo. The Defense Department should not automatically assume an open-ended burden of being the world's jailer of foreign enemy combatants.

Given all the uncertainties concerning the future requirements for detention facilities at Guantanamo, where—oh where, tell me—is the urgency in this request? The Defense Department insists that prisoners currently in custody at Guantanamo are in conditions that are safe, secure, and humane. The current detention facilities at Guantanamo include Camp 4, where detainees live in 10-man bays with nearly all-day access to exercise yards and other recreational privileges; Camp 1, where detainees are housed in individual cells with a toilet and sink in each cell; and Camp 5, the new 100-bed maximum security prison that the Pentagon boasts would be envied by many States. Camp Delta also boasts a 19-bed detainee hospital, which military officials describe as a state-of-the-art facility, complete with first-rate dental care.

With the exception of the existing maximum security prison, these are temporary facilities, but according to the Defense Department, they are designed to provide safe, secure, and humane housing for the prisoners. As the Pentagon is quick to point out, the concrete slab and open-air chain-link enclosures that originally housed prisoners when the Guantanamo detention facilities opened in January of 2002 are long gone.

The Defense Department, in its justification for the new prison, asserts that the existing temporary facilities are nearing the end of their useful life, will not meet Geneva Convention requirements, and will be subject to continued scrutiny by the International Committee of the Red Cross, the ICRC, until facility standards are raised.

Playing the Geneva Convention card is a curious tactic coming from an administration that selectively cherry-picks which of the Geneva Convention standards it chooses to apply to the prisoners at Guantanamo. The only Geneva Convention requirements cited by the Defense Department in its justification for the new prison are that housing units and core functions should be contiguous and allow for communal conditions where practical—certainly nice-to-have amenities but hardly a core requirement for the humane treatment of prisoners.

In fact, the ICRC's main concern about Guantanamo, according to the organization's website, is not contiguous detention units but the fact that the administration has attempted to place the detainees in Guantanamo beyond the law. Building a new prison will not address that concern, and it will not exempt the Guantanamo detention center from the watchful eyes of the Red Cross. Nor will allegations of mistreatment of prisoners at Guantanamo be resolved by trading one set of cell blocks for another.

There may indeed be advantages to moving more Guantanamo prisoners from temporary into permanent detention facilities, but until we have a clearer picture of the number of prisoners who will be housed there over the long term, there is no compelling reason to rush into spending $36 million of your money—it is your money—the taxpayers' dollars to build a prison based on guesstimates instead of facts.

At a hearing of the Senate Armed Services Committee last month, Gen Bantz Craddock, Commander of the U.S. Southern Command, which oversees Guantanamo, was asked what the Pentagon was doing to improve the quality of life for the U.S. military personnel assigned to Guantanamo. General Craddock replied that he had submitted a list of unfunded requirements of several million dollars for U.S. military facilities. But, he continued, ''we are watching this closely because we don't want to get out in front of the policy with regard to the long-term detainee issue down there.''

That is good advice from General Craddock, and I would suggest that we apply it to the detention facilities at Guantanamo as well. It is the policy that should drive the construction, not the other way around. Before we ask the American taxpayers—before we ask you, the people out there who are watching the Senate Chamber here with open eyes, with open ears and probably with open mouths, you, it is your money—before we ask you, the American taxpayers to spend $36 million to build a brand new permanent prison for foreign detainees at Guantanamo we should make sure that we have an ironclad requirement for that prison. Until the courts have resolved the legal status of the prisoners and until the Department of Defense and the administration determine the role of the department in the long-term detention of the prisoners, building a permanent maximum security prison at Guantanamo is premature.

Madam President, are there any pending amendments ahead of this amendment?

The PRESIDING OFFICER. There are amendments pending.

Mr. BYRD. I will take my amendment in the order in which the amendment has been called up.

I ask unanimous consent ahead of time if it may be in order to have the yeas and nays on my amendment, even though it won't be voted on at this moment.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside.

AMENDMENT NO. 367

Mr. BYRD. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 367.

Mr. BYRD. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To reduce by $36,000,000 the amount appropriated for ''Military Construction, Army'', with the amount of the reduction to be allocated to funds available under that heading for the Camp 6 Detention Facility at Guantanamo Bay, Cuba)

On page 169, line 13, strike ''$897,191,000'' and insert ''$861,191,000''.

Mr. BYRD. Madam President, I ask unanimous consent that it be in order to ask for the yeas and nays at this time.

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

Mr. BYRD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. I thank the Chair, and I thank all Senators.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, for the information of all Senators, we are preparing to seek unanimous consent that we have a series of three votes that will begin at 1:45 p.m. today. These will be on or in relation to the Durbin amendment and the two Kerry amendments which are pending before the Senate. We hope to be able to reach agreement on this consent request so Senators can be advised very soon that that will be the order of the Senate.

That still leaves, of course, the amendment of the Senator from West Virginia which we will have an opportunity to discuss separate and apart from these three that will be voted on. Then we will seek to deal with that amendment in the regular order.

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. COCHRAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. COCHRAN. Madam President, I am pleased to advise the Senate that we have been able to reach agreement on a series of votes that will occur at 1:45. I am authorized by the leadership on both sides to propound this unanimous consent request.

I ask unanimous consent at 1:45 p.m. today the Senate proceed to a series of votes in relation to the following amendments: Durbin No. 356; Kerry No. 333; Kerry No. 334; provided further that no amendments be in order to these amendments prior to the votes, and that prior to the Durbin vote Senator STEVENS and Senator DURBIN be allocated 5 minutes each to speak; further, that there be 2 minutes equally divided for debate prior to each vote; finally, that all votes after the first be limited to 10 minutes each.

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

Mr. COCHRAN. Madam President, I appreciate the cooperation of all Senators in getting this agreement. Senator BYRD has offered an amendment on which the yeas and nays have been ordered, but we will not vote on that amendment until others who wish to speak on the amendment have an opportunity to do so. That will occur at any time. If we do complete debate on the Byrd amendment prior to 1:45, that could be something we could consider adding, but at this point we are not prepared to make that announcement.

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. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCONNELL. Madam President, imagine how nervous you would be if I told you as we go about our business in the Senate, hidden in the Capitol basement were over 500 tons of some of the deadliest material ever conceived by man, VX nerve gas. Suppose I told you it had been there for decades, and although the authorities had previously promised to safely destroy some toxins, they were now changing their tune. They had put their plans to dispose of these deadly weapons on hold, leaving you to babysit them. I imagine you would start to feel a little nervous. Now you know how the residents of Madison County, KY, feel. For the people of Madison County, KY, and all over central Kentucky, the fear I have described is a daily reality.

The Blue Grass Army Depot in Madison County contains 523 tons of our Nation's chemical weapons stockpile. Since the 1940s, it has stored mustard gas, sarin nerve agent, and VX nerve agent. Each of these is among the deadliest nerve agents ever created. As little as 10 milligrams of VX is enough to kill a human being. That is about the mass of 10 grains of sand. It is virtually undetectable to the naked eye, and yet if that tiny amount is inhaled, death is imminent. If it is absorbed through the skin, death takes mere minutes.

The time has come for the safety of our fellow Kentuckians to safely eliminate these heinous weapons.

The Department of Defense has agreed it is time for the weapons to go. They promised they would dispose of them. Congress has appropriated hundreds of millions of dollars for them to safely destroy the materials. Yet the Department refuses to take the necessary steps to accomplish the task. The Department has offered all sorts of reasons why, many of which even contradict each other. But the bottom line is, they refuse to spend the money the President requested and the Congress appropriated to dispose of these chemical weapons stored in Kentucky.

This Congress cannot and will not let them get away with it. The Department's foot dragging on eliminating these weapons is simply unacceptable. The best they claim they can do is to place the Blue Grass Army Depot on caretaker status, meaning that virtually no cleanup action will be taken. The Department's own studies have shown the longer we sit on these dangerous weapons, the greater the risk to surrounding communities. The Department of Defense needs to fulfill its obligations, and it needs to clean up these sites now—not some other time, now.

In 1996, I authored legislative language that created the Assembled Chemical Weapons Alternatives Program, also known as ACWA, to find the best method to destroy VX and other deadly agents. The Blue Grass Army Depot became one of the ACWA sites, along with a site in Pueblo, CO.

The DOD refuses to clean up that site in Colorado also, and so my friend Senator WAYNE ALLARD knows this issue well. I thank him for his steadfast involvement and leadership on this question. He feels as strongly as I do that the dangerous substances located at the hearts of our States need to be disposed of safely and quickly.

The Department claims ACWA sites must be downgraded to caretaker status because they are over budget due to cost overruns. Yet the Department's own schizophrenic decisionmaking is what led to these costs. The Department has repeatedly stopped or slowed down design work and then restarted, adding unnecessary startup and stop-work costs. They stingily parcel out appropriated monies in such small quantities that it is impossible to spend it efficiently. Thus, it is the Department's own bureaucratic mismanagement that has created the cost problems.

Perhaps we should expect no less from an outfit whose operating maxim is printed on this board behind me. Dr. Dale Klein, the Assistant to the Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs, admitted in his testimony last week before the House Armed Services Committee that, as he said:

As I often tell people, some of our budgeting processes are accurate but incorrect.

Let me run that by you one more time. He said:

As I often tell people, some of our budgeting processes are accurate but incorrect.

What nonsense. Can you believe that? Dr. Klein, speaking of the Department of Defense, said on the record:

. . . some of our budgeting processes are accurate but incorrect.

I will leave it to someone else to figure out exactly what that means, but it

does not fill me with confidence in the Department's ability to resolve this issue. The Congress must pursue this matter if we ever want to see positive results. Therefore, I have authored a provision, section 1115, in this bill before us, the supplemental appropriation bill, that expressly directs DOD to spend the money Congress has appropriated to dispose of chemical weapons at the Blue Grass Army Depot, which is in Kentucky, and the Pueblo Chemical Depot, which is in Colorado. It forbids them, absolutely forbids them, from shunting that money into any other purpose.

Let me be clear: This provision does not add a penny of new spending to this bill. It merely requires the Department to spend the money they requested for the purposes they identified.

DOD has broken its word to the citizens of Madison County. But the language I have authored will force the Department to get Blue Grass back on track, and I promise that prediction will prove both accurate and correct. My provision will guarantee that the $813.4 million in prior-year monies that has been budgeted for ACWA sites will not be transferred for other purposes.

Over the past several years, the President has requested specific funds for ACWA. For reasons of comity, Congress has provided these funds for the overall chemical demilitarization program largely in lump sums, trusting that DOD would comply with the President's budget request. But they have not. Instead, DOD undermined the President's budget request and diverted funds intended for the ACWA Program. This language will hold the Department to the President's budget request with respect to this program.

My provision will force DOD to obligate at least $100 million at the ACWA sites within 120 days of the enactment of this legislation before us. Because the Department has purposely—purposely—withheld funds from the ACWA sites and downgraded them to caretaker status, work has come to a virtual halt at Blue Grass in Kentucky and completely at Pueblo in Colorado.

The Department itself has repeatedly determined that the storing of these deadly weapons poses an increasing danger over time. Yet they now complain they will have to jump through multiple bureaucratic hoops before those sites can be up and running again. By obligating $100 million immediately, we can get much-needed funds moving through the pipeline again and help jump-start the cleanup efforts at both sites.

My provision will also require the Department to provide Congress with a bimonthly accounting, every 2 months, of the money spent at these sites. This improved oversight will hopefully shed some light on the opaque processes at DOD. Perhaps with enough work, we can even find out how to make a budget both accurate and correct.

Because safety is paramount, my provision will do one more thing. It will prohibit DOD from conducting a study on the transportation of chemical weapons across State lines. Because transporting chemical weapons across State lines is illegal already, one would think this provision unnecessary. But despite the law, the Department has ordered a study on doing that which it cannot legally do. It is a mystery to me why the Department would spend precious time and money exploring an option that is not an option, that is illegal under Federal law. Let me say again, the Department of Defense is currently spending funds that should be going toward destroying deadly chemical weapons on studying a course of action that is illegal.

That suggests to me that rather than destroying the chemical weapons where they are stored, the Department is considering transferring them out of the Blue Grass Army Depot to other facilities. That is reckless and irresponsible for too many reasons to describe. Kentuckians do not want trucks full of nerve gas speeding down the interstate, and I suspect neither do the people of other States, such as Alabama, Arkansas, Utah, or any other State. Even if it were legal, there is no way politically these weapons are going to be moved across the country to some other site for destruction.

Before I conclude, I want to address one more failure of the Department of Defense. By not meeting their obligations to the people of Kentucky and Colorado, they are breaking not only their word, they are breaking America's word. That is because by placing the ACWA sites on caretaker status, the Department is acknowledging the weapons will not be disposed of at least until 2016 at the earliest, yet the United States has signed the Chemical Weapons Convention, which establishes a deadline for elimination of these substances in 2012 at the latest. The Department of Defense should be working with all the speed it can muster to meet this deadline, not openly thumbing its nose at it. Passing this bill will move us closer to compliance with the Chemical Weapons Convention.

In this age of terrorism, our decisionmaking processes for handling and disposing of such horrifying weapons must be focused and clear. The Department of Defense approach to ACWA sites has been neither.

I urge our colleagues to support this bill. With the passage of section 1115, you will get accountability and transparency from the Department of Defense. You will ensure that the promise made to the people of Kentucky is a promise fulfilled. Most importantly, you will protect the safety of hundreds of thousands of Americans.

On the other hand, if we do nothing, it will all be left up to DOD. The best they can be is ''accurate but incorrect.''

Madam 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. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, is time control in place right now?

The PRESIDING OFFICER. The Senator has 5 minutes prior to the first vote.

Mr. STEVENS. I have 5 minutes after 1:45 p.m.

The PRESIDING OFFICER. The Senator has 5 minutes before the vote at 1:45 p.m.

AMENDMENT NO. 334

Mr. STEVENS. Mr. President, I wish to speak first on the amendment offered by Senator KERRY.

The PRESIDING OFFICER. The Senator from Alaska may proceed.

Mr. STEVENS. Mr. President, our Defense Subcommittee has considered this matter very closely. We believe the provision for death gratuity is a special and unique situation, and we provided it in the bill before the Senate.

What we seek to provide is a special recognition for our Nation's fallen heroes who have given their lives in combat defending our Nation or who have died in training or other activity that is considered related to combat by title X.

Let me state that again. Our provision covers all service members who lose their lives in combat or who die in training or other activity that is considered combat related by title X.

The normal death gratuity in effect now is $12,400. It provides immediate cash to meet the needs of survivors. This amount is payable immediately and is intended to provide sufficient funding to support families until other benefits, particularly those such as the Survivor Benefit Plan, Dependency and Indemnity Compensation, and Social Security, come into play.

We believe every life is precious, and we grieve over the loss of life when it occurs among anyone in our military. But our Appropriations Committee has included this provision to provide special recognition for fallen heroes. This special recognition is intended for those who have died as a result of combat or combat-related situations, such as training, and in support of the global war against terrorism our Nation is fighting.

The administration and the Department of Defense strongly oppose the recommended expansion of the death gratuity to cover all deaths of anyone who is in uniform. In fact, a 2004 independent study requested by the Department of Defense concluded that the full system of benefits provided to survivors of members who die on active duty is adequate, substantial, and comprehensive.

That study did identify a lack of recognition for direct sacrifice of life, as

provided by the Public Safety Officers' Benefit Act, which pays more than $267,000 to survivors in recognition of deaths in performance of duty of law enforcement officers and firefighters. The Senate supplemental bill provides this type of recognition for our military.

First, if we consider opening the special death gratuity for all casualties, we should also consider the significance of a retroactive date, as we considered the concept of trying to cover all casualties. If the increased death gratuity is provided for all deaths, there is no longer a direct connection to the events of 9/11 and the war against terrorism.

Finally, to increase the death gratuity to include all deaths would cost an additional $300 million in this year alone, 2005. The total bill for fiscal year 2005 would be about $1.1 billion.

Many of us who served in war in defense of our Nation—and I am one of those—believe there is a special significance in the way we have defined death gratuity in the Senate bill before us now. We believe it is fully appropriate for the problem of recognizing fallen heroes.

I know this provision is related to other outpourings of those who have lost life in the September 11 controversy. There is a connection in that this provision seeks to recognize soldiers who have fallen as a result of the actions we have taken as a nation to address 9/11 in the fight against terrorism. I do not believe we should devalue the most heroic sacrifices of our men and women in uniform by making this cover anyone in uniform.

Mr. President, I do intend to oppose this amendment.

I have 5 minutes before 1:45 p.m.

AMENDMENT NO. 356

Mr. President, I also rise to oppose the amendment to fill the pay gap when Guard and Reserve are mobilized. This is the Durbin amendment. This emergency supplemental bill is not the proper legislative vehicle to add new benefits without approval of the committee of jurisdiction. The Senate Armed Services Committee, I am told, does not support the inclusion of this new benefit in our supplemental bill. The administration did not request that additional authority, and I am told it opposes this amendment. The proposed amendment, I believe, should be held for debate when the appropriate committee, such as the Armed Services Committee, brings the authorization bill before the Senate.

The amendment to this bill would require Federal agencies to pay any difference between military pay and civilian compensation for employees of the Federal Government who either volunteer or are called to active duty. The estimate we received from the Congressional Budget Office is this is an additional cost of $152 million over a 5-year period.

Reservists and guardsmen know when they are activated what their military pay will be, what their total compensation is. There is no misunderstanding about that. In an all-volunteer force, individuals choose whether they serve in the military. Certainly financial considerations enter into that decision, whether their service be full time or part time, with an obligation to answer the call of duty when necessary.

When Guard and Reserve members train for mobilization, they understand they are subject to mobilization during war and national emergencies. The likelihood of mobilization is evident as the Department has been mobilizing Guard and Reserve members almost continuously for the past 13 years.

More importantly, this provision would do a disservice to patriotic non-Federal reservists who are self-employed, small businessmen, or employees who do not receive such coverage as proposed by the Durbin amendment.

In addition, the amendment would allow mobilized reservists to make significantly more than those active-duty service members whom they join when they are called up to serve in active duty. This could be interpreted by some active-duty members to mean that the Federal Government places a higher value on the service of those people who are called up temporarily than we do on those who are career military people. The amendment would cause a significant equity issue as far as the active-duty service members and I believe would negatively affect their morale.

Requiring the Department of Defense and other Federal agencies to pay the differential salary limits the ability of agencies to accommodate staffing shortages through temporary personnel actions. Once these people are called up, the Department has to hire someone temporarily to take their place. The place is there for them when they come back, but they will not have the ability to have the money available if they have to pay this differential. This issue becomes more significant the longer the period of active duty.

Another concern is that this amendment does not distinguish between Reservists who volunteer to perform active duty and those who are involuntarily called to active duty. Reservists who volunteer for duty can weigh the financial impact of such service when considering whether to apply for an assignment.

Finally, Reserve service offers a robust pay and benefits package. With the support of Congress, military pay is now very competitive with pay in the private and public sectors and allowances are increasing to minimize out-of-pocket expenses.

Any changes to Guard and Reserve compensation system should be assessed for the long term, not just during this current deployment. Questions regarding affordability and equity of benefits must be carefully weighed and answered before we legislate changes.

This appropriation bill is not the appropriate legislative vehicle to set military compensation policy; this change should be considered by the Armed Services and Governmental Affairs Committees which have jurisdiction over these matters.

Thus, we strongly recommend that the Senate hold this authorization measure for full consideration by the Armed Services and Governmental Affairs Committees. The amendment deserves adequate time for analysis and debate in light of the full system of military benefits and funding constraints.

I strongly oppose this amendment.

Mr. BYRD. Mr. President, Senator DURBIN's amendment touches on a critical issue: the strains being placed upon the National Guard and the Reserve by the long deployments to Iraq and Afghanistan. He correctly points out that these deployments have resulted in a financial crisis for unknown numbers of American families who have loved ones called to duty, pulled out of their civilian careers, and sent half a world away for long periods of time.

The amendment pending before the Senate would compensate those members of the National Guard and the Reserve who suffer a loss of income because they are away from their civilian jobs—but only if those jobs are with the Federal Government. The many Guardsmen and Reservists who work in the private sector would not be helped by the amendment.

I am very sympathetic to the plight of the families of National Guardsmen and Reservists who have found themselves in dire financial straits because of a long, unexpected deployment that takes the family breadwinner away from his job. I have heard from families in West Virginia who could be facing financial ruin because of a soldier's drop in income due to a protracted, 18-month deployment.

However, the Congress is approaching this problem from the wrong end. The heart of this matter is not how much Uncle Sam may pay our citizen-soldiers. The problem is that our National Guard and Reserve are being deployed, and re-deployed, for such long periods at a time. The United States hasn't sent so many part-time soldiers overseas in half a century. In addition to causing financial hardships for many American families, the pace of these deployments is threatening to break the back of the National Guard and the Reserve.

In 2003, I offered two amendments to limit the deployment and re-deployment of the National Guard and Reserve. Unfortunately, the Senate voted down those amendments, and the strains on the National Guard and the Reserve continue and, in some cases, are worsening. Until Congress limits the excessive deployments of our citizen-soldiers, or until our troops start coming home from Iraq, there will continue to be myriad strains on our troops and their families. It is not reasonable to expect the government to

compensate our troops and families for each difficulty or strain that this foolish war in Iraq has caused, because our national treasure is finite.

What's more, I am concerned that the amendment on which the Senate will soon vote will have financial consequences for many years down the road. Our country is neck deep in red ink, and Congress must be judicious in enacting benefits that grow to have a life of their own well after the Senate has voted. This problem is compounded by the refusal of the President to budget for the costs of the wars in Iraq and Afghanistan. If the White House does not budget for the war, there is no way to increase revenues or lower other spending in order to balance the budget. In the coming days of debate on this emergency supplemental appropriations bill, I will offer an amendment on this crucial point.

Despite these reservations about the pending amendment, the bottom line is that the families of many National Guardsmen and Reservists are experiencing real financial hardships. Although this amendment will only take care of some of those families, it will provide a lifeline to families who are struggling to make ends meet because of the demands of the war in Iraq. I commend the Senator from Illinois for his commitment to the National Guard, and I will support him on this amendment.

However, when the Senate next considers relieving the strains caused by the long deployments of the Guard and Reserve, the Senate should not adopt a piecemeal approach. The heart of the matter is our open-ended mission in Iraq. Unless that matter is addressed head-on, Congress will continue to find more and more ways to spend our nation's scarce treasure. That is not a wise fiscal course.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am disappointed that the Senator from Alaska, who has served the Senate and his country so well, now opposes this amendment. When it was last offered on an emergency supplemental bill on October 17, 2003, he joined with 95 of our colleagues in voting for this amendment. I think the amendment still is a valid amendment.

Let me explain what the amendment does. Seventeen thousand Federal employees have been activated into Guard and Reserve units. They find that when they go into this activated status, they are receiving less in income than they were paid by the Federal Government. The bill says the Federal agencies they worked for will make up the difference so as they are serving our country and risking their lives overseas they will have this pay differential, so their families will be able to keep the mortgage paid, pay the utility bills, and keep the family together.

The Senator suggests this is going to create some sort of a disadvantage to those in active military, but I am sure he feels, as I do, that companies across America that stand behind their employees who are activated in the Guard and Reserve are doing the right and patriotic thing by making up the difference in pay between what one is paid when they are home and what one is paid when they are in uniform. They are saying to this soldier: We are with you; we are with your family; serve your country and come back to your job; we are proud of you.

There is one employer at the top in America that does not do it. It is the Federal Government. The arguments are made on the floor today that if we stand behind these soldiers who are Federal employees, somehow it is a poor reflection on the rest of the military. That is not true. We revere and honor those who serve our country, active military, activated Guard, activated Reserve. Fifty-one percent of the activated Guard and Reserve take a cut in pay to serve America. What I am saying is if one is a Federal employee, for goodness sakes, they ought to have their salary made whole. Why should they go overseas, worrying about whether they are going to get hit by a bullet, step on a landmine or hit by a rocket-propelled grenade, and whether their spouse can pay the bills at home for tuition for the kids? Why do we not stand behind these soldiers who are serving? We are out there on the Fourth of July waving our flags, but, for goodness sakes, we have a chance to stand behind them today on the Senate floor. It is absolutely shameful that the Federal Government will not provide the same kind of pay protection for our activated Guard and Reserve that over 900 private businesses, State and local governments, have provided across America. We honor them.

The Secretary of Defense has a Web site to honor the fact that they are standing behind the soldiers, but we do not do it. The Federal Government does not do it. This is our chance to make a difference.

Also, on the Kerry amendment, I disagree with the Senator from Alaska. To think that if someone is on a troop plane headed over to Kuwait and, God forbid, it crashes, they are entitled to $12,000; however, if they get off the plane and are killed in combat they should be entitled to $100,000—I think they are heroes in both instances. Senator KERRY is suggesting we should regard them as such. I think his amendment is a valid amendment and, yes, it does cost money. It costs money to stand behind our veterans, our soldiers, and their families. That is part of the real cost of war. That is why I urge my colleagues to vote for this amendment. The amendment I am offering today passed 96 to 3 when last called. It passed by a voice vote after that. It has the support of the Reserve Officers Association, the National Guard Association of the United States, and the Enlisted Association of the National Guard of the United States. These organizations represent the men and women who are risking their lives in Iraq and Afghanistan, and are asking for basic fairness from the Federal Government. I think this amendment is long overdue.

For 3 years now, this amendment has been lost in conference. It passes on the Senate floor and disappears, and Federal employees activated to serve our country wonder what happened. Well, today we will have a chance with this rollcall vote to see if we want to stand behind these men and women in uniform. This is an amendment that is long overdue.

I ask unanimous consent that Senator SALAZAR of Colorado be added as a cosponsor.

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

Mr. DURBIN. I suggest the absence of a quorum, before a vote is called.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that we each have 1 more minute.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. No objection.

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

Mr. STEVENS. Mr. President, I wish to address the Senator from Illinois because every person the Senator has mentioned in connection with Senator KERRY's amendment is covered. All the people on an airplane going to combat are covered. Any training-related combat, they are covered. The question is whether people who stand side by side with someone in the Pentagon working daily in uniform, a civilian person working the same job, whether one should be covered in the event of death and the other should not, whether one should be covered while driving home here in Washington, DC, after drinking too much, gets in an automobile accident, and get the same benefit a fallen hero gets. I ask the Senator if he would consider in connection with his amendment eliminating a request for the yeas and nays and we would be glad to accept that amendment.

Mr. DURBIN. I say to the Senator, if I had not lost this amendment twice in conference after it passed the Senate, I would agree to that, but I think we need a record vote. I do not know what it takes to finally get this Senate to go on record and stand by the Senate position in conference. Twice now we have taken this proposal to conference and it has disappeared, with the White House or Department of Defense or somebody opposing it. If we have a record vote, I think we have a much better chance to say to the conferees, for goodness sakes, the third time, let us stand up for these men and women.

I am sorry; I want to insist on the yeas and nays. I believe that is the only way to make it clear where we stand on the issue and to convince the conferees to finally stand for the Senate position if it succeeds.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. I move to table the Senator's amendment.

Mr. COCHRAN. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER (Mr. SUNUNU). Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 39, nays 61, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—39

Allard	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Frist	Murkowski
Brownback	Graham	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Burr	Hagel	Smith
Chambliss	Hatch	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Cornyn	Kyl	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich

NAYS—61

Akaka	Domenici	Mikulski
Alexander	Dorgan	Murray
Allen	Durbin	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bayh	Feingold	Obama
Biden	Feinstein	Pryor
Bingaman	Harkin	Reed
Boxer	Hutchison	Reid
Byrd	Inouye	Roberts
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Salazar
Chafee	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Coleman	Kohl	Snowe
Collins	Landrieu	Specter
Conrad	Lautenberg	Stabenow
Corzine	Leahy	Thomas
Dayton	Levin	Warner
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Dole	Martinez	

The motion was rejected.

Mr. COCHRAN. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COCHRAN. The yeas and nays have been ordered on the underlying amendment. I ask the yeas and nays be vitiated.

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

The question is on agreeing to the Durbin amendment.

The amendment (No. 356) was agreed to.

Mr. COCHRAN. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COCHRAN. We have under the order a vote, now, on two Kerry amendments, Nos. 333 and 334. Is there time for debate?

The PRESIDING OFFICER. Under the previous order, there is 2 minutes to be evenly divided on each amendment.

Mr. KENNEDY. Mr. President, I am delighted to join my colleague in sponsoring these amendments, which will increase the death gratuity from $12,000 to $100,000 for all service members killed on active duty, and allow their dependents to continue receiving the basic housing allowance for a full year instead of the 180 days in current law.

All of us support our troops. We obviously want to do all we can to see that they have proper equipment, vehicles, and everything else they need to protect their lives as they carry out their missions. But we also need care for the families of these courageous men and women who make the ultimate sacrifice.

Any service member's death is tragic, whether in combat overseas or a training accident here in the United States. They are heroes, not victims. These brave men and women came forward to serve our country knowing what the dangers were and knowing the possibilities. They stood tall when the country needed them.

Their case is a tragedy, and so is the void left behind for their loved ones.

We know what happens when a family is notified of a death. There is a knock on the door. They open the door and a military officer is standing there to give them the most dreaded news they will ever receive. Details are few and typically only include the time and place of the death, and perhaps some brief words on how it happened. A few days later, he provides them a death gratuity check for $12,000 and helps them through the process of making the funeral arrangements while the flag draped coffin is on the way home.

After the burial, the conversation turns to additional funds and benefits. The topic often has to be pressed by the officer, because the families, so burdened, seldom think in terms of what their benefits might be. They slowly realize that instead of having a constant breadwinner for many years, they receive only a modest monthly sum.

The burden of combat deaths falls most often on the junior enlisted personnel, whose average yearly wages can be as low as $17,000. The actual benefit depends on number of children and other specific circumstances, and decreases over time because of age or a child's status as a student.

The current Senate bill uses the administration's formula to achieve a $500,000 threshold, and includes some noncombat deaths, but not all of them. The bill, for example, provides a $100,000 gratuity to survivors of those killed in training accidents. But it retains the current $12,000 gratuity for other types of deaths, such as those who collapse during strenuous exercise or are killed in an accident driving to work. It is distinction without a difference for the family of the service member who died. They know only that their loved one went to work to help prepare their fellow soldiers, marines, sailors or airmen for battle and will never return. In today's military, all jobs and stations are equally important.

Our amendment eliminates any distinction between combat and non-combat deaths and provides a death gratuity of $100,000, regardless of where or how a service member dies.

Along with other provisions of the bill, the amendment would increase the total death benefit to $500,000, depending on the amount of military life insurance a person carries.

No one can ever put a price on a human life, but there is no doubt that current levels are unacceptably low.

It's also very important to extend the length of time for surviving widows and children to remain in military housing to a full year, either on base or with housing assistance.

Currently, surviving spouses and dependents of military personnel killed on active duty may continue in their military housing or receive their military housing allowances for up to 180 days after the death of their loved one.

Their loss is traumatic enough without the immediate pressure of having to find a place to live, moving, and disrupting their life all over again. Extending the length of time for survivors to stay in military housing gives them greater flexibility as they struggle to deal with what has happened. Children will be able to finish the school year among friends and in familiar surroundings.

We know we can do much more to take care of military families after the loss of a loved one. We have been complacent for too long, and I urge my colleagues to support us in providing this much needed and well-deserved relief to these courageous and suffering families.

Mr. KERRY. Mr. President, point of inquiry.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 333

Mr. KERRY. Mr. President, it is my understanding the Senator from Alaska, or the manager, is prepared to accept one of the amendments, I think. Am I correct?

Mr. STEVENS. The Senator is correct; we are willing to accept the second amendment.

Mr. KERRY. Mr. President, that is amendment No. 334, which extends the period of time that spouses can remain on a base after their spouse has died in action.

Mr. STEVENS. Mr. President, that is amendment No. 334.

I ask unanimous consent that the rollcall be vitiated and the Senate adopt that amendment.

Mr. KERRY. Amendment No. 333.

Mr. STEVENS. Amendment No. 333?

Mr. KERRY. Mr. President, I ask unanimous consent that Senator LINCOLN be added as a cosponsor.

The PRESIDING OFFICER. To which amendment?

Mr. KERRY. To amendment No. 333 and amendment No. 334.

The PRESIDING OFFICER. Without objection, it is so ordered. The cosponsor will be added to both amendments.

Mr. STEVENS. Our records show it is amendment No. 334.

Mr. KERRY. Mr. President, there is confusion.

Mr. STEVENS. I am corrected; it is amendment No. 333.

The PRESIDING OFFICER. It is the understanding of the Chair, the amendment described by the Senator from Massachusetts is——

Mr. KERRY. No. 333.

The PRESIDING OFFICER. No. 333.

Mr. KERRY. Thank you.

The PRESIDING OFFICER. Does the Senator from Alaska wish to modify his unanimous consent request?

Mr. STEVENS. I have made the motion we vitiate the rollcall and accept the amendment.

The PRESIDING OFFICER. No rollcall has been ordered at this time. Without objection, amendment No. 333 is agreed to. The motion to reconsider is laid upon the table.

The amendment (No. 333) was agreed to.

The Senator from Massachusetts.

AMENDMENT NO. 334

Mr. KERRY. Mr. President, the second amendment is an amendment to raise the death benefit for those who die while in service to our country. Currently, it is $12,000 plus change. We want to take it up to $100,000.

The Senator is going to tell you that the Pentagon is opposed to this. Secretary Rumsfeld is opposed to this. The uniformed leadership at the Pentagon is overwhelmingly in favor of it.

Air Force GEN Michael Moseley said:

I believe a death is a death and our servicemen and women should be represented that way.

Army GEN Richard Cody said:

It is about service to this country and I think we need to be very, very careful about [drawing a] distinction.

And GEN Richard Myers, Chairman of the Joint Chiefs of Staff, said:

I think a death gratuity that applies to all service members is preferable to one that's targeted just to those that might be in a combat zone.

Let me say to our colleagues, you can be driving a car and have a car accident in a combat zone, and you qualify for the upper level. But if you are serving on an aircraft carrier or elsewhere and you are training personnel, and you die from a catapult that falls or you have an accident, you do not get the same benefit, even as you are preparing to send troops to war.

That is wrong. We believe you ought to apply it according to the desire of the uniformed generals, which is to treat all members of the service the same say.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Alaska.

Mr. STEVENS. Mr. President, respectfully, the Senator from Massachusetts is wrong. Those who die in training or other activities related to combat are covered by our amendment. We sought to recognize fallen heroes from the time they enter training for combat to go overseas. They are covered by our amendment. What this amendment does is it does not give us the opportunity to recognize those who put their lives on the line. We oppose this amendment because of that fact. We do believe there ought to be a distinction.

The Senator's amendment will mean, if someone right here in this district while in uniform drinks too much and dies while driving home, they are going to get this gratuity, the same gratuity the fallen hero should get. It is wrong to cover anyone in uniform with this type of allowance. We have increased the insurance for everyone in uniform. They can buy up to $400,000. But raising this from $12,240 to $100,000—it should go to those related to combat and in combat.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STEVENS. Mr. President, I move to table this amendment and ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are requested.

Is there a sufficient second?

There appears to be a sufficient second.

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

The assistant legislative clerk called the roll.

The result was announced—yeas 25, nays 75, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—25

Allard	Dole	Santorum
Bennett	Domenici	Sessions
Bond	Enzi	Shelby
Bunning	Frist	Stevens
Burns	Grassley	Thomas
Burr	Hatch	Voinovich
Cochran	Inhofe	Warner
Cornyn	Lott	
DeMint	McConnell	

NAYS—75

Akaka	Bingaman	Chafee
Alexander	Boxer	Chambliss
Allen	Brownback	Clinton
Baucus	Byrd	Coburn
Bayh	Cantwell	Coleman
Biden	Carper	Collins
Conrad	Jeffords	Nelson (NE)
Corzine	Johnson	Obama
Craig	Kennedy	Pryor
Crapo	Kerry	Reed
Dayton	Kohl	Reid
DeWine	Kyl	Roberts
Dodd	Landrieu	Rockefeller
Dorgan	Lautenberg	Salazar
Durbin	Leahy	Sarbanes
Ensign	Levin	Schumer
Feingold	Lieberman	Smith
Feinstein	Lincoln	Snowe
Graham	Lugar	Specter
Gregg	Martinez	Stabenow
Hagel	McCain	Sununu
Harkin	Mikulski	Talent
Hutchison	Murkowski	Thune
Inouye	Murray	Vitter
Isakson	Nelson (FL)	Wyden

The motion was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 334) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. KERRY. Mr. President, I want to thank my colleagues for having supported amendment No. 334 to extend the $100,000 death gratuity to the survivors of all who die on active duty.

I want the record to show what the amendment will accomplish and why what it accomplishes is important.

Current law provides $12,000 to all members of the military who die on active duty, regardless of circumstance.

Earlier this year, President Bush proposed increasing the death gratuity to $100,000 for those who die in Iraq, Afghanistan, or designated combat zones.

The supplemental legislation reported by the Appropriations Committee increases the death gratuity to $100,000 for those who die in combat and those classified under circumstances classified as warranting Combat Related Special Compensation, CRSC, if they had lived. CRSC was a compromise brokered a few years ago in lieu of concurrent receipt. Using CRSC, the $100,000 death gratuity would go to those who die ''as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war.'' For all others, the death gratuity remains $12,000.

My amendment is very simple. It changes the existing law to say $100,000 shall be paid in death gratuity under all circumstances in which $12,000 is now paid. It eliminates the provisions in the legislation that distinguish between the manner and place of deaths. It eliminates any connection to combat related special compensation. It does not extend the death gratuity to anyone who doesn't already receive the $12,000.

The amendment simply heeds the advice of the uniformed leadership of the military who said, unambiguously, that a death is a death is a death, and Congress should not try to parse them.

General Richard A. Cody, U.S. Army, said:

It is about service to this country and I think we need to be very, very careful about making this $100,000 decision based upon what type of action. I would rather err on the side of covering all deaths rather than try to make the distinction.

Admiral John B. Nathman, U.S. Navy, said:

This has been about . . . how do we take care of the survivors, the families and the children. They can't make a distinction; I don't believe we should either.

General Michael T. Moseley, U.S. Air Force, said:

I believe a death is a death and our servicemen and women should be represented that way.

General William Nyland, U.S. Marine Corps, said:

I think we need to understand before we put any distinctions on the great service of these wonderful young men and women. . . . they are all performing magnificently. I think we have to be very cautious in drawing distinctions.

Finally, General Richard Myers, the Chairman of the Joint Chiefs of Staff, said:

I think a death gratuity that applies to all service members is preferable to one that's targeted just to those that might be in a combat zone.

I also want to note that the practical effect of my amendment is identical to the provisions of the House-passed supplemental. The underlying bill, H.R. 1268, passed the House on March 16, 2005, and in section 1113 it would require an equal death gratuity of $100,000 for all service members, regardless of the circumstance and location of their death. Like my amendment, it does not treat one military family differently than others.

Lastly, my amendment has been endorsed by the Enlisted Association of the National Guard of the United States, EANGAUS; the Military Officers Association of America, MOAA; the National Guard Association of the United States, NGAUS; the National Military Family Association, NMFA; the Reserve Enlisted Association, REA; and the Reserve Officers Association, ROA.

I thank my colleagues again for their support and look forward to working with them to hold this mark in conference.

The PRESIDING OFFICER. The Senator from Texas is recognized.

AMENDMENT NO. 367

Mrs. HUTCHISON. Mr. President, I rise to speak against the Byrd amendment. It is my understanding that, after I speak and after Senator BYRD has a few minutes to respond, we will have a vote on this amendment.

The amendment put forth by Senator BYRD would take out $40 million requested by the administration in emergency funds to build a detection facility and security fence at Guantanamo Bay. I believe we must keep the $40 million to allow the Department to move forward to make better facilities at Guantanamo Bay, facilities that are more secure, and facilities that will make operations more efficient, especially in the use of guards.

Currently, there are about 545 detainees at Guantanamo Bay. About half of those are housed in three camps, which are built as temporary facilities. I have seen these facilities. Many of us have gone to Guantanamo Bay to look at them. They are basically walls made of chain-link fences. Of course, there is no climate control, and there is not very much room for exercise of detainees. Building the more permanent facility would provide a better, more secure facility, and facilities that are better housing units.

I think Guantanamo Bay is the perfect place to hold these types of detainees, many of whom are dangerous terrorists. I do not want these prisoners moved. I don't want them moved into facilities in communities in our country, on our shores, where they can pose a danger for our citizens and serve as a lightning rod for terrorist activity. Al-Qaida has shown that it will try to liberate—by force if necessary and with no regard to the loss of innocent lives—their fellow terrorists. U.S. forces in Iraq and Afghanistan have weathered such attacks and thwarted repeated violent escape attempts. Recent reports of tunnels, riots, and mortar attacks against detention facilities in Iraq have been well publicized in the press.

Do we want to move that to the lower 48 States in the United States of America? I don't think so. Having them on an island, where other terrorist attempts to free prisoners are much less able to be put forth, is the exact right place for these prisoners. I want to make sure that we have the best facilities possible and that we have the permanent facilities on an island in Cuba so that there is not as much capability to do harm to innocent Americans as there would be if we moved those prisoners to places on our soil such as Atlanta, GA, or Florida.

The detention facility that would be built will also reduce the number of required personnel. The current facilities require significant personnel to monitor detainees. A permanent facility would free 150 of them to perform other tasks in the global war on terror. It will be the same for the security fence; we could free up 196 people who are now guarding around the perimeter of Guantanamo Bay. So that is 346 fewer guards that would be needed if we had the permanent facilities.

It is very important that we keep the $40 million asked for by this administration to make better, more permanent facilities at Guantanamo Bay. I want them to stay on that island, not moved into the United States where we know terrorists are dwelling, we know they are looking for ways to attack our country. The last thing we want is for them to start moving into detention facilities to try to free prisoners and, in the process, harm innocent Americans or the people who are guarding those prisoners.

So I ask the Senate to vote this amendment down and give the administration and the Department of Defense the capability to house these prisoners in the most efficient way possible and certainly in a way that protects American lives to the greatest extent possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I do not know of any other Senators who intend to debate this issue. I would like to put an exclamation point on the statement made by the distinguished Senator from Texas though.

One thing that is clear, if we do not have a permanent facility there, an improved facility, we are going to have to keep more U.S. personnel there guarding and maintaining the security of this facility. If we use the funds the administration is requesting, approve the request the administration has submitted to the Congress, then we will be able to use a lot of the people who are there now for other purposes elsewhere in the war on terror to help better defend the country and make sure we are safeguarding the security interests of the American people.

This is not to help prisoners have a better deal, even though the facility will be more humane and easier to care for and to deal with, but it will be more secure, and it will help us reallocate resources that will benefit our national security interests. That is the point.

This is money well invested. The administration is requesting it. Our subcommittee chair supports it after reviewing the request. So I think the Senate should support the committee and what it has recommended and reject the Byrd amendment.

The PRESIDING OFFICER. Is there further debate on the Byrd amendment? The Senator from West Virginia.

Mr. BYRD. 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. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia.

Mr. BYRD. Mr. President, am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

Mr. President, the Pentagon defends the current facilities for the incarceration of prisoners at Guantanamo as being safe, secure, and humane. There

is no emergency, unforeseen or otherwise, that requires the immediate construction of a 220-bed maximum security prison to relieve existing deficiencies at Guantanamo, and so it is premature.

That is part of the case I am making, it is premature. Why have this item in this bill? Why in an emergency supplemental bill? It is premature to ask the American taxpayers to spend $36 million—it is your money, I say to the taxpayers—to build a permanent maximum security prison at Guantanamo when the courts have not yet determined the legal status of the detainees at Guantanamo or have not determined whether the United States can continue to hold them indefinitely without charging them with a crime.

The prison population at Guantanamo is steadily declining, down to about 540 from a high of 750. The Department of Defense reportedly hopes to further cut the current population by at least half. However, DOD has not given a firm estimate of how many detainees it expects will require long-term incarceration.

Why all the hurry? The 220-bed prison is a guesstimate—a guesstimate—not an estimate.

The Department of Defense has already built one permanent maximum security prison at Guantanamo, a $16 million state-of-the-art facility completed less than a year ago that has the capacity to hold 100 prisoners.

Temporary detention facilities at Guantanamo include several camps in which prisoners are housed in individual cells with a toilet and sink in each cell, and one camp where detainees who are considered the least dangerous are housed in 10-man bays with all-day access to exercise yards.

The Department of Defense contends that these temporary facilities are nearing the end of their useful life, but the Department does not argue they are unsafe or uninhabitable.

The U.S. military has many urgent unmet needs, some of which are emergency status needs. Construction of a second permanent maximum security prison at Guantanamo is not among these urgent, unmet needs. This is a decision that should be deferred until the courts have resolved the legal status of the detainees at Guantanamo and until the Defense Department determines the number of detainees it expects to hold in custody for the long term.

What I am saying right now is the request is premature. Let us wait until the courts do their job. Then we will have a picture of what we need to do. Let us not be premature in spending the taxpayers' money when there are too many unanswered questions that ought to be answered and which in time will certainly present us with a clear picture of the permanent needs.

I thank the Chair and thank all Senators.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The result was announced—yeas, 27, nays 71, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—27

Akaka	Harkin	Mikulski
Baucus	Inouye	Pryor
Biden	Jeffords	Reed
Boxer	Johnson	Reid
Byrd	Kohl	Rockefeller
Carper	Lautenberg	Sarbanes
Dorgan	Leahy	Specter
Feingold	Levin	Stabenow
Feinstein	Lincoln	Wyden

NAYS—71

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dodd	Murkowski
Bayh	Dole	Murray
Bennett	Domenici	Nelson (FL)
Bingaman	Durbin	Nelson (NE)
Bond	Ensign	Obama
Brownback	Enzi	Roberts
Bunning	Frist	Salazar
Burns	Graham	Santorum
Burr	Grassley	Schumer
Cantwell	Gregg	Sessions
Chafee	Hagel	Shelby
Chambliss	Hatch	Smith
Clinton	Hutchison	Snowe
Coburn	Inhofe	Stevens
Cochran	Isakson	Sununu
Coleman	Kerry	Talent
Collins	Kyl	Thomas
Conrad	Landrieu	Thune
Cornyn	Lieberman	Vitter
Corzine	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	

NOT VOTING—2

Dayton	Kennedy

The amendment (No. 367) was rejected.

Mr. COCHRAN. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 372

Mr. CORNYN. Mr. President, I call up my amendment numbered 372, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN] proposes an amendment numbered 372.

Mr. CORNYN. I ask unanimous consent the reading of the amendment be dispensed with.

The amendment is as follows:

(Purpose: To express the sense of the Senate that Congress should not delay enactment of critical appropriations necessary to ensure the well-being of the men and women of the United States Armed Forces fighting in Iraq and elsewhere around the world, by attempting to conduct a debate about immigration reform while the supplemental appropriations bill is pending on the floor of the United States Senate)

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) our immigration system is badly broken, fails to serve the interests of our national security and our national economy, and undermines respect for the rule of law;

(2) in a post-9/11 world, national security demands a comprehensive solution to our immigration system;

(3) Congress must engage in a careful and deliberative discussion about the need to bolster enforcement of, and comprehensively reform, our immigration laws;

(4) Congress should not short-circuit that discussion by attaching amendments to this supplemental outside of the regular order; and

(5) Congress should not delay the enactment of critical appropriations necessary to ensure the well-being of the men and women of the United States Armed Forces fighting in Iraq and elsewhere around the world, by attempting to conduct a debate about immigration reform while the supplemental appropriations bill is pending on the floor of the United States Senate.

Ms. MIKULSKI. Mr. President, I realize the Senator from Texas has been recognized to offer his amendment. I ask unanimous consent I be permitted to offer my amendment after the Cornyn-Feinstein amendment.

Mr. CORNYN. Reserving the right to object, I have no objection to that request. I note that Senator FEINSTEIN, who is also joining me as a cosponsor on this amendment, would like to speak following me. Senator ISAKSON would also like to speak. I ask unanimous consent they be recognized.

Ms. MIKULSKI. Withholding the right to object, I have no objection to how long you wish to speak on your amendment, Senator. I wanted to be sure I got to offer my amendment this afternoon.

Mr. CORNYN. I have no objection.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Maryland will be considered after the amendment of the Senator from Texas.

Mr. CORNYN. I thank the Senator from Maryland for working with us.

This amendment is a sense of the Senate that Congress should not delay enactment of the supplemental appropriations bill by attempting to conduct a debate about comprehensive immigration reform at this time.

As I made clear, along with Senator KYL and others on this point, I am for comprehensive immigration reform. It is long overdue. It is something in the regular order we are going to consider, both in the Subcommittee on Immigration, Border Security, and Citizenship, which I chair in the Judiciary Committee, but also I have talked with the chairman of the full Judiciary Committee, Senator SPECTER, and he has

advised me that once we complete our work—hopefully in the next couple of months—he would give us an expedited markup in the full committee.

On a subject so complex and potentially divisive as comprehensive immigration reform, it is appropriate we take up this issue as we would most complex issues; that is, by the regular order. It is particularly important we do so in light of the subject matter of the present legislation in the Senate which is an emergency supplemental appropriations bill that should be passed without undue delay so our men and women in uniform can get the resources they need, including the equipment to do the job we have asked them to do and which they have so heroically agreed to do on our behalf in the war on terror.

I confess there are many good proposals out there with regard to immigration reform. The Senator from Maryland has a proposal on H–2B on which there will be some agreement; some people will agree with it. The distinguished Senator from Idaho has a bill called the agriculture jobs bill which will attempt to create a workforce that can work in the agricultural industry. I have some problems with the details of that bill, but in the main it is a well-intentioned effort to try to deal with part of this problem.

I say ''part of this problem'' advisedly. Rather than try to deal with this issue on a piecemeal basis, it is important we enact comprehensive reform. For too long we have simply ignored the fact our borders are not secure, that once people get past the border they literally can melt into the landscape. It has resulted in the current untenable proposition that there are about—no one knows for sure—10 million people who have come into our country outside of our laws. We need to deal with that, particularly in a post-September 11 environment, by addressing the security concerns, by restoring our reputation in this country as a nation that believes in and adheres to the rule of law but also in a way that is compassionate and deals with the economic reality involved where approximately 6 million of those 10 million people are currently in the workforce, many performing jobs American citizens simply do not want to perform.

It is not because I disagree with the general intent of immigration reform that I speak in favor of this resolution, which says we ought to take up this matter but in the regular course and on another day.

It is mainly because I do not want to see, nor do I believe any Senator on the floor or in their office or elsewhere would want to see us get bogged down and diverted in an immigration debate that, frankly, I do not think we are yet ready for, and at a time which I think could well damage our long-term prospects at getting comprehensive immigration reform passed, but particularly in a way that is calculated—let me change that word; it is not ''calculated''—the result likely would be that we would slow down and perhaps bog down this emergency supplemental appropriations bill to equip our troops with what they need.

So this resolution suggests, in the last paragraph, that:

> Congress should not delay the enactment of critical appropriations necessary to ensure the well-being of the men and women of the United States Armed Forces fighting in Iraq and elsewhere around the world, by attempting to conduct a debate about immigration reform while the supplemental appropriations bill is pending on the floor of the United States Senate.

I commend this to all of our colleagues. I express my appreciation in particular to the Senator from California, Mrs. FEINSTEIN, for working with us. We both serve on the Judiciary Committee and believe this is an important issue. But it needs to be handled in the regular course that would not divert us from the immediate task at hand, which is to make sure our troops have the resources they need in order to complete the job we have asked them to do on our behalf.

Mr. President, with that, I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Texas for authoring this sense-of-the-Senate amendment. I am proud to be a cosponsor. I agree with all the comments he has made. I believe it is a huge mistake to bypass the Judiciary Committee, to bypass the Immigration Subcommittee on bills that are big in their ramifications on the United States of America.

If we do that, we will get into a debate on the floor on the AgJOBS bill. I think very few people know, for example, that the way the bill is written you can have two misdemeanor convictions and essentially still get a temporary green card. That can be misdemeanor theft. That can be misdemeanor battery. That can be misdemeanor drugs. I will have an amendment to address that. I will take some time with it.

Most people do not know you just have to have 100 hours of work in a 12-month period. I will have an amendment to address that, and there will be other amendments to address that. But this is a very controversial bill that can have a huge impact on the number of people coming across the border. At the very least, it should have a markup in Judiciary. We should have an opportunity to make amendments in Judiciary before it comes to the floor of the Senate as an amendment on an appropriations bill.

There is also the REAL ID bill, which very well may come up. Senator MIKULSKI has an amendment on H–2B. I am concerned about it because it does not have a cap on the number, and the H–2B quota has been reached. I believe it is 66,000. Maryland has some problems, which are valid problems, I am sure. But just to open the bill, unless there is a specified number—I think we need to discuss it.

I will bring up the State Criminal Alien Program for reauthorization. This is paying back the States for their costs of confinement of illegals who commit felonies and misdemeanors and go to county jails and State prisons. So it will open a long and complicated debate on the floor of the Senate. We should not do that. Please. I have sat as a member of the Immigration Subcommittee now for 12 years. I come from a big immigration State, the largest, no doubt about that, in America, a State with very deep concerns.

I understand the agricultural labor needs of the States as well as anyone. And not to be able to have a markup, not to be able to make amendments in a committee and present a bill that has been scrubbed, amended, and is ready for prime time, I believe, is a huge mistake.

So I am very pleased to support the Senator's amendment. I will have another amendment in due course in this area as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I stand at this moment to very cautiously oppose the resolution and to express my reason. I say ''cautiously'' because of my respect for the Senator from Texas and respect for the Senator from California and all of the work they are putting into immigration and the need for comprehensive reform.

None of us in the Senate argue about it, but we certainly are willing to talk about it. In fact, we have talked about it now for 1,201 days since 9/11. Mr. President, 9/11 was that day of awakening when we found out there were millions of foreign nationals in our country without documentation, and some of them were here with evil intent. Not many but some. Most are here and hardworking.

Tragically enough, because of the character of an obsolete package of immigration laws, they are living in the back streets and shadows of America. They have no rights. They work hard. Many of them take their money back to their birth country. Some of them attempt to stay. That is where we are. We all know that.

The Senator from California has talked about the numbers. Her State has a very big problem. I hope we can get into that debate.

Let me also talk about the timing of it. I think you are going to see, if it is extended, only those who would want to extend the time of this debate. The issue of the Senator from Maryland is a very small, sensitive, important debate. It is very time sensitive. That law should have been in place the first of April so the hires could have gone forth at the first of May. In my State, the resorts open June 1. It is critical that workforce be in place by June 1.

Comprehensive debate, according to the Senator from Texas, should probably take place late summer, early fall, when they have finally done their

work. I do not criticize them for that. But I must tell you, long before 9/11 I was looking at the very tragic situation of American agriculture. American agriculture has admitted openly that they have a very large problem. It is quite simple. The Bureau of Labor and Statistics will tell you the workforce may have as many as, well, 1.6 million workers, and 70 percent of them are not documented and therefore, by definition, illegal. By surveys alone, the workers admit it. Yet we now say: Gee whiz, we will talk about it now.

It is too late now. It can't be done now. It is time sensitive to the industry, very time sensitive to the food on the shelf of the American consumer, time sensitive to humane support of those who toil in our fields.

No, there is never the right time. And, oh, about this supplemental, this ''urgent'' supplemental—I am sorry, I do not mean to criticize the Senator from Texas—we have been urgently working on this for 2 months. That is how long ago the President proposed it, 2 months ago. We will have this on the President's desk by the first of May. That is when they want it. We do not need to debate immigration for 4, 5 days unless the Senator from California wants to drag it out.

There will be amendments on the floor of the Senate to my bill, and there should be. It is open for amendment. I would hope I could convince Senators to take it as it is. It has had hearings before the Judiciary Committee. It is well vetted. It has been 8 years in the crafting. Last year, I had 509 groups supporting it. This year I will have 600.

This issue's time has come, and it is time the Senate deal with it openly and forthrightly. I was willing to step back for a moment. I told the leader so. The leader worked on it but could not put that package together. I will be on the floor of the Senate later today, hopefully, offering my amendment. It has been filed at the desk. We can deal with this in a day, unless there are Senators who want to drag it out by throwing in amendments that ought to go in the substantive comprehensive package that the Senator from Texas, chairing the committee, is working on and attempting to do at this moment.

A comprehensive bill? You bet. Rifle shots, targeted? You bet. We have to do it now and should do it now—H–2B, H–2A, critical to Americas's workforce and food supply now, not this fall or this winter or next year. We almost collapsed the raisin industry in the Central Valley in California last year. Why? Because Social Security was doing its work and checking Social Security numbers. And 72 percent of them were mismatches. That is a phrase for ''illegal.'' The Senator from California knows it. She has admitted she has a major problem in the heart of America's agricultural food basket.

Shame on us for not having the time to deal with the problem and deal with it forthrightly, honestly, and fairly. I am willing to subject my work to amendments, if the Senator from California wants to bring all of the amendments she can. I would hope she would target it to those specific two, the AgJOBS bill. She is right about misdemeanors, but I am only following the current Federal law, the current law for immigration. I haven't changed it at all. If she doesn't like it, she will bring amendments, and maybe we can adjust that a little.

I have worked with the Senator from California. I am not disagreeing with the premise of some of her arguments. But if she wants to throw the whole baby in with the bath water, then she had better be careful because she will collapse her agricultural economy if we make a misstep.

We are doing something right now that is critical to America and to America's culture. We are trying to control our borders. We are trying to apprehend and deport those in our country who are illegal. We ought to do that. I have voted for everything along the way. But as we work to get all of this done and clean up the inheritance of the last 20 years of bad law or law that wasn't enforceable—and we learned all about it in a post-9/11 environment—we have to remember one thing: As we do the right things, we have to do all of it the right way or we will collapse certain segments of America's economy because we destroyed the workforce that is out there at this moment, toiling in America's agricultural fields or in America's processing plants, working hard to take money home to their children and wives—not here, dominantly in Mexico. Some here.

That is the reality that I bring to the floor, and I am very willing to debate. I hope we can get into that debate later on today.

When you think about the Cornyn-Feinstein resolution, that this is not the right thing, then when is it? Twelve hundred days from now, 1,300, 1,400 days from the day that America awoke to the problem as America's people were killed and our trade center fell and our Pentagon was attacked? That is the reality. We are doing all the right things. We are moving in the right direction. But let's make sure that as we do, we do it in a package that doesn't start collapsing segments of our industry or mistreating people who work hard for themselves and for the American economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. I thank the Senator from Texas for allowing me a few moments to speak about this issue.

If we read the preamble to this proposed amendment, it says it is a sense of the Senate that the Congress of the United States should not delay the appropriation to our men and women in harm's way by having a debate over immigration policy. It could just as easily say it is the sense of the Senate that the Congress should not delay a comprehensive immigration reform debate which is the reason we have the problem today.

I have a great respect for the Senator from Texas. I understand why this amendment has been put together because, as the Senator has said, there are a lot of us who have been trying for 3 or 4 days to figure out a way to bring about a meaningful debate on comprehensive immigration reform. I am taking this opportunity because I want to make points not on behalf of the Senator from Georgia but on behalf of the 9 million people in Georgia I represent.

Those points are as follows: REAL ID is not an immigration issue. It is a national security issue. By the time we get to the end of this debate and the conference, it should be a part of this package.

No. 2, I have the greatest respect for the Senator from California and the Senator from Idaho and the Senator from Texas and the distinguished chairman of the Judiciary Committee, the Senator from Pennsylvania. I wouldn't disregard for a second the amount of work that has gone into the comprehensive immigration laws of this country, trying to bring about fundamental change. However, as of this date, in the 3 and a half plus years since 9/11, the Congress has done little to address some major issues. For a second, I would like to address them.

As I do, I want you to know I am a second-generation Swedish American. Because of this great country, my grandfather emigrated in 1903 in the potato famine. My father was born in 1916. My grandfather wasn't naturalized until 1926. Because of this Constitution, I am in the Senate today. I respect the legal immigration process. I also despise those who tend to judge books by covers and categorize people by their ethnicity or their look or say: They are an illegal alien. We have delayed so long in dealing with securing our borders, enforcing legal immigration and seeing to it there are consequences to bad behavior, the American people have lost confidence in the government to actually do what the Constitution expects us to do.

Think about a few things for a second. We have talked about agriculture. We are spending money enforcing the adverse effect wage rate on the onion farms of south Georgia. We are spending money enforcing a law that actually would induce a farmer to think about hiring undocumented workers rather than documented workers because it is going to cost him $2, $3, or $4 an hour more to hire the documented worker, and we don't have the enforcement people to enforce our borders. How in the world can we justify trying to enforce that which induces the wrong thing to happen?

We have seen our health facilities, our educational facilities—I chaired the Georgia Board of Education. I

spent more time providing Spanish-speaking teachers for our State, and bilingual programs, which I am proud of. I want to educate every one of them. I helped write No Child Left Behind. But as the flood and the flow continues and the suspicion continues that we fail in Washington to recognize the crisis we have in this country, a crisis that is causing some of our citizens to take actions that worry me deeply, it is my responsibility on the floor of this Senate to represent the people of the State of Georgia.

I respect the Senator from Texas and this amendment. I understand why it is here. If we get about the business of a feeding frenzy, of taking some of the points I have mentioned and the Senator from Idaho has, we may delay, but somehow, some way we need to send the American people the clear signal we get it. We are going to have comprehensive reform. We are going to have a comprehensive debate, and it is going to be sooner rather than later.

I will disagree, I am sure, as will others with me, on where we need to go. But disagreeing on how we get there and getting there are two different things. We no longer have the luxury. Our States, our school systems, our hospitals, our farmworkers, and our people no longer have the luxury or the patience for us to delay any longer.

In my State of Georgia, there is an old saying: If you want to get the mud out of the stream, get the hog out of the spring. Procrastination on dealing with the delicate and difficult issues of comprehensive immigration reform have muddied the water in America and will do great harm if we don't hurry up and take the 8, 3, 4, and 6 years of work that has been done in committees and move forward with comprehensive reform.

I believe the Senator from Texas is trying to use this as a foundation for that to happen. I understand the Senator from Idaho's frustration which I have shared. I hope if my remarks contribute anything, it will be to send a message: Regardless of whether we agree on the specifics, let us no longer delay in dealing with the single largest domestic issue to the people of the United States and that is comprehensive immigration reform and rewarding legal immigration and getting our arms around illegal immigration.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I wanted to make a brief response, both to the Senator from Georgia and the Senator from Idaho. One of the reasons why I think it is so difficult to look at a broken immigration system is because our immigration system is so big. America takes more immigrants in its regular immigration quota a year than other industrialized countries put together.

If you take that and you take all of the other programs, H–1B, H–2B, the L visas, and all these other visas, it adds up to about 5.5 million people a year who come into our country under one visa or another. It is an enormous job to look over this whole breadth and scope of immigration programs and make the necessary changes.

I think one logical change is if a quota of people coming from Mexico is perhaps too small, people have to wait too long; therefore, there is a huge illegal immigration problem. Nonetheless, we are a nation of laws. If we have the law, we should follow the law. So I am one who believes reform should be done, but in the name of reform I don't believe we should pass a bill quickly on an appropriation bill without going through the necessary steps to adjust it and amend it in the committee.

Let me make a point in response to the Senator from Idaho, and I am pleased that he is a great expert on California agriculture. Since he is, he will know that the great bulk of the workforce is illegal. That workforce has been there for a very long time. I would accept a bill that provided for some adjustment of a workforce that had worked in agricultural labor for 3 years, that had been in California doing it, could show prior work documentation and be vouched for by employers.

According to this bill that we are going to have on the floor—and I assume people feel it is going to sweep through—you only have to work for a hundred days—that is, 575 hours—in 12 months and you are eligible for your family coming, for a temporary green card; and then if you work another time, you get a permanent green card.

Well, this is going—mark my words—to be a huge magnet. When I discuss this with people, they say: There is an eligible date. Look at it here. Do you think people across the border know the eligible date? All they know is they have to be here and work for a hundred days, so come on over. They come over and you cannot find them and they don't go home. What happens is the numbers build up, the people in southern California find people camping in their backyards, in their gullies, and in the parks; there is no housing, the schools are overcrowded, and then people go to the ballot with an initiative. That is what happened in 1994 when proposition 187, unconstitutional as it was, passed. Polls show that if put on the ballot today, it would most likely pass again.

So I have tried to be constructive. I have proposed amendments that have been rejected by the authors in the House and the Senate. I am on the Immigration Subcommittee. Why do any of us serve on a subcommittee, then, if a bill of such enormous dimension—this could be the largest immigration program in history. It could bring millions of people into this country. The workers, their spouses, their minor children are all permitted.

We should know what we do. Now, a hundred days of work, 575 hours of work—if I were on the other side, I would say I can sneak across and get a hundred hours of work, then I can bring in my family and I will have a green card. It is nirvana.

For my State, it is perhaps different—Texas might be the next State, and then Arizona—in terms of sheer numbers and problems. When the President proposed his plan, let me tell you that apprehensions at the border in February went up 14.2 percent; the next month, March, 57.8 percent; April, 79.6 percent. So the call was out there, and people thought, aha, and they tried to come across the border to get into the country. The same thing will happen.

That is why it is important that we figure a way to prevent that from happening. I will provide for an adjustment of status for people who have worked in agricultural labor for a long time, for a substantial period of time.

Mr. CRAIG. Will the Senator yield?

Mrs. FEINSTEIN. For a nice question or a mean one?

Mr. CRAIG. I have never been mean to the Senator from California, nor has she to me. She obviously makes very important points. None of those have been disputed and none of them have been dismissed out of hand. California is a unique situation. Texas is a unique situation. My State of Idaho has a large number of undocumenteds during the year, but it is equal to one county in the Central Valley of California. I understand that.

I don't understand California agriculture as well as the Senator from California, but I spent a good deal of time down there because I work on a broad variety of issues dealing with California and water. California has a very real problem. The Senator has a right to be concerned and alarmed. Any amendments she would wish to offer that are viewed as constructive I will take a very hard look at to make sure that what we do works.

Yes, we have a January 1, 2005, date. I will not get into the details of my bill. We will debate that. So the rush of the border would already have had to occur. But it hasn't. It has increased simply because there is a demand for workers in this country.

If the Senator wants to help me shape that more, I am willing to listen to that and see what we can do with amendments that deal with the misdemeanor issue she is concerned about and a time certain. None of us wants to create a rush at the border. What we want to create for California and the rest of the country is a legal workforce that is there, real, and honors those here for 3, 4, 5 years, who are married and have families here. We say: Go back to Mexico, and you may get back across the border.

Mrs. FEINSTEIN. Mr. President, I think I have the floor. I was waiting for the question.

Mr. CRAIG. The question is quite simple: Offer your amendments, and I will take a serious look at them. You make very important issues for your State and many other States, and I

hope you will do that in a fair and responsible way, as you have always been on this issue.

Mrs. FEINSTEIN. I thank the Senator.

Mr. CHAMBLISS. Will the Senator yield?

Mrs. FEINSTEIN. Yes.

Mr. CHAMBLISS. Mr. President, I happen to agree with her 100 percent. She is exactly right. Not only are we going to see a flood of illegals coming across in greater numbers than what we have today, we are going to see status under the AgJOBS bill, which is pure and simple amnesty. But you are also going to have somewhere between 8 million and 13 million illegal aliens who are here today having the opportunity to become legalized. Just the fact that we don't know, as the Senator has alluded to, how many there are, with the difference being between 8 million and 13 million, that tells you how big the problem is.

So I happen to agree with her, and I will simply tell her we are going to have an alternative—Senator KYL and I—to the AgJOBS when we get to that. The Senator is exactly on target relative to these folks who are going to line up at the border.

Mrs. FEINSTEIN. If I may conclude my discussion, and then I will yield the floor to Senator CRAIG. He mentioned raisins. The last time I looked, it took 40,000 workers in California to harvest the raisin crop in 4 different counties. Most of these are illegals. Most of these have done it year after year. They also go from crop to crop to crop, as we know.

The key is to take care of, in my view, the people who are already here and working and are a part of this. The demand for the agricultural jobs comes every time the employer sanctions are carried out. Then suddenly the agricultural industry says we are for bringing more people in from other countries. I think we have to find a way to have a workforce that is known, identifiable, reasonably and well paid, that can get housing, can send their children to school, that work in this industry. Probably one-half of the agricultural workforce—I would say 600,000 workers—is illegal. These are the 600,000 who I believe we should be concerned with—not opening the border to bring in more but to find a way that they then can become a responsible part of the workforce. That is where I am, because I admit that is a need.

This bill does not do that. This bill sets up a different program and does not relate to people who have been here for years working in agriculture. They may be very good citizens. They probably are. Some of them own their homes, they have children, they are responsible. They have a tough life, true. I think this can be handled. But what has happened is there is a set mentality that the bill has to be this way because we have 60 votes, and we are going to keep it this way. That is a problem and, therefore, that mentality does not let it go through Immigration, does not let amendments have exposure in committee.

Virtually everybody here who is arguing is a member of the Judiciary Committee. That is where we ought to be debating it instead of on the floor passing a piece of legislation of which no one—no one—knows the absolute effect.

I yield the floor.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Arizona.

Mr. KYL. Mr. President, before the Senator yields, may I ask two quick questions? Will the Senator from California respond? First, the Senator from California is the ranking member on the Terrorism and Homeland Security Subcommittee of the Judiciary Committee, which I chair; is that correct?

Mrs. FEINSTEIN. That is correct.

Mr. KYL. Mr. President, let me ask the Senator another question. She talked about the probability of thousands and thousands of illegal immigrants being attracted to come into the country who are not here now. The Senator from Idaho said we will have a cutoff date.

Was the Senator from California, in raising that concern—which I believe to be an absolutely legitimate concern—perhaps talking about section 101(D)(1)(c) of the bill of the Senator from Idaho which actually invites former lawbreakers to return to the United States? In other words, illegal immigrants who have formerly worked in U.S. agriculture.

Mrs. FEINSTEIN. Mr. President, can the Senator give me a page?

Mr. KYL. I do not have the page. It is a section that permits former immigrants, who worked here illegally in agriculture but have since returned to their home, to return to our southern border and apply for the special status that is set up in the bill the Senator from California described earlier in order to file a preliminary application for status as temporary permanent resident if they appear in designated ports of entry with an application that ''demonstrates prior qualifying employment in the United States,'' and then could be granted admission to the United States by the Department of Homeland Security.

That is question No. 1. Is that one of the areas in which additional illegal immigrants would be attracted to come into this country?

Mrs. FEINSTEIN. Absolutely. Additionally, this bill gives this special temporary green card to people with two misdemeanors on their record. I have discussed this with the authors in the House, and they do not want to amend it. My own view is there should be no misdemeanors. Why should somebody who broke a law coming here be able to break two more laws and get special consideration? We all know misdemeanor laws vary. We know there are misdemeanor drug laws, there are misdemeanor battery laws, misdemeanor theft laws, misdemeanor driving under the influence—there are all kinds of criminal misdemeanors. To say someone who broke the law who came here illegally, who was illegally employed, can have two misdemeanors on their record and have a special status is something I do not understand. Yet I have implored them for a substantial period of time, and they do not want to change.

If we had a chance to discuss this in the Judiciary Committee in a markup, this would be brought out, and we could debate it back and forth. People could say why they want it, we could say why we do not think it should be included, and there would be a vote. At least a bill would have been vetted by a committee process.

Mr. KYL. Will the Senator from California yield for another question?

Mrs. FEINSTEIN. I will be happy to yield.

Mr. KYL. Under the provisions we talked about before, which would attract any number of illegal immigrants—and by the way, that is not a term I throw around negatively because they would, in fact, have to say they were illegal immigrants in order to gain entry into the United States. They would have to say they were working illegally in the United States before and now they want to come back. That is the provision of law under which they could actually come back into the United States.

Based on the experience of the Senator from California with the use of illegal documentation—Social Security cards, driver's licenses, all of the other items of identification that can be counterfeited—would the Senator have a view as to whether this particular provision could be taken advantage of by those wishing to commit fraud? Of course, people already committed fraud in this country by coming here illegally and using those same fraudulent documents to gain employment in the first place. Isn't this one that would engender a lot of fraudulent applications to come back into the United States?

Mrs. FEINSTEIN. This has been and is today a huge problem. Additionally, there is another problem on our southern border, if the Senator would give me a minute, and that is, other than Mexicans crossing the border being picked up illegally. I think it was up to 88,000 last year. So it is shooting up. And when you ask the Border Patrol about it, they say this is very difficult for them to sort it all out because there is such pressure on the border. The Senator, certainly, in Arizona knows that pressure on the border.

The fraud of documents is well known. One can buy a driver's license, a Social Security card fraudulently in places that I know of and have seen it happening in southern California for $15 or $20. So that is not a big problem.

Mr. KYL. If I can conclude by saying to the Senator from California, I think the proposal she and the Senator from Texas have set forth to put this very

important but very complicated discussion off and not have this debate on the bill that helps to fund our war operations in Iraq and Afghanistan is a very good proposal which I intend to support.

As she knows, I welcome the opportunity to work with her and also with my good friend and colleague from Idaho, the Senator who is proposing the bill, which I would oppose but would hope to be able to work on if we have the opportunity to do that outside the kind of activity in which we are engaged on the supplemental appropriations bill.

So I do support the proposal of the Senators from Texas and California and hope the body will approve it.

Mrs. FEINSTEIN. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I enjoyed this debate. It has been over 15 years since the Senate has had real debate on immigration. The Simpson-Mazzoli bill was the last time the Senate seriously looked at this issue, and it took us years to finally come up with a bill. We have not seriously addressed changes since.

There have been dramatic changes across America in immigration patterns, the number of people coming in, certainly issues of national security. If there is ever an issue we should address in comprehensive fashion, it is immigration.

I commend President Bush. We do not see eye to eye on many things, but I commend him for his leadership in suggesting we debate immigration. His proposal is not one I embrace in its entirety, but it at least opened the debate. Many were critical of it, some lauded it, but at least he had the courage to step up and say: Let's debate it.

Now comes the sense-of-the-Senate resolution that says we have an important bill before us relative to the war in Iraq, Afghanistan, and tsunami relief. Senator CORNYN, a Republican of Texas, and Senator FEINSTEIN, a Democrat of California, have said this bill should not include immigration provisions. I think they make a compelling argument, an argument which I joined with several of my colleagues in making to Senator FRIST a few days ago, who cosigned a letter—about 20 of us—to Senator FRIST saying we do not believe one specific immigration provision should be part of this conference or this appropriations bill, and that relates to the REAL ID.

For those who have not followed the debate, the REAL ID is a provision adopted in the House of Representatives which will be part of this appropriations bill when the House and Senate come together to decide the final work product.

My concern, I say to Senator CORNYN and Senator FEINSTEIN, is that the garlic is in the soup. There is no way to take it out at this point. Those of us who may be conferees will walk into that conference committee and face an immigration issue, a very serious immigration issue, a very controversial one.

So the suggestion we not add any immigration debate to this bill may be a good one to expedite it but like it or not we are going to face what I consider to be some very onerous provisions of the REAL ID bill which will be part of the conference committee report. If it is appropriate, I will retain the floor but ask the Senator from Texas about that particular circumstance. Would the Senator from Texas be open to modifying his sense of the Senate resolution in paragraph 4? In paragraph 4, the Senators from Texas and California say Congress should not short circuit the discussion of immigration by attaching amendments to this supplemental outside of the regular order.

Would the Senator from Texas modify his resolution to add the following language: Or by including provisions relating to immigration in the conference report to this supplemental appropriation bill?

If the Senator would, then I think what we are saying is we want a clean bill. By this vote, we are instructing our conferees to not come back with REAL ID, to not come back with any immigration provision.

I understand the predicament Senator MIKULSKI faces in Maryland. Senator REED of Rhode Island faces a similar predicament when it comes to Liberian refugees. Senator SCHUMER faces an emergency situation with victims of volcano on an island who are now going to be deported back to tragic circumstances.

The point I am making is we cannot escape the reality immigration is on top of us and coming at us, but if we want this bill—because of its special nature—to be clean, I ask, without yielding the floor, if I could, through the Chair, if the Senator from Texas would be open to including this language in his sense of the Senate resolution?

Mr. CORNYN. Mr. President, I appreciate the question of the Senator from Illinois. For purposes of the Senate bill, it is absolutely critical, as I think the debate has shown so far, we not get into other unrelated issues to the war supplemental, but we ought to leave it up to the conferees. Obviously, we are going to have to deal with the House provisions, and that is going to be worked on in the conference committee I do not expect to be on.

This is the agreed language Senator FEINSTEIN and I have been able to come up with, and it covers the area we have some control over; that is, what happens in the Senate on the Senate's version of the bill.

Certainly, I will want to work with the Senator from Illinois and all my colleagues to try to make sure we enact comprehensive reform. Part of the problem is we are taking this in a rifle-shot fashion when I think what we need to do is deal with it comprehensively. That is the reason for the resolution.

Mr. DURBIN. I thank the Senator from Texas. I do apologize. I mentioned to him a minute or two ago that I was going to ask a question along these lines. I would like to ask Senator CORNYN and Senator FEINSTEIN to consider this. Because if we do not go to that next step and say we are not going to let the House bring in an immigration provision in conference and tie our own hands and not offer important immigration provisions in the Senate, that is unfair. If we are going to make this an immigration and appropriations bill, then we have some pretty important issues to consider.

Senator KENNEDY has an issue with Senator CRAIG—Senator MIKULSKI, so many do. If this conference is going to be open and the REAL ID provisions come rolling out at us, as difficult as it is, as time consuming as it may be, we have no recourse but to open the issue and open the debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, reluctantly, I rise to oppose this amendment, even though I agree with many of the principles expounded in it. No. 1, to my colleagues on the Judiciary Committee, the sponsors of this amendment, I too, agree, that our immigration system is badly broken. It does fail to serve the interests of our national security and our national economy. We do need to enact the critical appropriations bill to support our troops and help people who are tsunami victims and some other important aspects. At the same time, though, the sense of the Senate really should be directed to the House. For someone like myself, who has a very serious crisis because of something called the H–2B visas, which I will explain in more detail at another time, the fact is this is our only vehicle.

Immigration, as an issue, was introduced in the supplemental appropriation bill in the House of Representatives with an enormously controversial and prickly concept, the so-called REAL ID card. I know that my colleague from Tennessee has proposed some creative solutions to deal with that. I know that others want to talk about this. If we can talk about comprehensive immigration reform, I am all for it. But the question is, When are we going to do it? It has been over 1,000 days since 9/11, and we have not done comprehensive immigration reform, nor have we looked at what aspects of immigration are working. There are certain aspects that are working in certain areas of the guest worker programs; college students who come from abroad, who work in our country and learn in our country and go back home, what a tremendous exercise in public diplomacy the so-called J visas have accomplished.

In my own State, the H–2B visa, which allows guest workers to come

into this country for seasonal employment to take jobs that are certified as not being held by American workers, with a mandated return to their own home, has worked well. It has worked so well that the cap is now bursting at the seams.

I am all for comprehensive immigration reform, but No. 4 says Congress should not short circuit the discussion by attaching amendments to this supplemental. We have had no discussion. There is nothing to short circuit. What we do have is a series of, as Senator DURBIN has said, these rifle-shot crisis situations.

It would be wonderful if we could have comprehensive reform. I look forward to participating in that comprehensive reform. For now, we have to look at those States that are facing a crisis because of the flawed immigration system we have now and for which we are advocating modest and temporary legislative remedies.

I salute our colleagues. They have a big job ahead of them. Anybody willing to undertake comprehensive immigration reform needs to be encouraged, supported and worked with. We need elasticity in this bill to deal with those things related to our economic viability. In many ways, a guest worker program that is working needs to be addressed, and I hope to offer an amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I know the Senator from Maryland has worked hard on this need, as well as the Senator from Idaho, and there are other Senators who feel deeply we ought to deal with immigration. Most of us have been to Iraq, Kuwait and Afghanistan. We know what this bill is about. This bill is about whether the National Guard men and women from Tennessee have sufficient armor when they go into a combat zone. This bill is about whether we are going to get some money to the new Palestinian Authority in time for them to be a success so we can begin to have the hope of peace in the Middle East. This bill is about whether we are going to fully fund a building in Baghdad for our thousands of Americans who are there so that they do not have to live in trailers and live in a more dangerous situation than most Americans outside of this country live in today in the world.

This bill is about whether our combat men and women have rifles that are sufficiently modern to defend themselves. This bill is about whether we have safe trucks. Eight hundred of them convoy from Kuwait City to Baghdad every day, carrying supplies to our men and women. This bill is about whether we have helmets for our combat men and women. We should not be slowing it down. It is amazing to me that we would slow down a bill to support the men and women in Iraq and Afghanistan, 40 percent of whom have left their mortgages, left their homes, left their children, left their jobs. They are dealing with all the issues we have to deal with from half a world away. Plus they are being shot at, and some of them are being killed. We are slowing it down because we have failed to address one of the single most important issues facing our country, and so we come up in the middle of a debate about whether to support our troops and say, okay, let us stop for a few weeks and argue about immigration.

For Heaven's sake, we should pass the bill to support our troops immediately. We agree with it. We all support it. We support them. We all agree with it. Then we should get about the business of dealing with the point of the Senator from Maryland, and the proposal of the Senator from Idaho, and the work Senator KYL and Senator CORNYN are doing.

This is a country that is unified by a few principles, our country, the United States of America. We are not unified by our race or by our ethnicity or anything else such as that. Among those principles is the rule of law. We go all around the world meddling in other people's business, preaching about the rule of law, yet we have 10 to 15 million people living here who violate the law by being here. We should not tolerate that, and we should be embarrassed as a Congress that we have failed to deal with it.

This is not a problem Tulsa can deal with or Nashville can deal with. This is a flat out responsibility of the Congress to solve, and we should solve it. We are dumping on the backs of local communities the cost for schools to educate people who are illegally here. Ten years ago in the schools of southern California, a third of the children in the largest school district in California were here illegally. Somebody has to pay for that. Emergency rooms in hospitals have many people there who are here illegally. That is straining the budgets of cities and states.

So here we are in the middle of a debate about how quickly we can support our military effort, and somebody over in the House of Representatives attaches a bill that might make some sense but—No. 1, it slows down our bill for the troops, and No. 2, it probably imposes upon states a big unfunded Federal mandate which most of the people on this side of the aisle were elected to stop. I mean there are 190 million state driver's licenses. What the House provision would do is say we are going to turn the state driver's license examiners into CIA agents so they can go around and check and see whether we have any terrorists coming in, and then we are going to make them pay for it as well. Here is one more unfunded mandate.

Then the third thing we are doing, and we have not even considered through our committees whether this is the best way to do it, is determining if we are going to have in effect a national identification card. In fact, that is what the REAL ID Program is. It is a national identification card. They say it is not, but what else is it? We have taken an ineffective national identification card, the driver's license—I have mine right here. We have taken an ineffective national identification card, and we are trying to turn it into an effective one. We know it is ineffective because we know that the terrorists in 9/11 all had driver's licenses. I know it because mine expired in 2000, and every time I hand it over at the airport they never turn it over to see if it was renewed to the year 2005. We have an ineffective identification card, and the House wants us, without going to a single committee, to pass a big unfunded mandate, slow down help for the troops, and pass an unfunded national identification card. That is what we are being asked to do here, and I don't think we should do it. That is not the right way to go about it.

I fully support the idea of allowing the Democratic and Republican leadership to agree on a certain time soon where we address this massive challenge to our credibility as a nation, as a nation of the rule of law, and where we create an immigration system we can be proud of. For me, that means a generous program to allow people to come here and work legally, and then we enforce the law. For me, that means we do not have a double system where we have 500,000 or a million people who stand in line to get in, and then we have another million people who break the line to get in. That is not right.

We also need to address questions about whether we are going to continue to require people who apply for student visas to say when they apply that they never intend to live here. Of course, many of them do and we want many of them to. Do we not want the brightest scientists in China or India to come to the University of Alabama or Tennessee and then stay here and create jobs to keep our standard of living up? We are getting more competition from those other countries for these bright people. We need to look at that. Then we need to look at enforcement.

But this is not the way to do business here. I strongly support the Cornyn resolution. I do not want to see the REAL ID legislation or any other immigration legislation slow down money for the troops, put an unfunded mandate on state and local governments, and prematurely, without careful, comprehensive consideration, try to deal on this floor with one of the greatest issues we have to face.

We should pass the Cornyn resolution. We should pass the bill supporting the troops. Then we should set aside a specific time, face up to it, and do our job of reforming the immigration laws.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Oklahoma.

Mr. COBURN. Mr. President, I rise to speak on this issue because I think we find ourselves fixing the wrong problem

again. The real consequence of not having addressed the immigration problems in this country means we have problems with crops that are not going to be harvested because we don't have workers. But the time to do that is right after we finish this bill.

The American people as a whole do not want an amnesty program, but they will accept an amnesty program if we fix the border, and we have not secured the border. We have not done what we need to do in this body, in the House or through the administration, to enforce the laws of this country.

It is illegal to come here and we should not reward illegal behavior. But you can't even begin to address that until you say we are going to enforce closing this border for national security purposes but also for competitive purposes.

We need to have a national debate about how many people need to come in and supply an effort to our Nation as we grow. All of us in this country are immigrants except for the Native Americans. We would welcome others. But it has to be done legally. We have not done our job as bodies of the legislature, along with this administration, of first securing the border.

We have a national priority in terms of our own safety. Yet the politics of securing that border plays into every Presidential candidate who is running today. It becomes a political football. The fact is, for our children we need to secure that border to make sure we don't have terrorists coming across. ''60 Minutes'' 3 or 4 weeks ago showed a person from Croatia who came across the border illegally, became a legalized citizen after that, and ran guns and exported them throughout our country. He had access illegally to get here in the first place. That is not what we want.

We need to solve agricultural problems. I come from an agricultural State. But the American people are not going to accept an amnesty program, I don't care how you design it, based on any type of emergency, until we fix the obligation we have, which is to control that border. We have the capability to do it. We have the technology to do it. We have the money to do that and a lot less of other things if we would do it. If we will in fact control that border, then we can solve every other problem that comes about.

There are going to be consequences of not fixing the problems that were outlined by Senator MIKULSKI and Senator CRAIG, but rightly so, because we haven't done our job. There are consequences when we do not do our job. So I support Senator CORNYN's resolution fully. We need to come back and address this. We need to address every other area, but we have to first recognize that the American people are counting on us to do what is right in terms of securing the border. As long as we continue to ignore that because it is not politically acceptable in certain circles, then we are not going to fulfill our duty to protect this country. When we have troops fighting in Iraq and in Afghanistan and around the rest of the world, and we will not even enforce the law when we have the capability to do it, we dishonor them.

So this is fixing the wrong problem. It is a problem, yes, but it is not the real problem. The problem is the border and controlling the border. I am convinced the American people are compassionate and will deal with any other issue of those who are here and those who want to come here in an orderly fashion, once they have the confidence that we have the border controlled. But we fail to do that at our peril, we fail to do that at the peril of the safety of this country, and we fail to do that at the peril of these areas that need specialized help in a short period of time. We are going to suffer the consequences of that and we should.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I point out the debate we have been seeing here in the last couple of hours to me proves the point, and that is this is a complex, difficult, contentious issue, but one that, from what I heard over the last couple of hours, we all agree needs to be addressed.

Indeed, that is what the resolution says. It says Congress must engage in a careful and deliberate discussion about the need to bolster enforcement of and comprehensively reform our immigration laws. That is what the resolution says.

I know different Senators have different proposals. As I have said, I think the idea is we ought to take up those in the Judiciary Committee in the Subcommittee on Immigration, and we ought to be able to come up with a bill we can present to the chairman of the Judiciary Committee and other members. We can have it marked up. With the help of the majority leader, we can get it to the floor of the Senate.

It would be my hope we can do that within the next few months. I agree. We have a serious problem that has long been neglected in this country, and it cries out for an answer.

Lest any of our colleagues think this is not a complicated matter, let me point out some of the matters contained in the AgJOBS bill alone which I think are very controversial. For the benefit of our colleagues who are listening, this will give them a flavor of why I say this is such a complex and contentious issue.

For example, although the AgJOBS bill purports to be a temporary worker program, it does not have a requirement once people are qualified to work in the program that they actually return to their country of origin. I believe this component of a work-and-return concept is absolutely critical to any program we might justly call the temporary worker or guest-worker program.

Second, one of the provisions of the AgJOBS bill is entitled ''Eligibility for Legal Services.'' This provision requires free, federally funded legal counsel be afforded through the Legal Services Corporation to assist temporary workers in the application process for legal permanent residency. That is right. The bill requires that the taxpayers pay the bill for these allegedly temporary workers to apply for legal permanent residency under the bill, creating a new legal right and a new right to legal representation for which the American taxpayers are going to be called on to pay.

Third, the AgJOBS bill allows farm workers who are currently working illegally in the United States to cut in line in front of workers who have followed legal avenues from the start, violating the principle the Senator from Tennessee articulated so well just a few moments ago.

Next, AgJOBS grants amnesty to as many as 3 million illegal aliens who say they have worked recently in U.S. agriculture, along with their family members.

So not only are we talking about a worker program, we are talking about bringing families and children, which common sense tells us will decrease the likelihood that at any such time in the United States part of this program will indeed be temporary. Indeed, it is more likely that they will stay beyond the span of their visa and live here permanently.

One other point: Since virtually all of the special agricultural workers granted the one-time-only amnesty enacted in 1986 left agricultural work as soon as they had their green cards on hand, AgJOBS puts illegal aliens on the path to U.S. citizenship in a two-step process.

First, illegal aliens would be granted temporary residence and indentured for up to 6 years to ensure they continue to work in agriculture in the short term. Next, once these newly legalized aliens are provided records of labor, they will be granted lawful permanent residence and then U.S. citizenship—amnesty, in a word.

Next, AgJOBS also freezes wage levels for new legal H–2A, nonimmigrant, agricultural workers at the January 2, 2003, level for 3 years following enactment. The undocumented worker can then stay in the United States indefinitely while applying for permanent resident status. They can become citizens so long as they work in the agricultural sector for 675 hours over the next 6 years. Their spouse and minor children are permitted to accompany them and will also earn legal permanent residency status.

I point that out because, as the Senator from Georgia, Mr. CHAMBLISS, said earlier, I doubt there are many of our colleagues who understand the content of this AgJOBS bill. If the Senator from Idaho chooses to offer it as an amendment, we will take up that debate. Senator FEINSTEIN and others may offer some amendments, and I hear that Senator KYL and Senator

CHAMBLISS may have amendments of their own. Who knows how many other amendments may be working out there related to AgJOBS or maybe a more comprehensive bill to deal with this issue generally.

But that makes the point. While we are spending time talking about immigration reform, we are not getting to the job that ought to be highest on our list of priorities; that is, making sure this emergency supplemental appropriations bill passes without undue delay and without getting bogged down in other matters, such as immigration reform.

In the end, I join with all of my colleagues and say it is past time we deal with immigration problems in this country comprehensively. We have no border security now. We do at the bridges, but between the bridges it is come and go almost as you please. While many people come across the border to work, we understand as human beings people who have no hope or no opportunity where they live will do almost anything to be able to provide for their family. Be it human smugglers or be it self-guided trips across the Rio Grande or across our northern border, it is relatively easy to get into the United States, and the terrorists who know that can exploit that and hurt the American people.

We also know once people get to the interior of the United States, there is virtually nonexistent law enforcement. We have inadequate detention facilities along the border, particularly in my State. They have to let virtually all of the detainees, the immigrants who come across illegally, go on their own recognizance and ask them to come back for a deportation hearing 30 days later. It should be no surprise that in some instances 88 percent of them don't show up and simply melt into the landscape—many of them working in places all across the country doing jobs Americans, perhaps, do not want.

But this demonstrates how badly broken our immigration system is, our border security, our interior enforcement, and the reason we need to deal with this comprehensively, not just with a Band-Aid.

I hope my colleagues will join Senator FEINSTEIN and me and the others who have spoken already in support of the Cornyn-Feinstein resolution and let us have a debate about immigration—comprehensive immigration reform. But let us not do it at the time when our troops are fighting the war on terror and delay them getting the equipment and the resources they need in order to do the job they volunteered so nobly to do on our behalf.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Texas for his leadership on this issue and for his remarks, which I share.

We have a problem with immigration and law enforcement and national security. Some of these are just security and some of these involve economic and social policy that impact the immigration question.

I believe we can do better. We need to give serious thought and consideration that we can do much better. We have people who want to come here. They want to do so in the right way. They will be assets to our Nation. We ought to identify those people and try to accommodate as many as possible, consistent with our own national interest.

The Senator from Texas mentioned what is happening in enforcement today. It is a nightmare. There was an article this morning in the Washington Times about 13 illegals stopped by the local police officers. They were released on bail. They are asked to show up for a hearing on their deportation. The statistics show, as the Senator just said, as much as 80 percent of those people do not show up. They become absconders. It makes a mockery of the system in many ways.

I have some ideas about this issue. I have some beliefs that local law enforcement has been confused in what their authority is. We ought to encourage them to be helpful in this area instead of discouraging, as the current laws today are.

I have done legal research on that particular question, but this is a Defense supplemental bill to fund our soldiers in the field in combat. It is not the time to debate comprehensively one of the most complex and sensitive subjects this country has to deal with. That is fundamental.

The Sensenbrenner language offered early on on the intelligence bill was not accepted. He was given a promise he could move it on the first vehicle that came out of the House. This is more a national security issue, by far, than an immigration bill. It is simply a tool to create a system by which we can readily identify those who are not here legally.

It is my observation, having been around this Senate now for some years, that you can propose and do a lot of things on immigration. Unless you come up with something that works, that has the actual potential to be an impediment to illegal entry into our country, that is when we start hearing an objection. It seems those proposals never pass.

I am prepared not to offer anything on this bill. I am prepared not to debate on this bill. My opinion is, the Sensenbrenner language is fine. I am all for it. But we are at this point looking at the potential of a flood of amendments dealing with immigration on a bill that ought to be funding our soldiers.

The distinguished Senator from Mississippi who chairs the Appropriations Committee must be looking in wonder at a bill that is supposed to be funding our troops that has now become a massive debate on this issue of immigration. It is unfortunate.

Senator FEINSTEIN and Senator CORNYN have agreed on an amendment that makes sense. It is something I can live with. I believe it would move us forward.

The legislation being proposed, such as AgJOBS, is not good to begin with, and I would probably oppose it, but more than that it is not the time to deal with it. We are just not ready. It is not appropriate.

I urge our colleagues to support this, and not only support it but to vote down the amendments that deal with immigration so we can get this bill done. We will have to deal with immigration. It is a critical national issue. It is important to our country. We are a nation of immigrants. We do not want to stop people from coming here. We do have needs in many areas and sectors of our economy.

I am not sure the Republic is going to fall if we do not have enough custodial helpers in some resort somewhere. I am not sure the Republic is going to fall if there is not somebody to turn the bedspreads down at night and put a little piece of chocolate on the pillow. In fact, we have a lot of American citizens who do that work dutifully every day. If they were paid $2 or $3 more an hour, maybe they would do it; maybe there would be more American citizens prepared to do that work.

We grow cotton in my home State of Alabama. If we bring twice as much cotton into the United States as was brought in the year before, will we not drive down the price of cotton, or any other commodity?

We need to be of the understanding that unlimited immigration to meet every possible need some business person says is critical is not the right policy for our country just because they say it is critical. They have an interest. They want cheap labor. We are now talking about matters that go beyond this supplemental.

I am proud of our soldiers. I have been to Iraq and Afghanistan three times. They are performing exceedingly well. We have a responsibility to support them. This legislation does that. It is our responsibility to move it forward, get it to them, remove this uncertainty, make sure the Defense Department has what they need to support our troops because we are holding their feet to the fire. If they are not doing what the Defense Department ought to be doing, we are going to be on them, and we need to give them the resources so we can legitimately complain if our soldiers are not being adequately supported. We will make a mistake if we get off that purpose and move toward a full-fledged debate on immigration.

I support the Cornyn-Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) is necessarily absent.

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

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 94 Leg.]

YEAS—61

Alexander	Domenici	Murray
Allard	Ensign	Nelson (NE)
Allen	Enzi	Pryor
Bennett	Feinstein	Reid
Bond	Frist	Roberts
Brownback	Graham	Salazar
Bunning	Grassley	Santorum
Burns	Gregg	Schumer
Burr	Hagel	Sessions
Byrd	Hatch	Shelby
Cantwell	Hutchison	Smith
Chafee	Inhofe	Specter
Chambliss	Kyl	Stevens
Clinton	Landrieu	Sununu
Coburn	Lincoln	Talent
Cochran	Lott	Thomas
Coleman	Lugar	Thune
Collins	Martinez	Vitter
Cornyn	McCain	Wyden
DeMint	McConnell	
Dole	Murkowski	

NAYS—38

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Feingold	Mikulski
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Isakson	Reed
Carper	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Snowe
Craig	Kerry	Stabenow
Crapo	Kohl	Voinovich
DeWine	Lautenberg	Warner
Dodd	Leahy	

NOT VOTING—1

Dayton

The amendment (No. 372) was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, today I rise to offer an amendment. I understand my colleague from California is seeking a unanimous consent.

Mrs. FEINSTEIN. Yes. If I may, Mr. President, I thank the Senator from Maryland. I ask unanimous consent—

Ms. MIKULSKI. This is without yielding the floor.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to be recognized following the Senator from Maryland for the purpose of offering an amendment.

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

Mr. STEVENS. Will the Senator from Maryland yield?

Ms. MIKULSKI. Yes, without losing my floor privileges.

Mr. STEVENS. Mr. President, I have an amendment at the desk. It is an amendment to restore the money for the initial design of the building for the National Intelligence Director. When this bill was before our committee, we reduced that amount at the time, but when the budget was presented, there was not a nominee for that office.

Yesterday, I presented to the Intelligence Committee Ambassador Negroponte to be the new NID and discussed this issue with him. It has become somewhat controversial. This amendment I have would restore the money our committee reduced in the line that deals with the NID. It has been cleared.

I ask unanimous consent that this amendment be set aside temporarily so we may consider this amendment. It has been cleared on both sides.

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

Ms. MIKULSKI. Mr. President, I am now confused. As a courtesy to the chairman of the Subcommittee on Defense Appropriations, I yielded to him so he could offer his technical amendment. Are we now laying my amendment aside?

Mr. STEVENS. No.

Ms. MIKULSKI. Where are we?

The PRESIDING OFFICER. The Senator is offering a unanimous consent to set aside your amendment and to bring up his, which has not been done yet.

Ms. MIKULSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. MIKULSKI. Mr. President, in the interest of following the regular order and engaging in senatorial courtesy, we really need order. I could not hear the distinguished Senator and, therefore, was concerned that we were having some slippage in our process.

AMENDMENT NO. 386

Mr. STEVENS. Mr. President, I thank the Senator from Maryland. I have a request to set aside the Senator's amendment temporarily while we consider this amendment which has been cleared on both sides. It restores the original budget request for NID.

I offer the amendment on behalf of myself and the Senator from Hawaii, and I ask unanimous consent that the amendment be brought before the Senate, that it be adopted, that the motion to reconsider be laid upon the table, and that we go back to the amendment of the Senator from Maryland.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. INOUYE, proposes an amendment numbered 386.

The amendment is as follows:

On page 149, line 10 strike ''$89,300,000'' and insert ''$250,300,000'' and on line 11 strike ''$20,000,000'' and insert ''$181,000,000.''

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to and the motion to reconsider is laid upon the table.

The amendment (No. 386) was agreed to.

The PRESIDING OFFICER. The Senator from Maryland is recognized. The Chair will enforce order.

AMENDMENT NO. 387

Ms. MIKULSKI. Mr. President, I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, and Mr. STEVENS, proposes an amendment numbered 387.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To revise certain requirements for H–2B employers and require submission of information regarding H–2B nonimmigrants)

On page 231, between lines 3 and 4, insert the following new title:

TITLE VII—TEMPORARY WORKERS

SEC. 7001. SHORT TITLE.

This title may be cited as the ''Save Our Small and Seasonal Businesses Act of 2005''.

SEC. 7002. NUMERICAL LIMITATIONS ON H–2B WORKERS.

(a) IN GENERAL.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

''(9) An alien counted toward the numerical limitations of paragraph (1)(B) during any one of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment in subsection (a) shall take effect as if enacted on October 1, 2004, and shall expire on October 1, 2006.

(2) IMPLEMENTATION.—Not later than the date of enactment of this Act, the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 101(a)(15)(H)(ii)(b), in a manner consistent with this section and the amendments made by this section.

SEC. 7003. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 426(a) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended by adding at the end the following:

''(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 101(a)(15)(H)(ii)(b).

''(i) The amount of the fee imposed under subparagraph (A) shall be $150.''.

(b) USE OF FEES.—

(1) FRAUD PREVENTION AND DETECTION ACCOUNT.—Subsection (v) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as added by section 426(b) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended—

(A) in paragraphs (1), (2)(A), (2)(B), (2)(C), and (2)(D) by striking ''H1–B and L'' each place it appears;

(B) in paragraph (1), as amended by subparagraph (A), by striking ''section 214(c)(12)'' and inserting ''paragraph (12) or (13) of section 214(c)'';

(C) in paragraphs (2)(A)(i) and (2)(B), as amended by subparagraph (A), by striking ''(H)(i)'' each place it appears and inserting ''(H)(i), (H)(ii), ''; and

(D) in paragraph (2)(D), as amended by subparagraph (A), by inserting before the period at the end ''or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(ii)''.

(2) CONFORMING AMENDMENT.—The heading of such subsection 286 is amended by striking ''H1–B AND L''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2005.

SEC. 7004. SANCTIONS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 3, is further amended by adding at the end the following:

''(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

''(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

''(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

''(iii) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

''(iv) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

''(v) In this paragraph, the term 'substantial failure' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2005.

SEC. 7005. ALLOCATION OF H–2B VISAS DURING A FISCAL YEAR.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 7002, is further amended by adding at the end the following new paragraph:

''(j) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens who enter the United States pursuant to a visa or other provision of nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.''.

SEC. 7006. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–2B NONIMMIGRANTS.

Section 416 of the American Competitiveness and Workforce Improvement Act of 1998 (title IV of division C of Public Law 105–277; 8 U.S.C. 1184 note) is amended—

(1) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following new subsection:

''(d) PROVISION OF INFORMATION.—

''(1) QUARTERLY NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of House of Representatives of the number of aliens who during the preceding 1-year period—

''(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

''(B) had such a visa or such status expire or be revoked or otherwise terminated.

''(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

''(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

''(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

''(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

''(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.''.

Ms. MIKULSKI. Mr. President, today I rise to offer an amendment that is desperately needed by small and seasonal business throughout the country. This amendment is identical to the bipartisan bill I introduced in February called Save Our Small and Seasonal Business Act. It is designed to be a 2-year temporary solution to the seasonal worker shortage that many coastal States and resort States are facing.

I wish to acknowledge the need for comprehensive immigration reform, but right now small and seasonal businesses all over this Nation are in crisis and need our help. These businesses need seasonal workers before the summer begins so they can survive.

For years, they have relied on something called the H–2B visa program to meet their needs. This is a temporary guest worker program. But this year they cannot get the temporary labor they need because they have been shut out of the H–2B visa program because the cap has been reached. This is a program that lets businesses hire temporary guest workers when no American workers are available.

This amendment modeled after the Save Our Small and Seasonal Business helps employers by doing four things:

It temporarily exempts the good actor workers—those who do return home after they have worked a season—from the H–2B cap. Employers apply for and actually name those good compliant workers who have complied with the law, they name them so that they are allowed them to reenter for this temporary period.

It protects against fraud within the H–2B program.

It provides a fair and balanced allocation for the H–2B visas.

And it reports to Congress how the program is working and where the beneficiaries are.

I urge my colleagues to help small businesses by passing this amendment and save these businesses and actually save thousands of American jobs.

Thousands of small and seasonal businesses are facing a worker shortage as we approach the summer. In my home State, this is primarily in the seafood industry. This year, because the cap of 66,000 workers was reached earlier in the year, my small businesses have been effectively shut out. We have had a lot of summer seasonal business in Maryland on the Eastern Shore and Ocean City, people working on the Chesapeake Bay, and many of these businesses use the program year after year.

First of all, they do hire American workers. They hire all the American workers they can find. But at this time of the year, we need additional help to meet seasonal demands. Because that cap was reached for the second year in a row, I might add, these employers are at a disadvantage. They cannot use the program. What will it mean? It will mean that some of our businesses will actually have to close their doors.

My amendment is supported on both sides of the aisle. It does not change existing requirements for employers. Employers cannot just turn to the H–2B visa whenever they want. First of all, employers must try vigorously to recruit those workers. Then they must demonstrate to the Department of Labor that they have no U.S. workers available. Only after that are they allowed to fill seasonal vacancies with the H–2B visas.

The workers they bring in often participate in the program year after year. They often work for the same companies. They do not stay in the United States and are prohibited by law from doing so. They return to their home country, to their families, and their U.S. employer starts all over the following year.

Let me just say this: Right now in certain villages in Mexico, there are many women—mothers and their adult daughters, aunts—who are packing their bags. They are ready to come back to Maryland where they have come before to work in Clayton Seafood or Phillips Crab House, which so many of you have enjoyed in your visits to the bay, or Harrison's seafood. Some of them have been in business 100 years. Some of them are major employers. A lot of college kids work their way through college working at Phillips Seafood, but Phillips Seafood

needs these guest workers to help these kids and to help the restaurant stay open.

These workers are not taking the jobs, they are helping American workers keep their jobs and American companies keep their doors open and, I might add, to the delight of many of you here, to the delight of people who enjoy our products, and to the delight of the people who collect the sales tax, Social Security, and so on from those American workers.

I know we need comprehensive reform, but while we are waiting for that, I have a temporary fix. By the way, working with my colleagues on both sides of the aisle, we looked for regulatory relief. We consulted with the Department of Labor and the Department of Homeland Security. Secretary Chao could not have been more gracious, more cooperative, more forthcoming, but when it came down to it, her legislative counsel said, you need to change the law. She could not change the regulations on this cap.

What does my amendment do? First, my amendment continues to protect those American jobs. It is a short-term fix because it is a 2-year solution. This amendment will only be in place for 2 years. So it allows this comprehensive reform to go forward.

What it does is exempt returning seasonal workers from the cap. That means there are no new workers. It means those people who have worked before and have gone back home are the only ones who would be eligible. In other words, in the last 3 years, they had to have worked here under the law, come in under the law, and returned home as the law requires. So it is not new people. It is not an amnesty program. It is an employment program for them and for us. These workers receive a visa, and it requires their employers to list them by name. So in all probability, they will return to the same employer. Then, at the end of the year, they will do it all over again. Remember, the only people eligible are those who have used the program in the past—the employer and the actual person coming in.

I worry about fraud, too. So we have an antifraud fee that ensures that Government agencies processing the H–2B visa will get added resources in their new sanctions. The bill creates a fair allocation of visas. Some summer businesses lose out because winter employers get all the visas. This will make the system more fair. We also simplified the reporting requirements.

I could give example after example of businesses that have been impacted. Clayton Seafood started over a century ago. They work the water of the bay supplying crab, crabmeat, and seafood. It is the oldest working crab processing plant in the world, and by employing 65 H–2B visa workers they have been able to retain all of their full-time workers.

The Friel Cannery, which began its business over 100 years ago, is the last corn cannery left out of 300. When they could not find local workers, they turned to the H–2B visa. Since then, that business is open and thriving. Each year this program helps the company not only maintain its workforce, but 75 Americans have good paying full-time jobs in accounting and marketing and other areas, and it keeps 190 seasonal workers going and 70 farmers who would not have a cannery to go to are also able to keep their jobs.

So that is what my legislation is all about. It is a quick and simple legislative remedy. It has strong bipartisan support. It is realistic. It is specific. It is immediate, achievable, and does not exacerbate our immigration problem.

Every Member of the Senate who has heard from their constituents, whether they are seafood processors, landscapers, or other people in resort areas, know the urgency in their voice. They know the immediacy of the problem. Our companies feel urgency. They feel immediacy. They feel desperation.

I urge my colleagues to join me in passing this amendment and keeping the doors of American companies open while we also maintain control of our borders.

Mr. KENNEDY. Will the Senator yield for a question?

Ms. MIKULSKI. I yield to the Senator from Massachusetts.

Mr. KENNEDY. I, first, commend Senator MIKULSKI, and I see the Senator from Maine, Ms. COLLINS, and others who have been interested in this issue. Am I right that the earlier numbers by and large have been taken up primarily by winter tourism? The time for application comes at the time of the year when great numbers are taken up for the winter tourism, which has happened historically, and what we are trying to do with the Senator's amendment is to treat the summer tourism and the summer needs on an even playing field, as they are in my own State, which are primarily smaller mom-and-pop stores and some very small hotels that need that. So this basically creates a more even playing field, as I understand, between those who would be taken in the wintertime and those who need the help in the summer, No. 1; am I correct?

Ms. MIKULSKI. The Senator from Massachusetts has accurately assessed what has created the crisis: that given the time of application and when they want the people to work, the winter needs then take up practically all 66,000. We acknowledge our colleagues who do need the winter help, but we need their help for the summer help. You are also correct that my legislation would create a more even playing field between the two and, again, this is a temporary legislative remedy while we assess the entire situation of the need for comprehensive reform, how we keep American jobs, how we keep American companies open, and yet retain control of our borders.

Mr. KENNEDY. Am I correct this is a rather modest increase in terms of the demand? In my own State, the numbers are approximately 6,000 for the summertime. The numbers the Senator has are going to be nationwide, so this is very modest based upon the need. The final point which the Senator has emphasized, but I think it is very important to underline, is these are people who have been here before, who have gone home and came back and therefore have demonstrated over the course of their life that they return back home and are in conformity with both the immigration and labor laws that exist today.

Ms. MIKULSKI. The Senator, again, has made an accurate assessment. This bill is only applicable to employers and guest workers who have complied with the law. If a worker has not been here before and they have not demonstrated that they have complied with the law, not returned to their home country, they would not be eligible. That is why I say we need to help American business but keep control of the border.

Mr. KENNEDY. I thank the Senator for her response and urge my colleagues to give strong support for her amendment.

Ms. MIKULSKI. I thank the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as many are well aware, the cap in current law on the number of H–2B visas is too restrictive, and it's imposing needless hardships on many businesses that rely on seasonal workers to meet the heavy demands of the tourism industry. Once again, these small industries are facing a crisis this summer if the number of visas isn't increased immediately. Senator MIKULSKI's timely amendment will provide the much-needed relief they deserve, and I urge the Senate to support it.

For several years in a row, the cap has created a crisis for the tourism industry in Massachusetts and nationwide. Countless small, family-run businesses depend on the ability to hire more workers for the summer season, and they can't possibly find enough U.S. workers to fill the need. Without this amendment, many of these firms can't survive because the seasonal business is the heart of their operation.

This fiscal year's allocation of 66,000 visas was exhausted just a few months on into the year. Senator MIKULSKI will make about 30,000 additional visas available, and it should be enacted as soon as possible, so that these firms can make their plans for the coming months.

Obviously, this amendment is only temporary relief. It should be achieved through comprehensive immigration reform. We all know our immigration system is broken, and many other reforms are needed as well. The Nation needs a new immigration policy that reflects current economic realities, respects family unity and fundamental fairness, and upholds our enduring tradition as a Nation of immigrants.

Enacting these other reforms will take time—time we don't have if we want to rescue countless seasonal employers around the country. Senator

MIKULSKI's proposal provides the immediate relief needed to enable employers counting on H–2B workers to keep their doors open this summer, and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise in strong support of the amendment offered by my colleague along the Chesapeake Bay, Senator MIKULSKI. This amendment would make minor, temporary changes to the non-immigrant, seasonal visa program known as the H–2B visa program. This program allows small businesses in the Commonwealth of Virginia to hire temporary workers for non-agricultural jobs.

As many of my colleagues know that for each fiscal year, which starts on October 1, there has been a statutory limitation on the number of admissions to the U.S. under the H–2B visa category since 1990. In 2004, the statutory cap of 66,000 H–2B visas was reached on March 9. This year the H–2B cap was reached much earlier on January 3.

As a result of reaching this cap for the second year in a row, many businesses, mostly summer employers, have been unable to obtain the temporary workers they need because the cap was filled prior to the day they could even apply for the visas. Consequently, these businesses have and will continue to sustain significant economic losses unless Congress acts.

Our amendment helps fix this problem by making common-sense reforms to our H–2B visa program that will allow our small and seasonal companies an opportunity to remain open for business.

First, the bill would reward good workers and employers. Those workers who have faithfully abided by the law for one of the past 3 years would be exempted from the cap. This exemption will help keep together workers and employers who have had a successful track record of working together.

Second, the bill would make sure that the Government agencies processing the H–2B visas have the resources they need to detect and prevent fraud. Starting on October 1, 2005, employers participating in the program would pay an additional fee that would be placed in a Fraud Prevention and Detection account. The Departments of State, Homeland Security, and Labor could use these funds to educate and train their employees to prevent and detect fraudulent visas.

Finally, the bill would implement a visa allocation system that would be fair for all employers. Half of the 66,000 visas would be reserved for employers needing workers in the winter and the other half would be reserved for companies needing workers for the summer. This provision would allow both winter employers and summer employers an equal chance to obtain the workers they desperately need.

Without these modifications, these employers will continue to struggle in their efforts to find the necessary employees to keep their businesses running. Many in the seafood industry in Virginia have come to my office, looked me straight in the eye, and told me that their businesses are not going to make it another year if something is not done soon. Only through passage of this amendment can this detrimental cycle be interrupted and these businesses can be saved.

Unfortunately, the only real opposition to this legislation is ''perception.'' I have the utmost respect for those in this Chamber that may not fully support this amendment. Their perception on this matter stems from good principles. Illegal immigration has grown to be a substantial problem in this country, especially in the area of domestic security, and I agree that changes must be made to make our policy work.

However, the temporary changes this amendment proposes does not belong in the debate on immigration or illegal immigration. The H–2B program is a seasonal, non-immigrant worker visa program. In fact, it may be one of the last programs we have to provide a legal, seasonal workforce for our small businesses, allowing them to fill the gaps where domestic workers cannot be found.

More importantly, these changes do not belong in the immigration debate because they deal with an economic issue. Over 75 percent of net new jobs in this country come from small businesses. This amendment proposes changes to help save our small businesses. In many parts of the country, for every temporary H–2B worker that is hired, two more full-time domestic workers are sustained.

There are some criticisms of this program which I am sure some will raise. Let's take a moment and examine some of these mis-perceptions surrounding the H–2B program.

H–2B employers do not do enough to recruit U.S. workers. They could just pay more. Virginia employers have not found this to be the case. The Department of Homeland Security and the Department of Labor set stringent guidelines on recruitment and wages.

First, U.S. employers must prove that they have exhausted all opportunities to hire U.S. workers. One H–2B employer agent in Virginia, who assists employers in this process, have told me that they have already spent in excess of $250,000 on such ads on behalf of its 300 plus clients for the 2005 employment season. This was out of over 6,000 job openings for 300 plus employers in 30 plus States.

Even after this campaign, they only succeeded in locating and hiring less than 50 U.S. workers who expressed an interest in the H–2B jobs. They were all hired, but unfortunately, less than half of these workers started work and even less completed the entire season.

In regard to the seafood industry, over the past 15 years, Americans have slowly withdrawn from their workforce. It is common for motivated workers to make $75–$100 dollars in a 7-hour day shucking oysters, picking crabs, or packing the product. Those in the seafood industry have told me that despite this earning potential, ''frequently U.S. workers will work for a day or two and then never return. It is difficult to function on the uncertainty of our local work force, but we never give up on them.''

In addition, the Department of Labor requires H–2B workers and U.S. workers to be paid the same wages for the same work. Additionally, all of the same taxes taken out of a domestic worker's salary are taken out of the H–2B worker's salary; however, the H–2B worker by regulation are ineligible to receive any benefits from the taxes withheld from their paycheck.

The H–2B program encourages illegal immigration; or, there's nothing more permanent than a temporary worker, a long review of the management of this program reveals otherwise. The employers have successfully ensured that the workers return to their home country. If they do not, employers are not able to participate in the program next year, and neither are the workers. Most consulates in their home countries require the workers to present themselves personally to prove that they have returned home.

Believe me, I am a strong supporter of efforts to help those Americans who want to work get the skills they need to be successful in the workforce. But these H–2B workers are not taking jobs from Americans, they are filling in the gaps left vacant by Americans that do not want them. Like I have said before, this program actually helps to sustain domestic jobs.

The future success of the H–2B visa program rests on the ability of businesses to participate in it, but right now, many will be denied access to the program for the second year in a row. The amendment introduced today helps fix this problem by focusing on three main objectives to help make the H–2B program more effective and more fair.

These seasonal businesses just cannot find enough American workers to meet their business needs. And ultimately, that is why this program is so important. Without Americans to fill these jobs, these businesses need to be able to participate in the H–2B program. The current system is not treating small and seasonal businesses fairly and must be reformed if we want these employers to stay in business.

I congratulate the distinguished Senator from Maryland for raising this issue. I have joined her as a cosponsor on this amendment. In my some quarter of a century that I have been privileged to be in the Senate I have watched in my State the loss of the textile industry and the furniture industry. Peanuts have disappeared, tobacco has disappeared, and now the seafood industry is disappearing.

The distinguished Senator from Maryland and I have paralleled our careers, and my recollection is there used

to be about 150 oyster-picking and crab-picking small businesses in my State. If there is one thing about this legislation, it is for the small person operator, man and woman. I doubt if there is now more than 40 out of the 150 or more picking houses remaining in my State, and these folks have come to see me. They are very quiet when they come in. They do not have any high-paid lobbyist. They come up themselves. Maybe they take off their overalls, but by and large they come right in the office in a very courteous way and they do not beg for anything. They just want to have an opportunity to remain in existence. Most of these small operations have been handed down from family to family.

Throughout Virginia, we take great pride in the Virginia crabcake. We are in competition with the Maryland crabcake. Now, I know Marylanders will come over and steal the Virginia crabmeat to put in their crabcakes. I say to my dear friends, the two Senators from Maryland, they know that, but pretty soon there may not be any crabmeat left for the crabcakes from either State to put on their menus.

Likewise, the oysters have declined, but that, I cannot say, is entirely due to this labor situation. It is more because of the Chesapeake Bay and the problems we are having with the balance of nature. The oysters are disappearing for a variety of reasons, but I will not get into that. Then a number of the seafood houses that provide bait for fishing are dependent on these workers.

I ask my colleagues to listen carefully to two letters that were written to me, and then I will yield the floor. The first one is from Cap'n Tom's Seafood. He states:

My name is Tom Stevens, I am owner and operator of Cap'n Tom's Seafood located in Lancaster County in the Northern Neck of Virginia.

By the way, that is one community I have tried to help because those counties have great pride, but they do not have as strong an economy as they once did. He continues:

I'm located less than 30 minutes from businesses like The Tides Inn, Indian Creek Yacht Club and Windmill Point. These business are large consumers of seafood. I also have many customers in the Richmond area.

When I opened my plant, for years I tried to operate using local help. However, it has become much harder to operate. Not only is the local force scarce and unreliable, but the younger generation is not interested, in learning the trade. On holidays, such as Thanksgiving and Christmas when oysters are in demand, shuckers are nowhere to be found.

As you are aware, in this business, oysters must be shucked and crabs must be picked soon after they arrive. I have tried to get local help by advertising in the local newspapers and through the employment agency without success. I finally got help through the H2 B workers program.

Speaking for myself and several others in the industry, we could not operate our businesses if it weren't for the H2 B program. I can not emphasize enough how important this program is for the seafood industry of Virginia. These workers are reliable, hard working, and with excellent work ethics. Their main purpose is to earn money to improve their lives and the lives of their families in their country of origin. I pay them as I do my other workers, not the minimum I was told I could, but the top of the pay scale for the seafood industry. I deduct their taxes including Social Security and pay unemployment, even though they do not claim it.

I sincerely hope that you will continue to support the H2 B workers program and to strengthen the program by increasing the quota. The future of the seafood industry is dependent entirely on this program. It is important that our industry remains strong and healthy for the welfare of the State of Virginia.

Sincerely,

TOM STEVENS.

The other letter is from Bevans Oyster Company, Inc., in Kinsale, VA, a small community:

I am Ronald Bevans, President and owner of Bevans Oyster Company. My company relies on the Federal H2–B temporary foreign visa program to provide the legal, reliable, seasonal labor which my company needs in order to stay in business. We have used this program since 1996 to obtain fish packers from March 1 to December 31. Our workers, for the most part, return to us each year. Some of them have been with us since we started the program in 1996.

And on and on it goes. One sentence in here stands out:

Our seafood business cannot survive without the H2–B workers.

Mr. President, I strongly support this amendment, and I hope my colleagues in the Senate will join with me to help these small and seasonal businesses by agreeing to this amendment.

I ask unanimous consent to have this letter and other letters printed in the RECORD and yield the floor.

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

BEVANS OYSTER COMPANY, INC.,
Kinsale, VA, January 6, 2005.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR: I am Ronald Bevans, president and owner of Bevans Oyster Company, Inc. My company relies on the federal H–2B temporary foreign visa program to provide the legal, reliable, seasonal labor which my company needs in order to stay in business. We have used this program since 1996 to obtain fish packers from March 1 to December 31. Our workers, for the most part, return to us each year. Some of them have been with us since we started utilizing the program in 1996.

This year we requested 110 workers. Our filing agent, Mid-Atlantic Solutions, tells us that our application is still at the U.S. Department of Labor awaiting certification to be used for the next step of the approval process. Although our application was filed as early as legally possible, it did not get to the Citizenship and Immigration Service (CIS) before the H–2B statutory cap of 66,000 annual visas was met. Consequently, we will be unable to employ our H–2B seasonal workforce.

Our seafood business cannot survive without the H–2B workers.

I make every effort to hire American workers for these positions, and have Americans working here wherever possible. However, our experience has been that there is an insufficiency of Americans willing to do the type of work required for these positions. Generally those who are hired quit within the first week. We have a loyal local workforce, but they are getting older and their number diminishes each year.

It is critical that you understand that without the help of our foreign workers Bevans Oyster Company will have to shut down and the American workers currently employed here will lose their jobs as well.

I opened Bevans Oyster Company in 1966 and have owned and operated it myself ever since. Over the years, my business has continued to grow. When the need arose for additional workers and I could not find reliable help in my area, I turned to the H–2B program to meet my seasonal labor shortfall. With the help of this program over the past eight years, my business has grown and flourished and is now a vital part of the Northern Neck community. This business is my life. By suspending the H–2B program, the government is not only preventing me from accessing my employees, it is taking my livelihood and everything I have worked so hard to build.

The lack of seasonal workers for our fish season will have a domino effect on many other people and industries. Our fish suppliers will either have to find a new market for their bait fish or dock their fishing boats. Our customers, which are located along the entire east coast and along the Gulf from Florida to Texas, who have come to depend on us over the years for their bait needs, will suffer from the lack of product, causing their customers to suffer, and so on.

As you well realize, the Virginia seafood industry is located in rural counties and provides many needed jobs for U.S. citizens in these communities. The loss of Virginia seafood H–2B workers will lead to the loss of the American jobs the seafood industry provides.

I go to extraordinary lengths to ensure that my workers are legally employed and that U.S. workers jobs are protected. The wages I pay are above the prevailing wage for this area and industry. I make sure my workers are housed in decent, safe, and affordable housing. These workers have told me that the opportunity to work in the U.S. has improved their quality of life as well as that of their families and their home communities. The money earned and returned to their home country is an important contribution to that economy. Workers build homes and educate their children. Without the H–2B program, they would never realize these dreams.

My company desperately needs some type of relief from this cap. I don't know all the answers. All I know is that we need our workers, and they need us. Please keep the H–2B program operating until a comprehensive solution to the immigration issue is reached. Thank you for your consideration of this request.

Sincerely,

RONALD W. BEVANS.

LITTLE RIVER SEAFOOD, INC.,
Reedville, VA, March 24, 2005.

To: Mr. John Frierson.
From: J. Gregory Lewis.
Re: H–2B Program.

DEAR MR. FRIERSON: Thank you for your phone call yesterday regarding the H–2B program and our needs as an employer of immigrant workers. This program has enabled us to meet our seasonable labor needs for many years. Our seasonal jobs, (crab picking, crab packing, etc.), are manual, repetitive tasks—unskilled labor.

Regarding our questions about payment to these laborers, when Little River Seafood,

Inc., hires an employee, that person, local or immigrant, completes the necessary W–4 federal withholding form and the State of Virginia withholding form. We withhold the required social security tax, and federal and state taxes on all employees. In addition, we pay the employer's share of social security tax and pay the federal and state unemployment taxes.

Though our pickers are guaranteed a wage of $5.25 per hour, which is the prevailing wage, they are paid by the ''piece rate'' per pound of crabmeat. Most pickers end up earning between $7 and $9+ per hour depending upon how quickly they learn, their level of ability, and ultimately, their productivity. All pickers, immigrant or local, are paid in the same way.

As our older local employees have retired, the younger locals do not seek employment in this field. Because we are stabilized by the use of legally documented H–2B seasonal workers, we are able to continue in the crab processing business, make crab purchases from our local watermen (some of whom are students), and keep our local workers employed, some on a year-round basis. Without the H–2B employees, our ability to stay in business, keep our local workers employed, and contribute to the economy would be severely jeopardized.

Regarding your questions as to recruitment of employees, Little River Seafood advertises each year, prior to the crabbing season, in our local newspapers. Response to these advertisements has been minimal. Our local Virginia Employment Commission is made aware of our employee needs, and of course, because we are in a small, rural community, these needs are also spread by word-of-mouth. Local response is almost nil. We have employed a few students during the summer for miscellaneous jobs around the plant, and, as mentioned, we do make crab purchases from students that are crabbers learning the business.

We certainly appreciate your phone call and your interest in learning more about the necessity of keeping the H–2B program in effect allowing countless small businesses in the United States to remain in business and continue to contribute to the economy.

Please let us know if we can provide you with further information.

J. GREGORY LEWIS,
President.

GRAHAM & ROLLINS, INC.,
Hampton, VA, January 12, 2005.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER, I am in receipt of your letter dated January 10, 2005. concerning H2–B workers for Graham & Rollins, Inc. My two sons and I appreciate your timely action in pursuit of reconsideration of our petition, however painful, it apparently is not to be. It is a shame that a small fourth generation family business must vanish because our government has become so impersonal to communicate a simple omission of just two names before closing the door and rejecting our petition irrespectively of the consequence from such an act. We have examined all options to save the company concluding that we must by June or July obtain the Mexican H2–B skilled laborers we have trained over the years. As a final act towards this object, we ask if you would consider sponsoring a bill similar in nature to the one you introduced last year exempting returning H2–B visa holders (beneficiaries/workers) from the annual FY 66,000 H2–B program cap, or raising the cap to accommodate the needs of entitled businesses that have been left out. We have reason to believe there are many small businesses such as our own faced with the same crisis, and congressional action is required to keep those institutions whole. The H2–B program was created to accomplish the work not being done in this country because of unavailability of the domestic work force to meet the needs of our work place.

Taking away the employees we have trained and become dependent upon through this program is like sabotage. This cannot and must not happen to the many small companies like Graham & Rollins affected by the reduction of the visa cap. I trust and hope you are in agreement and will expedite congressional action to accomplish exempting the returning H2–B workers or raising the cap. Please let us know as soon as possible if you are supportive of this request and if we can help by contacting our other representation.

Sincerely,

JOHN B. GRAHAM, Sr.

R&W MARINE CONSTRUCTION, INC.,
Cobbs Creek, VA, March 29, 2005.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

R&W Marine Construction, Inc. has been operating in Virginia for 38 years as a small construction business specializing in marine construction and excavation. We engage in heavy construction consisting of building piers, bulkheads, riprap (stone) installation along shorelines and landscaping work. This type of work is not easy and requires hard physical labor.

Over the years of operating my business, I have continuously dealt with labor problems. It is very difficult to hire domestic workers that are dependable, reliable and are willing to do this type of work. I have hired some excellent supervisors over the years but they can not work without the laborers. We have frequently advertised in the local and regional newspapers and also contacted the employment agencies for job referrals. We pay competitive rates and offer benefits to all domestic workers. We accept employment applications year round and only receive a very small quantity. Most of these applicants will not accept a labor position or are not suitable for this line of work. R&W Marine also recruits students for summer time positions.

We were introduced and participated in the H2B Program in 2000. It has been very successful to the livelihood of my business and has created the workforce needed to meet the work demand. The pay rates for the H2B workers are specified by the U.S. Department of Labor. The wages are subject to all state and federal taxes. These workers arrive in the spring and return to their country within 10 months of their arrival. They always return home within this time frame. I have never had a problem with a worker not abiding by the immigration policies. R&W Marine has had many of the same workers return consecutively for the past 5 years and are all legal workers.

If businesses are not able to acquire the number of H2B workers needed to operate their business, they may be forced to hire illegal workers. This will increase the problems for the Immigration Service of keeping up with who will be entering the U.S. and the security of our country. Also, if businesses are forced to shut down or minimize their services they provide to the public, there may be a significant reduction in our American domestic workforce.

I thank you for your time and consideration in this matter. Please continue to gain support for the H.R. 793, the H2B cap fix bill.

Sincerely yours,

RICHARD E. CALLIS,
President/Owner.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, first of all, if I could just say preliminarily, in order not to split the united front in support of this amendment, I am not going to get into a debate between the quality of the Virginia crabcake and the Maryland crabcake, although I must note it is the Maryland crabcake that has always held preeminence in that discussion.

Mr. WARNER. Mr. President, I object to that statement.

Mr. SARBANES. I commend my colleague from Maryland for a very innovative and carefully reasoned response to a crisis situation. This is a clear example of legislative craftsmanship that addresses the issue and does it in a way that does not open up a lot of unintended consequences or other possibilities. It does not constitute any major restructuring of the immigration laws or anything of that sort. This is really an effort in a very focused, almost laser-like way, to address this specific problem.

The problem is the following: Under the administrative set up, an employer cannot seek an H–2B visa until within 120 days of when it would be used or exercised. That means that people who need summer employees cannot come in right at the beginning of the year to seek the H–2B visas. What happened, of course, this year is people in the earlier part of the year—the winter people in a sense—came in, and used up all of the 66,000 visas that were available so people who have relied on this program over the years to carry out their businesses were shut out altogether. Of course, that raises very dire prospects for the operation of these small businesses all across the country.

We have underscored the crisis confronting the seafood business in Maryland and Virginia, but innkeepers in Maine, hotel operators in Florida, and businesses all across the country confront similar problems with respect to being able to bring in these H–2B visa workers.

This amendment maintains all the requirements that existed previously. In other words, the employers must still demonstrate they have sought to find American workers for these jobs. That is a current requirement. That is maintained in this amendment.

These employers, some of them, have made extraordinary efforts to do that, visiting college campuses, attending job fairs, exploring every possible way they can find workers. Many have gone well beyond what I think has been previously required in terms of meeting that requirement. But, they have not been able to find the workers. They need these H–2B workers.

What my colleague, Senator MIKULSKI, has done—I think in a very measured way—is, if you previously brought in an H–2B worker and that worker has then gone back at the end of the limited time during which they were permitted to come into the country to do

the job, you can, despite the fact we have now bumped up against the ceiling, bring that worker or workers that helped you meet your employment situation back in. No new worker would come into the country under this provision who had not been here before as part of this H–2B program. So, in effect, you are saying to someone: Look, you have come for the last 2 or 3 years as part of this program, so it is going to be available to you to come again. And you say to the employer seeking to bring them, you can bring back that workforce in order to meet your work situation.

In that sense, it is not an expansion of the general availability of the program. You are not broadening who can partake of it. You must have previously participated in the program in order to be able to come in again. I think that is a very innovative way to address the situation. It will enable these small businesses to function.

It is important to recognize that it is not the functioning of the particular business involved, but it is the functioning of other businesses, dependent upon the particular business that needs these workers, that will be affected most. If you cannot do the processing of the seafood, then the people down the line who depend on getting that seafood in order to do their business are going to be adversely affected as well. So there is a ripple effect that goes out through the economy which raises the threat of having a substantial economic impact, at least in some areas of the country.

I also want to underscore the amendment, as I understand it—and my colleague can correct me if this is not so—maintains all of the existing penalties that would apply to an employer who might misrepresent any statement on their H–2B petition. In other words, employers would still be held responsible in terms of how they conducted their effort. As I mentioned earlier, they are required to go through all of the necessary measures to ensure they have not been able to find available, qualified U.S. citizens to fill these jobs before they file an H–2B visa application.

This amendment is limited in time. It is limited in scope, but it would address the current crisis situation. It might not totally address it, but we are confident it would do so sufficiently to enable most, if not all, of these businesses to carry out their functions.

I think it does not raise larger questions and, therefore, because it has been very carefully developed, I think it constitutes an appropriate response to the situation we are now confronting. I urge my colleagues to support this amendment. It does the job. It does it in a very direct and focused way, and it will enable us to work through these problems while we await general revisions of the immigration laws.

This doesn't open up that particular path which I know would concern some Members of this body.

I again commend my colleague for very carefully working out an amendment. I know how much he has consulted with people in the administration and colleagues here in the Senate. I very much hope this body will adopt this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief, but at the same time I think what we have all said is very important to this issue. The H–2B class of workers is a critical component to not just the seafood industry of our coasts but to the resort industry of our country. For any of you who have ever skied in the West and met this nice young lady or man who speaks with a Norwegian brogue and they are helping you up and down the ski lift, my guess is they are class 2B. If you have met a young man or woman waiting on tables at a resort, possibly in Sun Valley, ID, they are a class 2B. The reason they are there is because they come, they build a stable presence, they are there for the period of time our resort hospitality industries need them, and it is most important that we have them.

Both Senators from Maryland have already talked about the dynamics of first that employer must seek domestic workers, U.S. citizens, and when that labor supply is exhausted they must seek elsewhere because they simply need that workforce. They come, they stay, they go home. It is a program that works well.

I am going to be on the floor later debating another program that doesn't work well: H–2A. The reason it doesn't—and it used to years ago in the 1950s; identified the worker and the work necessary and the employer. We had nearly 500,000 in those days of H–2A, known only then as the Bracero Program. It was out of the great wisdom of the Congress, and it has not worked since. This one works.

But what the Senator from Maryland is doing is bumping up the cap a little bit. Why? Because we have a growing economy, and we have a growing need. It isn't a static workforce; it is a dynamic workforce—whether it is the seafood industry, whether it is the hospitality industry, or whether it is a stone quarry mining semiprecious stones in the State of Idaho to be polished and placed in the countertops of high-end kitchens of new homes across America. That is the diversity of this particular workforce.

She has identified it. She has recognized it. It is a cap of 65,000. The cap for 2005 was reached on the first day of the fiscal year. That not only speaks to the need but it speaks to the reality of the problem.

The amendment is very specific. This amendment would temporarily exempt returning workers who have good records and play by the rules from the H–2A cap, protect against fraud for H–2B, protect against fraud in the H–2B program by adding a $150 antifraud fee, and on and on. In other words, it has some safety checks in it, but it rewards those who play by the rules—and most do. They come, they work, they go home.

That is not only ideal for our country, it is ideal for these foreign nationals who can benefit themselves and their families by coming here to work for a salary that is, of course, better than the salary they can earn in their own home country and working in conditions that meet all of the standards of our labor laws in this country. That is fundamentally what is so important.

My conclusion is simply this: This amendment provides a fair and balanced allocation system for H–2B visas. Currently, many summer employees lose out as winter employers tend to be the first in line for the B's. That was already expressed, both by the Senator from Massachusetts and by others who have spoken on this issue.

I strongly support the amendment. It is the right time. It needs to be done. We simply cannot wait. This is an issue that is very time sensitive. We can't wait until October to hire folks who are needed the first of May.

I hope that we move it quickly through the Congress and get it to the President's desk.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CRAIG. I yield briefly, yes.

Mr. SARBANES. The Senator made the point that this addresses those workers who have played by the rules. In other words, they have come, they have worked, and gone back. They have met all of the requirements. Of course, they pay taxes while they are here. We know they are here. They are followed and documented.

But I want to add a dimension: It also addresses the employers who have played by the rules by seeking to get their workers through the system legally.

Mr. President, I will read from the article in the Baltimore Sun:

> Despite their frustration, the owners say they will not turn to an obvious alternative work force. ''I am not going to hire illegals,'' said one of the owners. ''It is against the law.''

He made the point that they have done everything legally. This H–2B program is a win-win situation. The workers pay taxes, the Government knows who they are, and they get checked at the border. So you have employers who want to play by the rules and employees who have played by the rules. This amendment focuses on them and gives them a solution to a very pressing problem.

Mr. CRAIG. I thank the Senator from Maryland for bringing that up. What he demonstrates by that statement is a system that works. But he also demonstrates that the other Senator from Maryland has recognized that when pressures build and limits are met, you turn the valve a little bit and let the pressure off and let the legal system work, quite often in H–2A.

Last year, 45,000 people were identified. But 1.6 million are in the workforce. We had a system in H–2A that worked like this, and we were sensitive and constantly working to adjust it. And we wouldn't have an illegal, undocumented problem that we will debate later tomorrow or next week. This is a system that works, but it also is one that we have been sensitive to and have been willing to adjust the cap so everybody can effectively play by the rules and meet the employment needs they have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, let me begin my remarks by commending the Senator from Maryland for her work on this very important issue. She and I, along with Senator GREGG of New Hampshire, Senator KENNEDY from Massachusetts, and many of our colleagues, have joined forces in a bipartisan way to address an issue that affects the small businesses in our States.

Many American businesses—particularly those in the hospitality, forest products, and fishery industries—rely on seasonal employees to supplement their local workers during the peak season. That is certainly true in my home State of Maine. We have many seasonal restaurants and hotels that need to greatly expand their workforces during the summer and fall months. Many of them, after fruitless efforts to hire American workers, have found that it has worked very well for them to hire in the past foreign workers under the H–2B visa program. But this year all 66,000 available H–2B visas were used up within the first few months of the fiscal year—in fact, in early January. The Department of Homeland Security announced that it would stop accepting applications for H–2B visas. This creates a particular inequity for States such as mine that have a later tourism season. By the time Maine restaurant owners, hotel owners, and other tourism-related small businesses can apply for these workers, there are no more visas.

My colleagues from Maryland and Idaho have raised very important points. These are workers who often return year after year to the same familiar family business in Maine. When their work is done, they leave and return home to their home countries. They play by the rules. The businesses play by the rules. They are not hiring people who are here illegally. They are hiring people through this special program.

Without these visas, employers are simply going to be unable to hire a sufficient number of workers to keep their businesses running during the peak season. Many of these businesses fear this year they will have to decrease their hours of operation during what is their busiest and most profitable time of year. This would translate into lost jobs for American workers, lost income for American businesses, and lost tax revenues for our States.

These losses will be significant. We must help them be avoided. That is why I have worked with my colleagues in introducing the legislation upon which this amendment is based. It is the Save Our Small and Seasonal Businesses Act of 2005. It would offer relief to these businesses by excluding from the cap returning foreign workers who were counted against the cap within the past 3 years and to address the regional inequities in the system. It would limit the number of H–2B visas that could be issued in the first 6 months of the fiscal year to half of the total number available under the cap.

By allocating visas equally between each half of the year, employers across the country operating both in the winter and the summer seasons will have a fair and equal opportunity to hire these much-needed workers.

Let me emphasize what, perhaps, is the most important point in this debate. That is, employers are not permitted to hire these foreign workers unless they can prove they have tried but have been unable to locate available American workers through advertising and other means.

As a safeguard, current regulations require the U.S. Department of Labor to certify that such efforts have occurred. In Maine, as in other States, our State Department of Labor takes the lead in ensuring that employers have taken sufficient steps—including advertising—to try to find local workers to fill these positions. Indeed, that is the preference of my Maine employers. They would much rather be able to hire local workers. Indeed, they do hire local workers, but there simply are not enough local people to fill these seasonal jobs that peak during the summer and the fall.

Comprehensive, long-term solutions are necessary for this and many other immigration issues. But we have an immediate need. The summer season is fast approaching. Tourism is critical to the economy of Maine. But if the tourism businesses are not able to hire a sufficient number of workers to operate their businesses, the economy will suffer and American jobs will be lost. It is exactly as the Senator from Maryland so eloquently explained in her statement.

We need to make sure we act now to avoid a real crisis for these seasonal businesses this summer and fall.

I salute the Senator from Maryland for her work on this. I hope my colleagues will join in supporting this amendment. This vehicle may not be the very best for this proposal, but we do need to act. Time is running out.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank the Senator from Maine for her remarks, along with her and her colleague from Maine for their advocacy on behalf of Maine workers. We know Maine has been hard hit with many issues.

I ask unanimous consent to add Senator DEWINE of Ohio as a cosponsor.

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

Ms. MIKULSKI. Mr. President, I hope the distinguished chairman of the Committee on Appropriations would take my amendment or, at the very least, have an amendment tonight. There needs to be a discussion on how we proceed.

I note there seems to be no one here. I could speak on this bill, I have such passion, such fervor about the need for it that I could speak for an extended period of time, but I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. INHOFE. Mr. President.

The PRESIDING OFFICER. Under the previous order, the Senator from California is to be recognized following the last debate.

Mr. INHOFE. I see.

Ms. MIKULSKI. Mr. President, my amendment is pending.

The PRESIDING OFFICER. That is correct.

Ms. MIKULSKI. My amendment is pending and I recognize the Senator from Oklahoma wishes to speak. The Senator from California has an amendment.

Mr. INHOFE. Will the Senator yield?

Ms. MIKULSKI. Yes.

Mr. INHOFE. I was going to make a unanimous consent request to have a very short statement concerning S. 359. I recognize your amendment is pending, but I would do that through unanimous consent. This is the Agriculture Job Opportunity Benefits and Security Act.

Ms. MIKULSKI. If the Senator wishes to speak on another matter, perhaps as if in morning business, I have no objection to that.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. If I might, how long will this be?

Mr. INHOFE. I respond to the Senator from California, I could do anywhere between 2 minutes and an hour. Your choice.

Mrs. FEINSTEIN. I would object since I have been waiting.

Mr. INHOFE. I can make it very short.

Mrs. FEINSTEIN. Two minutes.

Mr. INHOFE. Three minutes.

Ms. MIKULSKI. Perhaps I could clarify this, Mr. President. The reason I asked for a quorum call, reclaiming my right to the floor, is so the distinguished chairman of the Appropriations Committee and I could discuss how we were going to proceed for the rest of the evening. Therefore, the Senator from California would know how

to exercise her right as the next in line.

So if the Senator from California could be patient for a minute to get clarification, he could be a time-filler.

Would that be a good way to do it?

Mr. INHOFE. That would be fine.

Ms. MIKULSKI. It is a klutzy way of talking about it, but it is, nevertheless, where we are.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I will make this very quick. And I appreciate this very much from the Senators from Maryland and California.

Mr. President, I just want to get on the record.

Last summer, I had an intern in my office from Rwanda. I have been active in Rwanda in kind of a mission thing for quite some time. She came to this country 10 years ago after the genocide that was taking place. She went through all the problems in becoming a legal resident. And, of course, she is going to actually become a citizen.

I have been privileged for a number of years to be chosen to speak at the various naturalization ceremonies in Oklahoma. These people go through all of the procedures. I daresay that most of those who go through the naturalization process become better citizens than some who are born here.

Certainly, they know more about the history of this country. That is one of the reasons I have opposed, historically, any type of an amnesty program.

Now, the one that is before us by my very good friend from Idaho has four steps of amnesty in AgJOBS. The first one is a temporary resident status, so that this jobs bill states that upon application to DHS, the immigration status of an illegal immigrant shall—not ''will,'' not ''may be,'' but ''shall''—be adjusted to lawful temporary resident status as long as the immigrant worked in an agricultural job for at least 575 hours or 100 workdays, whichever is less.

The next step is to take that same person and give them permanent resident status. The third step would be to make an adjustment not only for those individuals coming in but also for the spouses and the minor children. So we are talking about opening that gate for many more people.

Fourthly, the reentry. Now, this means if somebody left the country under any circumstances, they would be allowed to come back and go through this process.

On top of that, another thing I do not like about the legislation is it does have a taxpayer-funded legal services provision in it.

So I just want to get on record and say this is something I do not think is in the best interests of this country.

Mr. President, I do thank the Senator from California and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Reserving my right to object, may I ask what the Senator would like to do?

Mrs. FEINSTEIN. What I would like to do is put forward an amendment. I gather there will be no more votes tonight.

Ms. MIKULSKI. Well, that is what we are trying to determine. That is what I am trying to determine. I would like to have a quorum call.

The PRESIDING OFFICER. The Senator from California has the floor.

The Senator from California.

Mrs. FEINSTEIN. Yes, that is fine. I will not take long. I will just put the amendment in. I will not ask for a vote tonight.

Ms. MIKULSKI. I have no objection.

Mrs. FEINSTEIN. I thank the Senator very much.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is set aside.

Mrs. FEINSTEIN. Mr. President, I want the Senator to know it is my intention to vote for her amendment. I obviously did not want it on this bill, but since it is, it is my intention to vote for it.

AMENDMENT NO. 395

(Purpose: To express the sense of the Senate that text of the REAL ID Act of 2005 should not be included in the conference report)

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk and ask that the amendment be read.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. CLINTON, and Mrs. BOXER, proposes an amendment numbered 395:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Senate conferees should not agree to the inclusion of language from division B of the Act (as passed by the House of Representatives on March 16, 2005) in the conference report;

(2) the language referred to in paragraph (1) is contained in H.R. 418, which was—

(A) passed by the House of Representatives on February 10, 2005; and

(B) referred to the Committee on the Judiciary of the Senate on February 17, 2005; and

(3) the Committee on the Judiciary is the appropriate committee to address this matter.

Mrs. FEINSTEIN. I thank the clerk. This amendment is cosponsored by Senators BROWNBACK, LIEBERMAN, ALEXANDER, LEAHY, CLINTON, and BOXER.

As the clerk has read, it is a sense-of-the-Senate amendment. It relates directly to the REAL ID Act. It is the sense-of-the-Senate amendment that attempts to bind the Senate conferees to oppose the REAL ID Act in the conference on this bill. I would like to take a minute to explain why.

First of all, this was presented to the Senate in February. It has not yet been heard by the Senate Judiciary Committee. And, once again, a very controversial bill will be considered in conference on this bill. It was put in the House bill in a preemptive way. It is there, and we have to deal with it.

I want everyone to know this bill is major in scope in what it does to change immigration hearings and much to do with immigration. It very much tightens the standards for asylum and withholding of removal. It would give judges broad discretion to deny asylum claims based on the credibility of the applicant. And possibly one reason alone could mean a negative credibility finding.

It changes the statutory requirement that an applicant must demonstrate to be granted asylum, making it much more difficult, and it eliminates judicial review by barring a court from reversing the decision of the judge or other adjudicator about the availability of corroborating evidence.

It would give the Secretary of the Department of Homeland Security the ability to unilaterally waive all laws to construct the border fence, including possibly wage and hour laws, criminal laws, labor laws, civil rights, and so on.

Now, the problem with this section—I happen to be for finishing this 3-mile stretch of California border with a border fence—is the wording in this is so broad that it appears to provide waiver authority over laws that might impede the expeditious construction of barriers and roads not just to finish the fence in Southern California but anywhere in the United States. And it would allow for no review or appeal of the decisions of the Secretary of Homeland Security relating to this.

In terms of judicial review of orders of removal, it would limit, if not eliminate, stays of removal while cases are pending. Most importantly, it would eliminate, for the first time in our Nation's history, any habeas corpus review of removal orders for both criminal and noncriminal immigrants. This is a major change. It would limit the ability of the courts of appeal to review mixed questions of law, even in cases of longtime, lawful permanent residents, if virtually any crime led to the deportation.

Further, the restrictions on reviewing mixed questions of law would apply to asylum and claims under the Convention Against Torture. Now, here is a section that causes great concern. I believe it does to Republicans as well as Democrats.

The REAL ID Act appears to essentially create bounty hunters. Let me tell you how it does that. It increases the authority of bail bondsmen to arrest and detain anyone they believe is illegal, including a financial incentive by leaving it up to a bondsman's opinion that an alien poses a flight risk which necessitates them being turned over to the Department of Homeland Security. If that is the case, the alien

forfeits his or her bond premium under very broad circumstances. Illegal aliens turned over to the Department of Homeland Security must be detained.

Now, this is at a time when immigration officials have not proven they can detain all of the aliens they apprehend today.

What this does is, it says to the bail bondsman, if you think someone is illegal, you can go after them. You can maintain custody over them and you turn them in, and they have to be detained. This is on a bail bondsman's opinion of illegality. It also would provide bail bondsmen with unfettered access to information on illegal aliens and to influence Government processes with noncitizens subject to bonding. I don't know that we should be giving bail bondsmen this authority without any hearing in the Senate or any consequential discussion in the House on this point.

It sets minimum bonds for aliens in removal proceedings at $10,000, and it prohibits the Department of Homeland Security from releasing anyone on their own recognizance who is in removal proceedings. We don't even know if we can hold everybody. This particular section, actually more than any other, causes me enormous concern, and obviously the cosponsors of this sense of the Senate.

It does a number of other things. It holds spouses and children of an alien accountable for an alien's involvement in a terrorist organization or activity, even if they didn't know about it. I don't know that we should do that without understanding what we are doing.

With respect to driver's licenses, it creates a large unfunded mandate on the States. The CBO did a cost estimate of the costs associated with implementing the driver's license provisions and estimated that DHS would spend $20 million over the 5-year period to reimburse States for the cost of complying with the legislation. But in addition, it would require States that participate in the driver's license agreement, which is an interstate database, to share driver information at a cost of $80 million over 3 years, to reimburse States for the cost to establish and maintain the database. The grand total is $100 million over 3 to 5 years.

The just-passed intelligence reform law sets up a process whereby States, the Federal Government, and interested parties will make recommendations for establishing minimum Federal standards for driver's licenses and personal identification documents. The REAL ID Act essentially countermands the rights of States in this process. Both the current law, pursuant to the intelligence reform bill, and the REAL ID Act require that States set certain minimum document requirements as well as minimum issuance standards. The difference is that the REAL ID Act eliminates the stakeholder process and proscribes a very complicated and burdensome set of requirements on States.

It also has differences between the intelligence reform bill and the REAL ID Act on the issue of driver's licenses and personal identification documents. The intelligence bill gives States 2 years to comply with minimum standards. The REAL ID Act gives States 3 years in order for these documents to be accepted by a Federal agency for official purposes.

Secondly, the intelligence reform bill requires that the Secretary of Homeland Security and the Secretary of Transportation work together to establish minimum standards for driver's licenses and personal identification documents. The REAL ID Act imposes on States what must be done.

I don't think we should do this. We passed an intelligence reform bill. We dealt with some standards in that bill. Here, without a hearing, without any committee consideration, this bill is put, by the House of Representatives, on to this supplemental and is in conference.

I don't think we should do this. The sponsors agree with me. So we have proposed a sense of the Senate that would seek to bind conferees to eliminate the REAL ID Act from this bill. That doesn't mean it is eliminated for all time. I also believe the Judiciary Committee should promptly hear the bill. We should consider amendments. We should be able to compare it in this house with the intelligence reform bill just passed and, therefore, make a decision. This is what the Senate is set up for. We are meant to be a deliberative body. We are meant to consider major and controversial pieces of legislation and, if necessary, slow them down. This is added unilaterally on this supplemental bill with no consideration by this house whatsoever. It is going to resolve itself with a very few Members of this body dealing with an enormously complicated, controversial bill that conflicts with other legislation passed by this body. We don't do our work if we let this happen.

We have proposed this sense of the Senate, and I am hopeful there will be enough votes in this body so that the conferees on the Senate side will simply not accept business being done this way. Who would have thought a major piece of immigration legislation would be placed, without hearing, on this emergency supplemental which deals with the war in Iraq and critical emergency matters? It is a big mistake.

I ask for the yeas and nays, and I understand the vote will not be tonight, but this will be put in the order.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mrs. FEINSTEIN. I thank the Chair and yield the floor.

AMENDMENT NO. 387

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I call for the regular order.

The PRESIDING OFFICER. The Senator is recognized.

Ms. MIKULSKI. As I understand the regular order, the H–2B amendment I have offered is pending. I note that there are other speakers on the other side of the aisle but on the same side of the issue who wish to speak. I note the Senator from Wyoming is here and he wishes to speak. I want to continue the debate on this amendment.

The PRESIDING OFFICER. The Senator's amendment is the regular order.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I thank the Senator from Maryland. I will briefly tell of my interest and support for this idea. I am very pleased to be a cosponsor. This is an issue we have struggled over the last couple of years. Certainly it is not the overall remedy to our whole struggle on immigration. However, this is something we do need to do now that will last in the meantime while we work on the other.

Each of us who has spoken has a little different role to play in our home States with regard to this issue. In Wyoming, it is primarily the summer season, travel and vacations, Jackson Hole, WY, and other places where this has been a very important part of providing services there. Last year, of course, we were caught up in the 66,000-worker limitation, and it was kind of unfortunate for us because, as I said, it was the summer season, and therefore, the applications didn't get in as quickly as they did in some other places where their seasons started earlier. By the time our folks applied, there were no vacancies.

I am for an overhaul of immigration. When we have the needs and we want people to be able to legally come to this country, whether it is for a short while, whether it is for a longer while, come legally, I am one who thinks illegal is illegal and we shouldn't have it that way.

We have to look at the demands and then find a relatively simple way to work through it; otherwise, people tend to try to ignore it and go around, so that doesn't work.

These small businesses are in need of some relief. They cannot find workers to do these jobs. The Labor Department certifies there is indeed a labor shortage in this case and they look to willing workers.

The Mikulski amendment is quite simple, as has been explained. It doesn't count workers to the cap of 66,000 who have participated in the H–2B program during the past 3 years. It separates the allocation to two 6-month batches 2-year temporary relief. It collects new fees for fraud prevention and detection so folks who process the applications have the skills and tools to identify fraud. We need to make these changes.

I understand the difficulty with the bill that is on the floor. I think the resolution is coming clear so we can deal with some of these issues and leave the larger, longer term solutions to another time.

Mr. President, I thank the Senator from Maryland and I look forward to a very positive vote on this issue.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I thank the Senator from Wyoming for his comments in articulating the economic issues facing Wyoming. I have had the occasion to visit there myself and I know what a wonderful State it is. I am not much of a skier; I am built a little too close to the ground for that. But this shows this is not only a coastal State issue, and it also shows it is not only a seafood processing issue; this is an issue that affects our entire country, particularly those who depend upon summer seasonal workers. We understand some of our States enjoy—whether it is Massachusetts, Wyoming, or Idaho—both summer and winter. Either way, the Senator knows that we depend on summer workers. We thank him and the Senator from Idaho who spoke, as well as others.

Mr. President, I note that the hour is late and now that the Senator from Wyoming has spoken, I am not sure if there are other people who wish to speak.

I ask unanimous consent that Senator SNOWE of Maine be added as a cosponsor.

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

Ms. MIKULSKI. Mr. President, I want to get a vote on my amendment, but it is not possible tonight. Therefore, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. COCHRAN. 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. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I have requests to make on behalf of managers of the bill with respect to amendments that have been cleared on both sides of the aisle.

AMENDMENT NO. 401

I send an amendment to the desk on behalf of Senator MCCONNELL.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. MCCONNELL, proposes an amendment numbered 401.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 193, line 23 of the bill, strike ''$500,000'' and insert in lieu thereof: ''$1,000,000''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 401) was agreed to.

AMENDMENT NO. 402

Mr. COCHRAN. Mr. President, the next amendment is on behalf of Senators MCCONNELL, LEAHY, and OBAMA that addresses the Avian flu virus in Asia, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. MCCONNELL, for himself, Mr. LEAHY, and Mr. OBAMA, proposes an amendment numbered 402.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To address the avian influenza virus in Asia)

On page 192, line 19, after ''March 2005,'' insert ''and the avian influenza virus,''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 402) was agreed to.

AMENDMENT NO. 403

Mr. COCHRAN. Mr. President, I now send to the desk an amendment on behalf of Mr. LUGAR and Mr. BIDEN. It deals with an increase in funding for the Department of State's Office of the Coordinator for Reconstruction and Stabilization with an offset.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for himself, Mr. LUGAR, and Mr. BIDEN, proposes an amendment numbered 403.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide additional amounts for diplomatic and consular programs and reduce the amount available for the Global War on Terror Partners Fund)

On page 171, line 13, strike ''$757,700,000'' and insert ''$767,200,000''.

On page 171, line 21, after ''education:'' insert the following ''*Provided further*, That of the funds appropriated under this heading, $17,200,000 should be made available for the Office of the Coordinator for Reconstruction and Stabilization:''.

On page 179, line 24, strike ''$40,000,000'' and insert ''$30,500,000''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 403) was agreed to.

AMENDMENT NO. 404

Mr. COCHRAN. Mr. President, I now send an amendment to the desk on behalf of Mr. LEAHY regarding environmental recovery activities in tsunami-affected countries.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. LEAHY, proposes an amendment numbered 404.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify language in the bill relating to environmental recovery activities in tsunami affected countries)

On page 194, line 7, delete ''Aceh'' and everything thereafter through ''Service'' on line 9, and insert in lieu thereof: ''tsunami affected countries''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 404) was agreed to.

AMENDMENT NO. 405

Mr. COCHRAN. Mr. President, I send an amendment to the desk on behalf of Mr. LEAHY requiring a 5-day notification to the committees on appropriations for tsunami funds.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. LEAHY, proposes an amendment numbered 405.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment reads as follows:

(Purpose: To require five day prior notification to the Committees on Appropriations for tsunami recovery and reconstruction funds)

On page 194, line 19, after colon insert the following:

Provided further, That funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations, except that such notifications shall be submitted no less than five days prior to the obligation of funds:

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 405) was agreed to.

Mr. COCHRAN. Mr. President, I thank the Senators.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I ask unanimous consent to lay aside the pending amendment.

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

AMENDMENT NO. 406

(Purpose: To protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation)

Mr. BAYH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Indiana [Mr. BAYH], for himself, Mr. CORZINE, and Mr. PRYOR, proposes an amendment numbered 406.

Mr. BAYH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. BAYH. Mr. President, I rise to support a cause which is essential to the continued prosecution of our war on terrorism. It is essential to preserving our National Guard and Reserve as a vital force in defending our country, and it is essential to defending our moral obligation to those who defend our Nation.

No one—particularly those citizens who have placed themselves in harm's way at our bidding—should be forced to choose between doing right by their loved ones and doing right by our country. The amendment I have submitted will prevent that moral tragedy from happening.

What I refer to as the patriot penalty—the cut in income those who are called to active duty in our Guard and Reserve must suffer—has become a very serious problem. We now have about 180,000 Active-Duty Guard and Reserve personnel; 40 percent of the forces in Iraq have been called to active duty from the Guard and Reserve. The deployments are now lasting longer on average than any time since the Korean war.

Since that conflict, it had been our practice to not summon the Guard and Reserve for active duty for more than 6 months. Today it is routine they are called to service in Afghanistan, Iraq, and elsewhere for longer than that period of time, making these deployments not reasonably anticipatable on behalf of these individuals and their families.

Mr. President, 51 percent—more than half—of the guardsmen and reservists who are called to active duty suffer a loss of income, the patriot penalties. The average loss is $4,400 per citizen soldier—a material amount of money for the average American family. The General Accounting Office in a recent study indicates that there is growing financial strain on these families, even up to bankruptcy. It is morally unacceptable. It is unacceptable from a national security standpoint and from our obligation as fellow citizens that those we place in harm's way and ask to make the ultimate sacrifice physically should also be asked to make the ultimate sacrifice financially.

That is what this amendment would stop. It is hard, not just for the soldiers and their families involved; it is also undermining the vitality of the Guard and Reserve and the essential role they play in service to defending our country. Fully five out of six of the Reserve branches did not meet their recruiting goals in the most recent period. General Helmly, the head of the Army Reserve, has described the Army Reserve as a broken force. At a time when we are relying upon our Reserve and our Guard men and women more than ever before, they are on the cusp of becoming, according to their commander, a broken force. We must not let that happen. Of the 78 percent of these individuals who are considering not reenlisting in the Guard and Reserve, fully 75 percent, three-quarters, cite the loss in income as a material factor in their decision to not reenlist.

Many laudable firms in my State and, I am sure, in the State of Mississippi, the State of South Carolina, and elsewhere, are doing their part. About one-third of employers are seeking to make up this penalty, the patriot penalty, on their own; 23 States are helping. It is important we do our part as well.

Our amendment would provide, after someone has been called to active service for more than 6 months—therefore a period of time more than was reasonably anticipatable—for up to $10,000 in lost income be made up for these individuals, meaning that more than 95 percent of those who suffer this penalty would be made whole.

We provide incentives for the two-thirds of employers currently not contributing to making up these penalties, for them to do their part as well, making it a public-private partnership. The cost over the next 5 years is estimated to be about $535 million. Given the scope and the magnitude of the undertakings in Afghanistan, in Iraq, the costs we are incurring for so many other activities, including to try to train, equip and put into place Afghans and Iraqis to defend their countries, this is well within our budget. This is well within what we can afford as a country, to do right by those who are attempting to implement freedom abroad, to ensure that they can do right by their loved ones and their families at home.

Objections, of course, are raised to anything in the Senate. The principal one is that it will lead to an inequality of pay to those on the battlefield, permanent Active-Duty personnel versus Reserve and Guard men and women who have been called to serve by their side. These are unequal circumstances. As I said, for those who are Active-Duty and have made that commitment to our country, they can plan for that circumstance. For those in the Guard and Reserve who have been called to service for a period of time that was not anticipatable because it is longer than any time in the last half century, they require and deserve somewhat different treatment. I simply say, we do not call upon our Active-Duty personnel to take a cut in pay when they enter combat. We should not ask our guardsmen and reservists to take a cut in pay when they do likewise. That is why the patriot penalties must be made up.

In conclusion, we should find it within both our hearts and our wallets to do right by those who defend our country. It is important to the fight against terrorism. It is important to the preservation of the Guard and Reserve as a vital component of our Nation's security. It is important and essential that we fulfill our moral obligation to those we have called to duty so that they can do right by their loved ones, just as we are asking them to do right by their company.

I respectfully ask for my colleagues' support of this urgent and worthwhile initiative.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, I submit the following notice in writing: In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill H.R. 1268 amendment No. 398, which I ask unanimous consent to have printed in the RECORD.

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

On page 231, after line 6, add the following:

TITLE VII—SPECIAL COMMITTEE OF SENATE ON WAR AND RECONSTRUCTION CONTRACTING

SEC. 7001. FINDINGS.

Congress makes the following findings:

(1) The wars in Iraq and Afghanistan have exerted very large demands on the Treasury of the United States and required tremendous sacrifice by the members of the Armed Forces of the United States.

(2) Congress has a constitutional responsibility to ensure comprehensive oversight of the expenditure of United States Government funds.

(3) Waste and corporate abuse of United States Government resources are particularly unacceptable and reprehensible during times of war.

(4) The magnitude of the funds involved in the reconstruction of Afghanistan and Iraq and the war on terrorism, together with the speed with which these funds have been committed, presents a challenge to the effective performance of the traditional oversight function of Congress and the auditing functions of the executive branch.

(5) The Senate Special Committee to Investigate the National Defense Program, popularly know as the Truman Committee, which was established during World War II, offers a constructive precedent for bipartisan oversight of wartime contracting that can also be extended to wartime and postwar reconstruction activities.

(6) The Truman Committee is credited with an extremely successful investigative effort, performance of a significant public education role, and achievement of fiscal savings measured in the billions of dollars.

(7) The public has a right to expect that taxpayer resources will be carefully disbursed and honestly spent.

SEC. 7002. SPECIAL COMMITTEE ON WAR AND RECONSTRUCTION CONTRACTING.

There is established a special committee of the Senate to be known as the Special Committee on War and Reconstruction Contracting (hereafter in this title referred to as the ''Special Committee'').

SEC. 7003. PURPOSE AND DUTIES.

(a) PURPOSE.—The purpose of the Special Committee is to investigate the awarding and performance of contracts to conduct military, security, and reconstruction activities in Afghanistan and Iraq and to support the prosecution of the war on terrorism.

(b) DUTIES.—The Special Committee shall examine the contracting actions described in subsection (a) and report on such actions, in accordance with this section, regarding—

(1) bidding, contracting, accounting, and auditing standards for Federal Government contracts;

(2) methods of contracting, including sole-source contracts and limited competition or noncompetitive contracts;

(3) subcontracting under large, comprehensive contracts;

(4) oversight procedures;

(5) consequences of cost-plus and fixed price contracting;

(6) allegations of wasteful and fraudulent practices;

(7) accountability of contractors and Government officials involved in procurement and contracting;

(8) penalties for violations of law and abuses in the awarding and performance of Government contracts; and

(9) lessons learned from the contracting process used in Iraq and Afghanistan and in connection with the war on terrorism with respect to the structure, coordination, management policies, and procedures of the Federal Government.

(c) INVESTIGATION OF WASTEFUL AND FRAUDULENT PRACTICES.—The investigation by the Special Committee of allegations of wasteful and fraudulent practices under subsection (b)(6) shall include investigation of allegations regarding any contract or spending entered into, supervised by, or otherwise involving the Coalition Provisional Authority, regardless of whether or not such contract or spending involved appropriated funds of the United States.

(d) EVIDENCE CONSIDERED.—In carrying out its duties, the Special Committee shall ascertain and evaluate the evidence developed by all relevant governmental agencies regarding the facts and circumstances relevant to contracts described in subsection (a) and any contract or spending covered by subsection (c).

SEC. 7004. COMPOSITION OF SPECIAL COMMITTEE.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Special Committee shall consist of 7 members of the Senate of whom—

(A) 4 members shall be appointed by the President pro tempore of the Senate, in consultation with the majority leader of the Senate; and

(B) 3 members shall be appointed by the minority leader of the Senate.

(2) DATE.—The appointments of the members of the Special Committee shall be made not later than 90 days after the date of the enactment of this Act.

(b) VACANCIES.—Any vacancy in the Special Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) SERVICE.—Service of a Senator as a member, chairman, or ranking member of the Special Committee shall not be taken into account for the purposes of paragraph (4) of rule XXV of the Standing Rules of the Senate.

(d) CHAIRMAN AND RANKING MEMBER.—The chairman of the Special Committee shall be designated by the majority leader of the Senate, and the ranking member of the Special Committee shall be designated by the minority leader of the Senate.

(e) QUORUM.—

(1) REPORTS AND RECOMMENDATIONS.—A majority of the members of the Special Committee shall constitute a quorum for the purpose of reporting a matter or recommendation to the Senate.

(2) TESTIMONY.—One member of the Special Committee shall constitute a quorum for the purpose of taking testimony.

(3) OTHER BUSINESS.—A majority of the members of the Special Committee, or ⅓ of the members of the Special Committee if at least one member of the minority party is present, shall constitute a quorum for the purpose of conducting any other business of the Special Committee.

SEC. 7005. RULES AND PROCEDURES.

(a) GOVERNANCE UNDER STANDING RULES OF SENATE.—Except as otherwise specifically provided in this resolution, the investigation, study, and hearings conducted by the Special Committee shall be governed by the Standing Rules of the Senate.

(b) ADDITIONAL RULES AND PROCEDURES.—The Special Committee may adopt additional rules or procedures if the chairman and ranking member agree that such additional rules or procedures are necessary to enable the Special Committee to conduct the investigation, study, and hearings authorized by this resolution. Any such additional rules and procedures—

(1) shall not be inconsistent with this resolution or the Standing Rules of the Senate; and

(2) shall become effective upon publication in the Congressional Record.

SEC. 7006. AUTHORITY OF SPECIAL COMMITTEE.

(a) IN GENERAL.—The Special Committee may exercise all of the powers and responsibilities of a committee under rule XXVI of the Standing Rules of the Senate.

(b) HEARINGS.—The Special Committee or, at its direction, any subcommittee or member of the Special Committee, may, for the purpose of carrying out this resolution—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Special Committee or such subcommittee or member considers advisable; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Special Committee considers advisable.

(c) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(1) ISSUANCE.—Subpoenas issued under subsection (b) shall bear the signature of the Chairman of the Special Committee and shall be served by any person or class of persons designated by the Chairman for that purpose.

(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(d) MEETINGS.—The Special Committee may sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

SEC. 7007. REPORTS.

(a) INITIAL REPORT.—The Special Committee shall submit to the Senate a report on the investigation conducted pursuant to section 7003 not later than 270 days after the appointment of the Special Committee members.

(b) UPDATED REPORT.—The Special Committee shall submit an updated report on such investigation not later than 180 days after the submission of the report under subsection (a).

(c) ADDITIONAL REPORTS.—The Special Committee may submit any additional report or reports that the Special Committee considers appropriate.

(d) FINDINGS AND RECOMMENDATIONS.—The reports under this section shall include findings and recommendations of the Special Committee regarding the matters considered under section 7003.

(e) DISPOSITION OF REPORTS.—Any report made by the Special Committee when the Senate is not in session shall be submitted to the Clerk of the Senate. Any report made by the Special Committee shall be referred to the committee or committees that have jurisdiction over the subject matter of the report.

SEC. 7008. ADMINISTRATIVE PROVISIONS.

(a) STAFF.—

(1) IN GENERAL.—The Special Committee may employ in accordance with paragraph (2) a staff composed of such clerical, investigatory, legal, technical, and other personnel as the Special Committee, or the chairman or the ranking member, considers necessary or appropriate.

(2) APPOINTMENT OF STAFF.—

(A) IN GENERAL.—The Special Committee shall appoint a staff for the majority, a staff for the minority, and a nondesignated staff.

(B) MAJORITY STAFF.—The majority staff shall be appointed, and may be removed, by the chairman and shall work under the general supervision and direction of the chairman.

(C) MINORITY STAFF.—The minority staff shall be appointed, and may be removed, by the ranking member of the Special Committee, and shall work under the general supervision and direction of such member.

(D) NONDESIGNATED STAFF.—Nondesignated staff shall be appointed, and may be removed, jointly by the chairman and the ranking member, and shall work under the joint general supervision and direction of the chairman and ranking member.

(b) COMPENSATION.—

(1) MAJORITY STAFF.—The chairman shall fix the compensation of all personnel of the majority staff of the Special Committee.

(2) MINORITY STAFF.—The ranking member shall fix the compensation of all personnel of the minority staff of the Special Committee.

(3) NONDESIGNATED STAFF.—The chairman and ranking member shall jointly fix the compensation of all nondesignated staff of the Special Committee, within the budget approved for such purposes for the Special Committee.

(c) REIMBURSEMENT OF EXPENSES.—The Special Committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by such staff members in the performance of their functions for the Special Committee.

(d) PAYMENT OF EXPENSES.—There shall be paid out of the applicable accounts of the Senate such sums as may be necessary for the expenses of the Special Committee. Such payments shall be made on vouchers signed by the chairman of the Special Committee and approved in the manner directed by the Committee on Rules and Administration of the Senate. Amounts made available under this subsection shall be expended in accordance with regulations prescribed by the Committee on Rules and Administration of the Senate.

SEC. 7009. TERMINATION.

The Special Committee shall terminate on February 28, 2007.

SEC. 7010. SENSE OF SENATE ON CERTAIN CLAIMS REGARDING THE COALITION PROVISIONAL AUTHORITY.

It is the sense of the Senate that any claim of fraud, waste, or abuse under the False Claims Act that involves any contract or spending by the Coalition Provisional Authority should be considered a claim against the United States Government.

Mr. DORGAN. Mr. President, I submit the following notice in writing: In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill H.R. 1268 amendment No. 399, which I ask unanimous consent to have printed in the RECORD.

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

At the end of the bill, add the following:

SEC. ___. (a) None of the funds appropriated or made available in this Act or any other Act may be used to fund the independent counsel investigation of Henry Cisneros after June 1, 2005.

(b) Not later than July 1, 2005, the Government Accountability Office shall provide the Committee on Appropriations of each House with a detailed accounting of the costs associated with the independent counsel investigation of Henry Cisneros.

Mr. KERRY. Mr. President, this debate on emergency funding for our military wouldn't be complete if we did not begin to address the crises military families face at home as well as abroad.

I am proud that the Senate has passed my two amendments, one to allow families to stay in military housing for a full year after the death of a spouse, the other to ensure all military families receive $500,000 in total death benefits when a loved one dies in service to America, but I am also deeply moved by the stories I have heard from across our country in the last 24 hours about the challenges to military families every day.

Yesterday, I sent an email to Americans asking them to share their stories—of husbands and wives, sons and daughters, neighbors and friends who serve their country with courage but have been left on their own by our policies here at home. Within hours over 2,000 Americans sent me their stories. They took time out of their busy days to share their stories on the hope someone would listen. Their voices must be heard in the halls of Congress. Today, I enter a small sample of their stories into the CONGRESSIONAL RECORD to prove we are listening, and hope that today's victory marks a new beginning, and that soon Congress will answer all their prayers and pass a comprehensive Military Families Bill of Rights.

I ask unanimous consent that the letters be printed in the RECORD.

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

Alan Neville—Aberdeen, SD

This is a story about my own family. In January 2003, my wife was called to active duty with her Army National Guard unit. She was inactive status and a mere 7 days from being completely out of the military when she was mobilized. She went from being a civilian attorney to a Sergeant/E–5 administrative clerk at a significant loss of pay. At that time, I became a single parent to four young children for one full year. In August 2004, I too was called to active duty with my Army Reserve unit. I went from being a university professor to being a Sergeant First Class/E–7. Once again, our four children were without one of their parents during their critical stages of development. We've done our part, now it's time for others to do their part. The burden placed on the National Guard and Reserve forces seems extreme. The morale among more seasoned soldiers, those with 10 to 20 years of service, is not good. Many are getting out of the military at the first available moment.

Jack Cooper—Corpus Christi, TX

This is a story about a young couple in Austin, Texas. The husband works for Home Depot and was called up in the Marine reserves. There are two young children, both girls. One of the girls has Job's Syndrome. Home Depot did not continue the family's insurance.

They had to go out and pay ridiculous rates for additional health insurance to cover the child. That was money they could not afford because Home Depot did not pay his salary while he was gone. The child was in the hospital for much of the time the father was in Iraq. The mother had to take off from teaching to stay with the child in the hospital. She used up all vacation and sick time, and then was docked pay for lost time.

We are not taking care of our soldiers or their families.

Doris Fulmer—Albuquerque, NM

I just lost my husband on February 11. He was a navy pilot for 28 years. He paid on my SBP for years, and now I can hardly get by, and waiting for the increase in October is going to be difficult. I will have to sell my house to survive. It appears they are waiting for us to die to . . .

Not enough is being done for the active duty veteran. I don't see how the administration can be so tight with the veterans and their loved ones while we wage war in a foreign country and pour in millions of millions of dollars.

Stephen Cleff—Haddenfield, NJ

This past Christmas, my uncle was called into service in Iraq. He has served this country in Vietnam and when he returned continued to serve as a policeman.

My uncle is 58 years old. This is an example of how stretched our armed forces are because of the current policies of the President and his followers.

His current service not only required that he miss Christmas with his family, including his father who was very ill, but more importantly, it required that he miss his father's funeral. His wife is now alone in their house, waiting for his return. I do not know the specifics of their finances, but I do know that they relied on his income as a police officer.

I wonder how easily our current majority leaders would send people into combat if they had to survive on the same benefits.

Christopher Perkins—Burnham, ME

Here in Central Maine we have a young man, Fred Allen who, like myself, volunteered to be a paratrooper and served in both Afghanistan and then in Iraq.

He was grievously wounded in both legs in Falluja, a name we all know from the news. He spent a good deal of time in the hospital getting back on his feet and continues his healing and therapy at home. According to his mother he is receiving little in the way of compensation or direct help.

I can draw a strong parallel here with my personal experience in the Army.

I enlisted in 1967 at the height of Vietnam and also went Airborne. I served with the 3/506th Airborne Infantry ''Currahees'' of the 101st Airborne Division in 1968–69. I was a radio operator and then a machine gunner in the field. I received the Combat Infantryman's Badge, Jump Wings, Air Medal and the Bronze Star with ''V'' Device for heroism in ground combat.

After my return home my best friend was killed in Vietnam and I began to have serious problems with nightmares, depression etc.

The army's answer at the time was a ''resignation for the good of the service'' Sign here and you can go home.

In the 1980's there was a greater awareness of the problems veterans were having and programs were developed, but for over 15 years we were on our own. Many good soldiers didn't make it.

Thanks to Senators Mitchell and Cohen I was finally able to receive PTSD treatment and treatment for arthritis and a disability award.

It is my greatest hope that our younger brothers will not have to wait so long for their help. I once wrote a critique of the PTSD program at VAMROC, Togus, Maine for Senator Mitchell. This was my final remark.

''We who placed our lives in the balance, and were not found wanting, ask for no more than that which is our due, to be treated with dignity, honor and respect.''

Pamela Goers—Romulus, MI

My stepson is in the Navy stationed in Washington State. He finds it so extremely hard to take care of his family on his pay that he was willing to volunteer to go to Iraq [again] because of the bonus offered and how much his family would benefit from it. This is just wrong. The military men and women put their lives on the line for us; the least we can do is ensure that their families are provided for.

James Tate—Coon Rapids, Iowa

I have 2 sons in Afghanistan, deployed for 1 year duty with the 168th Infantry Iowa National Guard. The younger has had the misfortune of having his marriage disintegrate in his absence and he has no assurance that his construction job will be available on his return. The older has a contract detassling business for 2 Iowa seed corn companies. This is a very seasonal business and Mike has suffered a $60,000.00 loss of income from the business. In his absence his wife and I had the responsibility of keeping the business going but the companies involved were fearful that in his absence we would not be able to handle the number of acres he normally completes. Consequently they cut the allotted acres by ½. Much of the fixed expenses of running such an operation remain the same regardless of the total acres performed. Normally the business returns approximately $70,000 above expenses. Last summer the return was less than $10,000.00. Besides, there remains a question of whether or not the companies will make the normal acres available in the future or if they will give them to the other contractors that filled the void this past summer.

My wife and I raised and educated 11 law abiding, tax paying American citizens. This administration has created a situation that for the first time in nearly 70 years leaves me ashamed of what my country is doing in the world.

D. Bottoms—Oregon, WI

My best friend Kurt Jerke, age 31, is a captain in the Indiana National Guard. He was a Ph.D. graduate student in the Department of

Biological Sciences at Purdue University. In his final year for his Ph.D. degree, he received orders to leave for Afghanistan. At this time, his wife Katie had just giving birth to his first son. Kurt left when his son was only two months old. Katie has been in a daze ever since Kurt left for Afghanistan with managing her job, daycare and caring for her child, while maintaining there house all as a single parent. They're son, Cade, is now a year old. He's a walking, talking, cute little guy. Kurt missed his son's first year and Kurt still has no end in site. Kurt has no idea when or if he's coming home. Kurt has no idea if he's staying in Afghanistan or if he's going to Iraq . . .

Sandy Fox—Cleveland, OH

As a 6-year member of the Ohio National Guard, my son was within one month of completing his obligation when he was notified that he could not leave the service. He is now in Baghdad, much to the dismay of the entire family.

He has two sons, ages 2 and 4. He discovered the week before he shipped out for Iraq that his wife is pregnant with a daughter . . . the first female in our family for quite a long time. His wife is a nursing student who also has a part-time job. Not only has his departure caused emotional upheaval for the entire extended family, he was the major ''breadwinner'' for his nuclear family.

Knowing that she could not afford to keep up payments on their apartment, their vehicles, etc., without his income, she approached the military for assistance. She was told that there was nothing they could do for her. . . that she would have to turn to her in-laws for help to sustain her and her family while her husband was serving our country.

In summary, this poor pregnant woman is living in the basement of her in-laws' home with her two sons because the military and our government turned their backs on her. Their atrocious treatment of the military personnel, their families and our veterans belies all their public rhetoric about family values and moral integrity. It's disgraceful! I don't know how they sleep at night.

Kara Block—Jamaica Plain, MA

My brother is a lieutenant in the Marine Corps. He has been on two tours of duty to Iraq and is about to deploy for the third time, this time to Afghanistan.

Since 9/11, our family has been continually shadowed with the threat of losing my brother on one of his deployments. He was on the first wave of the invasion in March 2003 as part of the 1st Light Armored Reconnaissance that forged ahead to Tikrit. On that first Iraq deployment, we did not hear from our brother until it was time for his battalion's return to the States. He called my parents via a satellite phone before heading back, to ask them to wire $200 for a phone card to call home from the ship that carried them homeward. The U.S. government does not pay for its troops to keep in touch with their families while deployed.

On his second deployment to Iraq, my brother called home to ask for a particular kind of field binoculars, as those that should have been standard issue to him had not been provided. These binoculars cost my parents $500, and were obtained only with great difficulty [incidentally, per Newsweek in 2003, the average American troop spent over $2000 outfitting himself/herself with safety and field gear]. For many other military families, the purchase of this necessary safety-enhancing instrument would be prohibitively expensive.

In January 2004, when much media ado was made about the lack of armor in the Humvees contributing to many unnecessary roadside fatalities from IEDs, President Bush made a statement assuring all military family members that the troops would receive proper armor by March 2004. However, upon their return, several Marines Lieutenants informed us that the armor did not arrive till June/July 2004; despite the battalion's mission being to escort military and civilian convoys—a highly dangerous duty that took them all over IED-infested roads of Iraq. The Marines also cited a shortage of flak-jackets on their first deployment.

The ordeal of enduring those long, dangerous deployments (especially cognizant of the lack of armor/equipment) and perennially bracing for bad news is too great to recount here. Needless to say, these last few years have taken an extensive toll on the health and happiness of this family, which I consider as much of a sacrifice for this nation as the military service of my brother.

Despite the outcry of his family against such things as his inadequate training for the jobs with which he was tasked, lack of armor and other safety-enhancing equipment [and despite the acknowledged fact that he and his men faced death at every moment at the behest of a president who lied us about the reasons for war], my brother has volunteered to extend his time in the Marines and to deploy for a third time in two years. Were I a poet I would better describe my boundless pride in him and all our troops. Heartbreakingly, he and all the other troops who give so much for this country ask so little in return.

We celebrate the heroism our troops with homecoming parades, yellow ribbons and imposing bronze memorials. But we as a country [especially in Congress] should put our money where our mouth is and increase combat pay, grant our Veterans adequate health care and other benefits, and take care of the families of the fallen or injured (e.g., access to good education for their children). THAT would be a meaningful demonstration of our respect and appreciation for their sacrifice. Our troops deserve no less.

Theresa Grof—Agawam, MA

My husband was activated in 2001 after 9/11. His pay was so low as a technical sergeant in the U.S. Air Force Reserves that we are now 20,000 dollars in debt and have no way out. My husband has served his country many times, he is a Gulf War Veteran, Operation Enduring Freedom Veteran, and an Iraqi Freedom Veteran. He has 14 years in the United States Air Force Reserve, but the pay is so low and the benefits being slowly eroded away that he is no longer sure if he wants to make it to 20 years. He sees his unit falling apart and wants to stay but with cuts in benefits and our debts mounting (we have also both attended college on our GI Bills during these activations) that it just does not seem feasible to stay in the reserves any longer. His unit is losing more and more longtime reservists every week. The unit is becoming undermanned and when they get a new recruit, which is not very often, the person is not well trained enough to really help. This problem of losing long serving military men like my husband will affect the military's mission. Retaining these men is important and passing a bill to help those of us so in debt because of continuous activations should be a major priority at this time. I am very proud of my husband and I see his determination to keep serving his country but soon there will be no reason to stay.

Mark Vaughn—East Greenwich, RI

I am in the U.S. Army Reserve and have been deployed 4 times in 8 years. I have missed almost 36 percent of my daughter's life while deployed. When not deployed I am an adjunct college professor and, until recently did not make enough to be able to afford health insurance. The only time I and my daughter were covered was while I was deployed. While I believe that is would be cost prohibitive to provide all Reserve and National Guard soldiers health benefits, it would be the right thing to do to provide them a health plan which they could buy into (co-pay). This plan would cover them and their families whether or not they were deployed. In addition to providing the families of our soldiers, sailors, marines and airmen a benefit it will also help keep them healthy should they be called up. I believe that it would also provide a strong incentive for recruiting. Just a thought.

Heidi Behr—Orlando, FL

I work as a social worker at a local elementary school in Maitland, Florida. We have some kids in our school whose parents are serving in Iraq and Afghanistan. I know of many families (some at our school and in our community and elsewhere around the country) who are struggling to make ends meet financially because they are not receiving adequate compensation while their loved ones serve in the Armed Forces. Many of the families who have members in the National Guard are dealing with the double blow of loss of pay while also now not having their husband or wife at home. I think it is criminal that our government calls these national guards up without compensating the family for their lost wages and insurance. If a family was dependent on this guard member's insurance through their civilian job, many times those families have now lost health insurance. This is not right and needs to be taken into account by the government when they decide to call these men and women back into service.

Carrie Philpott—Eugene, OR

My son joined the Marine Corp in November of 2002. He enlisted with the hopes that he would be able to fulfill his dream of attending college and earning a BA degree in Criminal Justice. Other than the GI bill, no other funds are available to him for higher education He has just spent a month at home with me after being injured while serving our country in Iraq. He had the time to study his military benefits package and look at what university he would be able to attend. Imagine his disappointment and frustration to find that his GI bill will only cover 1.75 years of an undergraduate degree at a state university that doesn't even offer a degree in his field of study. He has now returned to his unit to complete his 4 year enlistment only to be told that he will have to go back to Iraq in Aug. '06.

Along with his physical injury, my son had nightly nightmares, screaming out visions that could only have come from his battle experiences. I wonder what else he will have to endure for the price of an education?

Kathy Hartman—Loveland, CO

This is a story in reverse to what you are seeking. I have a nephew serving in Iraq who works as a security guard for a private contractor. He receives approximately $18,000 per month and has all of the finest in equipment and security. He received his training as a Ranger in the U.S. Army but now serves as an employee of a private contractor.

My question is, why isn't every soldier employed in Iraq able to receive the salary, benefits and equipment that this ''soldier'' does? Why have we contracted some of this war out to the highest bidders, using our tax dollars to pay some of our soldiers a more-than-decent wage while our ''grunts'' fight and die at minimum wage? I do not understand this inequity except of course for the fact that we have now set up wars and military expenses to benefit large corporations even more than they have benefited in the past.

Don't get me wrong. While I do not believe in this war, I do believe that all those in

harm's way should be equitably compensated, trained and outfitted. I would rather that all soldiers be compensated at a wage befitting the horror and danger they experience.

Clearly the private contractors are able to pay generous compensation in addition to making generous profits. This is wrong.

Nada Smith McLeskey—Columbus, OH

I was married for 28 years to my first husband who for 21 years served our country in the United States Air Force. He continues today serving our country by teaching your high school students leadership by serving with the JRAFROTC Program in Salt Lake City, Utah. Our daughter served for 6 years in the Utah Air National Guard and today our son serves our country in the United States Air Force in the Special Forces branch. Our son has already seen one tour of duty to the Middle East. He is married and a father of 3 children. He is an enlisted service member. His wife was forced to stop working because their childcare far out weighed the income she could bring home and the subsistence allowance program was cut by the Bush Administration. They now live in base housing but none the less, their income for a family of five is roughly $2000 per month. By the time their bills are paid, there is little left for them to buy groceries or enjoy the luxury of maybe going out to a movie or to eat. I send them what I can per month to help out. I know what it is like to serve our country and have to live on an extremely tight budget. My daughter in law would love to work so they can pay off their debts and have extra money, but with 3 children under the age of 6 it is impossible as childcare would eat up all her wages. Thank you.

Doug Brewer—Tacoma, WA

My daughter is best friends with a 16 year-old whose father is a reservist. He was deployed to Iraq, leaving behind a 12 year-old autistic child, who needs the care of two parents to even have a semblance of a quality of life. The father is in Mosul, a very dangerous place, ostensibly for a year, but we all know how that length of time has tended to expand. I can't tell you how many tears this family has shed over the father's safety, the one parent's frustration of raising an autistic child (among two other siblings), as well as the financial pressures of having the main bread-winner gone. Why? For what purpose?

Katie Laude—Beaver Dam, WI

My husband is a reservist currently serving in Afghanistan. He served his 8 years of military service after getting an ROTC scholarship for college. After finishing his two years of being a company commander he went on IRR. After September 11th he was given the advice to join back with his unit or risk being ''cross-leveled'' into another unit where he wouldn't know the troops.

Well, as it turns out, he did join his old unit again but was still cross leveled to a unit in St. Cloud, MN (we live in southern Wisconsin). We have three boys (ages 9, 6 and 1). I had our third son after my husband had left. To make it worse, I have NO family support group unless I want to drive over 5 hours to the unit in Minnesota. I have had to hire out virtually everything around our house (lawn, snow removal, home maintenance, etc). After taking a year leave from my job after the baby was born, I felt I had to go back to work. So I am now working full time as a teacher and raising three kids with no husband.

Linda Brown—Bunker Hill, WV

Our daughter is in the MD Air National Guard as well as a full time college student. We still carry her on our medical insurance. She has been deployed twice in the last 3 years each time putting her education on hold. Her boyfriend works full time at the WV Air National Guard but does not have medical insurance. My daughter became pregnant but is unable to marry her boyfriend because he does not have medical insurance. There is no way she could marry him and then have the baby with no insurance. I advised her not to, what if something happened to her or the baby? We cannot afford to pay out of pocket and we make too much money to qualify for Government aid. We would like our daughter to be married and she would like to be also. Her boyfriend has checked into private insurance but at $800 a month they can not afford it. My daughter served in Qatar in Operation Enduring Freedom as did her boyfriend. He flies almost every week doing missions for our government but is not offered insurance! It makes me so mad, most of our government officials don't care about healthcare for others because they will never have to worry about themselves.

Gail Mountain—Gloucester, MA

Like a lot of stories about abuse and mistreatment, despite the specific issue surrounding that abuse and mistreatment, proving it is very difficult.

Nonetheless, I would like to share my suspicion of mistreatment of my nephew as a member of the Air Force reserve who lost his job in the U.S. upon his return from a 3-month assignment in Kuwait, perhaps a year ago.

He had been getting subtle messages for months from his employer that his need for time off to accommodate his military training was not appreciated.

When he returned from Kuwait, he was ''let go'' under what I believe to me the guise of his inability to do his work.

He believes, and so do I, that he lost his job because of the time it took for him to serve his country.

He will never be able to prove it, but I think we need to also find a way to insure this does not happen to those who choose to serve our country, yet still need to earn a living.

This young man continues to diligently working on his master's degree and to take every opportunity to get as much military training as he can so he can become a part of the investigative branch of the Air Force because he loves his country and because he wants to participate in the safety of it. I hope a part of your work will be to also insure that our reserves and our national guard are taken care of by the country they choose to protect.

Sarah O'Malley—Castine, ME

This story is of a man in a town near by, the nephew of a friend, a high school classmate. Harold Gray was in the National Guard, the 133rd Engineering Battalion from here in Maine. He was injured several months ago by a road side bomb, getting hit with shrapnel in the head and shoulder. Shrapnel destroyed his eyes and lodged in his brain.

Harold was in a coma for quite a while at a military hospital in Washington. His wife traveled to DC to be by his side, and his three young daughters are staying in their home community with family. Harold's wife is a manicurist with no benefits, when she doesn't work, she doesn't get paid. She hasn't been working for months now. In every store you go in around here, there is a coffee can with Harold's picture, collecting spare change to help support his family. This soldier's family is living off good will and spare change.

As a Guardsman, I don't know what kind of extended support Harold and his family can expect. The best case scenario for Harold's situation would be a full cognitive recovery, but with total blindness. This is however, extremely unlikely. Harold will live the rest of his life with shrapnel in his brain, and the severe cognitive deficit that goes with it, as well as the loss of this sight. As a Guardsman, not a member of the Army etc, I fear that his family will fall between the cracks, and through loop holes and bureaucracy not receive the benefits (however paltry) that regularly commissioned soldiers are entitled to.

Jean Harris-Letts—Middleburg, FL

I am a physician in a town where many of my patients count on military benefits.

For Medicare recipients, most of the time both Social Security checks go for food and rent, while hopefully the service connected spouse will be able to get his or her medication from the Veterans Administration. The non-military spouse will have to get samples of meds or often go without.

My younger patients whose spouses are in the military are in an only slightly better position . . . It baffles me how anyone could countenance cutting military benefits in a time of war, when so much depends on morale.

The patients to whom I refer are not deadbeats. They are hard working people, who are just not being properly compensated, and find only twenty four hours in the day when they try to do more.

George Cleveland—Milwaukee, WI

I am a Vietnam era vet with severe back pain, lumbar/sacrel facet degeneration. I was completely independent when President Clinton was in office. When President Bush got in office and reduced V.A. funds. They took away my pain meds, which where 6–5mg Percocets and 2–10mg Oxiocotins. It's gotten to the point that I can't walk with my grandchildren anymore. I'm 58 years old and poor with no other insurance I've talked to other vets with similar problems. We've basically been told that we are not worth the price of our meds. What's going to happen 40 years from now when the vets from Iraq still need help will they be forgotten to? Just go to any V.A. Hospital in this country and talk to the vets sitting in the smoking area and ask. This will probably screw me pretty bad but at this point I just don't give a damn.

Holly Ortman—Fort Benning, GA

My name is Holly Ortman. Not only am I a nurse in the US AF Reserves (inactive now), but I am also a spouse of an active duty soldier in the US Army and a mother of 4. I am highly educated and was working on my Practitioners Degree. I have always stood behind our government and its decisions, but as of late, I feel that my support is dissipating due to the government's lack of support for the military families and the military child. When our son was 6 months old, my husband was given orders to deploy to Afghanistan with the 10th Mountain Division. At the time I was an ICU Nurse manager at the local hospital. At this point in our lives, we only had 3 children. Due to the demands of being a mother of 3, one of which was only 6 months, and an acting single parent due to the absence of my husband, I had to step down as the nurse manager and work in the ER as an emergency/trauma nurse. This was very short lived because in the state of New York nursing is unionized, therefore everything works off of seniority. That left only night shifts open for me to work. Because finding a trustworthy person to come in at night and watch 3 children and get 2 of them ready for school the next morning is so difficult I had to totally resign my nursing position. Just so you understand the seriousness of this let me explain that before I resigned, our family income was close to $4500.00 a month. Because I could not work

due to the military deployment, our income fell to less than 1800.00 a month. This qualified our family for W.I.C., and other forms of public assistance, which we had never needed before, but desperately need now. During his deployment, my husband re-enlisted for another 6 years. He is a very patriotic man and he wanted to do what he felt in his heart was right. We toughed it out and my husband came home in May of 2004. Shortly after his return, we found out we were pregnant with our 4th and last child. He then received his orders for Fort Benning, Georgia. We relocated to Fort Benning and upon his First day of reporting and 6 months TO DO THE DAY of his return from Afghanistan he was told to collect his CIF gear, he would be leaving for Iraq by January and that they needed his combat experience over there. We were devastated, as the birth of our last child was due in February and we were hoping to financially catch up by me going back to work. Due to the fact that my pregnancy was high risk, he was allowed to stay behind until the baby was born. He is now leaving for Iraq this Saturday. My career, in a field that is in dire need of experienced people, will once again be on hold, and we will have to scrape by yet again due to the minimal amount the government pays my husband to leave his family and put his life on the line. I was so disappointed in my government when I heard that many wanted to decrease the deployment pay. We are barely making it as it is and without that pay we would literally be in dire straights. Now there is talk of decreasing the amount of the yearly raise to help the budget. Both of my oldest children go to a military school and it has been a God send. They have deployment groups for them and a counselor to help with the transition, which was very hard during the first deployment. These schools know how special a military child is. Now Donald Rumsfeld wants to shut down our military schools. How much more can you people keep taking from us before you realize that we have nothing left to take? I cannot even repay my government student loan because I can not work because of his continual deployment and the government doesn't pay him enough to keep us above poverty level. My family has sacrificed so much and only keeps getting slapped in the face by our government. My family feels so used. I currently hold a commission as Major in the USAF IRR, which I am resigning, and I have told my husband, we will find him a way out. We just can't afford the price of your freedom anymore. I am sorry but fine speeches and big talk cannot put food on my table and bring my husband home alive. Thank you for this chance to share this with you.

Richard Perez, Sr.—Las Vegas, NV

On February 10th, 2005 at 11:30pm in Al Asad, Iraq, we lost our only son USMC LCpl Richard A. Perez Jr.

His story is on www.richardperezjr.com website.

The heartache will never end. My wife Rosemarie who had been a senior sales agent for State Farm with the states highest sales totals for the past 4 years is devastated and has no more energy to even perform her job anymore because of the loss of our only son.

I, Richard A. Perez Sr., Battle with this problem daily, recently our son had signed with us on a very large home loan which we thought would solve all problems as we have rented for 20+ years and never owned a home.

We bought it with the pretense that Rich would help us with the home loan and to build upon his career and life with his own family as he was generating money in his management position at Jack in the Box restaurant. The house has not been built as of yet, but the looming cost of a home here in Las Vegas is skyrocketing and a big payment is due soon. We cannot afford to do this as our daughter is a student at UNLV another a student in High School aspiring model and actress and a third only 10 years old a gymnast in Henderson . . . all girls who lost their brother.

I personally have lost my job and find myself on unemployment getting 329.00 per week because I grieved too long and could not perform my job at the level expected.

Costs run high, but our family has been ruined by a war my son never intended on entering as he was a reservist and had goals and dreams of his own. We still have not even gotten our sons final report , we don't even know the details of what happened? 8–9 weeks ago . . . He was proud to be a Marine and we are proud of him, the little money the Government gave us has paid his college loans at UCLA and we are faced with the hardship of our lives being ruined, because of Iraq.

My whole family has suffered during the past 2–3 months since the accident but really the past 7–9 months we've been stressed and it has affected all that we do daily.

What a disaster, what a shame that my own land of liberty, land of the free has placed us in bondage for years to come and has all of us reeling as where do we go from here?

I am a 7th generation American. My family tree is American Indian, Spanish and Mexican from Los Angeles, CA. I grew up thinking my country was great, my forefathers defended my stance so we can live today. My very uncle Fred Perez sold airplanes to Iraq and Iran as he worked for Boeing in the 60–70s. My cousin lost a leg in the USMC in Vietnam. My Uncle lost an arm in Korea and my wife's uncle died on the shores of France during WWII. What happened to the American Dream? Why, when my family and son defended liberty, do we now suffer? People in NYC buildings were provided 2 million dollars each so they could adjust to their loss. Yes, they needed it, but we do too.

Mr. WARNER. Mr. President, I will offer an amendment to H.R. 1268 which would require the Department of Defense to submit a report to Congress by July 15, 2005, on the Government's processes and policies for disposal of property at military installations proposed to be closed or realigned as part of the 2005 round of base closure and realignment, and the assistance available to affected local communities for reuse and redevelopment decisions.

This report will be of tremendous assistance to States and local communities affected by BRAC, and faced with difficult decisions about the redevelopment and economic revitalization of their areas. The report required by this amendment is similar to Community Guides to base reuse, which were published by the Department of Defense in all four previous BRAC rounds during the Commission's deliberations. These guides served a vital purpose for affected communities by explaining existing Federal law pertaining to property disposal and by endorsing a proactive and cooperative relationship between military departments and local communities, without appearing to be directive in nature. I ask support for this amendment.

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be 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.

HONORING OUR ARMED FORCES

ARMY 1ST LIEUTENANT CHARLES WILKINS, III

Mr. DEWINE. Mr. President, inscribed on an exterior wall of the Chapel at the Normandy American Cemetery and Memorial in France, are the following words:

These endured all and gave all that justice among nations might prevail and that mankind might enjoy freedom and inherit peace.

Many years after the bloody battle on Normandy's shores and many miles from those sandy beaches and jagged cliffs, Army 1LT Charles Wilkins, III, of Columbus, OH, like the thousands of American servicemen who perished before him over 60 years ago, gave his life so that others, too, might enjoy freedom and inherit peace.

On August 20, 2004, 1st Lieutenant Wilkins was killed near Samarra, Iraq, when a roadside explosive detonated near his Humvee. He was 38-years-old.

Today, I would like to pay tribute to this fellow Ohioan and to take a few moments to remember him here in the Senate Chamber. You see, Charles—or Chuck, as he was known to his family and friends—was a deeply devoted, unselfish man. He lived his life with a sense of duty—always dutiful to his country, to his family, to his friends, and to his job. Chuck defined the term ''citizen soldier,'' balancing his service in the Ohio National Guard with his obligations to his family and his career.

After attending both Bishop Hartley High School and St. Charles Preparatory School, Chuck graduated in 1985, and enlisted in the U.S. Air Force. After his discharge, he enrolled at The Ohio State University to study economics. While in college, Chuck joined the Ohio National Guard because, according to his sister Lorin, ''He wanted to be an officer.'' After earning his college degree, Chuck took a job as a transportation planner with the Federal Highway Administration, became a volunteer for Habitat for Humanity, and began attending Capital Law School—all while continuing his service in the National Guard.

At any time, Chuck could have quit being a soldier and settled into a quiet life as a civilian. But, that wasn't the type of person he was. Rather, Chuck was the type of person who always gave 100 percent of himself. In addition to his full time job, his military responsibilities, and his law classes, Chuck served as a peer-advisor at Capital for first-year law students.

As someone who also attended law school, myself, I know how difficult and time consuming study can be—and Chuck Wilkins was doing it with a host of additional fulltime commitments! One of his advisees remembered how helpful Chuck was:

Without Chuck, I doubt I would have made it through that very difficult first year [of law school]. He was always positive and upbeat, and he was constantly encouraging [us] to never give up. We could always count on Chuck to lift us up when we were down. It was important to him to make our first year journey a little bit better by sharing things that weren't available to him during his first year. I'm glad he took the time to make our first year law school world a better place.

Chuck Wilkins always made time for others. As one of his co-workers said, ''He was always looking out for somebody else, never for himself.'' It was this sense of selflessness led Chuck to Iraq.

Chuck was a member of the 216th Engineering Battalion, based in Chillicothe, OH. When his original unit was passed over for deployment to Iraq, Chuck sought a transfer to a unit that was scheduled to deploy in February of 2004. The new unit needed officers, and the Iraqi people needed bridges and roads. Once again, Chuck gave of himself so that others would not go without. It was hard for Chuck to leave his career and his law school studies, but as his sister, Lorin, said, ''He was Army, through and through. He wanted to help rebuild Iraq so people could have the same freedoms we do.''

As I said earlier, Chuck Wilkins wanted the Iraqi people to ''enjoy freedom and inherit peace.''

Though his sense of duty compelled him to go, it still was hard for Chuck to leave his family—the family he loved so very much. Like any mother, Natalie Wilkins did not want her son to leave for war. She begged him not to go and to seek an exemption, but Chuck would just reply, Mom, I can't stay. I have to go with my men.'' While his deep sense of duty pulled him away from his loved ones here at home, Chuck remained a family man'' in every sense of that phrase. His sister, Lorin, says that Chuck was always there for the family. She said that even with his busy schedule, if you called him, he would be there.'' He took good care of his mom and dad and his sisters, always making sure that his family was provided for—whether he was home in Ohio or thousands of miles away in Iraq.

Charles Wilkins, Jr.—Chuck's father—says that one of his last memories of his son is of him swimming in a pool, playing with his nephew, laughing. That is when Chuck Wilkins was happiest—that is when he was making others happy, making them feel safe and cared for and protected.

We honor the fallen because they have honored us—with their service, with their sacrifice. Charles Wilkins not only gave himself to his country, he gave a little bit of himself to everyone he met.

When Charles passed away, his mother said that the world lost a good man—a man whose llfe was bound by duty and good deeds. Our world is the lesser without him, but it is also the better for the time he lived on this earth. Charles Wilkins was a good citizen, a good soldier, a devoted family man, and a compassionate human being. Everyone who met him was touched by him in some way. He will be dearly missed.

My wife Fran and I continue to keep his grandmother, Dorothy; his mother, Natalie; his father, Charles; and his sisters Lorin and Davina in our thoughts and our prayers.

I yield the floor.

ALASKA-MONGOLIA TIES

Ms. MURKOWSKI. Mr. President, I rise today to pay tribute to and recognize the contributions of an ally to the United States, an ally that has contributed to our efforts in Afghanistan and Iraq and who has worked in close cooperation with my State of Alaska.

While their contributions have not received the widespread recognition given to other countries, the nation of Mongolia has been a steadfast friend of the United States. They have not been deterred by those critics who deride the quality of the nations included in the coalition forces.

Mongolia's contributions mean a bit more to the State of Alaska. In September 2004, we marked the 1-year anniversary of the start of the Alaska-Mongolia National Guard State Partnership.

Through the State Partnership Program, a true friendship has developed between Mongolia and Alaska. Our National Guard has established broad working relationships and increased exchanges with their Mongolian partners. They stand side by side with the Mongolian Armed Forces in Iraq as they participate in the coalition fighting the global war on terror. In fact, the Mongolian Ministry of Defense specifically requested Alaska National Guard support based on Alaska's relationship with their nation.

I would like to quote MG Craig Gambell that, ''[a]s long as the Mongolian Armed Forces are willing to send troops in support of Operation Iraqi Freedom, the Alaska National Guard will continue to stand by their side.''

Prior to 2000, Mongolia did not have a national policy of deploying forces beyond its borders. Yet, they were the first coalition country to contribute an infantry battalion to Iraq. The Mongolian Armed Forces are currently providing security to a logistics base in southern Iraq, escorting convoys, constructing military barracks, medical facilities, and local schools. They deserve special recognition for preventing a suicide attack that could have killed hundreds.

Alaska's pairing with Mongolia in the National Guard State Partnership Program is fitting, given our similar geographic size, topography, population density, and climate. The program allows Alaska's soldiers to work with Mongolian forces on professional military skills as well as in military-to-civil and civil-to-civil areas. Beyond the teamwork in Iraq, other events have been coordinated to keep the partnership together for years to come.

Last year, an Alaska National Guard delegation met with Prime Minister Elbegdorj, as well as other senior level government and military leaders in Mongolia. Already plans to send observers both this year and next have been made.

The success that the partnership enjoyed this past year is a direct reflection of the willingness and eagerness on both sides to further our relations. The Alaska National Guard tells me that Mongolia is enthusiastic about their democratic reforms and is aggressively working to meet its goals.

I thank the leaders of Mongolia for their friendship and support, and I look forward to the continued success of this partnership between the Land of the Midnight Sun and the Land of Blue Sky.

CAMBODIAN KHMER NEW YEAR

Mr. REED. Mr. President. I rise today on behalf of my fellow Rhode Islanders to commemorate the 2549th Anniversary of the Buddha, the Khmer New Year.

This 3-day anniversary, which begins today, highlights the rich heritage of Cambodian Americans, while recognizing contemporary Khmerian accomplishments. Specifically, the New Year's festivities celebrate the ancient dance, music, and religious traditions of the Cambodian community. The event also provides older Cambodian Americans with an opportunity to pass their customs down to future generations while simultaneously allowing all Khmerians to share their culture with other Americans.

This celebration traditionally serves as a respite between the Khmerian harvest and the weeks colloquially referred to as the ''rainy season.'' Traditionally, the Anniversary of the Buddha affords Khmerians a chance to give thanks, reflect, and welcome the spirit Tevada Chhnam Thmey. Also, in accordance with tradition, scores of Cambodian-Americans will gather with friends and family to visit local monasteries. While there, the Khmerian people will proffer food to their clergymen, pray for ancestors, give charity to the less-fortunate, forgive the misdeeds of others, and thank elders for their knowledge and care.

The Khmerian ceremonies and activities occurring this week demonstrate that each year brings new opportunities for charity, peace, and happiness. Rhode Islanders witnessed the realization of one such opportunity this year. I was fortunate to work with Miriam Hospital in Providence and Representatives Kennedy and Langevin to obtain visas to reunite Cambodian-Rhode Islander Minea Meas with his family. Three long years after Minea received political asylum in our country, his wife, Chantol Lim, and his children Monita, Sovannra, and Sinvath joyfully relocated from Cambodia to build

a positive future with Minea in Rhode Island. Consequently, the Meas family will never forget the Year of the Monkey.

As we commemorate this important time, let us reflect on recent international affairs and our Nation's continued efforts to promote universal human rights and fundamental democratic ideals. Let us also take this opportunity to honor the Cambodian Americans currently serving in our Nation's military, for helping to preserve the liberties we all enjoy.

Finally, I would like to wish all Cambodian Americans happiness, prosperity, and good health in this, the Year of the Rooster.

ADDITIONAL STATEMENTS

TRIBUTE TO MAX M. FISHER

• Mr. VOINOVICH. Mr. President, he was the son of poor Russian immigrants who grew up to be a citizen of the world. He was a skilled businessman who devoted much of his time to giving away millions of dollars to charity. He was a modest man with a low profile who was sought out by world leaders for his advice.

America has lost one of its finest citizens with the passing last month of Max Fisher.

A former Member of this body, Jacob Javits, called Max Fisher ''perhaps the single most important lay person in the American Jewish community.'' If for no other reason, his commitment to the Jewish people would have earned him the title, but the hundreds of millions of dollars he helped raise for Jewish charitable causes further demonstrated his devotion.

Presidents Nixon and Ford turned to him to serve as an unofficial emissary to Israel during times of crisis in the Middle East. His work was hailed by Henry Kissinger in his autobiography.

Though a resident of Michigan as an adult, Max Fisher was no Wolverine. He was a Buckeye through and through. Max grew up in Salem, OH and attended the Ohio State University on a football scholarship. In his time as an athlete the world got a glimpse of the competitive spirit that was to serve him so well in business. In one of his most famous plays as a Buckeye, Max sacrificed four of his teeth when he successfully blocked a punt with his face.

After his graduation from Ohio State in 1930, Max headed for Detroit and began his career as a pioneer in the oil refining business. Max saw that the automobile would transform the nation, and he had the vision to create the refinery capacity necessary to run those millions of new vehicles. He learned the business inside and out and became a legend when he built another oil company—Aurora Gasoline and its affiliate, Speedway '76—that, after a series of mergers, became Marathon Oil in 1962. Twenty years later, U.S. Steel bought Marathon and the sale of Max Fisher's 600,000 shares added another fortune to his fortune.

Never content to rest on his laurels, Max's business interests continued. He had successful ventures in food processing and real estate, including as a partner in the purchase of the 77,000 acre Irvine Ranch in Orange County, CA, which was the largest private real estate transaction in American history at the time.

One of the traits of Max Fisher that I admire most is that he never abandoned his friends in time of trouble. When others might have told him he had reason to do so, he remained loyal. After his friend Richard Nixon resigned the presidency and entered a long winter as a political pariah, Max reached out to him with encouraging words, writing that ''history will record the great contribution you have made to the world.'' He stuck by his friend Gerald Ford when Jimmy Carter narrowly defeated him in 1976.

Some say that after Ohio State, Detroit was Max's first love. When riots erupted in Detroit in the late 1960s, Max did everything in his power to try to bring people of all races and faiths together. At his funeral, a retired Federal judge told the story of how Max Fisher went down to City Hall to demand the release of African American citizens who were jailed for peaceful protests. Max never gave up on Detroit—and nearly everyone will tell you that without Max, Detroit might not have survived as a viable urban core.

Max had the grace to see the innate value of people as children of God. I always felt good when I met with Max. His honesty was consuming and he made you feel like you were the only person he cared about. His example of giving generously and doing deeds of loving kindness inspired others to follow suit. No one will ever be able to calculate the money that would not have been given without Max's example.

I will never forget the wonderful program that was held to honor Max when we cut the ribbon to open the Max Fisher College of Business at the Ohio State University. I am sure it was a special moment for Max to think about what it meant for the son of an immigrant to have the College of Business named for him at one of the Nation's largest universities. And as an Ohio State alumnus and former football player, I'm sure it was special to know that just a stone's throw away was the Horseshoe where he played football as a student. It was a fitting tribute to a great American who made a difference for his fellow man and country.

Like the Ohio State University's College of Business, the Detroit Symphony Orchestra's performance hall also bears Max's name. These twin monuments to Max Fisher are a fitting tribute to a man who was a genius in business and every bit the passionate humanitarian.

Ours is a better Nation and world for him having been in it. Thank you, Max.•

EZION-MOUNT CARMEL UNITED METHODIST CHURCH

• Mr. BIDEN. Mr. President, I rise today to commemorate the 200th anniversary of a true Delaware institution, Ezion-Mount Carmel United Methodist Church. Ezion-Mount Carmel stands as a testament to the power of faith and community. It has survived through several incarnations to become a beacon of light in Wilmington, and a constant reminder that we can—and we must—triumph over adversity.

Ezion-Mount Carmel's history is as complex as one might expect from such a venerable institution. Its genesis was when the African-American members of the Old Asbury Methodist Church, unsatisfied with being forced to worship from the church's balcony, founded their own congregation and helped establish the freedom to worship in Delaware. That congregation would ultimately come to be known as Ezion-Mount Carmel United Methodist Church, and it has survived war, fire and community strife with a clear purpose and mission.

Beyond its extraordinary past, Ezion-Mount Carmel is a dynamic force for good today. One of Wilmington's community outreach leaders, the church offers numerous programs which have a real, positive effect on the often troubled community in which it resides. As it has for two centuries, Ezion-Mount Carmel continues to be a place of refuge and hope for those in need. It is where a congregation and a community gather to gain strength from each other and from God, and to continue a legacy of remarkable achievement.

For its noble past, its exciting present and its promising future, I ask that the Senate join me in congratulating Ezion-Mount Carmel United Methodist Church on its 200th anniversary.•

SOO LOCKS ANNIVERSARY

• Mr. LEVIN. Mr. President, this year marks the 150th anniversary of completion of two of the four Soo Locks in the St. Marys River. These locks, completed in 1855, provide the link between Lake Superior and the rest of the Great Lakes at Sault Ste. Marie, MI. These locks have proved to be vital to the economy of the Great Lakes region as well as the nation as a whole. The locks, in fact, handle more cargo than the Panama Canal annually. The history of the Soo Locks is really the story of the settlement of the Midwest and the rise of the region's industrial legacy.

Lake Superior is separated from Lake Huron by the St. Marys River. Prior to the locks, rapids made navigation of this river impossible. The Ojibway Indians, and later white settlers, were forced to portage their small

boats around the rapids to reach Lake Superior. Larger ships had to have their cargo unloaded and then moved by wagon to the other side of the rapids, where it could be loaded onto another ship.

In the 1840s, extensive copper and iron mining began in Michigan's Upper Peninsula, and several boomtowns soon sprang up along Lake Superior's shores. Due to the lack of roads, all travel and trade was done by boat. The increased traffic soon made it clear that continuing the loading and unloading of cargo at Sault Ste. Marie would not be possible.

An act of Congress in 1852 gave 750,000 acres of public land to the State of Michigan for use as compensation to the company that would build a system of locks between Lake Superior and the other Great Lakes. The project was undertaken by the Fairbanks Scale Company due to their mining interests in the Upper Peninsula.

Despite poor building conditions during the cold winters, the two 350-foot locks were constructed within the 2-year deadline set by the State. On May 31, 1855, the locks were turned over to the State of Michigan and named the State Lock.

The opening of the State Lock decreased the cost of shipping iron ore from the Upper Peninsula to industrial centers like Detroit, Chicago, and Cleveland, by more than half. This, along with railroad improvements, allowed Michigan's Upper Peninsula to fuel America's industrial revolution. Michigan was able to lead the nation in iron production for almost 50 years. Even today, about 22 percent of the iron ore produced in the United States comes from Marquette County alone.

In 1881, it became clear that new locks would be necessary to keep up with growing traffic. Additionally, the State did not have the funds to improve the existing locks, so they were transferred to the jurisdiction of the Army Corps of Engineers, where they have been ever since.

The current lock system consists of a total of four locks, two of which are shallower and no longer used. The other two, the MacArthur and the Poe locks, were completed in 1943 and 1968 respectively. The MacArthur lock is used most often and can accommodate ships of up to 800 feet in length. Larger ships need to use the Poe lock as it can handle ships of up to 1,000 feet in length. There are plans to build a new lock in place of the two unused locks, but funding has not been appropriated. Common cargos that pass through the locks today include iron ore, limestone, coal, grain, cement, salt and sand.

Today the Great Lakes shipping industry and the Soo Locks still allow many industries to stay competitive. The Soo Locks shaped the economy of the Great Lakes region, and the engineers who helped design and construct the locks truly deserve to be remembered and honored.●

HONORING THE ACCOMPLISHMENTS OF KING'S DAUGHTERS MEDICAL CENTER

● Mr. BUNNING. Mr. President, I pay tribute and congratulate King's Daughters Medical Center of Ashland, KY. This hospital has been named as one of the Solucient Top 100 Hospitals in America.

King's Daughters has been chosen for this award among every hospital in America. This award cannot be applied for; it is simply given to the hospitals that rank among the best in clinical outcomes, patient safety, operational efficiency, financial results, and service to the community. Solucient, a leading source of health care business intelligence, uses these five criteria to independently determine the best hospitals in America.

The citizens of Ashland should be proud of this hospital. Their success serves as an example of how Kentucky is more than capable of providing elite-level health care to its citizens. King's Daughters Medical Center's dedication and hard work should be an inspiration to the health care community of the Commonwealth. I wish them continued success in the future.●

SELF-HELP ENTERPRISES

● Mrs. BOXER. Mr. President, I rise to commemorate the 40th anniversary of Self-Help Enterprises. Self-Help is an organization that helps low-income families build their own homes. Now in its 40th year, Self-Help Enterprises has been instrumental in building over 5,000 new homes in the San Joaquin Valley.

As its name implies, Self-Help aids families that try to help themselves. The mission of Self-Help Enterprises stresses that of personal responsibility, pride in ownership and community. Through its various programs Self-Help not only helps to build houses, it builds communities.

To qualify for help a family must demonstrate that it is committed to building their own home and that it is dedicated to helping others in the community. In this way, Self-Help ensures that a sense of community is built. Families receive counseling through every step of the home building process and are taught, not shown, how to build a house so that they may take pride in their work. Each family must contribute at least 40 hours of ''sweat equity'' a week towards building their home, with a total of 1,300–1,500 hours of labor. Self-Help calls this sweat equity the family's down payment. Families are organized into groups of 10 or 12. From these groups families work to build each others' homes. Through cooperative work Self-Help Enterprises helps an average of 150 families build homes each year.

Self-Help Enterprises also works on Community Development Projects designed to improve the infrastructure present in low-income neighborhoods. Similarly, Self-Help rehabilitates older homes to help families keep homes that may be run-down, and makes homes safer to live in. To date, Self-Help has rehabilitated 5,000 homes, renovated 20,000 water and sewer connections, and weather-proofed 40,000 homes.

Self-Help understands the importance of providing affordable housing to families. For families who cannot own a home, Self-Help develops multi-family housing projects and establishes rent levels and financing plans to give low-income families a chance to raise their children in a safe and secure environment.

In its mission statement, Self-Help Enterprises states that all families really need is ''someone to bridge the gulf between dreams and reality.'' Self-Help is that bridge. I congratulate Self-Help Enterprises on their 40th anniversary and wish them many more years of continued success.●

HABITAT FOR HUMANITY, FRESNO

● Mrs. BOXER. Mr. President, I take this opportunity to recognize the 20th anniversary of Habitat for Humanity, Fresno.

Habitat for Humanity, Fresno was formed in 1985. For the past 20 years, Habitat for Humanity has been a champion in the community on behalf of those who cannot afford homes. The mission of Habitat for Humanity is to end poverty housing ''by uniting individuals, families and communities to build decent, affordable housing.''

Since its inception, Habitat for Humanity, Fresno has helped build over 35 homes. The process through which it helps to build homes demonstrates its dedication to its mission. Habitat for Humanity stresses that it does not build homes for families. It facilitates the building of homes. While the difference may seem slight, it is in fact one of the sources of success for this organization. To qualify for aid from Habitat for Humanity, families must show that they are invested in building a home. This investment, or dedication, will serve as the foundation from which a house is built.

Habitat for Humanity chooses its families regardless of ethnicity. It provides aid to low income families who show a willingness to partner with the community. This willingness to partner serves to perpetuate an altruistic sense of participation and involvement within the community. And indeed, Habitat for Humanity is fueled by the dedication and goodwill of volunteers.

Since 1985, Habitat for Humanity has hosted over 7,000 volunteers. These volunteers range in age, ethnicity, gender and occupation. The diverse background of these volunteers is representative of the far reach that Habitat for Humanity has in the community.

The homes they construct are built with the love, strength and dedication of a community. The mission of Habitat for Humanity goes far beyond

merely building houses. Through its work in the community Habitat for Humanity not only builds houses, it builds strength within the community and confidence in its recipients.

I congratulate Habitat for Humanity, Fresno on the celebration of its 20th anniversary and wish them continued success.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 11:50 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 18. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes.

H.R. 135. An act to establish the ''Twenty-First Century Water Commission'' to study and develop recommendations for a comprehensive water strategy to address future water needs.

H.R. 482. An act to provide for a land exchange involving Federal lands in the Lincoln National Forest in the State of New Mexico, and for other purposes.

H.R. 541. An act to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries.

H.R. 794. An act to correct the south boundary of the Colorado River Indian Reservation in Arizona, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 18. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 135. An act to establish the ''Twenty-First Century Water Commission'' to study and develop recommendations for a comprehensive water strategy to address future water needs; to the Committee on Environmental and Public Works.

H.R. 482. An act to provide for a land exchange involving Federal lands in the Lincoln National Forest in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 541. An act to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries; to the Committee on Energy and Natural Resources.

H.R. 794. An act to correct the south boundary of the Colorado River Indian Reservation in Arizona, and for other purposes; to the Committee on Indian Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1621. A communication from the Director, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the Administration's 2005 annual report entitled ''Atlantic Highly Migratory Species''; to the Committee on Commerce, Science, and Transportation.

EC–1622. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: The Cessna Aircraft Company Models 172R, 172S, 182T, and T182T Airplanes; REQUEST FOR COMMENTS'' ((RIN2120–AA64) (2005–0173)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1623. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: The Cessna Aircraft Company Models 402C, and 414A Airplanes'' ((RIN2120–AA64) (2005–0174)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1624. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A310 Series Airplanes; and Model A300 B4–600, B4–600, B4–500R, and F4–600R Series Airplanes, and Model C4 605R Variant F Airplanes; REQUEST FOR COMMENTS'' ((RIN2120–AA64) (2005–0175)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1625. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Honeywell International Inc. TFE731–2 and –3 Series Turbofan Engines'' ((RIN2120–AA64) (2005–0169)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1626. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200 and 300 Series Airplanes; CORRECTION'' ((RIN2120–AA64) (2005–0170)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1627. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757 Series Airplanes'' ((RIN2120–AA64) (2005–0160)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1628. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dassault Model Falcon 2000EX and 900EX Series Airplanes'' ((RIN2120–AA64) (2005–0161)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1629. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC 8 Airplanes'' ((RIN2120–AA64) (2005–0146)) received on April 7, 2005 ; to the Committee on Commerce, Science, and Transportation.

EC–1630. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Lrd. Models PC 12 and PC 12/45 Airplanes'' ((RIN2120–AA64) (2005–0171)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1631. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–80C2 Turbofan Engines; CORRECTION'' ((RIN2120–AA64) (2005–0166)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1632. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330, A340–200, and A340–300 Series Airplanes; CORRECTION'' ((RIN2120–AA64) (2005–0167)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1633. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Aerospatiale Model ATR 42–200, 300, and 320 Series Airplanes'' ((RIN2120–AA64) (2005–0157)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1634. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–100B SUD, 200B, 200C, 200F, and 300 Series Airplanes'' ((RIN2120–AA64) (2005–0163)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1635. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A319, A320, and A321 Series Airplanes'' ((RIN2120–AA64) (2005–0164)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1636. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus

Model A300 B4300 622R and A300 F4 622R Airplanes'' ((RIN2120–AA64) (2005–0165)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1637. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 727 Airplanes'' ((RIN2120–AA64) (2005–0150)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1638. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–100, 100B, 100B SUD, 200B, 200C, 200F and 300 Series Airplanes and Model 747ST and 747SR Series Airplanes; Equipped with Pratt and Whitney Model JT9D–3 or –7 Series Engines'' ((RIN2120–AA64) (2005–0151)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1639. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B2 and B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600); and A310 Series Airplanes'' ((RIN2120–AA64) (2005–0162)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1640. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747 200B, 200C, 200F, 300, and 747SR Series Airplanes Equipped with General Electric CF6–45 or 50 Series Engines'' ((RIN2120–AA64) (2005–0168)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1641. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B4–600, 600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes; and Model A310 Series Airplanes; Equipped with Certain Honeywell Inertial Reference Units'' ((RIN2120–AA64) (2005–0148)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1642. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Limited Model BAE 146 and Avro 146RJ Series Airplanes'' ((RIN2120–AA64) (2005–0158)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1643. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 90 30 Airplanes'' ((RIN2120–AA64) (2005–0159)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1644. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200, 200CB, and 200PF Series Airplanes Equipped with Rolls Royce Model RB211 Engines'' ((RIN2120–AA64) (2005–0152)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1645. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica Model EMB 135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0153)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1646. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eagle Aircraft Sdn. Bhd. Model Eagle 150B Airplanes'' ((RIN2120–AA64) (2005–0154)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1647. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney JT9D–59A, 70A, 7Q and 7Q3 Turbofan Engines'' ((RIN2120–AA64) (2005–0155)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1648. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc Models 768–60, 772–60, and 772B–60 Turbofan Engines'' ((RIN2120–AA64) (2005–0156)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1649. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 90 30 Airplanes'' ((RIN2120–AA64) (2005–0144)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1650. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200 Series Airplanes'' ((RIN2120–AA64) (2005–0145)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1651. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model BAe 146 Series Airplanes'' ((RIN2120–AA64) (2005–0147)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1652. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model 4101 Airplanes'' ((RIN2120–AA64) (2005–0149)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1653. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–300 Series Airplanes'' ((RIN2120–AA64) (2005–0142)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1654. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–300, 400, and 500 Series Airplanes Modified in Accordance with Supplemental Type Certificate'' ((RIN2120–AA64) (2005–0143)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1655. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing 737–600, 700, 700C, 800, and 900 Series Airplanes'' ((RIN2120–AA64) (2005–0139)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1656. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model EC 155B and EC 155B1 Helicopters'' ((RIN2120–AA64) (2005–0140)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1657. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Short Brothers Model SD3 60 Series Airplanes'' ((RIN2120–AA64) (2005–0127)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1658. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS350B, BA, B1, B2, B3, C, D, D1, and EC130 B4 Helicopters'' ((RIN2120–AA64) (2005–0128)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1659. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model EC 155B, EC155B1, SA 360C, SA 365C, SA 365C1, SA 365C2, SA 365N, SA 365N1, AS 365N2, AS 365 N3, and SA 366G1 Helicopters'' ((RIN2120–AA64) (2005–0129)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1660. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B2 and B4 Series Airplanes'' ((RIN2120–AA64) (2005–0130)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1661. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL 600–2B19 Airplanes'' ((RIN2120–AA64) (2005–0120)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1662. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream Model GV SP Series Airplanes'' ((RIN2120–AA64) (2005–0119)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1663. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General

Electric Company CT58 Series and Surplus Military T58 Series Turboshaft Engines'' ((RIN2120–AA64) (2005–0124)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1664. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL 600 2B19 Airplanes and Model CL 600 1A11, 2A12, and CL 600 2B16, Series Airplanes'' ((RIN2120–AA64) (2005–0123)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1665. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CORRECTION - Raytheon Aircraft Company 90, 99, 100, 200, and 300 Series Airplanes '' ((RIN2120–AA64) (2005–0137)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1666. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron Canada Model 407 Helicopters'' ((RIN2120–AA64) (2005–0136)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1667. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200 and 300 Series Airplanes'' ((RIN2120–AA64) (2005–0135)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1668. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls-Royce Deutschland Ltd. and Co KG Model Tay 611–8, 620–15, 650–15, and 651–54 Turbofan Engines'' ((RIN2120–AA64) (2005–0138)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1669. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Model DH 125, HS 125, and BH 125 Series Airplanes; BAe 125 Series 800A, and 800B Airplanes; and Hawker 800 and 800XP Airplanes; Equipped with TFE731 Engines'' ((RIN2120–AA64) (2005–0132)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1670. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Limited Model BAe 146 Series Airplanes and Model Avro 146 RJ Series Airplanes'' ((RIN2120–AA64) (2005–0133)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1671. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron A Division of Textron Canada Model 222, 222B, 222U, and 230 Helicopters'' ((RIN2120–AA64) (2005–0134)) received on April 7, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1672. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Mifflintown, PA'' ((RIN2120–AA66) (2005–0080)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1673. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Beluga, AK'' ((RIN2120–AA66) (2005–0065)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation; to the Committee on Commerce, Science, and Transportation.

EC–1674. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Red Dog, AK'' ((RIN2120–AA66) (2005–0059)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1675. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Badami, AK'' ((RIN2120–AA66) (2005–0060)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1676. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Haines, AK'' ((RIN2120–AA66) (2005–0058)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1677. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Angoon, AK'' ((RIN2120–AA66) (2005–0064)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1678. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Kulik Lake, AK'' ((RIN2120–AA66) (2005–0057)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1679. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Prospect Creek, AK'' ((RIN2120–AA66) (2005–0056)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1680. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Seward, AK'' ((RIN2120–AA66) (2005–0055)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1681. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Annette Island, Metlakatia, AK'' ((RIN2120–AA66) (2005–0061)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1682. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Coffeyville, KS'' ((RIN2120–AA66) (2005–0078)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1683. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Macon, MO'' ((RIN2120–AA66) (2005–0075)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1684. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Neosho, MO'' ((RIN2120–AA66) (2005–0076)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1685. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Rolla/Vichy, MO'' ((RIN2120–AA66) (2005–0077)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1686. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mount Comfort, IN'' ((RIN2120–AA66) (2005–0070)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1687. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hibbing, MN'' ((RIN2120–AA66) (2005–0069)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1688. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mean, AR'' ((RIN2120–AA66) (2005–0066)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1689. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mountain Grove, MO'' ((RIN2120–AA66) (2005–0068)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1690. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Lexington, MO; CONFIRMATION OF EFFECTIVE DATE'' ((RIN2120–AA66) (2005–0049)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1691. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Rolla, MO'' ((RIN2120–AA66) (2005–0046)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1692. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Rolla/Vivhy, MO'' ((RIN2120–AA66) (2005–0047)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1693. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Boone, IA; CONFIRMATION OF EFFECTIVE DATE'' ((RIN2120–AA66) (2005–0048)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1694. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Coffeyville, KS'' ((RIN2120–AA66) (2005–0053)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1695. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Nevada, MO'' ((RIN2120–AA66) (2005–0041)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1696. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Ozark, MO'' ((RIN2120–AA66) (2005–0040)) received on April 4, 2005; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs:

Special Report entitled ''The Role of Professional Firms in the U.S. Tax Shelter Industry'' (Rept. No. 109–54).

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs:

Special Report entitled ''Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling'' (Rept. No. 109-55).

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 362. A bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes (Rept. No. 109–56).

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 39. A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration (Rept. No. 109–57).

S. 148. A bill to establish a United States Boxing Commission to administer the Act, and for other purposes (Rept. No. 109–58).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. DOMENICI for the Committee on Energy and Natural Resources.

*David Garman, of Virginia, to be Under Secretary of Energy.

By Mr. INHOFE for the Committee on Environment and Public Works.

*John Paul Woodley, Jr., of Virginia, to be an Assistant Secretary of the Army.

*Luis Luna, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

*Stephen L. Johnson, of Maryland, to be Administrator of the Environmental Protection Agency.

*D. Michael Rappoport, of Arizona, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2008.

*Michael Butler, of Tennessee, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term expiring October 6, 2008.

*Major General Don T. Riley, United States Army, to be a Member and President of the Mississippi River Commission.

*Brigadier General William T. Grisoli, United States Army, to be a Member of the Mississippi River Commission.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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 Ms. SNOWE:

S. 769. A bill to enhance compliance assistance for small businesses; to the Committee on Small Business and Entrepreneurship.

By Mr. LEVIN (for himself, Ms. COLLINS, Mr. JEFFORDS, Ms. STABENOW, Mr. DEWINE, Mr. BAYH, Mr. DAYTON, Mr. LEAHY, Mr. KENNEDY, Mr. REED, Mr. LAUTENBERG, Mr. WARNER, and Mr. AKAKA):

S. 770. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve that Act; to the Committee on Environment and Public Works.

By Mr. ALLARD:

S. 771. A bill to better assist low-income families to obtain decent, safe, and affordable housing as a means of increasing their economic and personal well-being through the conversion of the existing section 8 housing choice voucher program into a flexible voucher program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORNYN (for himself and Mr. HARKIN):

S. 772. A bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use; to the Committee on Finance.

By Mr. CORZINE:

S. 773. A bill to ensure the safe and secure transportation by rail of extremely hazardous materials; to the Committee on Commerce, Science, and Transportation.

By Mr. BUNNING:

S. 774. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits; to the Committee on Finance.

By Mr. INHOFE (for himself and Mr. COBURN):

S. 775. A bill to designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the ''Boone Pickens Post Office''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. JOHNSON (for himself, Mr. THUNE, Mr. DAYTON, Mr. LAUTENBERG, Mr. KENNEDY, and Mr. ROCKEFELLER):

S. 776. A bill to designate certain functions performed at flight service stations of the Federal Aviation Administration as inherently governmental functions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SARBANES:

S. 777. A bill to designate Catoctin Mountain Park in the State of Maryland as the ''Catoctin Mountain National Recreation Area'', and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. BOXER (for herself and Mr. LAUTENBERG):

S. 778. A bill to amend title XVIII and XIX of the Social Security Act to require a pharmacy that receives payments or has contracts under the medicare and medicaid programs to ensure that all valid prescriptions are filled without unnecessary delay or interference; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. LEVIN):

S. 779. A bill to amend the Internal Revenue Code of 1986 to treat controlled foreign corporations established in tax havens as domestic corporations; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. SALAZAR (for himself and Mr. ALLARD):

S. Res. 106. A resolution congratulating the University of Denver Pioneers men's hockey team, 2005 National Collegiate Athletic Association Division I Hockey Champions; considered and agreed to.

ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 65, a bill to amend the age restrictions for pilots.

S. 172

At the request of Mr. DEWINE, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Maine (Ms. COLLINS), the Senator from Iowa (Mr. HARKIN) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 172, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of all contact lenses as medical devices, and for other purposes.

S. 288

At the request of Mr. GREGG, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 288, a bill to extend Federal funding for operation of State high risk health insurance pools.

S. 289

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 289, a bill to authorize an annual appropriation of $10,000,000 for mental health courts through fiscal year 2011.

S. 300

At the request of Ms. COLLINS, the names of the Senator from Missouri (Mr. TALENT) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 300, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 308

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 308, a bill to require that Homeland Security grants related to terrorism preparedness and prevention be awarded based strictly on an assessment of risk, threat, and vulnerabilities.

S. 352

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 352, a bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes.

S. 357

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 357, a bill to expand and enhance postbaccalaureate opportunities at Hispanic-serving institutions, and for other purposes.

S. 382

At the request of Mr. ENSIGN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 424

At the request of Mr. BOND, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 432

At the request of Mr. ALLEN, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 432, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 467

At the request of Mr. DODD, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 467, a bill to extend the applicability of the Terrorism Risk Insurance Act of 2002.

S. 557

At the request of Mr. COBURN, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 557, a bill to provide that Executive Order 13166 shall have no force or effect, to prohibit the use of funds for certain purposes, and for other purposes.

S. 582

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 582, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas, and for other purposes.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 697

At the request of Mr. OBAMA, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 697, a bill to amend the Higher Education Act of 1965 to improve higher education, and for other purposes.

S. 757

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 757, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 758

At the request of Mr. ALLEN, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 758, a bill to amend the Internal Revenue Code of 1986 to ensure that the federal excise tax on communication services does not apply to internet access service.

S. 765

At the request of Mr. WARNER, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 765, a bill to preserve mathematics- and science-based industries in the United States.

S. CON. RES. 17

At the request of Mr. BIDEN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 17, a concurrent resolution calling on the North Atlantic Treaty Organization to assess the potential effectiveness of and requirements for a NATO-enforced no-fly zone in the Darfur region of Sudan.

AMENDMENT NO. 316

At the request of Mr. NELSON of Florida, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of amendment No. 316 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 333

At the request of Mr. KERRY, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Illinois (Mr. DURBIN), the Senator from West Virginia (Mr. BYRD) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 333 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 334

At the request of Mr. KERRY, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Colorado (Mr. SALAZAR), the Senator from Illinois (Mr. DURBIN), the Senator from West Virginia (Mr. BYRD) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 334 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 340

At the request of Mr. DEWINE, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Colorado (Mr. SALAZAR) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 340 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related

grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 341

At the request of Mr. DEWINE, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. CORZINE) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of amendment No. 341 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 342

At the request of Mr. DEWINE, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Illinois (Mr. DURBIN), the Senator from Oregon (Mr. SMITH), the Senator from Pennsylvania (Mr. SPECTER), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of amendment No. 342 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 356

At the request of Mr. DURBIN, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Maryland (Mr. SARBANES), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mrs. LINCOLN), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of amendment No. 356 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

At the request of Mr. OBAMA, his name was added as a cosponsor of amendment No. 356 proposed to H.R. 1268, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE:

S. 769. A bill to enhance compliance assistance for small businesses; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, as Chair of the Senate Committee on Small Business and Entrepreneurship, regulatory fairness remains one of my top priorities. In 1996, I was pleased to support, along with all of my colleagues, the Small Business Regulatory Enforcement Fairness Act, SBREFA, which made the Regulatory Flexibility Act more effective in curtailing the impact of regulations on small businesses. One of the most important provisions of SBREFA compels agencies to produce compliance assistance materials to help small businesses satisfy the requirements of agency regulations. Unfortunately, over the years, agencies have failed to achieve this requirement. Consequently, small businesses have been forced to figure out on their own how to comply with these regulations. This makes compliance that much more difficult to achieve, and therefore reduces the effectiveness of the regulations.

The Government Accountability Office, GAO, found that agencies have ignored this requirement or failed miserably in their attempts to satisfy it. The GAO also found that SBREFA's language is unclear in some places about what is actually required. That is why today, I am introducing The Small Business Compliance Assistance Enhancement Act of 2005, to close those loopholes, and to make it clear that we were serious when we first told agencies, and that we want them to produce quality compliance assistance materials to help small businesses understand how to deal with regulations.

My bill is drawn directly from the GAO recommendations and is intended only to clarify an already existing requirement—not to add anything new. Similarly, the compliance guides that the agencies will produce will be suggestions about how to satisfy a regulation's requirements, and will not impose further requirements or additional enforcement measures. Nor does this bill, in any way, interfere or undercut agencies' ability to enforce their regulations to the full extent they currently enjoy. Bad actors must be brought to justice, but if the only trigger for compliance is the threat of enforcement, then agencies will never achieve the goals at which their regulations are directed.

The key to helping small businesses comply with these regulations is to provide assistance—showing them what is necessary and how they will be able to tell when they have met their obligations. Too often, small businesses do not maintain the staff, or possess the resources to answer these questions. This is a disadvantage when compared to larger businesses, and reduces the effectiveness of the agency's regulations. The SBA's Office of Advocacy has determined that regulatory compliance costs small businesses with less than 20 employees almost $7,000 per employee, compared to almost $4,500 for companies with more than 500 employees. If an agency can not describe how to comply with its regulation, how can we expect a small business to figure it out? This is the reason the requirement to provide compliance assistance was originally included in SBREFA. That reason is as valid today as it was in 1996.

Specifically, my bill would do the following:

Clarify how a guide shall be designated: Section 212 of SBREFA currently requires that agencies ''designate'' the publications prepared under the section as small entity compliance guides. However, the form in which those designations should occur is not clear. Consistent use of the phrase ''Small Entity Compliance Guide'' in the title could make it easier for small entities to locate the guides that the agencies develop. This would also aid in using on line searches—a technology that was not widely used when SBREFA was passed. Thus, agencies would be directed to publish guides entitled ''Small Entity Compliance Guide.''

Clarify how a guide shall be published: Section 212 currently states agencies ''shall publish'' the guides, but does not indicate where or how they should be published. At least one agency has published the guides as part of the preamble to the subject rule, thereby requiring affected small entities to read the Federal Register to obtain the guides. Agencies would be directed, at a minimum, to make their compliance guides available through their websites in an easily accessible way. In addition, agencies would be directed to forward their compliance guides to known industry contacts such as small businesses or associations with small business members that will be affected by the regulation.

Clarify when a guide shall be published: Section 212 does not indicate when the compliance guides should be published. Therefore, even if an agency is required to produce a compliance guide, it can claim that it has not violated the publishing requirement because there is no clear deadline. Agencies would be instructed to publish the compliance guides simultaneously with, or as soon as possible after, the final rule is published, provided that the guides must be published no later than the effective date of the rule's compliance requirements.

Clarify the term ''compliance requirements'': The term ''compliance requirements'' also needs to be clarified. At a minimum, compliance requirements must identify what small

businesses must do to satisfy the requirements and how they will know that they have met these requirements. This should include a description of the procedures a small business might use to meet the requirements. For example, if, as is the case with many OSHA and EPA regulations, testing is required, the agency should explain how that testing might be conducted. The bill makes clear that the procedural description should be merely suggestive—an agency would not be able to enforce this procedure if a small business was able to satisfy the requirements through a different approach.

It is time we get serious about ensuring that small businesses have the assistance they need to deal with the maze of Federal regulations we expect them to handle on a daily basis. The Small Business Compliance Assistance Enhancement Act of 2005 will make a significant contribution to that effort.

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. 769

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 ''Small Business Compliance Assistance Enhancement Act of 2005''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Small businesses represent 99.7 percent of all employers, employ half of all private sector employees, and pay 44.3 percent of total United States private payroll.

(2) Small businesses generated 60 to 80 percent of net new jobs annually over the last decade.

(3) Very small firms with fewer than 20 employees spend 60 percent more per employee than larger firms to comply with Federal regulations. Small firms spend twice as much on tax compliance as their larger counterparts. Based on an analysis in 2001, firms employing fewer than 20 employees face an annual regulatory burden of nearly $7,000 per employee, compared to a burden of almost $4,500 per employee for a firm with over 500 employees.

(4) Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) requires agencies to produce small entity compliance guides for each rule or group of rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code.

(5) The Government Accountability Office has found that agencies have rarely attempted to comply with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note). When agencies did try to comply with that requirement, they generally did not produce adequate compliance assistance materials.

(6) The Government Accountability Office also found that section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) and other sections of that Act need clarification to be effective.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To clarify the requirement contained in section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) for agencies to produce small entity compliance guides.

(2) To clarify other terms relating to the requirement in section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note).

(3) To ensure that agencies produce adequate and useful compliance assistance materials to help small businesses meet the obligations imposed by regulations affecting such small businesses, and to increase compliance with these regulations.

SEC. 3. ENHANCED COMPLIANCE ASSISTANCE FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by striking subsection (a) and inserting the following:

''(a) COMPLIANCE GUIDE.—

''(1) IN GENERAL.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 605(b) of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications 'small entity compliance guides'.

''(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

''(A) the posting of the guide in an easily identified location on the website of the agency; and

''(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

''(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

''(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

''(B) not later than the date on which the requirements of that rule become effective.

''(4) COMPLIANCE ACTIONS.—

''(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

''(B) EXPLANATION.—The explanation under subparagraph (A)—

''(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and

''(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements.

''(C) PROCEDURES.—Procedures described under subparagraph (B)(ii)—

''(i) shall be suggestions to assist small entities; and

''(ii) shall not be additional requirements relating to the rule.

''(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

''(6) REPORTING.—Not later than 1 year after the date of enactment of the Small Business Compliance Assistance Enhancement Act of 2005, and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives describing the status of the agency's compliance with paragraphs (1) through (5).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 211(3) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by inserting ''and entitled'' after ''designated''.

By Mr. LEVIN (for himself, Ms. COLLINS, Mr. JEFFORDS, Ms. STABENOW, Mr. DEWINE, Mr. BAYH, Mr. DAYTON, Mr. LEAHY, Mr. KENNEDY, Mr. REED, Mr. LAUTENBERG, Mr. WARNER, and Mr. AKAKA):

S. 770. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve that Act; to the Committee on Environment and Public Works.

Mr. LEVIN. Mr. President, today my colleague from Maine, Senator COLLINS and I are very pleased to introduce the National Aquatic Invasive Species Act of 2005. This bill, which reauthorizes the Nonindigenous Aquatic Nuisance Prevention and Control Act, takes a comprehensive approach towards addressing aquatic nuisance species to protect the nation's aquatic ecosystems. Invasive species are not a new problem for this country, but what is so important about this bill is that this is the first real effort to take a comprehensive approach toward the problem of aquatic invasive species. The bill deals with the prevention of introductions, the screening of new aquatic organisms that do come into the country, the rapid response to invasions, and the research to implement the provisions of this bill.

During the development of this country, there were more than people immigrating to this country. More than 6,500 non-indigenous invasive species have been introduced into the United States and have become established, self-sustaining populations. These species—from microorganisms to mollusks, from pathogens to plants, from insects to fish to animals—typically encounter few, if any, natural enemies in their new environments and wreak havoc on native species. Aquatic nuisance species threaten biodiversity nationwide, especially in the Great Lakes.

In fact, the aquatic nuisance species became a major issue for Congress back in the late eighties when the zebra mussel was released into the Great Lakes. The Great Lakes still have zebra mussels, and now, 20 States are fighting to control them. The Great Lakes region spends about $30 million per year to keep water pipes from becoming clogged with zebra mussels.

Zebra mussels were carried over from the Mediterranean to the Great Lakes in the ballast tanks of ships. The leading pathway for aquatic invasive species was and still is maritime commerce. Most invasive species are contained in the water that ships use for

ballast to maintain trim and stability. Aquatic invaders such as the zebra mussel and round goby were introduced into the Great Lakes when ships, often from nations, pulled into port and discharged their ballast water. In addition to ballast water, aquatic invaders can also attach themselves to ships' hulls and anchor chains.

Because of the impact that the zebra mussel had in the Great Lakes, Congress passed legislation in 1990 and 1996 that has reduced, but not eliminated, the threat of new invasions by requiring ballast water management for ships entering the Great Lakes. Today, there is a mandatory ballast water management program in the Great Lakes, and the Coast Guard is in the rule-making process to turn the voluntary ballast water exchange reporting requirement into a mandatory ballast water exchange program for all of our coasts. The current law requires that ships entering the Great Lakes must exchange their ballast water, seal their ballast tanks or use alternative treatment that is ''as effective as ballast water exchange.'' Unfortunately, alternative treatments have not been fully developed and widely tested on ships because the developers of ballast technology do not know what standard they are trying to achieve. This obstacle is serious because ultimately, only on-board ballast water treatment will adequately reduce the threat of new aquatic nuisance species being introduced through ballast water.

Our bill addresses this problem. First, this bill establishes a deadline for the Coast Guard and EPA to establish a standard for ballast water management and requires that the standard reduce the number of plankton in the ballast water by 99 percent or the best performance that technology can provide. This way, technology vendors and the maritime industry know what they should be striving to achieve and when they will be expected to achieve it. After 2011, all ships that enter any U.S. port after operating outside the Exclusive Economic Zone of 200 miles will be required to use a ballast water treatment technology that meets this standard.

I understand that ballast water technologies are being researched, and some are currently being tested onboard ships. The range of technologies include ultraviolet lights, filters, chemicals, deoxygenation, ozone, and several others. Each of these technologies has a different price tag attached to it. It is not my intention to overburden the maritime industry with an expensive requirement to install technology. In fact, the legislation states that the final ballast water technology standard must be based on the best performing technology that is economically achievable. That means that the Coast Guard must consider what technology is available, and if there is no economically achievable technology available to a class of vessels, then the standard will not require ballast technology for that class of vessels, subject to review every three years. I do not believe this will be the case, however, because the approach of this bill creates a clear incentive for treatment vendors to develop affordable equipment for the market.

Technology will always be evolving, and we hope that affordable technology will become available that completely eliminates the risk of new introductions. Therefore, it is important that the Coast Guard regularly review and revise the standard so that it reflects what the best technology currently available is and whether it is economically achievable.

There are other important provisions of the bill that also address prevention. For instance, the bill encourages the Coast Guard to consult with Canada, Mexico, and other countries in developing guidelines to prevent the introduction and spread of aquatic nuisance species. The Aquatic Nuisance Species Task Force is also charged with conducting a pathway analysis to identify other high risk pathways for introduction of nuisance species and implement management strategies to reduce those introductions. And this legislation, for the first time, establishes a process to screen live organisms entering the country for the first time for non-research purposes. Organisms believed to be invasive would be imported based on conditions that prevent them from becoming a nuisance. Such a screening process might have prevented such species as the Snakehead, which has established itself in the Potomac River here in the DC area, from being imported.

The third title of this bill addresses early detection of new invasions and the rapid response to invasions as well as the control of aquatic nuisance species that do establish themselves. If fully funded, this bill will provide a rapid response fund for states to implement emergency strategies when outbreaks occur. The bill requires the Army Corps of Engineers to construct and operate the Chicago Ship and Sanitary Canal project which includes the construction of a second dispersal barrier to keep species like the Asian carp from migrating up the Mississippi through the Canal into the Great Lakes. Equally important, this barrier will prevent the migration of invasive species in the Great Lakes from proceeding into the Mississippi system.

Lastly, the bill authorizes additional research which will identify threats and the tools to address those threats.

Though invasive species threaten the entire Nation's aquatic ecosystem, I am particularly concerned with the damage that invasive species have done to the Great Lakes. There are now roughly 180 invasive species in the Great Lakes, and it is estimated that a new species is introduced every 8 months. Invasive species cause disruptions in the food chain, which is now causing the decline of certain fish. Invasive species are believe to be the cause of a new dead zone in Lake Erie. And invasive species compete with native species for habitat.

This bill addresses the ''NOBOB'' or No Ballast on Board problem which is when ships report having no ballast when they enter the Great Lakes. However, a layer of sediment and small bit of water that cannot be pumped out is still in the ballast tanks. So when water is taken on and then discharged all within the Great Lakes, a new species that was still living in that small bit of sediment and water may be introduced. By requiring technology to be installed, this bill addresses a very serious issue in the Great Lakes.

All in all, the bill would cost between $160 million and $170 million each year. This is a lot of money, but it is a critical investment. As those of us from the Great Lakes know, the economic damage that invasive species can cause is much greater. However, compared to the annual cost of invasive species, the cost of this bill is minimal. Therefore, I urge my colleagues to cosponsor this legislation and work to move the bill swiftly through the Senate.

Ms. COLLINS. Mr. President, from Pickerel Pond to Lake Auburn, from Sebago Lake to Bryant Pond, lakes and ponds in Maine are under attack. Aquatic invasive species threaten Maine's drinking water systems, recreation, wildlife habitat, lakefront real estate, and fisheries. Plants, such as Variable Leaf Milfoil, are crowding out native species. Invasive Asian shore crabs are taking over Southern New England's tidal pools and have advanced well into Maine—to the potential detriment of Maine's lobster and clam industries.

I rise today to join Senator LEVIN in introducing legislation to address this problem. The National Aquatic Invasive Species Act of 2005 would create the most comprehensive nationwide approach to date for combating alien species that invade our shores.

The stakes are high when invasive species are unintentionally introduced into our Nation's waters. They endanger ecosystems, reduce biodiversity, and threaten native species. They disrupt people's lives and livelihoods by lowering property values, impairing commercial fishing and aquaculture, degrading recreational experiences, and damaging public water supplies.

In the 1950s, European Green Crabs swarmed the Maine coast and literally ate the bottom out of Maine's softshell clam industry by the 1980s. Many clam diggers were forced to go after other fisheries or find new vocations. In just one decade, this invader reduced the number of clam diggers in Maine from nearly 5,000 in the 1940s to fewer than 1500 in the 1950s. European green crabs currently cost an estimated $44 million a year in damage and control efforts in the United States.

Past invasions forewarn of the long-term consequences to our environment and communities unless we take steps to prevent new invasions. It is too late

to stop European green crabs from taking hold on the East Coast, but we still have the opportunity to prevent many other species from taking hold in Maine and the United States.

Senator LEVIN and I introduced an earlier version of this legislation in March of 2003. Just a few months earlier, one of North America's most aggressive invasive species hydrilla—was found in Maine for the first time. This stubborn and fast-growing aquatic plant had taken hold in Pickerel Pond in the Town of Limerick, ME, and threatened recreational use for swimmers and boaters. At the time, we warned that unless Congress acted, more and more invasive species would establish a foothold in Maine and across the country.

Unfortunately, Congress failed to act on our legislation and new invasions have continued. In December, for the first time, the Maine Department of Environmental Protection detected Eurasian Milfoil in the State. Maine was the last of the lower 48 States to be free of this stubborn and fast-growing invasive plant that degrades water quality by displacing native plants, fish and other aquatic species. The plant forms stems reaching up to 20 feet high that cause fouling problems for swimmers and boaters. In total, there are 24 documented cases of aquatic invasive species infesting Maine's lakes and ponds.

When considering the impact of these invasive species, it is important to note the tremendous value of our lakes and ponds. While their contribution to our quality of life is priceless, their value to our economy is more measurable. Maine's Great Ponds generate nearly 13 million recreational user days each year, lead to more than $1.2 billion in annual income for Maine residents, and support more than 50,000 jobs.

With so much at stake, Mainers are taking action to stop the spread of invasive species into our State's waters. The State of Maine has made it illegal to sell, posses, cultivate, import or introduce eleven invasive aquatic plants. Boaters participating in the Maine Lake and River Protection Sticker program are providing needed funding to aid efforts to prevent, detect and manage aquatic invasive plants. Volunteers are participating in the Courtesy Boat Inspection program to keep aquatic invasive plants out of Maine lakes. Before launch or after removal, inspectors ask boaters for permission to inspect the boat, trailer or other equipment for plants. More than 300 trained inspectors conducted upwards of 30,000 courtesy boat inspections at 65 lakes in the 2004 boating season.

While I am proud of the actions that Maine and many other States are taking to protect against invasive species, all too often their efforts have not been enough. As with national security, protecting the integrity of our lakes, streams, and coastlines from invading species cannot be accomplished by individual States alone. We need a uniform, nationwide approach to deal effectively with invasive species. The National Aquatic Invasive Species Act of 2005 will help my State and States throughout the Nation detect, prevent and respond to aquatic invasive species.

The National Aquatic Invasive Species Act of 2005 would be the most comprehensive effort ever undertaken to address the threat of invasive species. By authorizing $836 million over 6 years, this legislation would open numerous new fronts in our war against invasive species. The bill directs the Coast Guard to develop regulations that will end the easy cruise of invasive species into U.S. waters through the ballast water of international ships, and would provide the Coast Guard with $6 million per year to develop and implement these regulations.

The bill also would provide $30 million per year for a grant program to assist State efforts to prevent the spread of invasive species. It would provide $12 million per year for the Army Corps of Engineers and Fish and Wildlife Service to contain and control invasive species. Finally, the Levin-Collins bill would authorize $30 million annually for research, education, and outreach.

Mr. President, the most effective means of stopping invading species is to attack them before they attack us. We need an early alert, rapid response system to combat invading species before they have a chance to take hold. For the first time, this bill would establish a national monitoring network to detect newly introduced species, while providing $25 million to the Secretary of the Interior to create a rapid response fund to help States and regions respond quickly once invasive species have been detected. This bill is our best effort at preventing the next wave of invasive species from taking hold and decimating industries and destroying waterways in Maine and throughout the country.

One of the leading pathways for the introduction of aquatic organisms to U.S. waters from abroad is through transoceanic vessels. Commercial vessels fill and release ballast tanks with seawater as a means of stabilization. The ballast water contains live organisms from plankton to adult fish that are transported and released through this pathway. Last week, a Federal judge ruled that the Government can no longer allow ships to dump, without a permit from the Environmental Protection Agency, any ballast water containing nonnative species that could harm local ecosystems. The court case and subsequent decision indicates that there are problems with our existing systems to control ballast water discharge and signals a need to address invasive hitchhikers that travel to our shores aboard ships. Our legislation would establish a framework to prevent the introduction of aquatic invasive species by ships.

The National Aquatic Invasive Species Act of 2005 offers a strong framework to combat aquatic invasive species. I call on my colleagues to help us enact this legislation in order to protect our waters, ecosystems, and industries from destructive invasive species—before it's too late.

By Mr. CORZINE:

S. 773. A bill to ensure the safe and secure transportation by rail of extremely hazardous materials; to the Committee on Commerce, Science, and Transportation.

Mr. CORZINE. Mr. President, today I am introducing legislation, the Extremely Hazardous Materials Rail Transportation Act of 2005, to ensure the safety and security of toxic chemicals that are transported across our nation's 170,000 mile rail network.

On January 6, 2005, a freight car carrying toxic chlorine gas derailed in South Carolina. The derailment caused a rupture that released a deadly gas cloud over the nearby community of Graniteville. As a result of this accident, nine people died and 318 needed medical attention. Many of those needing medical attention were first responders who arrived at the scene of the accident unaware that a tank car containing chlorine gas had ruptured. As one responder described it, ''I took a breath. That stuff grabbed me. It gagged me and brought me down to my knees. I talked to God and said, 'I am not dying here.''' In the aftermath of the chlorine release, more than 5,000 area residents needed to be evacuated from their homes.

The Graniteville accident was the deadliest accident involving the transport of chlorine. But it was not the first. Since the use of rail for chlorine transport began in 1924, there had been four fatal accidents involving the release of chlorine, according to the Chlorine Institute. Thirteen people have died. In addition, the National Transportation Safety Board has investigated 14 derailments from 1995 to 2004 that caused the release of hazardous chemicals, including chlorine. In those instances, four people died and 5,517 were injured.

The Graniteville accident exposes fundamental failings in the transport of hazardous materials on America's rail system. These failings include pressurized rail tank cars that are vulnerable to rupture; lack of sufficient training for transporters and emergency responders; lack of sufficient notification to the communities that hazardous material train run through and a lack of coordination at the federal level between the many agencies that are involved in rail transport of hazardous materials.

Because of these failings, our Nation's freight rail infrastructure remains vulnerable to the release of hazardous materials either by accident or due to deliberate attack. The ''Extremely Hazardous Material Rail Transportation Act addresses these

safety and security issues. My legislation would require the DHS to coordinate Federal, State and local efforts to prevent terrorist acts and to respond to emergencies in the transport by rail of extremely hazardous materials. It requires the DHS to issue regulations that address the integrity of pressurized tank cars, the lack of sufficient training for transporters and emergency responders, and the lack of sufficient notification for communities. It would also require the DHS to study the possibility of reducing, through the use of alternate routes, the risks of freight transportation of extremely hazardous material; except in the case of emergencies or where such alternatives do not exist or are prohibitively expensive. Finally, it contains protections for employees who report on the safety and security of transportation by rail of extremely hazardous materials.

I hope my colleagues will support this legislation, and 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. 773

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 ''Extremely Hazardous Materials Rail Transportation Act of 2005''.

SEC. 2. COORDINATION OF PRECAUTIONS AND RESPONSE EFFORTS RELATED TO THE TRANSPORTATION BY RAIL OF EXTREMELY HAZARDOUS MATERIALS.

(a) REGULATIONS.—

(1) REQUIREMENT FOR REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other Federal, State, and local agencies, prescribe regulations for the coordination of efforts of Federal, State, and local agencies aimed at preventing terrorist acts and responding to emergencies that may occur in connection with the transportation by rail of extremely hazardous materials.

(2) CONTENT.—

(A) IN GENERAL.—The regulations required under paragraph (1) shall—

(i) require, and establish standards for, the training of individuals described in subparagraph (B) on safety precautions and best practices for responding to emergencies occurring in connection with the transportation by rail of extremely hazardous materials, including incidents involving acts of terrorism; and

(ii) establish a coordinated system for notifying appropriate Federal, State, and local law enforcement authorities (including, if applicable, transit, railroad, or port authority police agencies) and first responders of the transportation by rail of extremely hazardous materials through communities designated as area of concern communities by the Secretary of Homeland Security under subsection (b)(1).

(B) INDIVIDUALS COVERED BY TRAINING.—The individuals described in subparagraph (A)(i) are first responders, law enforcement personnel, and individuals who transport, load, unload, or are otherwise involved in the transportation by rail of extremely hazardous materials or who are responsible for the repair of related equipment and facilities in the event of an emergency, including an incident involving terrorism.

(b) AREA OF CONCERN COMMUNITIES.—

(1) DESIGNATION OF AREA OF CONCERN COMMUNITIES.—

(A) IN GENERAL.—In prescribing regulations under subsection (a), the Secretary of Homeland Security shall compile a list of area of concern communities.

(B) CRITERIA.—The Secretary of Homeland Security shall include on such list communities through or near which the transportation by rail of extremely hazardous materials poses a serious risk to the public health and safety. In making such determination, the Secretary shall consider—

(i) the severity of harm that could be caused in a community by the release of the transported extremely hazardous materials;

(ii) the proximity of a community to major population centers;

(iii) the threat posed by such transportation to national security, including the safety and security of Federal and State government offices;

(iv) the vulnerability of a community to acts of terrorism;

(v) the threat posed by such transportation to critical infrastructure;

(vi) the threshold quantities of particular extremely hazardous materials that pose a serious threat to the public health and safety; and

(vii) such other safety or security factors that the Secretary determines appropriate to consider.

(2) CONSIDERATION OF ALTERNATE ROUTES.—The Secretary of Homeland Security shall conduct a study to consider the possibility of reducing, through the use of alternate routes involving lower security risks, the security risks posed by the transportation by rail of extremely hazardous materials through or near communities designated as area of concern communities under paragraph (1), except in the case of emergencies or where such alternatives do not exist or are prohibitively expensive.

SEC. 3. PRESSURIZED RAILROAD CARS.

(a) NEW SAFETY STANDARDS.—

(1) REQUIREMENT FOR STANDARDS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other relevant Federal agencies, prescribe by regulations standards for ensuring the safety and physical integrity of pressurized tank cars that are used in the transportation by rail of extremely hazardous materials.

(2) CONSIDERATION OF SPECIFIC RISKS.—In prescribing regulations under paragraph (1), the Secretary of Homeland Security shall consider the risks posed to such pressurized tank cars by acts of terrorism, accidents, severe impacts, and other actions potentially threatening to the structural integrity of the cars or to the safe containment of the materials carried by such cars.

(b) REPORT ON IMPACT RESISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other relevant Federal agencies, submit to the appropriate congressional committees a report on the safety and physical integrity of pressurized tank cars that are used in the transportation by rail of extremely hazardous materials, including with respect to the risks considered under subsection (a)(2).

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) the results of a study on the impact resistance of such pressurized tank cars, including a comparison of the relative impact resistance of tank cars manufactured before and after the implementation by the Administrator of the Federal Railroad Administration in 1989 of Federal standards on the impact resistance of such tank cars; and

(B) an assessment of whether tank cars manufactured before the implementation of the 1989 impact resistence standards and tank cars manufactured after the implementation of such standards conform with the standards prescribed under subsection (a).

SEC. 4. REPORT ON EXTREMELY HAZARDOUS MATERIALS TRANSPORT SAFETY.

(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation, submit to the appropriate congressional committees a report on the safety and security of the transportation by rail of extremely hazardous materials, including the threat posed to the security of such transportation by acts of terrorism.

(b) CONTENT.—The report required under subsection (a) shall include, in a form that does not compromise national security—

(1) information specifying—

(A) the Federal and State agencies that are responsible for the oversight of the transportation by rail of extremely hazardous materials; and

(B) the particular authorities and responsibilities of the heads of each such agency;

(2) an assessment of the operational risks associated with the transportation by rail of extremely hazardous materials, with consideration given to the safety and security of the railroad infrastructure in the United States, including railroad bridges and rail switching areas;

(3) an assessment of the vulnerability of railroad cars to acts of terrorism while being used to transport extremely hazardous materials;

(4) an assessment of the ability of individuals who transport, load, unload, or are otherwise involved in the transportation by rail of extremely hazardous materials or who are responsible for the repair of related equipment and facilities in the event of an emergency, including an incident involving terrorism, to respond to an incident involving terrorism, including an assessment of whether such individuals are adequately trained or prepared to respond to such incidents;

(5) a description of the study conducted under section 2(b)(2), including the conclusions reached by the Secretary of Homeland Security as a result of such study and any recommendations of the Secretary for reducing, through the use of alternate routes involving lower security risks, the security risks posed by the transportation by rail of extremely hazardous materials through or near area of concern communities;

(6) other recommendations for improving the safety and security of the transportation by rail of extremely hazardous materials; and

(7) an analysis of the anticipated economic impact and effect on interstate commerce of the regulations prescribed under this Act.

(c) FORM.—The report required under subsection (a) shall be in unclassified form, but may contain a classified annex.

SEC. 5. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—No person involved in the transportation by rail of extremely hazardous materials may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of any lawful act done by the person—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the person reasonably believes constitutes a violation of any law, rule, or regulation related to the security of shipments of extremely hazardous materials, or any other threat to the security of shipments of extremely hazardous materials, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the person (or such other person who has the authority to investigate, discover, or terminate misconduct);

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule, or regulation related to the security of shipments of extremely hazardous materials or any other threat to the security of shipments of extremely hazardous materials; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation related to the security of shipments of extremely hazardous materials.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c)—

(A) by filing a complaint with the Secretary of Labor; and

(B) if the Secretary has not issued a final decision within 180 days after the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, by commencing a civil action in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) COMPLAINT TO DEPARTMENT OF LABOR.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in subsection (b) of section 42121 of title 49, United States Code, except that notification made under such subsection shall be made to the person named in the complaint and to the person's employer.

(B) COURT ACTION.—An action commenced under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b)(2)(B) of title 49, United States Code.

(C) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 180 days after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A person prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the person whole.

(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) in the case of a termination of, or other discriminatory act regarding the person's employment—

(i) reinstatement with the same seniority status that the person would have had, but for the discrimination; and

(ii) payment of the amount of any back pay, with interest, computed retroactively to the date of the discriminatory act; and

(B) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(d) RIGHTS RETAINED BY PERSON.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any person under any Federal or State law, or under any collective bargaining agreement.

SEC. 6. CIVIL PENALTIES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations providing for the imposition of civil penalties for violations of—

(1) regulations prescribed under this Act; and

(2) the prohibition against discriminatory treatment under section 5(a).

SEC. 7. NO FEDERAL PREEMPTION.

Nothing in this Act shall be construed as preempting any State law, except that no such law may relieve any person of a requirement otherwise applicable under this Act.

SEC. 8. DEFINITIONS.

In this Act:

(1) EXTREMELY HAZARDOUS MATERIAL.—The term ''extremely hazardous material'' means—

(A) a material that is toxic by inhalation;

(B) a material that is extremely flammable;

(C) a material that is highly explosive;

(D) high-level radioactive waste; and

(E) any other material designated by the Secretary of Homeland Security as being extremely hazardous.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.

By Mr. BUNNING:

S. 774. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 income tax increase on Social Security benefits; to the Committee on Finance.

Mr. BUNNING. Mr. President, today, I am introducing the Social Security Benefits Tax Relief Act of 2005, which repeals the 1993 income tax increase on Social Security benefits that went into effect in 1993.

When Social Security was created, beneficiaries did not pay federal income tax on their benefits. However, in 1983, Congress passed legislation requiring that 50 percent of Social Security benefits be taxed for seniors whose incomes were above $25,000 for an individual and $32,000 for a couple. This additional revenue was credited back to the Social Security trust funds.

In 1993, Congress and President Clinton expanded this tax. A provision was passed as part of a larger bill requiring that 85 percent of a senior's Social Security benefit be taxed if their income was above $34,000 for an individual and $44,000 for a couple. This additional money is credited to the Medicare program.

I was in Congress in 1993, and fought against this provision. This is an unfair tax on our senior citizens who worked year after year paying into Social Security, only to be taxed on their benefits once they retired.

My bill, the Social Security Benefits Tax Relief Act, would repeal the 1993 tax increase on benefits and would replace the money that has been going to the Medicare program with general funds. This legislation is identical to the legislation I introduced in the 108th Congress.

Recently during debate on the Budget Resolution, I introduced an amendment that provides the Finance Committee with the tax cuts to finally repeal the 1993 tax increase on Social Security benefits. My amendment passed by a vote of 55 yeas to 45 nays. The legislation I am introducing today provides the legislative blueprint for repealing this unfair tax.

The 1993 tax was unfair when it was signed into law, and it is unfair today. I hope my Senate colleagues can support this legislation to remove this burdensome tax on our seniors.

By Mr. INHOFE (for himself and Mr. COBURN):

S. 775. A bill to designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, OK, as the ''Boone Pickens Post Office''; to the Committee on Homeland Security and Governmental Affairs.

Mr. INHOFE. Mr. President, I rise today to proudly introduce legislation to designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, OK, as the ''Boone Pickens Post Office''.

Thomas Boone Pickens, Jr. emulates the Oklahoma spirit of hard work, entrepreneurship and philanthropy. He is an excellent example of the potential to achieve success in our American free enterprise system. I honor, I proudly seek to name the post office in his hometown of Holdenville, OK, where he was born in 1928.

As the son of a landman, Pickens quickly appreciated the business potential of oil exploration. Oklahoma State University awarded Pickens a bachelor of science in geology in 1951. He grew frustrated with the bureaucracy of working for a large company and decided to start his own in 1956. This company was the basis for what became one of the leading oil and gas exploration and production firms in the nation, Mesa Petroleum Company.

Not only did Pickens lead in the energy industry itself, he possessed the unique ability to recognize and acquire undervalued companies. Repeatedly, markets eventually realized the worth of these companies, and shareholder profits soared.

His innovative thinking and business skills amassed the fortune and wisdom he unselfishly shares with others. Oklahoma State University has benefited from his generous investment in academics and athletics. He is also a dedicated supporter of a wide range of medical research initiatives. He is an energetic advocate for the causes he believes in, devoting his time to serve on numerous boards and receiving recognition through countless awards.

He often said, ''Be willing to make decisions. That's the most important quality in a good leader. Don't fall victim to what I call the ready-aim-aim-aim-aim syndrome.

You must be willing to fire.'' That is exactly the Oklahoma mentality of leadership, the ability to make tough decisions and stick to them.

I encourage my colleagues to join me in support of this legislation as we commemorate an outstanding citizen so that future generations will be challenged by his example, just as we have been.

By Mr. JOHNSON (for himself, Mr. THUNE, Mr. DAYTON, Mr. LAUTENBERG, Mr. KENNEDY, and Mr. ROCKEFELLER):

S. 776. A bill to designate certain functions performed at flight service stations of the Federal Aviation Administration as inherently governmental functions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. JOHNSON. Mr. President, I rise today to introduce legislation to ensure that rural America's aviation network benefits from the same level of service and safety as America's busiest airports. Whether moving products and services as part of the global economy, or shepherding sick patients for medical care, rural communities require the same basic air infrastructure network. By ensuring that Flight Service Stations remain in rural areas, general aviation pilots will continue to be able to serve regions that may otherwise be neglected.

Flight Service Stations currently provide general aviation pilots with weather briefings, temporary flight restrictions, emergency information, and aid in search and rescue situations. Flight Service Station Specialists use their expertise of regional weather, landscape, and flight conditions to ensure pilots reach their destinations safely. Their work has kept general aviation running smoothly and has literally saved lives.

On February 1, 2005, the Federal Aviation Administration announced that operations conducted by Flight Service Stations would be performed by a private contractor. Under the Administration's proposal, the contractor will eliminate 38 of the 58 stations across the country. Work currently conducted by these stations will then be done by employees located in the remaining 20 stations.

The Federal Aviation Administration's proposal will lead to decreased safety for pilots of small planes because they will no longer be talking to personnel familiar with regional weather and topography. The consolidated system will strain service capability because fewer employees will be responsible for a growing system of general air traffic. The proposed plan will be especially harmful to rural areas that more heavily rely upon smaller aircraft.

The Federal Aviation Safety Security Act would ensure that these facilities can continue to preserve and protect general aviation in the United States. This legislation is supported by a large number of general aviation pilots and others who depend on their regional Flight Service Station. The bill already enjoys significant bipartisan support, and I will continue to work with members of both parties to preserve aviation safety.

I ask unanimous consent that the text of the Federal Aviation Safety Security Act be printed in the RECORD.

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

S. 776

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 ''The Federal Aviation Safety Security Act of 2005''.

SEC. 2. INHERENTLY GOVERNMENTAL DETERMINATION.

For purposes of section 2(a) of the Federal Inventory Activities Act of 1998 (112 Stat. 2382), the functions performed by air traffic control specialists at flight service stations operated by the Federal Aviation Administration are inherently governmental functions and must be performed by Federal employees.

SEC. 3. ACTIONS VOIDED.

Any action taken pursuant to section 2(a) of the Federal Inventory Activities Act of 1998 (112 Stat. 2382), or any other law or legal authority with respect to functions performed by air traffic control specialists at flight service stations operated by the Federal Aviation Administration is null and void.

By Mr. SARBANES:

S. 777. A bill to designate Catoctin Mountain Park in the State of Maryland as the ''Catoctin Mountain National Recreation Area'', and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, today I am reintroducing legislation to re-designate Catoctin Mountain Park as the Catoctin Mountain National Recreation Area. This measure was unanimously approved by the full Senate during the 108th Congress, but unfortunately, was not considered in the House.

I spoke during the 108th Congress about the need to enact this legislation and I want to underscore some of the key reasons today. Catoctin Mountain Park is a hidden gem in our National Park System. Home to Camp David, the Presidential retreat, it has been aptly described as ''America's most famous unknown park.'' Comprising nearly 6000 acres of the eastern reach of the Appalachian Mountains in Maryland, the park is rich in history as well as outdoor recreation opportunities. Visitors can enjoy camping, picnicking, cross-country skiing, fishing, as well as the solitude and beauty of the woodland mountain and streams in the park.

Catoctin Mountain Park had its origins during the Great Depression as one of 46 Recreational Demonstration Areas (RDA) established under the authority of the National Industrial Recovery Act. The Federal Government purchased more than 10,000 acres of mountain land that had been heavily logged and was no longer productive to demonstrate how sub-marginal land could be turned into a productive recreational area and help put people back to work. From 1936 through 1941, hundreds of workers under the Works Progress Administration and later the Civilian Conservation Corps were employed in reforestation activities and in the construction of a number of camps, roads and other facilities, including the camp now known as Camp David, and one of the earliest—if not the oldest—camp for disabled individuals. In November 1936, administrative authority for the Catoctin RDA was transferred to the National Park Service by Executive Order.

In 1942, concern about President Roosevelt's health and safety led to the selection of Catoctin Mountain, and specifically Camp Hi-Catoctin as the location for the President's new retreat. Subsequently approximately 5,000 acres of the area was transferred to the State of Maryland, becoming Cunningham Falls State Park in 1954. The remaining 5,770 acres of the Catoctin Recreation Demonstration Area was renamed Catoctin Mountain Park by the Director of the National Park Service in 1954. Unfortunately, the Director failed to include the term ''National'' in the title and the park today remains one of eleven units in the National Park System—all in the National Capital Region—that do not have this designation.

The proximity of Catoctin Mountain Park, Camp David, and Cunningham Falls State Park, and the differences between national and state park management, has caused longstanding confusion for visitors to the area. Catoctin Mountain Park is continually misidentified by the public as containing lake and beach areas associated with Cunningham Falls State Park, being operated by the State of Maryland, or being closed to the public because of the presence of Camp David. National Park employees spend countless hours explaining, assisting and redirecting visitors to their desired destinations.

My legislation would help to address this situation and clearly identify this park as a unit of the National Park System by renaming it the Catoctin Mountain National Recreation Area. The Maryland State Highway Administration, perhaps in anticipation of the enactment of this bill, has already changed some of the signs leading to the Park. This bill would make the name change official within the National Park Service and on official National Park Service maps. Moreover, the mission and characteristics of this park—which include the preservation of significant historic resources and important natural areas in locations that provide outdoor recreation for large numbers of people—make this designation appropriate. This measure would not change access requirements

or current recreational uses occurring within the park. But it would assist the visiting public in distinguishing between the many units of the State and Federal systems. It will also, in my judgment, help promote tourism by enhancing public awareness of the National Park unit.

I urge approval of this legislation and ask unanimous consent that the full 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. 777

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 ''Catoctin Mountain National Recreation Area Designation Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Catoctin Recreation Demonstration Area, in Frederick County, Maryland—

(A) was established in 1933; and

(B) was transferred to the National Park Service by executive order in 1936;

(2) in 1942, the presidential retreat known as ''Camp David'' was established in the Catoctin Recreation Demonstration Area;

(3) in 1952, approximately 5,000 acres of land in the Catoctin Recreation Demonstration Area was transferred to the State of Maryland and designated as Cunningham Falls State Park;

(4) in 1954, the Catoctin Recreation Demonstration Area was renamed ''Catoctin Mountain Park'';

(5) the proximity of Catoctin Mountain Park, Camp David, and Cunningham Falls State Park and the difference between management of the parks by the Federal and State government has caused longstanding confusion to visitors to the parks;

(6) Catoctin Mountain Park is 1 of 17 units in the National Park System and 1 of 9 units in the National Capital Region that does not have the word ''National'' in the title; and

(7) the history, uses, and resources of Catoctin Mountain Park make the park appropriate for designation as a national recreation area.

(b) PURPOSE.—It is the purpose of this Act to designate Catoctin Mountain Park as a national recreation area to—

(1) clearly identify the park as a unit of the National Park System; and

(2) distinguish the park from Cunningham Falls State Park.

SEC. 3. DEFINITIONS.

(a) MAP.—The term ''map'' means the map entitled ''Catoctin Mountain National Recreation Area'', numbered 841/80444, and dated August 14, 2002.

(b) RECREATION AREA.—The term ''recreation area'' means the Catoctin Mountain National Recreation Area designated by section 4(a).

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

SEC. 4. CATOCTIN MOUNTAIN NATIONAL RECREATION AREA.

(a) DESIGNATION.—Catoctin Mountain Park in the State of Maryland shall be known and designated as the ''Catoctin Mountain National Recreation Area''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to Catoctin Mountain Park shall be deemed to be a reference to the Catoctin Mountain National Recreation Area.

(c) BOUNDARY.—

(1) IN GENERAL.—The recreation area shall consist of land within the boundary depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) ADJUSTMENTS.—The Secretary may make minor adjustments in the boundary of the recreation area consistent with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9(c)).

(d) ACQUISITION AUTHORITY.—The Secretary may acquire any land, interest in land, or improvement to land within the boundary of the recreation area by donation, purchase with donated or appropriated funds, or exchange.

(e) ADMINISTRATION.—The Secretary shall administer the recreation area—

(1) in accordance with this Act and the laws generally applicable to units of the National Park System, including—

(A) the Act of August 25, 1916 (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.); and

(2) in a manner that protects and enhances the scenic, natural, cultural, historical, and recreational resources of the recreation area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mrs. BOXER (for herself and Mr. LAUTENBERG):

S. 778. A bill to amend title XVIII and XIX of the Social Security Act to require a pharmacy that receives payments or has contracts under the medicare and medicaid programs to ensure that all valid prescriptions are filled without unnecessary delay or interference; to the Committee on Finance.

Mrs. BOXER. Mr. President, today I am introducing ''The Pharmacy Consumer Protection Act of 2005'' to ensure that our Nation's pharmacies fill all valid prescriptions without unnecessary delay or interference.

We are hearing more and more stories about pharmacists refusing to fill prescriptions for contraceptives because of their personal beliefs, not their medical concerns. Some of my constituents have told me about their experiences. One woman in Merced County was turned away by a pharmacist who said ''we don't do that here,'' but, less than two hours later, another pharmacist in the store filled the same prescription for another customer immediately. It's not just in California, of course.

In Menomonie, WI, a pharmacist told a woman he wouldn't fill her prescription for birth control pills or even transfer her prescription to another pharmacy. In Fabens, TX, a married woman had just had a baby. It had been a C-section. Her doctor told her not to get pregnant again in the near future, and prescribed birth control pills. She went to get her prescription refilled while visiting her mother in Fabens. Unfortunately, the cashier told her that the pharmacist wouldn't be able to refill her prescription because birth control was ''against his religion'' and was a form of ''abortion.''

The American people do not think this is right. According to a November 2004 CBS/New York Times poll, 8 out of 10 Americans believe that pharmacists should not be permitted to refuse to dispense birth control pills, including 70 percent of Republicans. They know that contraceptives are a legal and effective way to reduce unintended pregnancies and abortions.

But this challenge is not just about contraceptives. It's about access to health care. It's about making decisions based on science and medicine. Tomorrow, pharmacists could refuse to dispense any drug for any medical condition. Access to pharmaceuticals should depend on medical judgments, not personal ideology.

The Pharmacy Consumer Protection Act requires pharmacies that receive Medicare and Medicaid funding to fill all valid prescriptions for FDA-approved drugs and devices without unnecessary delay or interference. That means, if the item is not in stock, the pharmacy should order it according to its standard procedures, or, if the customer prefers, transfer it to another pharmacy or give the prescription back.

There are medical reasons why a pharmacy wouldn't want to fill prescriptions including problems with dosages, harmful interactions with other drugs, or potential drug abuse. This bill would not interfere with those decisions.

I know some are concerned about those pharmacists who do not want to dispense particular medications because of their personal beliefs, including their religious values. I believe that is between the pharmacist and his or her employer. In this bill, it is the responsibility of the pharmacy, not the pharmacist, to ensure that prescriptions are filled. Pharmacies can accommodate their employees in any manner that they wish as long as customers get their medications without delay, interference, or harassment.

Most of our pharmacies receive reimbursements through Medicaid. When the prescription drug program goes into full effect in January, a growing number will be part of Medicare. If a pharmacy contracts with our Medicaid or Medicare programs, directly or indirectly, they should fulfill their fundamental duty to the patients they serve.

Most pharmacists work hard and do right by their patients every day. They believe in science. They believe that if a doctor writes a valid prescription, it should be filled. But, unfortunately, some have put their personal views over the health of their patients. That is wrong. When people walk into a pharmacy, they should have confidence that they will get the medications they need, when they need them. The Pharmacy Consumer Protection Act of 2005 will help ensure just that.

By Mr. DORGAN (for himself and Mr. LEVIN):

S. 779. A bill to amend the Internal Revenue Code of 1986 to treat controlled foreign corporations established

in tax havens as domestic corporations; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I'm joined by Senator LEVIN of Michigan in introducing legislation that we believe will help the Internal Revenue Service (IRS) combat offshore tax-haven abuses and ensure that U.S. multinational companies pay the U.S. taxes that they rightfully owe.

Tens of millions of taxpayers will be rushing to file their tax returns in the next few days in order to fulfill their taxpaying responsibility by the April 15 filing deadline. Some tax experts estimate that taxpayers will spend over $100 billion and more than 6 billion hours this year trying to comply with their federal tax obligation. It's no wonder that many Americans are frustrated with the current tax system and would gladly welcome substantive efforts to simplify it.

However, this frustration changes to anger when the taxpayers who pay their taxes on time each year discover that many corporate taxpayers are shirking their tax obligations by actively shifting their profits to foreign tax havens or using other inappropriate tax avoidance techniques. The bill that Senator LEVIN and I are introducing today is a simple and straightforward way to try to tackle the offshore tax-haven problem.

Specifically, our legislation denies tax benefits, namely tax deferral, to U.S. multinational companies that set up controlled foreign corporations in tax-haven countries by treating those subsidiaries as domestic companies for U.S. income tax purposes. This tracks the same general approach embraced and passed by the Congress in other tax legislation designed to curb the problem of corporate inversions.

We have known for many years that some very profitable U.S. multinational businesses are using offshore tax havens to avoid paying their fair share of U.S. taxes. But Congress has really done very little to stop this hemorrhaging of tax revenues. In fact, recent evidence suggests that the tax-haven problem is getting much worse and may be draining the U.S. Treasury of tens of billions of dollars every year.

The New York Times got it right when it suggested that ''instead of moving headquarters offshore, many companies are simply placing patents on drugs, ownership of corporate logos, techniques for manufacturing processes and other intangible assets in tax havens . . . The companies then charge their subsidiaries in higher-tax locales, including the U.S., for the use of these intellectual properties. This allows the companies to take profits in these havens and pay far less in taxes.''

How pervasive is the tax-haven subsidiary problem? Last year, the Government Accountability Office (GAO), the investigative arm of Congress, issued a report that Senator LEVIN and I requested that gives some insight to the potential magnitude of this tax avoidance activity. The GAO found that 59 out of the 100 largest publicly-traded federal contractors in 2001—with tens of billions of dollars of federal contracts in 2001—had established hundreds of subsidiaries located in offshore tax havens.

According to the GAO, Exxon-Mobil Corporation, the 21st largest publicly traded federal contractor in 2001, has some 11 tax-haven subsidiaries in the Bahamas. Halliburton Company reportedly has 17 tax-haven subsidiaries, including 13 in the Cayman Islands, a country that has never imposed a corporate income tax, as well as 2 in Liechtenstein and 2 in Panama. And the now infamous Enron Corporation had 1,300 different foreign entities, including some 441 located in the Cayman Islands.

More recently, former Joint Committee on Taxation economist Martin Sullivan released a study that looked at the amount of profits that US. companies are shifting to offshore tax havens. He found that U.S. multinationals had moved hundreds of billions of profits to tax havens for years 1999–2002, the latest years for which IRS data is available.

Although Congress passed legislation, which I supported, that addresses the problem of corporate expatriates that reincorporate overseas, that legislation did nothing to deal with the problem of U.S. companies that are setting up tax-haven subsidiaries to avoid their taxpaying responsibilities in this country.

The legislation that we are introducing builds upon the good work of Senators GRASSLEY and BAUCUS and other members of the Senate Finance Committee by extending similar tax policy changes to cover the case of U.S. companies and their tax-haven subsidiaries.

Specifically, our legislation would do the following: 1. Treat U.S. controlled foreign subsidiaries that are set up in tax-haven countries as domestic companies for U.S. tax purposes. In other words, we would simply treat these companies as if they never left the United States, which is essentially the case in these tax avoidance motivated transactions.

2. List specific tax-haven countries subject to the new rule (based upon the previous work by the Organization for Economic Cooperation and Development) and give the Secretary of the Treasury the ability to add or remove a foreign country from this list in appropriate cases.

3. Provide an exception where substantially all of a U.S. controlled foreign corporation's income is derived from the active conduct of a trade or business within the listed tax-haven country.

4. Make these proposed changes effective beginning after December 31, 2007. This will give businesses ample time to restructure their tax-haven operations if they so choose.

This legislation will help end the tax benefits for U.S. companies that shift income to offshore tax-haven subsidiaries. For example, any efforts by a U.S. company to move profits to the subsidiary through transfer pricing schemes will not work because the income earned by the subsidiary would still be immediately taxable by the United States. Likewise, any efforts to move otherwise active income earned by a U.S. company in a high-tax foreign country to a tax haven would cause the income to be immediately taxable by the United States. Companies that try to move intangible assets—and the income they produce—to tax havens would be unsuccessful because the income would still be immediately taxable by the United States.

Let me be very clear about one thing. This legislation will not adversely impact U.S. companies with controlled foreign subsidiaries that are located in tax havens and doing legitimate and substantial business. The legislation expressly exempts a U.S.-controlled foreign subsidiary from its tax rule changes when substantially all of its income is derived from the active conduct of a trade or business within a listed tax-haven country.

In 2002, then-IRS Commissioner Charles Rossotti told Congress that ''nothing undermines confidence in the tax system more than the impression that the average honest taxpayer has to pay his or her taxes while more wealthy or unscrupulous taxpayers are allowed to get away with not paying.'' Last week, IRS Commissioner Everson echoed similar sentiments at a Senate Transportation-Treasury Appropriations Subcommittee hearing I attended on the IRS's FY 2006 budget request.

They are absolutely right. It's grossly unfair to ask our Main Street businesses to operate at a competitive disadvantage to large multinational businesses simply because our tax authorities are unable to grapple with the growing offshore tax avoidance problem. It is outrageous that tens of millions of working families who pay their taxes on time every year are shouldering the tax burden of large profitable U.S. multinational companies that use tax-haven subsidiaries.

I hope that Congress will act promptly to enact legislation to curb these tax-haven subsidiary abuses. I urge my colleagues to cosponsor this bill.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 106—CONGRATULATING THE UNIVERSITY OF DENVER PIONEERS MEN'S HOCKEY TEAM, 2005 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I HOCKEY CHAMPIONS

Mr. SALAZAR (for himself and Mr. ALLARD) submitted the following resolution; which was considered and agreed to:

S. RES. 106

Whereas the Denver Pioneers first won the National Collegiate Athletic Association (NCAA) Hockey Championship in 1958;

Whereas the University of Denver has won 7 NCAA Division I Men's Hockey Championships, including back-to-back championships in 2004 and 2005;

Whereas on April 9, 2005, the University of Denver won the Frozen Four with a hard fought victory over the University of North Dakota Fighting Sioux; and

Whereas the Championship ended a terrific season in which the University of Denver outscored its opponents 170 to 109 and had a record of 31–9–2: Now, therefore, be it

Resolved, That the Senate congratulates the University of Denver Pioneers men's hockey team, Coach George Gwozdecky, and Chancellor Daniel Ritchie on an outstanding championship season, a season which solidifies the Pioneers' status among the elite in collegiate hockey.

AMENDMENTS SUBMITTED AND PROPOSED

SA 357. Mr. KOHL (for himself, Mr. DEWINE, Mr. HARKIN, Mr. DURBIN, Mr. LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table.

SA 358. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. BOXER, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 359. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 360. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 361. Mr. REID (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 362. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 363. Mr. SARBANES (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 364. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 365. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 366. Mr. CORZINE (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 367. Mr. BYRD proposed an amendment to the bill H.R. 1268, supra.

SA 368. Mr. CORZINE (for himself, Mr. DEWINE, Mr. BROWNBACK, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 369. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 370. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 371. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 372. Mr. CORNYN (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill H.R. 1268, supra.

SA 373. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 374. Mr. KOHL (for himself, Mr. DEWINE, Mr. HARKIN, Mr. DURBIN, Mr. LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 375. Mr. CRAIG (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 376. Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 377. Mr. REED (for himself, Ms. SNOWE, Mr. KENNEDY, Mr. CHAFEE, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 378. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 379. Mrs. HUTCHISON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 380. Mr. KOHL (for himself, Mr. DEWINE, Mr. HARKIN, Mr. DURBIN, Mr. LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 381. Mr. CHAMBLISS (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 382. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 383. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 384. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 385. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 386. Mr. STEVENS (for himself and Mr. INOUYE) proposed an amendment to the bill H.R. 1268, supra.

SA 387. Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) proposed an amendment to the bill H.R. 1268, supra.

SA 388. Mr. BAYH submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 389. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 390. Mr. OBAMA (for himself, Mr. GRAHAM, Mr. BINGAMAN, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 391. Mr. OBAMA (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 392. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 393. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 394. Mr. WARNER submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 395. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. CLINTON, and Mrs. BOXER) proposed an amendment to the bill H.R. 1268, supra.

SA 396. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 397. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 398. Mr. DORGAN (for himself, Mr. DURBIN, Mr. LAUTENBERG, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 399. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 400. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 401. Mr. COCHRAN (for Mr. MCCONNELL) proposed an amendment to the bill H.R. 1268, supra.

SA 402. Mr. COCHRAN (for Mr. MCCONNELL (for himself, Mr. LEAHY, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, supra.

SA 403. Mr. COCHRAN (for Mr. LUGAR (for himself and Mr . BIDEN)) proposed an amendment to the bill H.R. 1268, supra.

SA 404. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, supra.

SA 405. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, supra.

SA 406. Mr. BAYH (for himself, Mr. PRYOR, and Mr. CORZINE) proposed an amendment to the bill H.R. 1268, supra.

SA 407. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 408. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed by her to the bill H.R.

1268, supra; which was ordered to lie on the table.

SA 409. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 410. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 411. Mr. SESSIONS (for Mr. BAUCUS (for himself, Mr. GRASSLEY, Ms. LANDRIEU, Mr. LOTT, Mrs. FEINSTEIN, Mr. VITTER, Mr. NELSON of Florida, Mr. BOND, and Mr. MARTINEZ)) proposed an amendment to the bill H.R. 1134, to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments.

TEXT OF AMENDMENTS

SA 357. Mr. KOHL (for himself, Mr. DEWINE, Mr. HARKIN, Mr. DURBIN, Mr. LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

In the bill, on page 171, line 2 strike ''$150,000,000 through ''expended'' and insert in lieu thereof the following:

''$470,000,000 to remain available until expended: Provided, That from this amount, to the maximum extent possible, funding shall be restored to the previously approved fiscal year 2005 programs under section 204(a)(2) of the Agricultural Trade Development and Assistance Act of 1954: Provided further, That of the funds provided under this heading, $12,000,000 shall be available to carry out programs under the Food for Progress Act of 1985''.

SA 358. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. BOXER, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Senate conferees should not agree to the inclusion of language from division B of the Act (as passed by the House of Representatives on March 16, 2005) in the conference report;

(2) the language referred to in paragraph (1) is contained in H.R. 418, which was—

(A) passed by the House of Representatives on February 10, 2005; and

(B) referred to the Committee on the Judiciary of the Senate on February 17, 2005; and

(3) the Committee on the Judiciary is the appropriate committee to address this matter.

SA 359. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. IMMIGRATION FRAUD.

(a) FRAUDULENT USE OF PASSPORTS.—

(1) CRIMINAL CODE.—

(A) SECRETARY OF HOMELAND SECURITY.—Section 1546 of title 18, United States Code, is amended by striking ''the Commissioner of the Immigration and Naturalization Service'' each place it appears and inserting ''the Secretary of Homeland Security''.

(B) DEFINITION OF PASSPORT.—Chapter 75 of title 18, United States Code, is amended by adding at the end the following:

''§ 1548. Definition

''In sections 1543 and 1544, the term 'passport' means any passport issued by the United States or any foreign country.''.

(C) CLERICAL AMENDMENT.—The table of sections for chapter 75 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 1548. Definition.''.

(2) IMMIGRATION AND NATIONALITY ACT.—Section 101(a)(43)(P) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(P)) is amended to read as follows:

''(P)(i) an offense described in section 1542, 1543, or 1544 of title 18, United States Code (relating to false statements in the application, forgery, or misuse of a passport);

''(ii) an offense described in section 1546(a) of title 18, United States Code, relating to document fraud used as evidence of authorized stay or employment in the United States for which the term of imprisonment is at least 12 months; or

''(iii) any other offense described in section 1546(a) of title 18, United States Code, relating to entry into the United States, regardless of the term of imprisonment imposed.''.

(b) RELEASE AND DETENTION PRIOR TO DISPOSITION.—Section 3142(f)(1) of title 18, United States Code, is amended—

(1) in subparagraph (C), by striking ''or'' after the semicolon; and

(2) by adding at the end the following:

''(E) an offense under section 1542, 1543, 1544, or 1546(a) of this title; or''.

SA 360. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

USE OF GUANTANAMO BAY DETENTION FACILITIES

SEC. 6047. (a) The Secretary of Defense, the Attorney General of the United States, and the Director of National Intelligence (upon confirmation) shall submit a report to Congress, in both classified and unclassified form, assessing the use of detention facilities at Guantanamo Bay, Cuba, including—

(1) a statement of the rationale for using Guantanamo Bay as the location for detention facilities;

(2) a comparison of the costs of maintaining such a facility at Guantanamo Bay with maintaining a similar facility within the United States;

(3) a comparison of the measures necessary to maintain the facility securely at Guantanamo Bay with maintaining a similar facility within the United States;

(4) a comprehensive listing of interrogation techniques which could be lawfully used at Guantanamo Bay, but not at a location within the United States; and

(5) an analysis of procedural rights, including rights of appeal and review, which would be available to a detainee held within the United States, but not available to a similarly situated detainee held at Guantanamo Bay.

(b) The report under subsection (a) shall be submitted not later than 90 days after the date of enactment of this Act.

(c) Funds appropriated or otherwise made available under this Act related to improvements to facilities at Guantanamo Bay shall not be obligated until and unless the report is submitted to Congress.

SA 361. Mr. REID (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

SENSE OF SENATE ON TREATMENT OF CERTAIN VETERANS UNDER REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS DISABILITY COMPENSATION

SEC. 1122. It is the sense of the Senate that any veteran with a service-connected disability rated as total by virtue of having

been deemed unemployable who otherwise qualifies for treatment as a qualified retiree for purposes of section 1414 of title 10, United States Code, should be entitled to treatment as qualified retiree receiving veterans disability compensation for a disability rated as 100 percent for purposes of the final clause of subsection (a)(1) of such section, as amended by section 642 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1957), and thus entitled to payment of both retired pay and veterans' disability compensation under such section 1414 commencing as of January 1, 2005.

SA 362. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

TITLE VII—UNACCOMPANIED ALIEN CHILD PROTECTION ACT OF 2005

SEC. 701. SHORT TITLE.

This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2005''.

SEC. 702. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who—

(A) complies with the duties set forth in this title;

(B) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(C) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

(D) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the meaning given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

Subtitle A—Custody, Release, Family Reunification, and Detention

SEC. 711. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in this subparagraph;

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child's native language—

(i) to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of this title and section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279), an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 715 and take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 712(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made by the Director in accordance with section 715.

SEC. 712. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4), section 713(a)(2) of this Act, and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments, has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of involvement in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, which may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(6) REIMBURSEMENT OF STATE EXPENSES.—The Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 713. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—A child shall not be placed with an entity described in section 712(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children are notified of such standards orally and in writing in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 714. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The annual Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Directorate shall consult the Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;

(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 715. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) PROCEDURES.—

(1) IN GENERAL.—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(3) ACCESS TO ALIEN.—The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Radiographs or the attestation of an alien shall not be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under this title or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 716. EFFECTIVE DATE.

This subtitle shall take effect on the date which is 90 days after the date of enactment of this Act.

Subtitle B—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 721. GUARDIANS AD LITEM.

(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

(1) APPOINTMENT.—The Director may appoint a guardian ad litem, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances—

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner; and

(F) report factual findings relating to—

(i) information collected under subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information collected under subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING.—

(1) IN GENERAL.—The Director shall provide professional training for all persons serving as guardians ad litem under this section.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions that unaccompanied alien children face; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established under paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

SEC. 722. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director should ensure that all unaccompanied alien children in the custody of the Office or the Directorate, who are not described in section 711(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director should—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 712(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to unaccompanied alien children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this title, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed under subparagraph (A) and submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be given an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 723. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle C—Strengthening Policies for Permanent Protection of Alien Children

SEC. 731. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant, who is 18 years of age or younger on the date of application and who is present in the United States—

''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien,

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

''(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply; and''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for a visa before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied a visa after the date of enactment of this Act because of such alien's age.

SEC. 732. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) CURRICULUM.—The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 711(a)(2).

SEC. 733. REPORT.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this title;

(3) data regarding the provision of guardian ad litem and counsel services under this title; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

SEC. 734. EFFECTIVE DATE.

The amendment made by section 731 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

Subtitle D—Children Refugee and Asylum Seekers

SEC. 741. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 742. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

SEC. 743. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section 711(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).''.

Subtitle E—Authorization of Appropriations

SEC. 751. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

Subtitle F—Amendments to the Homeland Security Act of 2002

SEC. 761. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director is authorized to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2005; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2005, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

SEC. 762. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 761, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

SEC. 763. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

SA 363. Mr. SARBANES (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CONSTRUCTION, GENERAL

Section 123 of Public Law 108–137 (117 Stat. 1837) is amended by striking ''in accordance with'' and all that follows through the end of the section and inserting ''in accordance with the Baltimore Metropolitan Water Resources Gwynns Falls Watershed study draft feasibility report and integrated environmental assessment prepared by the Corps of Engineers and the City of Baltimore, Maryland, dated April 2004.''.

SA 364. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

NUMERICAL LIMITATIONS RELATED TO ASYLUM

SEC. 6047. (a) Section 207(a) of the Immigration and Nationality Act (8 U.S.C. 1157(a)) is amended by striking paragraph (5).

(b) Section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) is amended to read as follows:

''(b) The Secretary of Homeland Security may, in the discretion of the Secretary of Homeland Security, adjust to the status of an alien lawfully admitted for permanent residence, the status of any alien granted asylum who—

''(1) applies for such adjustment,

''(2) has been physically present in the United States for at least one year after being granted asylum,

''(3) continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee,

''(4) is not firmly resettled in any foreign country, and

''(5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of examination for adjustment of such alien.

''Upon approval of an application under this subsection, the Secretary of Homeland Security shall establish a record of the alien's admission for lawful permanent residence as of the date on which such alien's application for asylum was approved.''.

SA 365. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following new title:

TITLE VII—NEW IMMIGRANT CATEGORIES

SEC. 7001. SHORT TITLE.

This title may be cited as the ''Widows and Orphans Act of 2005''.

SEC. 7002. NEW SPECIAL IMMIGRANT CATEGORY.

(a) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon at the end;

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

(3) by adding at the end the following:

''(N) subject to subsection (j), an immigrant who is not present in the United States—

''(i) who is—

''(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

''(aa) for whom no parent or legal guardian is able to provide adequate care;

''(bb) who faces a credible fear of harm related to his or her age;

''(cc) who lacks adequate protection from such harm; and

''(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

''(ii) who is—

''(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

''(II) determined by such official to be a female who has—

''(aa) a credible fear of harm related to her sex; and

''(bb) a lack of adequate protection from such harm.''.

(b) STATUTORY CONSTRUCTION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

''(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

''(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

''(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

''(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

''(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary of Homeland Security shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

''(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the date on which the alien was referred to the consular, immigration, or other designated official.

''(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).''.

(c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—Section 203(b)(4) of the Immigration Nationality Act (8 U.S.C. 1153(b)(4)) is amended by striking ''(A) or (B) thereof'' and inserting ''(A), (B), or (N) thereof''.

(d) EXPEDITED PROCESS.—Not later than 45 days from the date of referral to a consular, immigration, or other designated official as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a), special immigrant status shall be adjudicated and, if granted, the alien shall be paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) within 1 year of the alien's arrival in the United States.

(e) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the progress of the implementation of this title and the amendments made by this title, including—

(1) data related to the implementation of this title and the amendments made by this title;

(2) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a); and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 7003. REQUIREMENTS FOR ALIENS.

(a) REQUIREMENT PRIOR TO ENTRY INTO THE UNITED STATES.—

(1) DATABASE SEARCH.—An alien may not be admitted to the United States under this title or an amendment made by this title until the Secretary of Homeland Security has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the Untied States on criminal, security, or related grounds.

(2) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by paragraph (1) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N) of the Immigration and Nationality Act, as added by section 7002(a).

(b) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(1) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(A) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States under this title or an amendment made by this title, the alien shall be fingerprinted and submit to the Secretary of Homeland Security such fingerprints and any other personal biometric data required by the Secretary.

(B) OTHER REQUIREMENTS.—The Secretary of Homeland Security may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and National Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints of subparagraph (A).

(2) DATABASE SEARCH.—The Secretary of Homeland Security shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(3) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by paragraph (2) is completed not later than 180 days after the date on which the alien enters the United States.

(4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(A) ADMINISTRATIVE REVIEW.—An alien who is admitted to the United States under this title or an amendment made by this title who is determined to be ineligible for an adjustment of status pursuant to section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) may appeal such a determination through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. The Secretary of Homeland Security shall ensure that a determination on such appeal is made not later than 60 days after the date that the appeal is filed.

(B) JUDICIAL REVIEW.—Nothing in this title, or in an amendment made by this title, may preclude application of section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)).

SA 366. Mr. CORZINE (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

TITLE VII—ACCOUNTABILITY IN DARFUR

SECTION 7001. SHORT TITLE.

This title may be cited as the ''Darfur Accountability Act of 2005''.

SEC. 7002. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

(2) GOVERNMENT OF SUDAN.—The term ''Government of Sudan'' means the National Congress Party-led government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of this title.

(3) MEMBER STATES.—The term ''member states'' means the member states of the United Nations.

(4) SUDAN NORTH-SOUTH PEACE AGREEMENT.—The term ''Sudan North-South Peace Agreement'' means the comprehensive peace agreement signed by the Government of Sudan and the Sudan People's Liberation Army/Movement on January 9, 2005.

(5) THOSE NAMED BY THE UN COMMISSION OF INQUIRY.—The term ''those named by the UN Commission of Inquiry'' means those individuals whose names appear in the sealed file delivered to the Secretary-General of the United Nations by the International Commission of Inquiry on Darfur to the United Nations Security Council.

(6) UN COMMITTEE.—The term ''UN Committee'' means the Committee of the Security Council established in United Nations Security Council Resolution 1591 (29 March 2005); paragraph 3.

SEC. 7003. FINDINGS.

Congress makes the following findings:

(1) On July 22, 2004, the House of Representatives and the Senate declared that the atrocities occurring in Darfur, Sudan are genocide.

(2) On September 9, 2004, Secretary of State Colin L. Powell stated before the Committee on Foreign Relations of the Senate, ''[w]hen we reviewed the evidence compiled by our team, along with other information available to the State Department, we concluded that genocide has been committed in Darfur and that the Government of Sudan and the [Janjaweed] bear responsibility—and genocide may still be occurring''.

(3) President George W. Bush, in an address before the United Nations General Assembly on September 21, 2004, stated, ''[a]t this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide''.

(4) On July 30, 2004, the United Nations Security Council passed Security Council Resolution 1556, calling upon the Government of Sudan to disarm the Janjaweed militias and to apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out violations of human rights and international humanitarian law and carried out other atrocities in the Darfur region.

(5) On September 18, 2004, the United Nations Security Council passed Security Council Resolution 1564, determining that the Government of Sudan had failed to meet its obligations under Security Council Resolution 1556, calling for a military flight ban in and over the Darfur region, demanding the names of Janjaweed militiamen disarmed and arrested for verification, establishing an International Commission of Inquiry into violations of international humanitarian and human rights laws, and threatening sanctions should the Government of Sudan fail to fully comply with Security Council Resolutions 1556 and 1564.

(6) United Nations Security Council Resolution 1564 declares that if the Government of Sudan ''fails to comply fully'' with Security Council Resolutions 1556 and 1564, the Security Council shall consider taking ''additional measures'' against the Government of Sudan ''as contemplated in Article 41 of the Charter of the United Nations, such as actions to affect Sudan's petroleum sector or individual members of the Government of Sudan, in order to take effective action to obtain such full compliance and cooperation''.

(7) United Nations Security Council Resolution 1564 also ''welcomes and supports the intention of the African Union to enhance and augment its monitoring mission in Darfur'' and ''urges member states to support the African Union in these efforts, including by providing all equipment, logistical, financial, material, and other resources necessary to support the rapid expansion of the African Union Mission''.

(8) On February 1, 2005, the United Nations released the Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, dated January 25, 2005, which stated that, ''[g]overnment forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement throughout Darfur'', that such ''acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity'', and that the ''magnitude and large-scale nature of some crimes against humanity as well as their consistency over a long period of time, necessarily imply that these crimes result from a central planning operation''.

(9) The Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General notes that, pursuant to its mandate and in the course of its work, the UN Commission collected information relating to individual perpetrators of acts constituting ''violations of international human rights law and international humanitarian law, including crimes against humanity and war crimes'' and that the UN Commission has delivered to the Secretary-General of the United Nations a sealed file of those named by the UN Commission with the recommendation that the ''file be handed over to a competent Prosecutor''.

(10) On March 24, 2005, the United Nations Security Council passed Security Council Resolution 1590, establishing the United Nations Mission in Sudan (UNMIS) consisting of 10,000 military personnel and 715 civilian police personnel. The mandate of UNMIS includes to ''closely and continuously liaise and coordinate at all levels with the African Union Mission in Sudan (AMIS) with a view towards expeditiously reinforcing the effort to foster peace in Darfur, especially with regard to the Abuja peace process and the African Union Mission in Sudan''. Security Council Resolution 1590 also urged the Secretary-General and United Nations High Commissioner for Human Rights to increase the number and deployment rate of human rights monitors to Darfur.

(11) On March 29, 2005, the United Security Council passed Security Council Resolution 1591, establishing a Committee of the Security Council and a Panel of Experts to identify individuals who have impeded the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, or who are responsible for offensive overflights, and calling on member states to prevent those individuals identified from entry into or transit of their territories and to freeze those individuals non-exempted assets.

(12) On March 31, 2005, the United Nations Security Council passed Security Council Resolution 1593, referring the situation in Darfur since July 1, 2002, to the Prosecutor of the International Criminal Court (ICC) with the proviso that personnel from a state outside Sudan not a party to the Rome Statute of the ICC shall not be subject to the ICC in this instance.

SEC. 7004. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the atrocities unfolding in Darfur, Sudan, have been and continue to be genocide;

(2) the United States should immediately seek passage at the United Nations Security Council of a resolution that—

(A) extends the freezing of property and assets and denial of visas and entry, pursuant to United Nations Security Council Resolution 1591, to include—

(i) those named by the UN Commission of Inquiry;

(ii) family members of those named by the UN Commission of Inquiry and those designated by the UN Committee; and

(iii) any associates of those named by the UN Commission of Inquiry and those designated by the UN Committee to whom assets or property of those named by the UN Commission of Inquiry or those designated by the UN Committee were transferred on or after July 1, 2002;

(B) urges member states to submit to the Security Council the name of any individual that the government of any such member state believes is or has been planning, carrying out, responsible for, or otherwise involved in genocide, war crimes, or crimes against humanity in Darfur, along with evidence supporting such belief so that the Security Council may consider imposing sanctions pursuant to United Nations Security Council Resolution 1591;

(C) imposes additional sanctions or additional measures against the Government of Sudan, including sanctions that will affect the petroleum sector in Sudan, individual members of the Government of Sudan, and entities controlled or owned by officials of the government of Sudan or the National Congress Party in Sudan, that will remain in effect until such time as—

(i) humanitarian organizations are granted full, unimpeded access to Darfur;

(ii) the Government of Sudan cooperates with humanitarian relief efforts, carries out activities to demobilize and disarm Janjaweed militias and any other militias supported or created by the Government of Sudan, and cooperates fully with efforts to bring to justice the individuals responsible for genocide, war crimes, or crimes against humanity in Darfur;

(iii) the Government of Sudan cooperates fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

(iv) the Government of Sudan permits the safe and voluntary return of displaced persons and refugees to their homes and rebuilds the communities destroyed in the violence in Darfur; and

(v) the Sudan North-South Peace Agreement is fully implemented and a new coalition government is created under such Agreement;

(D) establishes a military no-fly zone in Darfur;

(E) supports the expansion of the African Union force in Darfur so that such force achieves the size and strength needed to prevent ongoing fighting and violence in Darfur;

(F) urges member states to accelerate assistance to the African Union force in Darfur;

(G) calls on the Government of Sudan to cooperate with, and allow unrestricted movement in Darfur by, the African Union force in the region, UNMIS, international humanitarian organizations, and United Nations monitors;

(H) extends the embargo of military equipment established by paragraphs 7 through 9 of Security Council Resolution 1556 and expanded by Security Council Resolution 1591

to include a total prohibition of sale or supply to the Government of Sudan;

(I) supports African Union and other international efforts to negotiate peace talks between the Government of Sudan and rebels in Darfur, calls on the Government of Sudan and rebels in Darfur to abide by their obligations under the N'Djamena Ceasefire Agreement of April 8, 2004, and subsequent agreements, and urges parties to engage in peace talks without preconditions and seek to resolve the conflict; and

(J) expands the mandate of UNMIS to include the protection of civilians throughout Sudan, including Dafur;

(3) the United States should work with other nations to ensure effective efforts to freeze the property and assets of and deny visas and entry to—

(A) those named by the UN Commission of Inquiry and those designated by the UN Committee;

(B) any individuals the United States believes is or has been planning, carrying out, responsible for, or otherwise involved in genocide, war crimes, and crimes against humanity in Darfur;

(C) family members of any person described in subparagraphs (A) or (B); and

(D) any associates of any such person to whom assets or property of such person were transferred on or after July 1, 2002;

(4) the United States should not provide assistance to the Government of Sudan, other than assistance necessary for the implementation of the Sudan North-South Peace Agreement, the support of the southern regional government in Sudan, or for humanitarian purposes in Sudan, unless the President certifies and reports to Congress that—

(A) humanitarian organizations are being granted full, unimpeded access to Darfur and the Government of Sudan is providing full cooperation with humanitarian efforts;

(B) concrete, sustained steps are being taken toward demobilizing and disarming Janjaweed militias and any other militias supported or created by the Government of Sudan;

(C) the Government of Sudan is cooperating fully with international efforts to bring to justice those responsible for genocide, war crimes, or crimes against humanity in Darfur;

(D) the Government of Sudan cooperates fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

(E) the Government of Sudan permits the safe and voluntary return of displaced persons and refugees to their homes and rebuilds the communities destroyed in the violence in Darfur; and

(F) the Sudan North-South Peace Agreement is fully implemented and a new coalition government is created under such Agreement;

(5) the President should work with international organizations, including the North Atlantic Treaty Organization (NATO), the United Nations, and the African Union to establish mechanisms for the enforcement of a no-fly zone in Darfur;

(6) the African Union should extend its mandate in Darfur to include the protection of civilians and proactive efforts to prevent violence, and member states should support fully this extension;

(7) the President should accelerate assistance to the African Union force in Darfur and discussions with the African Union and the European Union and other supporters of the African Union force on the needs of such force, including assistance for housing, transportation, communications, equipment, technical assistance such as training and command and control assistance, and intelligence;

(8) the President should appoint a Presidential Envoy for Sudan—

(A) to support the implementation of the Sudan North-South Peace Agreement;

(B) to seek ways to bring stability and peace to Darfur;

(C) to address instability elsewhere in Sudan; and

(D) to seek a comprehensive peace throughout Sudan;

(9) United States officials, including the President, the Secretary of State, and the Secretary of Defense, should raise the issue of Darfur in bilateral meetings with officials from other members of the United Nations Security Council and relevant countries, with the aim of passing a United Nations Security Council resolution described in paragraph (2) and mobilizing maximum support for political, financial, and military efforts to stop the genocide in Darfur;

(10) the Secretary of State should immediately engage in a concerted, sustained campaign with other members of the United Nations Security Council and relevant countries with the aim of achieving the goals described in paragraph (9);

(11) the United States fully supports the Sudan North-South Peace Agreement and urges the rapid implementation of its terms;

(12) the United States condemns attacks on humanitarian workers and calls on all forces in Darfur, including forces of the Government of Sudan, all militia, and forces of the Sudan Liberation Army/Movement and the Justice and Equality Movement, to refrain from such attacks; and

(13) The United States should actively participate in the UN Committee and the Panel of Experts established pursuant to Security Council Resolution 1591, and work to support the Secretary-General and the United Nations High Commissioner for Human Rights in their efforts to increase the number and deployment rate of human rights monitors to Darfur.

SEC. 7005. IMPOSITION OF SANCTIONS.

(a) FREEZING ASSETS.—At such time as the United States has access to the names of those named by the UN Commission of Inquiry and those designated by the UN Committee, the President shall, except as described under subsection (c), take such action as may be necessary to immediately freeze the funds and other assets belonging to anyone so named, their family members, and any associates of those so named to whom assets or property of those so named were transferred on or after July 1, 2002, including requiring that any United States financial institution holding such funds and assets promptly report those funds and assets to the Office of Foreign Assets Control.

(b) VISA BAN.—Beginning at such times as the United States has access to the names of those named by the UN Commission of Inquiry and those designated by the UN Committee, the President shall, except as described under subsection (c), deny visas and entry to—

(1) those named by the UN Commission of Inquiry and those designated by the UN Committee;

(2) the family members of those named by the UN Commission of Inquiry and those designated by the UN Committee; and

(3) anyone the President determines has been, is, or may be planning, carrying out, responsible for, or otherwise involved in crimes against humanity, war crimes, or genocide in Darfur, Sudan.

(c) WAIVER AUTHORITY.—The President may elect not to take an action otherwise required to be taken with respect to an individual under subsection (a) or (b) after submitting to Congress a report—

(1) naming the individual with respect to whom the President has made such election;

(2) describing the reasons for such election; and

(3) including the determination of the President as to whether such individual has been, is, or may be planning, carrying out, responsible for, or otherwise involved in crimes against humanity, war crimes, or genocide in Darfur, Sudan.

(d) ASSET REPORTING REQUIREMENT.—Not later than 14 days after a decision to freeze the property or assets of, or deny a visa or entry to, any person under this section, the President shall report the name of such person to the appropriate congressional committees.

(e) NOTIFICATION OF WAIVERS OF SANCTIONS.—Not later than 30 days before waiving the provisions of any sanctions currently in force with regard to Sudan, the President shall submit to the appropriate congressional committees a report describing the waiver and the reasons therefor.

SEC. 7006. REPORTS TO CONGRESS.

(a) REPORTS ON STABILIZATION IN SUDAN.—

(1) INITIAL REPORT.—Not later than 30 days after the date of enactment of this title, the Secretary of State, in conjunction with the Secretary of Defense, shall report to the appropriate congressional committees on efforts to deploy an African Union force in Darfur, the capacity of such force to stabilize Darfur and protect civilians, the needs of such force to succeed at such mission including housing, transportation, communications, equipment, technical assistance, including training and command and control, and intelligence, current status of United States and other assistance to the African Union force, and additional United States assistance needed.

(2) SUBSEQUENT REPORTS.—

(A) UPDATES REQUIRED.—The Secretary of State, in conjunction with the Secretary of Defense, shall submit an update of the report submitted under paragraph (1) until such time as the President certifies that the situation in Darfur is stable and that civilians are no longer in danger and that the African Union is no longer needed to prevent a resumption of violence and attacks against civilians.

(B) DURATION OF REPORTING REQUIREMENT.—The Secretary of State shall submit any updated reports required under subparagraph (A)—

(i) every 60 days during the 2-year period following the date of the enactment of this Act; and

(ii) after such 2-year period, as part of the report required under section 8(b) of the Sudan Peace Act (50 U.S.C. 1701 note), as amended by section 5(b) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497; 118 Stat. 4018).

(b) REPORT ON THOSE NAMED BY THE UN COMMISSION OF INQUIRY.—At such time as the United States has access to the names of those named by the UN Commission of Inquiry, the President shall submit to the appropriate congressional committees a report listing such names.

SA 367. Mr. BYRD proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego

border fence, and for other purposes; as follows:

On page 169, line 13, strike ''$897,191,000'' and insert ''$861,191,000''.

SA 368. Mr. CORZINE (for himself, Mr. DEWINE, Mr. BROWNBACK, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 183, after line 23, add the following:

REQUIREMENT FOR TRANSFER OF FUNDS

SEC. 2105. Not later than 15 days after the date of the enactment of this Act, the authority contained under the heading ''INTERNATIONAL DISASTER AND FAMINE ASSISTANCE'' in chapter 2 of title II of Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106; 117 Stat. 1227) to transfer funds made available under such chapter, shall be fully exercised and the funds transferred as follows:

(1) $53,000,000 shall be transferred to and consolidated with funds appropriated under the heading ''PEACEKEEPING OPERATIONS'' in title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (as enacted in division D of Public Law 108-447; 118 Stat. 2988) and used for the support of the efforts of the African Union to halt genocide and other atrocities in Darfur, Sudan; and

(2) $40,500,000 shall be transferred to and consolidated with funds appropriated under the heading ''INTERNATIONAL DISASTER AND FAMINE ASSISTANCE'' in such Act and used for assistance for Darfur, Sudan.

SA 369. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

SETTLEMENT OF CLAIM FOR DAMAGES AT LAS CRUCES INTERNATIONAL AIRPORT

SEC. 1122. (a) Of the funds appropriated or otherwise made available by this Act, $2,100,000 shall be made available to the Secretary of the Air Force to settle the claim filed by the City of Las Cruces, New Mexico, for damages resulting from the operation of Air Force aircraft on runway 04/22 at Las Cruces International Airport on August 26, 2004.

(b) The acceptance by the City of Las Cruces, New Mexico, of the settlement amount made available under subsection (a) shall be in full satisfaction of the claim for damages described in such subsection.

SA 370. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 175, beginning on line 24, strike ''$1,631,300,000'' and all that follows through ''*Provided,*'' on line 25, and insert ''$1,636,300,000, to remain available until September 30, 2006: *Provided*, That of the funds appropriated under this heading, not less than $5,000,000 shall be made available for programs and activities to promote democracy, including political party development, in Lebanon and such amount shall be managed by the Bureau of Democracy, Human Rights, and Labor of the Department of State: *Provided further*,''.

On page 179, line 24, strike ''$40,000,000'' and insert ''$35,000,000''.

SA 371. Mr. NELSON of Nebraska submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

SEC. 1122. Congress appropriated $1,000,000 in Operations & Maintenance, Navy within both the Fiscal Year 2004 and 2005 Defense Appropriations bills for the Navy to conduct a recruitment and retention screening test program called the ''Vital Learning Recruitment/Retention Screening Test Program''. The Navy is strongly encouraged to ensure that it utilizes a ''best value'' acquisition strategy which emphasizes the past performance technical capabilities of the company it selects to execute this program for which the $2,000,000 was appropriated.

SA 372. Mr. CORNYN (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) our immigration system is badly broken, fails to serve the interests of our national security and our national economy, and undermines respect for the rule of law;

(2) in a post-9/11 world, national security demands a comprehensive solution to our immigration system;

(3) Congress must engage in a careful and deliberative discussion about the need to bolster enforcement of, and comprehensively reform, our immigration laws;

(4) Congress should not short-circuit that discussion by attaching amendments to this supplemental outside of the regular order; and

(5) Congress should not delay the enactment of critical appropriations necessary to ensure the well-being of the men and women of the United States Armed Forces fighting in Iraq and elsewhere around the world, by attempting to conduct a debate about immigration reform while the supplemental appropriations bill is pending on the floor of the United States Senate.

SA 373. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—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 2005;

''(B) $750,000,000 for fiscal year 2006;

''(C) $850,000,000 for fiscal year 2007; and

''(D) $950,000,000 for each of the fiscal years 2008 through 2011.''.

(b) LIMITATION ON USE OF FUNDS.—Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

''(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

SA 374. Mr. KOHL (for himself, Mr. DEWINE, Mr. HARKIN, Mr. DURBIN, Mr.

LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

In the bill, on page 171, line 2 strike ''$150,000,000 through line 6 and insert in lieu thereof the following:

''$47,000,000 to remain available until expended: *Provided*, That from this amount, to the maximum extent possible, funding shall be restored to the previously approved fiscal year 2005 programs under section 204(a)(2) of the Agricultural Trade Development and Assistance Act of 1954: *Provided further*, That of the funds provided under this heading, $12,000,000 shall be available to carry out programs under the Food for Progress Act of 1985: *Provided further*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).''

SA 375. Mr. CRAIG (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

TITLE VII—AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITY ACT OF 2005

SEC. 701. SHORT TITLE.

This title may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2005'' or the ''AgJOBS Act of 2005''.

SEC. 702. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(3) JOB OPPORTUNITY.—The term ''job opportunity'' means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(5) TEMPORARY.—A worker is employed on a ''temporary'' basis where the employment is intended not to exceed 10 months.

(6) UNITED STATES WORKER.—The term ''United States worker'' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(7) WORK DAY.—The term ''work day'' means any day in which the individual is employed 1 or more hours in agriculture consistent with the definition of ''man-day'' under section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

Subtitle A—Adjustment to Lawful Status

SEC. 711. AGRICULTURAL WORKERS.

(a) TEMPORARY RESIDENT STATUS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer upon an alien who qualifies under this subsection the status of an alien lawfully admitted for temporary residence if the Secretary determines that the alien—

(A) has performed agricultural employment in the United States for at least 575 hours or 100 work days, whichever is less, during any 12 consecutive months during the 18-month period ending on December 31, 2004;

(B) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act; and

(C) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under subsection (e)(2).

(2) AUTHORIZED TRAVEL.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) in the same manner as an alien lawfully admitted for permanent residence.

(3) AUTHORIZED EMPLOYMENT.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien shall be provided an ''employment authorized'' endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(4) TERMINATION OF TEMPORARY RESIDENT STATUS.—

(A) IN GENERAL.—During the period of temporary resident status granted an alien under this subsection, the Secretary may terminate such status only upon a determination under this Act that the alien is deportable.

(B) GROUNDS FOR TERMINATION OF TEMPORARY RESIDENT STATUS.—Before any alien becomes eligible for adjustment of status under subsection (c), the Secretary may deny adjustment to permanent resident status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Secretary finds, by a preponderance of the evidence, that the adjustment to temporary resident status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (e)(2);

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(III) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(5) RECORD OF EMPLOYMENT.—

(A) IN GENERAL.—Each employer of a worker granted status under this subsection shall annually—

(i) provide a written record of employment to the alien; and

(ii) provide a copy of such record to the Secretary.

(B) SUNSET.—The obligation under subparagraph (A) shall terminate on the date that is 6 years after the date of enactment of this Act.

(b) RIGHTS OF ALIENS GRANTED TEMPORARY RESIDENT STATUS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a), such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a) as described in paragraph (1) shall not be eligible, by reason of such acquisition of that status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the Secretary confers temporary resident status upon that alien under subsection (a).

(3) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

(A) PROHIBITION.—No alien granted temporary resident status under subsection (a) may be terminated from employment by any employer during the period of temporary resident status except for just cause.

(B) TREATMENT OF COMPLAINTS.—

(i) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this subparagraph of complaints by aliens granted temporary resident status under subsection (a) who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(ii) INITIATION OF ARBITRATION.—If the Secretary finds that a complaint has been filed in accordance with clause (i) and there is reasonable cause to believe that the complainant was terminated without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including, but not limited to, reinstatement, back pay, or front pay to the affected employee. Within 30 days from the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted temporary resident status under subsection (a) without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of subsection (c)(1).

(v) TREATMENT OF ATTORNEY'S FEES.—The parties shall bear the cost of their own attorney's fees involved in the litigation of the complaint.

(vi) NONEXCLUSIVE REMEDY.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

(C) CIVIL PENALTIES.—

(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted temporary resident status under subsection (a) has failed to provide the record of employment required under subsection (a)(5) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(ii) LIMITATION.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(c) ADJUSTMENT TO PERMANENT RESIDENCE.—

(1) AGRICULTURAL WORKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall adjust the status of an alien granted lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(i) QUALIFYING EMPLOYMENT.—The alien has performed at least 360 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(ii) QUALIFYING YEARS.—The alien has performed at least 75 work days or 430 hours, but in no case less than 430 hours, of agricultural employment in the United States in at least 3 nonoverlapping periods of 12 consecutive months during the 6-year period beginning after the date of enactment of this Act. Qualifying periods under this clause may include nonconsecutive 12-month periods.

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 240 work days or 1,380 hours, but in no case less than 1,380 hours, of agricultural employment during the 3-year period beginning after the date of enactment of this Act.

(iv) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of enactment of this Act.

(v) PROOF.—In meeting the requirements of clauses (i), (ii), and (iii), an alien may submit the record of employment described in subsection (a)(5) or such documentation as may be submitted under subsection (d)(3).

(vi) DISABILITY.—In determining whether an alien has met the requirements of clauses (i), (ii), and (iii), the Secretary shall credit the alien with any work days lost because the alien was unable to work in agricultural employment due to injury or disease arising out of and in the course of the alien's agricultural employment, if the alien can establish such disabling injury or disease through medical records.

(B) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien adjustment to permanent resident status, and provide for termination of the temporary resident status granted such alien under subsection (a), if—

(i) the Secretary finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under subsection (e)(2);

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(III) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(C) GROUNDS FOR REMOVAL.—Any alien granted temporary resident status under subsection (a) who does not apply for adjustment of status under this subsection before the expiration of the application period described in subparagraph (A)(iv), or who fails to meet the other requirements of subparagraph (A) by the end of the applicable period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a). The Secretary shall issue regulations establishing grounds to waive subparagraph (A)(iii) with respect to an alien who has completed at least 200 days of the work requirement specified in such subparagraph in the event of a natural disaster which substantially limits the availability of agricultural employment or a personal emergency that prevents compliance with such subparagraph.

(2) SPOUSES AND MINOR CHILDREN.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted status under paragraph (1), including any individual who was a minor child on the date such alien was granted temporary resident status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(B) TREATMENT OF SPOUSES AND MINOR CHILDREN BEFORE ADJUSTMENT OF STATUS.—A spouse and minor child of an alien granted temporary resident status under subsection (a) may not be—

(i) removed while such alien maintains such status, except as provided in subparagraph (C); and

(ii) granted authorization to engage in employment in the United States or be provided an ''employment authorized'' endorsement or other work permit, unless such employment authorization is granted under another provision of law.

(C) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under subparagraph (A) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(i) commits an act that makes the alien spouse or child inadmissible to the United States under section 212 of such Act (8 U.S.C. 1182), except as provided under subsection (e)(2);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(iii) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(d) APPLICATIONS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Secretary shall provide that—

(i) applications for temporary resident status under subsection (a) may be filed—

(I) with the Secretary, but only if the applicant is represented by an attorney; or

(II) with a qualified designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Secretary; and

(ii) applications for adjustment of status under subsection (c) shall be filed directly with the Secretary.

(B) OUTSIDE THE UNITED STATES.—The Secretary, in cooperation with the Secretary of State, shall establish a procedure whereby an alien may apply for temporary resident status under subsection (a) at an appropriate consular office outside the United States.

(C) PRELIMINARY APPLICATIONS.—

(i) IN GENERAL.—During the application period described in subsection (a)(1)(B), the Secretary may grant admission to the United States as a temporary resident and provide an ''employment authorized'' endorsement or other appropriate work permit to any alien who presents a preliminary application for such status under subsection (a) at a designated port of entry on the southern land border of the United States. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this Act.

(ii) DEFINITION.—For purposes of clause (i), the term ''preliminary application'' means a fully completed and signed application which contains specific information concerning the performance of qualifying employment in the United States, together with the payment of the appropriate fee and the submission of photographs and the documentary

evidence which the applicant intends to submit as proof of such employment.

(iii) ELIGIBILITY.—An applicant under clause (i) shall otherwise be admissible to the United States under subsection (e)(2) and shall establish to the satisfaction of the examining officer during an interview that the applicant's claim to eligibility for temporary resident status is credible.

(D) TRAVEL DOCUMENTATION.—The Secretary shall provide each alien granted status under this section with a counterfeit-resistant document of authorization to enter or reenter the United States that meets the requirements established by the Secretary.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—

(A) IN GENERAL.—For purposes of receiving applications under subsection (a), the Secretary—

(i) shall designate qualified farm labor organizations and associations of employers; and

(ii) may designate such other persons as the Secretary determines are qualified and have substantial experience, demonstrate competence, and have traditional long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act, Public Law 89–732, Public Law 95–145, or the Immigration Reform and Control Act of 1986.

(B) REFERENCES.—Organizations, associations, and persons designated under subparagraph (A) are referred to in this Act as ''qualified designated entities''.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) or (c)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for status under subsection (a)(1) or (c)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A) or (c)(1)(A)).

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(iii) SUFFICIENT EVIDENCE.—An alien can meet the burden of proof under clause (i) to establish that the alien has performed the work described in subsection (a)(1)(A) or (c)(1)(A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(4) TREATMENT OF APPLICATIONS BY QUALIFIED DESIGNATED ENTITIES.—Each qualified designated entity shall agree to forward to the Secretary applications filed with it in accordance with paragraph (1)(A)(i)(II) but shall not forward to the Secretary applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Secretary. Upon the request of the alien, a qualified designated entity shall assist the alien in obtaining documentation of the work history of the alien.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this subsection by qualified designated entities operating under this subsection are confidential and the Secretary shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6).

(6) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, neither the Secretary, nor any other official or employee of the Department of Homeland Security, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section, the information provided to the applicant by a person designated under paragraph (2)(A), or any information provided by an employer or former employer, for any purpose other than to make a determination on the application, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department of Homeland Security, or bureau or agency thereof, or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(B) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this section, or any other information derived from such furnished information, to—

(i) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(ii) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(C) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Department of Homeland Security pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to a fine in an amount not to exceed $10,000.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

(i) files an application for status under subsection (a) or (c) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for adjustment of status under this section.

(9) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(i) shall be charged for the filing of applications for status under subsections (a) and (c); and

(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

(C) DISPOSITION OF FEES.—

(i) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Secretary until expended for processing applications for status under subsections (a) and (c).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under subsection (a)(1)(C) or an alien's eligibility for adjustment of status under subsection (c)(1)(B)(ii)(I), the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under clause (i).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for status under this section by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(f) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for temporary resident status under subsection (a) (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for temporary resident status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for temporary resident status under subsection (a) during the application period described in subsection (a)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit for such purpose.

(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c) except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the first day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the first day of the seventh month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $40,000,000 for each of fiscal years 2006 through 2009.

SEC. 712. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

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

''(D) who is granted status as a lawful temporary resident under the Agricultural Job Opportunity, Benefits, and Security Act of 2005,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted lawful temporary resident status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of enactment of this Act.

Subtitle B—Reform of H–2A Worker Program

SEC. 721. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by striking section 218 (8 U.S.C. 1188) and inserting the following:

''H–2A EMPLOYER APPLICATIONS

''SEC. 218. (a) APPLICATIONS TO THE SECRETARY OF LABOR.—

''(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

''(A) the assurances described in subsection (b);

''(B) a description of the nature and location of the work to be performed;

''(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

''(D) the number of job opportunities in which the employer seeks to employ the workers.

''(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

''(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

''(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

''(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

''(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

''(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

''(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

''(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

''(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

''(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

''(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

''(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

''(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied under subsection (a) and to all other workers in the same occupation at the place of employment.

''(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(E) REQUIREMENTS FOR PLACEMENT OF NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

''(i) the nonimmigrant performs duties in whole or in part at 1 or more work sites owned, operated, or controlled by such other employer;

''(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

''(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph

(E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

''(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

''(H) EMPLOYMENT OF UNITED STATES WORKERS.—

''(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

''(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

''(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on 'America's Job Bank' or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

''(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

''(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

''(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

''(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the foreign worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the foreign worker who is in the job was hired has elapsed, subject to the following requirements:

''(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

''(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

''(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

''(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

''(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

''(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A through 218C.

''(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

''(d) WITHDRAWAL OF APPLICATIONS.—

''(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

''(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

''(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

''(e) REVIEW AND APPROVAL OF APPLICATIONS.—

''(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or work site, a copy of each such application (and such accompanying documents as are necessary).

''(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

''(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

''(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.

''H–2A EMPLOYMENT REQUIREMENTS

''SEC. 218A. (a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

''(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

''(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

''(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

''(C) FAMILY HOUSING.—When it is the prevailing practice in the occupation and area

of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) CHARGES FOR HOUSING.—

''(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

''(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

''(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—If the requirement under clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

''(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H–2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(iii) AMOUNT OF ALLOWANCE.—

''(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2 bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(2) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

''(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

''(C) LIMITATION.—

''(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

''(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

''(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

''(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

''(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORK SITE.—The employer shall provide transportation between the worker's living quarters and the employer's work site without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

''(3) REQUIRED WAGES.—

''(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

''(B) LIMITATION.—Effective on the date of enactment of the Agricultural Job Opportunity, Benefits, and Security Act of 2005 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

''(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

''(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

''(I) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

''(I) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

''(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

''(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

''(i) the worker's total earnings for the pay period;

''(ii) the worker's hourly rate of pay, piece rate of pay, or both;

''(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the three-quarters guarantee described in paragraph (4);

''(iv) the hours actually worked by the worker;

''(v) an itemization of the deductions made from the worker's wages; and

''(vi) if piece rates of pay are used, the units produced daily.

''(G) REPORT ON WAGE PROTECTIONS.—Not later than June 1, 2007, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

''(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the

absence of the employment of H–2A workers in those occupations;

''(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

''(v) recommendations for future wage protection under this section.

''(H) COMMISSION ON WAGE STANDARDS.—

''(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

''(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

''(I) 4 representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

''(II) 4 representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

''(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

''(I) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

''(V) recommendations for future wage protection under this section.

''(iv) FINAL REPORT.—Not later than June 1, 2007, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

''(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

''(4) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

''(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

''(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 'three-fourths guarantee' described in subparagraph (A).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including but not limited to a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

''(5) MOTOR VEHICLE SAFETY.—

''(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

''(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

''(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

''(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

''(II) does not apply to—

''(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifically requested or arranged such transportation; or

''(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

''(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

''(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

''(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

''(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

''(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

''(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

''(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

''(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

''(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

''(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

''(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

''(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

''(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

''(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

''PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS

''SEC. 218B. (a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the

United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

''(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

''(c) CRITERIA FOR ADMISSIBILITY.—

''(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

''(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

''(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

''(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

''(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

''(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

''(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

''(d) PERIOD OF ADMISSION.—

''(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the work site and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

''(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

''(B) the total period of employment, including such 14-day period, may not exceed 10 months.

''(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

''(e) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

''(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(f) REPLACEMENT OF ALIEN.—

''(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

''(A) who abandons or prematurely terminates employment; or

''(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

''(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

''(g) IDENTIFICATION DOCUMENT.—

''(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify such person's proper identity.

''(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

''(A) The document shall be capable of reliably determining whether—

''(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

''(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

''(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

''(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

''(C) The document shall—

''(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

''(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien's stay—

''(A) for a period of more than 10 months; or

''(B) to a date that is more than 3 years after the date of the alien's last admission to the United States under this section.

''(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

''(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

''(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien's authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

''(5) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

''(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions) is 3 years.

''(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least ⅙ the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions).

''(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

''(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS.—Notwithstanding any

provision of the Agricultural Job Opportunity, Benefits, and Security Act of 2005, aliens admitted under section 101(a)(15)(H)(ii)(a) for employment as sheepherders—

''(1) may be admitted for a period of 12 months;

''(2) may be extended for a continuous period of up to 3 years; and

''(3) shall not be subject to the requirements of subsection (h)(5) relating to periods of absence from the United States.

''WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT

''SEC. 218C. (a) ENFORCEMENT AUTHORITY.—

''(1) INVESTIGATION OF COMPLAINTS.—

''(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

''(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (H). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

''(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

''(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

''(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

''(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

''(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

''(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of $90,000.

''(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

''(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

''(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

''(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

''(2) The reimbursement of transportation as required under section 218A(b)(2).

''(3) The payment of wages required under section 218A(b)(3) when due.

''(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

''(5) The guarantee of employment required under section 218A(b)(4).

''(6) The motor vehicle safety requirements under section 218A(b)(5).

''(7) The prohibition of discrimination under subsection (d)(2).

''(c) PRIVATE RIGHT OF ACTION.—

''(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

''(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers and agricultural employers without charge to the parties.

''(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other non-binding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

''(C) AUTHORIZATION.—

''(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

''(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

''(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

''(3) ELECTION.—An H–2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

''(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

''(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that

a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

''(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

''(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

''(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

''(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

''(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

''(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

''(i) a recovery under a State workers' compensation law; or

''(ii) rights conferred under a State workers' compensation law.

''(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

''(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and H–2A employer reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(d) DISCRIMINATION PROHIBITED.—

''(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

''(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

''(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(f) ROLE OF ASSOCIATIONS.—

''(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

''(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

''DEFINITIONS

''SEC. 218D. For purposes of sections 218 through 218D:

''(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a).

''(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

''(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States worker from a job for which the H–2A worker or workers is or are sought.

''(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)).

''(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

''(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

''(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

''(9) LAYS OFF.—

''(A) IN GENERAL.—The term 'lays off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary layoffs due to weather, markets, or other temporary conditions; but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

''(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

''(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

''(B) from its nature, it may not be continuous or carried on throughout the year.

''(12) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security.

''(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

''(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the

United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).''.

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

''Sec. 218. H–2A employer applications.
''Sec. 218A. H–2A employment requirements.
''Sec. 218B. Procedure for admission and extension of stay of H–2A workers.
''Sec. 218C. Worker protections and labor standards enforcement.
''Sec. 218D. Definitions.''.

Subtitle C—Miscellaneous Provisions

SEC. 731. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens under this title and the amendments made by this title, and a collection process for such fees from employers participating in the program provided under this Act. Such fees shall be the only fees chargeable to employers for services provided under this Act.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as added by section 721 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ eligible aliens pursuant to this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the alien employment user fees shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218B of the Immigration and Nationality Act, as added by section 721 of this Act, and the provisions of this Act.

SEC. 732. REGULATIONS.

(a) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture on all regulations to implement the duties of the Secretary under this title and the amendments made by this title.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this title and the amendments made by this title.

(c) REGULATIONS OF THE SECRETARY OF LABOR.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this title and the amendments made by this title.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218, 218A, 218B, and 218C of the Immigration and Nationality Act, as added by section 721 of this Act, shall take effect on the effective date of section 721 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 733. RELIGIOUS ORGANIZATIONS.

Section 274(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)) is amended by adding at the end the following:

''(C) It is not a violation of clauses (ii), (iii), or (iv) of subparagraph (A) for a religious denomination described in section 101(a)(27)(C)(i) or an affiliated religious organization described in section 101(a)(27)(C)(ii)(III), or their agents or officers, to encourage, invite, call, allow, or enable an alien who is present in the United States in violation of law to carry on the vocation described in section 101(a)(27)(C)(ii)(I), as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, and other basic living expenses.''.

SEC. 734. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, sections 721 and 731 shall take effect 1 year after the date of enactment of this Act.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the measures being taken and the progress made in implementing this title.

SA 376. Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

OPERATIONS AND MAINTENANCE, GENERAL

For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency repair of the Fern Ridge Dam, Oregon, $24,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

SA 377. Mr. REED (for himself, Ms. SNOWE, Mr. KENNEDY, Mr. CHAFEE, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 204, between lines 4 and 5, insert the following:

CHAPTER 5

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for ''Operations, Research and Facilities'', $3,000,000, to remain available until expended, for the National Marine Fisheries Service to establish a cooperative research program to study the causes of lobster disease and the decline in the lobster fishery in New England waters: *Provided*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

SA 378. Mr. SCHUMER submitted an amendment intended to be proposed by the him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

TITLE VII—MONTSERRAT IMMIGRATION FAIRNESS ACT

SEC. 701. SHORT TITLE.

This title may be cited as the ''Montserrat Immigration Fairness Act''.

SEC. 702. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS OF MONTSERRAT.

(a) IN GENERAL.—The status of any alien described in subsection (c) shall be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence, if the alien—

(1) applies for such adjustment within 1 year after the date of enactment of this Act; and

(2) is determined to be admissible to the United States for permanent residence.

(b) CERTAIN GROUNDS FOR EXCLUSION INAPPLICABLE.—For purposes of determining admissibility under subsection (a)(2), the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and 7(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(c) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—An alien shall be eligible for adjustment of status under subsection (a) only if the alien—

(1) is a national of Montserrat; and

(2) was granted temporary protected status in the United States by the Secretary of Homeland Security pursuant to the designation of Montserrat under section 244(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)(1)) on August 28, 1997.

SEC. 703. EFFECT OF APPLICATION ON CERTAIN ORDERS.

An alien present in the United States who has been ordered excluded, deported, or removed, or ordered to depart voluntarily, from the United States through an order of removal issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order of removal, apply for adjustment of status under section 702. Such an alien shall not be required to file a separate motion to reopen, reconsider, or vacate the order of removal. If the Secretary of Homeland Security approves the application, the Secretary shall cancel the order of removal. If the Secretary renders a final administrative decision to deny the application, the order of removal shall be effective and enforceable to the same extent as if the application had not been made.

SEC. 704. WORK AUTHORIZATION.

The Secretary of Homeland Security shall authorize an alien who has applied for adjustment of status under section 702 to engage in employment in the United States during the pendency of such application and shall provide the alien with an appropriate document signifying authorization of employment.

SEC. 705. ADJUSTMENT OF STATUS FOR CERTAIN FAMILY MEMBERS.

(a) IN GENERAL.—The status of an alien shall be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence if the alien—

(1) is the spouse, parent, or unmarried son or daughter of an alien whose status is adjusted under section 702;

(2) applies for adjustment under this section within 2 years after the date of enactment of this Act; and

(3) is determined to be admissible to the United States for permanent residence.

(b) CERTAIN GROUNDS FOR EXCLUSION INAPPLICABLE.—For purposes of determining admissibility under subsection (a)(3), the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and 7(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

SEC. 706. AVAILABILITY OF REVIEW.

(a) ADMINISTRATIVE REVIEW.—The Secretary of Homeland Security shall provide to aliens applying for adjustment of status under section 702 or 705 the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(b) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary of Homeland Security as to whether the status of any alien should be adjusted under this title is final and shall not be subject to review by any court.

SEC. 707. NO OFFSET IN NUMBER OF VISAS AVAILABLE.

The granting of adjustment of status under section 702 shall not reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SA 379. Mrs. HUTCHISON (for herself and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following new section:

VISAS FOR NURSES

SEC. 6047. Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1), by inserting before the period at the end of the second sentence ''and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants, and the dependents of such immigrants, whose schedule A petition, as defined in section 656.5 of title 20, Code of Federal Regulations, was approved by the Secretary of Labor''; and

(2) in paragraph (2)(A), by striking ''and 2000'' and inserting ''through 2004''.

SA 380. Mr. KOHL (for himself, Mr. DEWINE, Mr. DURBIN, Mr. LEAHY, Ms. MIKULSKI, Mr. INOUYE, Ms. LANDRIEU, Mrs. MURRAY, Mr. DORGAN, Mr. COLEMAN, Mr. OBAMA, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, line 2 strike ''$150,000,000'' and all through line 6 and insert in lieu thereof the following:

''$470,000,000 to remain available until expended: *Provided*, That from this amount, to the maximum extent possible, funding shall be restored to the previously approved fiscal year 2005 programs under section 204(a)(2) of the Agricultural Trade Development and Assistance Act of 1954: *Provided further*, That of the funds provided under this heading, $12,000,000 shall be available to carry out programs under the Food for Progress Act of 1985: *Provided further*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).''.

SA 381. Mr. CHAMBLISS (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

TITLE VII—TEMPORARY AGRICULTURAL WORKERS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Temporary Agricultural Work Reform Act of 2005''.

Subtitle A—Temporary H–2A Workers

SEC. 711. ADMISSION OF TEMPORARY H–2A WORKERS.

Section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) is amended to read as follows:

''ADMISSION OF TEMPORARY H–2A WORKERS

''SEC. 218. (a) APPLICATION.—An alien may not be admitted as an H–2A worker unless the employer has filed with the Secretary of Homeland Security a petition attesting to the following:

''(1) TEMPORARY OR SEASONAL WORK OR SERVICES.—

''(A) IN GENERAL.—The agricultural employment for which the H–2A worker or workers is or are sought is temporary or seasonal, the number of workers sought, and the wage rate and conditions under which they will be employed.

''(B) TEMPORARY OR SEASONAL WORK.—For purposes of subparagraph (A), a worker is employed on a 'temporary' or 'seasonal' basis if the employment is intended not to exceed 10 months.

''(2) BENEFITS, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (m) to all workers employed in the jobs for which the H–2A worker or workers is or are sought and to all other temporary workers in the same occupation at the place of employment.

''(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and during a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(4) RECRUITMENT.—

''(A) IN GENERAL.—The employer shall attest that the employer—

''(i) conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation; and

''(ii) was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought.

''(B) RECRUITMENT.—The adequate recruitment requirement under subparagraph (A) is satisfied if the employer—

''(i) places a job order with America's Job Bank Program of the Department of Labor; and

''(ii) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the area of intended employment.

''(C) ADVERTISEMENT CRITERIA.—The advertisement requirement under subparagraph (B)(ii) is satisfied if the advertisement—

''(i) names the employer;

''(ii) directs applicants to report or send resumes, as appropriate for the occupation, to the employer;

''(iii) provides a description of the vacancy that is specific enough to apprise United

States workers of the job opportunity for which certification is sought;

''(iv) describes the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

''(v) states the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

''(vi) offers wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

''(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the nonimmigrant is, or the nonimmigrants are, sought to any eligible United States worker who applies and is equally or better qualified for the job and who will be available at the time and place of need.

''(6) PROVISION OF INSURANCE.—If the job for which the nonimmigrant is, or the nonimmigrants are, sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

''(7) STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Labor, precludes the provision of the certification described in section 101(a)(15)(H)(ii)(a).

''(8) PREVIOUS VIOLATIONS.—The employer has not, during the previous 5-year period, employed H–2A workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Labor after notice and opportunity for a hearing.

''(b) PUBLICATION.—The employer shall make available for public examination, within 1 working day after the date on which a petition under this section is filed, at the employer's principal place of business or worksite, a copy of each such petition (and such accompanying documents as are necessary).

''(c) LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer) of the petitions filed under subsection (a). Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for public examination in Washington, District of Columbia.

''(d) SPECIAL RULES FOR CONSIDERATION OF PETITIONS.—The following rules shall apply in the case of the filing and consideration of a petition under subsection (a):

''(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Homeland Security may not require that the petition be filed more than 45 days before the first date the employer requires the labor or services of the H–2A worker or workers.

''(2) ISSUANCE OF APPROVAL.—Unless the Secretary of Homeland Security finds that the petition is incomplete or obviously inaccurate, the Secretary of Homeland Security shall provide a decision within 7 days of the date of the filing of the petition.

''(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

''(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to hire an alien as a temporary agricultural worker may be filed by an association of agricultural producers which use agricultural services.

''(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the petition was approved.

''(3) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under this section of an employer who places an H–2A worker with another H–2A employer if the other employer displaces a United States worker in violation of the condition described in subsection (a)(7).

''(4) TREATMENT OF VIOLATIONS.—

''(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that is in violation of the conditions for approval with respect to the member's petition, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

''(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—

''(i) JOINT EMPLOYER.—If an association representing agricultural producers as a joint employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, the denial shall apply only to the association and does not apply to any individual producer member of the association, unless the Secretary of Labor determines that the member participated in, had knowledge of, or had reason to know of the violation.

''(ii) SOLE EMPLOYER.—If an association of agricultural producers approved as a sole employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied approval during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

''(f) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—Regulations shall provide for an expedited procedure for the review of a denial of approval under this section, or at the applicant's request, for a de novo administrative hearing respecting the denial.

''(g) MISCELLANEOUS PROVISIONS.—

''(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii)(a) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

''(2) PREEMPTION OF STATE LAWS.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

''(3) FEES.—

''(A) IN GENERAL.—The Secretary of Homeland Security may require, as a condition of approving the petition, the payment of a fee in accordance with subparagraph (B) to recover the reasonable costs of processing petitions.

''(B) AMOUNTS.—

''(i) EMPLOYER.—The fee for each employer that receives a temporary alien agricultural labor certification shall be equal to $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed $1,000.

''(ii) JOINT EMPLOYER ASSOCIATION.—In the case of a joint employer association that receives a temporary alien agricultural labor certification, each employer-member receiving such certification shall pay a fee equal to $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed $1,000. The joint employer association shall not be charged a separate fee.

''(C) PAYMENTS.—The fees collected under this paragraph shall be paid by check or money order made payable to the 'Department of Homeland Security'. In the case of employers of H–2A workers that are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the petition may be paid by 1 check or money order.

''(D) INFLATION ADJUSTMENT.—In the case of any calendar year beginning after 2005, each dollar amount in subparagraph (B) may be increased by an amount equal to—

''(i) such dollar amount; multiplied by

''(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2004.

''(h) FAILURE TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (a), or a material misrepresentation of fact in a petition under subsection (a)—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 1 year.

''(i) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a)—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 2 years;

''(3) for a second violation, the Secretary of Homeland Security may disqualify the employer from the employment of H-2A workers for a period of 5 years; and

''(4) for a third violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H-2A workers.

''(j) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition

of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's petition under subsection (a) or during the period of 30 days preceding such period of employment—

''(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate;

''(2) the Secretary of Homeland Security may disqualify the employer from the employment of H–2A workers for a period of 5 years; and

''(3) for a second violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H–2A workers.

''(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to a petition under subsection (a) in excess of $90,000.

''(l) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment required under subsection (a)(2), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under subsection (a)(2) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

''(m) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—

''(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

''(A) IN GENERAL.—Employers seeking to hire United States workers shall offer the United States workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

''(B) INTERPRETATIONS AND DETERMINATIONS.—While benefits, wages, and other terms and conditions of employment specified in this subsection are required to be provided in connection with employment under this section, every interpretation and determination made under this Act or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made in conformance with the governing principles that the services of workers to their employers and the employment opportunities afforded to workers by their employers, including those employment opportunities that require United States workers or H–2A workers to travel or relocate in order to accept or perform employment, mutually benefit such workers, as well as their families, and employers, principally benefitting neither, and that employment opportunities within the United States further benefit the United States economy as a whole and should be encouraged.

''(2) REQUIRED WAGES.—

''(A) An employer applying for workers under subsection (a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the prevailing wage.

''(B) In complying with subparagraph (A), an employer may request and obtain a prevailing wage determination from the State employment security agency.

''(C) In lieu of the procedure described in subparagraph (B), an employer may rely on other wage information, including a survey of the prevailing wages of workers in the occupation in the area of intended employment that has been conducted or funded by the employer or a group of employers, that meets criteria specified by the Secretary of Labor in regulations.

''(D) An employer who obtains such prevailing wage determination, or who relies on a qualifying survey of prevailing wages, and who pays the wage determined to be prevailing, shall be considered to have complied with the requirement of subparagraph (A).

''(E) No worker shall be paid less than the greater of the prevailing wage or the applicable State minimum wage.

''(3) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

''(A) IN GENERAL.—An employer applying for workers under subsection (a) shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing, or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable State or local standards, Federal temporary labor camp standards shall apply.

''(C) CERTIFICATE OF INSPECTION.—Prior to any occupation by a worker in housing described in subparagraph (B), the employer shall submit a certificate of inspection by an approved Federal or State agency to the Secretary of Labor.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—The employer may provide a reasonable housing allowance in lieu of offering housing under subparagraph (A) if the requirement under clause (v) is satisfied.

''(ii) ASSISTANCE TO LOCATE HOUSING.—Upon the request of a worker seeking assistance in locating housing, the employer shall make a good-faith effort to assist the worker in locating housing in the area of intended employment.

''(iii) LIMITATION.—A housing allowance may not be used for housing which is owned or controlled by the employer. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance.

''(iv) REPORTING REQUIREMENT.—The employer must provide the Secretary of Labor with a list of the names of all workers assisted under this subparagraph and the local address of each such worker.

''(v) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H–2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(vi) AMOUNT OF ALLOWANCE.—

''(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(G) EXEMPTION.—An employer applying for workers under subsection (a) whose primary job site is located 150 miles or less from the United States border shall not be required to provide housing or a housing allowance.

''(4) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—

''(i) IN GENERAL.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, measured from the worker's first day of work in such employment, shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment by the employer.

''(ii) OTHER FEES.—The employer shall not be required to reimburse visa, passport, consular, or international border-crossing fees or any other fees associated with the worker's lawful admission into the United States to perform employment that may be incurred by the worker.

''(iii) TIMELY REIMBURSEMENT.—Reimbursement to the worker of expenses for the cost of the worker's transportation and subsistence to the place of employment shall be considered timely if such reimbursement is made not later than the worker's first regular payday after the worker completes 50 percent of the period of employment of the job opportunity as provided under this paragraph.

''(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall

be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer.

''(C) LIMITATION.—

''(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

''(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

''(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less or if the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (3).

''(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (5)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

''(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters (such as housing provided by the employer pursuant to paragraph (3), including housing provided through a housing allowance) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

''(5) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least 75 percent of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

''(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

''(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 75 percent guarantee described in subparagraph (A).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster (including a flood, hurricane, freeze, earthquake, fire, or drought), plant or animal disease, pest infestation, or regulatory action, before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker.

''(n) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker must file a petition with the Secretary of Homeland Security. The petition shall include the attestations for the certification described in section 101(a)(15)(H)(ii)(a).

''(o) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary of Homeland Security—

''(1) shall establish a procedure for expedited adjudication of petitions filed under subsection (n); and

''(2) not later than 7 working days after such filing shall, by fax, cable, or other means assuring expedited delivery transmit a copy of notice of action on the petition—

''(A) to the petitioner; and

''(B) in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate where the petitioner has indicated that the alien beneficiary or beneficiaries will apply for a visa or admission to the United States.

''(p) DISQUALIFICATION.—

''(1) Subject to paragraph (2), an alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years, violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission.

''(2) WAIVERS.—

''(A) IN GENERAL.—An alien outside the United States, and seeking admission under section 101(a)(15)(H)(ii)(a), shall not be deemed inadmissible under such section by reason of paragraph (1) or section 212(a)(9)(B) if the previous violation occurred on or before April 1, 2005.

''(B) LIMITATION.—In any case in which an alien is admitted to the United States upon having a ground of inadmissibility waived under subparagraph (A), such waiver shall be considered to remain in effect unless the alien again violates a material provision of this section or otherwise violates a term or condition of admission into the United States as a nonimmigrant, in which case such waiver shall terminate.

''(q) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(2) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Secretary of Homeland Security within 7 days of an H–2A worker's having prematurely abandoned employment.

''(3) REMOVAL BY THE SECRETARY.—The Secretary of Homeland Security shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(r) REPLACEMENT OF ALIEN.—

''(1) IN GENERAL.—Upon presentation of the notice to the Secretary of Homeland Security required by subsection (q)(2), the Secretary of State shall promptly issue a visa to, and the Secretary of Homeland Security shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker who abandons or prematurely terminates employment.

''(2) CONSTRUCTION.—Nothing in this subsection shall limit any preference required to be accorded United States workers under any other provision of this Act.

''(s) IDENTIFICATION DOCUMENT.—

''(1) IN GENERAL.—The Department of Homeland Security shall provide each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) with a single machine-readable, tamper-resistant, and counterfeit-resistant document that—

''(A) authorizes the alien's entry into the United States; and

''(B) serves, for the appropriate period, as an employment eligibility document.

''(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

''(A) The document shall be capable of reliably determining whether—

''(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

''(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

''(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

''(B) The document shall—

''(i) be compatible with other databases of the Secretary of Homeland Security for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(t) EXTENSION OF STAY OF H–2A WORKERS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—

''(A) IN GENERAL.—If an employer seeks to employ an H–2A worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (n) shall request an extension of the alien's stay.

''(B) COMMENCEMENT; MAXIMUM PERIOD.—An extension of stay under this subsection—

''(i) may only commence at the completion of the H–2A worker's stay with the current employer; and

''(ii) shall not exceed 10 months.

''(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States may commence or continue the employment described in a petition under paragraph (1) on the date on which the petition is filed. The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

''(B) APPROVAL.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

''(C) DEFINITION.—In this paragraph, the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(u) SPECIAL RULE FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—Notwithstanding any other provision of this section, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goatherder, or dairy worker may be admitted for a period of up to 2 years.

''(v) DEFINITIONS.—For purposes of this section:

''(1) AREA OF EMPLOYMENT.—The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H–2A worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to that employment.

''(3) DISPLACE.—In the case of a petition with respect to 1 or more H–2A workers by an employer, the employer is considered to 'displace' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the H–2A worker or workers is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

''(4) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(5) LAYS OFF.—

''(A) IN GENERAL.—The term 'lays off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) or (7) of subsection (a); but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (a)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(6) PREVAILING WAGE.—The term 'prevailing wage' means, with respect to an agricultural occupation in an area of intended employment, the rate of wages that includes the 51st percentile of employees with similar experience and qualifications in the agricultural occupation in the area of intended employment, expressed in terms of the prevailing method of pay for the occupation in the area of intended employment.

''(7) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

''(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

''(B) an alien provided status under section 220.''.

SEC. 712. LEGAL ASSISTANCE PROVIDED BY THE LEGAL SERVICES CORPORATION.

Section 305 of the Immigrant Reform and Control Act of 1986 (8 U.S.C. 1101 note) is amended—

(1) by striking ''A nonimmigrant'' and inserting the following:

''(a) IN GENERAL.—A nonimmigrant''; and

(2) by adding at the end the following:

''(b) LEGAL ASSISTANCE.—The Legal Services Corporation may not provide legal assistance for or on behalf of any alien, and may not provide financial assistance to any person or entity that provides legal assistance for or on behalf of any alien, unless the alien—

''(1) is present in the United States at the time the legal assistance is provided; and

''(2) is an alien to whom subsection (a) applies.''

''(c) REQUIRED MEDIATION.—The Legal Services Corporation may not bring a civil action for damages on behalf of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) or pursuant to those in the Blue Card Program established under section 220 of such Act, unless at least 90 days before bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.''.

Subtitle B—Blue Card Status

SEC. 721. BLUE CARD PROGRAM.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

''BLUE CARD PROGRAM

''SEC. 220. (a) DEFINITIONS.—As used in this section—

''(1) the term 'agricultural employment'—

''(A) means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986; and

''(B) includes any service or activity described in—

''(i) title 37, 37–3011, or 37–3012 (relating to landscaping) of the Department of Labor 2004–2005 Occupational Information Network Handbook;

''(ii) title 45 (relating to farming fishing, and forestry) of such handbook; or

''(iii) title 51, 51–3022, or 51–3023 (relating to meat, poultry, fish processors and packers) of such handbook.

''(2) the term 'blue card status' means the status of an alien who has been—

''(A) lawfully admitted for a temporary period under subsection (b); and

''(B) issued a tamper-resistant, machine-readable document that serves as the alien's visa, employment authorization, and travel documentation and contains such biometrics as are required by the Secretary;

''(3) the term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment;

''(4) the term 'Secretary' means the Secretary of Homeland Security;

''(5) the term 'small employer' means an employer employing fewer than 500 employees based upon the average number of employees for each of the pay periods for the preceding 10 calendar months, including the period in which the employer employed H–2A workers; and

''(6) the term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

''(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

''(B) an alien provided status under this section.

''(b) BLUE CARD PROGRAM.—

''(1) BLUE CARD PROGRAM.—Notwithstanding any other provision of law, the Secretary shall confer blue card status upon an alien who qualifies under this subsection if the Secretary determines that the alien—

''(A) has been in the United States continuously as of April 1, 2005;

''(B) has performed more than 50 percent of total annual weeks worked in agricultural employment in the United States (except in the case of a child provided derivative status as of April 1, 2005);

''(C) is otherwise admissible to the United States under section 212, except as otherwise provided under paragraph (2); and

''(D) is the beneficiary of a petition filed by an employer, as described in paragraph (3).

''(2) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—In determining an alien's eligibility for blue card status under paragraph (1)(C)—

''(A) the provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) shall not apply;

''(B) the provisions of section 212(a)(6)(C) shall not apply with respect to prior or current agricultural employment; and

''(C) the Secretary may not waive paragraph (1), (2), or (3) of section 212(a) unless such waiver is permitted under another provision of law.

''(3) PETITIONS.—

''(A) IN GENERAL.—An employer seeking blue card status under this section for an alien employee shall file a petition for blue card status with the Secretary.

''(B) EMPLOYER PETITION.—An employer filing a petition under subparagraph (A) shall—

''(i) pay a registration fee of—

''(I) $1,000, if the employer employs more than 500 employees; or

''(II) $500, if the employer is a small employer employing 500 or fewer employees;

''(ii) pay a processing fee to cover the actual costs incurred in adjudicating the petition; and

''(iii) attest that the employer conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation and was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought, which attestation shall be valid for a period of 60 days.

''(C) RECRUITMENT.—

''(i) The adequate recruitment requirement under subparagraph (B)(iii) is satisfied if the employer—

''(I) places a job order with America's Job Bank Program of the Department of Labor; and

''(II) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the metropolitan statistical area of intended employment.

''(ii) An advertisement under clause (i)(II) shall—

''(I) name the employer;

''(II) direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

''(III) provide a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

''(IV) describe the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

''(V) state the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

''(VI) offer wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

''(D) NOTIFICATION OF DENIAL.—The Secretary shall provide notification of a denial of a petition filed for an alien to the alien and the employer who filed such petition.

''(E) EFFECT OF DENIAL.—If the Secretary denies a petition filed for an alien, such alien shall return to the country of the alien's nationality or last residence outside the United States.

''(4) BLUE CARD STATUS.—

''(A) BLUE CARD.—

''(i) ALL-IN-ONE CARD.—The Secretary, in conjunction with the Secretary of State, shall develop a single machine-readable, tamper-resistant document that—

''(I) authorizes the alien's entry into the United States;

''(II) serves, during the period an alien is in blue card status, as an employment authorized endorsement or other appropriate work permit for agricultural employment only; and

''(III) serves as an entry and exit document to be used in conjunction with a proper visa or as a visa and as other appropriate travel and entry documentation using biometric identifiers that meet the biometric identifier standards jointly established by the Secretary of State and the Secretary.

''(ii) BIOMETRICS.—

''(I) After a petition is filed by an employer and receipt of such petition is confirmed by the Secretary, the alien, in order to further adjudicate the petition, shall submit 2 biometric identifiers, as required by the Secretary, at an Application Support Center.

''(II) The Secretary shall prescribe a process for the submission of a biometric identifier to be incorporated electronically into an employer's prior electronic filing of a petition. The Secretary shall prescribe an alternative process for employers to file a petition in a manner other than electronic filing, as needed.

''(B) DOCUMENT REQUIREMENTS.—The Secretary shall issue a blue card that is—

''(i) capable of reliably determining if the individual with the blue card whose eligibility is being verified is—

''(I) eligible for employment;

''(II) claiming the identify of another person; and

''(III) authorized to be admitted; and

''(ii) compatible with—

''(I) other databases maintained by the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(II) law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(C) AUTHORIZED TRAVEL.—During the period an alien is in blue card status granted under this section and pursuant to regulations established by the Secretary, the alien may make brief visits outside the United States. An alien may be readmitted to the United States after such a visit without having to obtain a visa if the alien presents the alien's blue card document. Such periods of time spent outside the United States shall not cause the period of blue card status in the United States to be extended.

''(D) PORTABILITY.—

''(i) During the period in which an alien is in blue card status, the alien issued a blue card may accept new employment upon the Secretary's receipt of a petition filed by an employer on behalf of the alien. Employment authorization shall continue for such alien until such petition is adjudicated.

''(ii) If a petition filed under clause (i) is denied and the alien has ceased employment with the previous employer, the authorization under clause (i) shall terminate and the alien shall be required to return to the country of the alien's nationality or last residence.

''(iii) A fee may be required by the Secretary to cover the actual costs incurred in adjudicating a petition under this subparagraph. No other fee may be required under this subparagraph.

''(iv) A petition by an employer under this subparagraph may not be accepted within 90 days after the adjudication of a previous petition on behalf of an alien.

''(E) ANNUAL CHECK IN.—The employer of an alien in blue card status who has been employed for 1 year in blue card status shall confirm the alien's continued employment status with the Secretary electronically or in writing. Such confirmation will not require a further labor attestation.

''(F) TERMINATION OF BLUE CARD STATUS.—

''(i) During the period of blue card status granted an alien, the Secretary may terminate such status upon a determination by the Secretary that the alien is deportable or has become inadmissible.

''(ii) The Secretary may terminate blue card status granted to an alien if—

''(I) the Secretary determines that, without the appropriate waiver, the granting of blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i));

''(II) the alien is convicted of a felony or a misdemeanor committed in the United States; or

''(III) the Secretary determines that the alien is deportable or inadmissible under any other provision of this Act.

''(5) PERIOD OF AUTHORIZED ADMISSION.—

''(A) IN GENERAL.—The initial period of authorized admission for an alien with blue card status shall be not more than 3 years. The employer of such alien may petition for extensions of such authorized admission for 2 additional periods of not more than 3 years each.

''(B) EXCEPTION.—The limit on renewals shall not apply to a nonimmigrant in a position of full-time, non-temporary employment who has managerial or supervisory responsibilities. The employer of such nonimmigrant shall be required to make an additional attestation to such an employment classification with the filing of a petition.

''(C) REPORTING REQUIREMENT.—If an alien with blue card status ceases to be employed by an employer, such employer shall immediately notify the Secretary of such cessation of employment. The Secretary shall provide electronic means for making such notification.

''(D) LOSS OF EMPLOYMENT.—

''(i) An alien's blue card status shall terminate if the alien is unemployed for 60 or more consecutive days.

''(ii) An alien whose period of authorized admission terminates under clause (i) shall be required to return to the country of the alien's nationality or last residence.

''(6) GROUNDS FOR INELIGIBILITY.—

''(A) BAR TO FUTURE VISAS FOR CONDITION VIOLATIONS.—Any alien having blue card status shall not again be eligible for the same blue card status if the alien violates any term or condition of such status.

''(B) ALIENS UNLAWFULLY PRESENT.—Any alien who enters the United States after April 1, 2005, without being admitted or paroled shall be ineligible for blue card status.

''(C) ALIENS IN H–2A STATUS.—Any alien in lawful H–2A status as of April 1, 2005, shall be ineligible for blue card status.

''(7) BAR ON CHANGE OR ADJUSTMENT OF STATUS.—

''(A) IN GENERAL.—An alien having blue card status shall not be eligible to change or adjust status in the United States or obtain a different nonimmigrant or immigrant visa from a United States Embassy or consulate.

''(B) LOSS OF ELIGIBILITY.—An alien having blue card status shall lose eligibility for such status if the alien—

''(i) files a petition to adjust status to legal permanent residence in the United States; or

''(ii) requests a consular processing for an immigrant visa outside the United States.

''(C) EXCEPTION.—An alien having blue card status may not adjust status to legal permanent resident status or obtain another nonimmigrant or immigrant status unless—

''(i)(I) the alien renounces his or her blue card status by providing written notification to the Secretary of Homeland Security or the Secretary of State; or

''(II) the alien's blue card status otherwise expires; and

''(ii) the alien has resided and been physically present in the alien's country of nationality or last residence for not less than 1 year after leaving the United States and the renouncement or expiration of blue card status.

''(8) JUDICIAL REVIEW.—There shall be no judicial review of a denial of blue card status.

''(c) SAFE HARBOR.—

''(1) SAFE HARBOR OF ALIEN.—An alien for whom a nonfrivolous petition is filed under this section—

''(A) shall be granted employment authorization pending final adjudication of the petition;

''(B) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the petition for change in status, unless the alien commits an act which renders the alien ineligible for such change of status; and

''(C) may not be considered an unauthorized alien as defined in section 274A(h)(3) until such time as the petition for status is adjudicated.

''(2) SAFE HARBOR FOR EMPLOYER.—An employer that files a petition for blue card status for an alien shall not be subject to civil and criminal tax liability relating directly to the employment of such alien. An employer that provides unauthorized aliens with copies of employment records or other evidence of employment pursuant to the petition shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

''(d) TREATMENT OF SPOUSES AND CHILDREN.—

''(1) SPOUSES.—A spouse of an alien having blue card status shall not be eligible for derivative status by accompanying or following to join the alien. Such a spouse may obtain status based only on an independent petition filed by an employer petitioning under subsection (b)(3) with respect to the employment of the spouse.

''(2) CHILDREN.—A child of an alien having blue card status shall not be eligible for the same temporary status unless—

''(A) the child is accompanying or following to join the alien; and

''(B) the alien is the sole custodial parent of the child or both custodial parents of the child have obtained such status.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 219 the following:

''Sec. 220. Blue card program.''.

SEC. 722. PENALTIES FOR FALSE STATEMENTS.

Section 1546 of title 18, United States Code, is amended—

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

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

''(c) Any person, including the alien who is the beneficiary of a petition, who—

''(1) files a petition under section 220(b)(3) of the Immigration and Nationality Act; and

''(2)(A) knowingly and willfully falsifies, conceals, or covers up a material fact related to such a petition;

''(B) makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry related to such a petition; or

''(C) creates or supplies a false writing or document for use in making such a petition, shall be fined in accordance with this title, imprisoned not more than 5 years, or both.''.

SEC. 723. SECURING THE BORDERS.

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a comprehensive plan for securing the borders of the United States.

SEC. 724. EFFECTIVE DATE.

This subtitle shall take effect on the date that is 6 months after the date of enactment of this Act.

SA 382. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, lines 7 through 10, strike ''at least 575 hours or 100 work days, whichever is less, during any 12 consecutive months during the 18-month period ending on'' and insert ''the previous 3 years, for at least 575 hours or 100 work days per year, before''.

SA 383. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, strike line 5 and all that follows through page 14, line 23, and insert the following:

(i) QUALIFYING EMPLOYMENT.—The alien has performed at least 5 years of agricultural employment in the United States, for at least 100 work days per year, during the 6-year period beginning on the date of enactment of this Act.

(ii) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of enactment of this Act.

(iii) PROOF.—In meeting the requirements under clause (i), an alien may submit the record of employment described in subsection (a)(5) or such documentation as may be submitted under subsection (d)(3).

(iv) DISABILITY.—In determining whether an alien has met the requirements under clause (i), the Secretary shall credit the alien with any work days lost because the alien was unable to work in agricultural employment due to injury or disease arising out of and in the course of the alien's agricultural employment, if the alien can establish such disabling injury or disease through medical records.

SA 384. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, strike line 11 and all that follows through ''(D)'' on page 20, line 16, and insert the following:

(A) IN GENERAL.—The Secretary shall provide that—

(i) applications for temporary resident status under subsection (a) may be filed—

(I) with the Secretary only if the applicant is represented by an attorney; or

(II) with a qualified entity designated under paragraph (2) only if the applicant consents to the forwarding of the application to the Secretary; and

(ii) applications for adjustment of status under subsection (c) shall be filed directly with the Secretary.

(B)

SA 385. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 15, strike lines 19 through 21, and insert the following:

(II) is convicted of a felony or misdemeanor committed in the United States.

SA 386. Mr. STEVENS (for himself and Mr. INOUYE) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 149, line 10 strike ''$89,300,000'' and insert ''$250,300,000'' and on line 11 strike ''$20,000,000'' and insert ''$181,000,000''.

SA 387. Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following new title:

TITLE VII—TEMPORARY WORKERS

SEC. 7001. SHORT TITLE.

This title may be cited as the ''Save Our Small and Seasonal Businesses Act of 2005''.

SEC. 7002. NUMERICAL LIMITATIONS ON H–2B WORKERS.

(a) IN GENERAL.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

''(9) An alien counted toward the numerical limitations of paragraph (1)(B) during any one of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment in subsection (a) shall take effect as if enacted on October 1, 2004, and shall expire on October 1, 2006.

(2) IMPLEMENTATION.—Not later than the date of enactment of this Act, the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 101(a)(15)(H)(ii)(b), in a manner consistent with this section and the amendments made by this section.

SEC. 7003. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 426(a) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended by adding at the end the following:

''(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 101(a)(15)(H)(ii)(b).

''(i) The amount of the fee imposed under subparagraph (A) shall be $150.''.

(b) USE OF FEES.—

(1) FRAUD PREVENTION AND DETECTION ACCOUNT.—Subsection (v) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as added by section 426(b) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended—

(A) in paragraphs (1), (2)(A), (2)(B), (2)(C), and (2)(D) by striking ''H1–B and L'' each place it appears;

(B) in paragraph (1), as amended by subparagraph (A), by striking ''section 214(c)(12)'' and inserting ''paragraph (12) or (13) of section 214(c)'';

(C) in paragraphs (2)(A)(i) and (2)(B), as amended by subparagraph (A), by striking ''(H)(i)'' each place it appears and inserting ''(H)(i), (H)(ii), ''; and

(D) in paragraph (2)(D), as amended by subparagraph (A), by inserting before the period at the end ''or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(ii)''.

(2) CONFORMING AMENDMENT.—The heading of such subsection 286 is amended by striking ''H1–B AND L''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2005.

SEC. 7004. SANCTIONS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 3, is further amended by adding at the end the following:

''(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

''(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

''(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

''(iii) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

''(iv) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

''(v) In this paragraph, the term 'substantial failure' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2005.

SEC. 7005. ALLOCATION OF H–2B VISAS DURING A FISCAL YEAR.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 7002, is further amended by adding at the end the following new paragraph:

''(j) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens who enter the United States pursuant to a visa or other provision of nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.''.

SEC. 7006. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–2B NONIMMIGRANTS.

Section 416 of the American Competitiveness and Workforce Improvement Act of 1998 (title IV of division C of Public Law 105–277; 8 U.S.C. 1184 note) is amended—

(1) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following new subsection:

''(d) PROVISION OF INFORMATION.—

''(1) QUARTERLY NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of House of Representatives of the number of aliens who during the preceding 1-year period—

''(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

''(B) had such a visa or such status expire or be revoked or otherwise terminated.

''(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

''(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

''(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

''(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

''(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.''.

SA 388. Mr. BAYH submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

UP ARMORED HIGH MOBILITY MULTIPURPOSE WHEELED VEHICLES

SEC. 1122. (a) ADDITIONAL AMOUNT FOR OTHER PROCUREMENT, ARMY.—The amount appropriated by this chapter under the heading ''OTHER PROCUREMENT, ARMY'' is hereby increased by $742,000,000, with the amount of such increase designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) AVAILABILITY OF FUNDS.—Of the amount appropriated or otherwise made available by this chapter under the heading ''OTHER PROCUREMENT, ARMY'', as increased by subsection (a), $742,000,000 shall be available for the procurement of up to 3,300 Up Armored High Mobility Multipurpose Wheeled Vehicles (UAHMMVs).

(c) REPORTS.—(1) Not later 60 days after the date of the enactment of this Act, and every 60 days thereafter until the termination of Operation Iraqi Freedom, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the current requirements of the Armed Forces for armored security vehicles.

(2) Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a report setting forth the most effective and efficient options available to the Department of Defense for transporting Up Armored High Mobility Multipurpose Wheeled Vehicles to Iraq and Afghanistan.

SA 389. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, after line 6, add the following:

SEC. 6047. STATE REGULATION OF RESIDENT AND NONRESIDENT HUNTING AND FISHING.

(a) SHORT TITLE.—This section may be cited as the ''Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005''.

(b) DECLARATION OF POLICY AND CONSTRUCTION OF CONGRESSIONAL SILENCE.—

(1) IN GENERAL.—It is the policy of Congress that it is in the public interest for each

State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing.

(2) CONSTRUCTION OF CONGRESSIONAL SILENCE.—Silence on the part of Congress shall not be construed to impose any barrier under clause 3 of Section 8 of Article I of the Constitution (commonly referred to as the ''commerce clause'') to the regulation of hunting or fishing by a State or Indian tribe.

(c) LIMITATIONS.—Nothing in this section shall be construed—

(1) to limit the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce;

(2) to limit the authority of the United States to prohibit hunting or fishing on any portion of the lands owned by the United States; or

(3) to abrogate, abridge, affect, modify, supersede or alter any treaty-reserved right or other right of any Indian tribe as recognized by any other means, including, but not limited to, agreements with the United States, Executive Orders, statutes, and judicial decrees, and by Federal law.

(d) STATE DEFINED.—For purposes of this section, the term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SA 390. Mr. OBAMA (for himself, Mr. GRAHAM, Mr. BINGAMAN, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. BENEFITS FOR MEMBERS OF THE ARMED FORCES RECUPERATING FROM INJURIES INCURRED IN OPERATION IRAQI FREEDOM OR OPERATION ENDURING FREEDOM.

(a) PROHIBITION ON CHARGES FOR MEALS.—

(1) PROHIBITION.—A member of the Armed Forces entitled to a basic allowance for subsistence under section 402 of title 37, United States Code, who is undergoing medical recuperation or therapy, or is otherwise in the status of ''medical hold'', in a military treatment facility for an injury, illness, or disease incurred or aggravated while on active duty in the Armed Forces in Operation Iraqi Freedom or Operation Enduring Freedom shall not, during any month in which so entitled, be required to pay any charge for meals provided such member by the military treatment facility.

(2) EFFECTIVE DATE.—The limitation in paragraph (1) shall take effect on January 1, 2005, and shall apply with respect to meals provided members of the Armed Forces as described in that paragraph on or after that date.

(b) TELEPHONE BENEFITS.—

(1) PROVISION OF ACCESS TO TELEPHONE SERVICE.—The Secretary of Defense shall provide each member of the Armed Forces who is undergoing in any month medical recuperation or therapy, or is otherwise in the status of ''medical hold'', in a military treatment facility for an injury, illness, or disease incurred or aggravated while on active duty in the Armed Forces in Operation Iraqi Freedom or Operation Enduring Freedom access to telephone service at or through such military treatment facility in an amount for such month equivalent to the amount specified in paragraph (2).

(2) MONTHLY AMOUNT OF ACCESS.—The amount of access to telephone service provided a member of the Armed Forces under paragraph (1) in a month shall be the number of calling minutes having a value equivalent to $40.

(3) ELIGIBILITY AT ANY TIME DURING MONTH.—A member of the Armed Forces who is eligible for the provision of telephone service under this subsection at any time during a month shall be provided access to such service during such month in accordance with that paragraph, regardless of the date of the month on which the member first becomes eligible for the provision of telephone service under this subsection.

(4) USE OF EXISTING RESOURCES.—In carrying out this subsection, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, private organizations, or other private entities offering free or reduced-cost telecommunications services.

(5) COMMENCEMENT.—

(A) IN GENERAL.—This subsection shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act.

(B) EXPEDITED PROVISION OF ACCESS.—The Secretary shall commence the provision of access to telephone service under this subsection as soon as practicable after the date of the enactment of this Act.

(6) TERMINATION.—The Secretary shall cease the provision of access to telephone service under this subsection on the date this is 60 days after the later of—

(A) the date, as determined by the Secretary, on which Operation Enduring Freedom terminates; or

(B) the date, as so determined, on which Operation Iraqi Freedom terminates.

SA 391. Mr. OBAMA (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

OPERATIONS AND MAINTENANCE, GENERAL

For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, to repair damage caused by flooding in the Kaskaskia River during January, 2005, to the Lake Shelbyville and Carlyle Lake projects, $5,400,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

SA 392. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

EPILEPSY RESEARCH BY DEPARTMENT OF DEFENSE PEER REVIEWED MEDICAL RESEARCH PROGRAM

SEC. 1122. Of the amount appropriated or otherwise made available by this chapter under the heading ''DEFENSE HEALTH PROGRAM'', $1,000,000 shall be available for the Department of Defense Peer Reviewed Medical Research Program for epilepsy research, including—

(1) research into the relationship between traumatic brain injury and epilepsy; and

(2) research on the development of tools to monitor epilepsy.

SA 393. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. IMPLEMENTATION OF MISSION CHANGES AT SPECIFIC VETERANS HEALTH ADMINISTRATION FACILITIES.

(a) IN GENERAL.—Section 414 of the Veterans Health Programs Improvement Act of 2004, is amended by adding at the end the following:

''(h) DEFINITION.—In this section, the term 'medical center' includes any outpatient clinic.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if

included in the Veterans Health Programs Improvement Act of 2004 (Public Law 108–422).

SA 394. Mr. WARNER submitted an amendment intended to be proposed by her to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 169, between lines 8 and 9, insert the following:

RE-USE AND REDEVELOPMENT OF CLOSED OR REALIGNED MILITARY INSTALLATIONS

SEC. 1122 (a) In order to assist communities with preparations for the results of the 2005 round of defense base closure and realignment, and consistent with assistance provided to communities by the Department of Defense in previous rounds of base closure and realignment, the Secretary of Defense shall, not later than July 15, 2005, submit to the congressional defense committees a report on the processes and policies of the Federal Government for disposal of property at military installations proposed to be closed or realigned as part of the 2005 round of base closure and realignment, and the assistance available to affected local communities for re-use and redevelopment decisions.

(b) The report under subsection (a) shall include—

(1) a description of the processes of the Federal Government for disposal of property at military installations proposed to be closed or realigned;

(2) a description of Federal Government policies for providing re-use and redevelopment assistance;

(3) a catalogue of community assistance programs that are provided by the Federal Government related to the re-use and redevelopment of closed or realigned military installations;

(4) a description of the services, policies, and resources of the Department of Defense that are available to assist communities affected by the closing or realignment of military installations as a result of the 2005 round of base closure and realignment;

(5) guidance to local communities on the establishment of local redevelopment authorities and the implementation of a base redevelopment plan; and

(6) a description of the policies and responsibilities of the Department of Defense related to environmental clean-up and restoration of property disposed by the Federal Government.

SA 395. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. CLINTON, and Mrs. BOXER) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Senate conferees should not agree to the inclusion of language from division B of the Act (as passed by the House of Representatives on March 16, 2005) in the conference report;

(2) the language referred to in paragraph (1) is contained in H.R. 418, which was—

(A) passed by the House of Representatives on February 10, 2005; and

(B) referred to the Committee on the Judiciary of the Senate on February 17, 2005; and

(3) the Committee on the Judiciary is the appropriate committee to address this matter.

SA 396. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DEFINITION OF IMMEDIATE RELATIVES.

Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by inserting ''In the case of a parent of a citizen of the United States who has a child (as defined in section 101(b)(1)), the child shall be considered, for purposes of this subsection, to be an immediate relative if accompanying or following to join the parent.'' after ''21 years of age.''.

SA 397. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. Section 426(d) of the Water Resources Development Act of 1999 (113 Stat. 326) is amended by striking ''$400,000'' and inserting ''$475,000''.

SA 398. Mr. DORGAN (for himself, Mr. DURBIN, Mr. LAUTENBERG, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, after line 6, add the following:

TITLE VII—SPECIAL COMMITTEE OF SENATE ON WAR AND RECONSTRUCTION CONTRACTING

SEC. 7001. FINDINGS.

Congress makes the following findings:

(1) The wars in Iraq and Afghanistan have exerted very large demands on the Treasury of the United States and required tremendous sacrifice by the members of the Armed Forces of the United States.

(2) Congress has a constitutional responsibility to ensure comprehensive oversight of the expenditure of United States Government funds.

(3) Waste and corporate abuse of United States Government resources are particularly unacceptable and reprehensible during times of war.

(4) The magnitude of the funds involved in the reconstruction of Afghanistan and Iraq and the war on terrorism, together with the speed with which these funds have been committed, presents a challenge to the effective performance of the traditional oversight function of Congress and the auditing functions of the executive branch.

(5) The Senate Special Committee to Investigate the National Defense Program, popularly know as the Truman Committee, which was established during World War II, offers a constructive precedent for bipartisan oversight of wartime contracting that can also be extended to wartime and postwar reconstruction activities.

(6) The Truman Committee is credited with an extremely successful investigative effort, performance of a significant public education role, and achievement of fiscal savings measured in the billions of dollars.

(7) The public has a right to expect that taxpayer resources will be carefully disbursed and honestly spent.

SEC. 7002. SPECIAL COMMITTEE ON WAR AND RECONSTRUCTION CONTRACTING.

There is established a special committee of the Senate to be known as the Special Committee on War and Reconstruction Contracting (hereafter in this title referred to as the ''Special Committee'').

SEC. 7003. PURPOSE AND DUTIES.

(a) PURPOSE.—The purpose of the Special Committee is to investigate the awarding and performance of contracts to conduct military, security, and reconstruction activities in Afghanistan and Iraq and to support the prosecution of the war on terrorism.

(b) DUTIES.—The Special Committee shall examine the contracting actions described in subsection (a) and report on such actions, in accordance with this section, regarding—

(1) bidding, contracting, accounting, and auditing standards for Federal Government contracts;

(2) methods of contracting, including sole-source contracts and limited competition or noncompetitive contracts;

(3) subcontracting under large, comprehensive contracts;

(4) oversight procedures;

(5) consequences of cost-plus and fixed price contracting;

(6) allegations of wasteful and fraudulent practices;

(7) accountability of contractors and Government officials involved in procurement and contracting;

(8) penalties for violations of law and abuses in the awarding and performance of Government contracts; and

(9) lessons learned from the contracting process used in Iraq and Afghanistan and in connection with the war on terrorism with respect to the structure, coordination, management policies, and procedures of the Federal Government.

(c) INVESTIGATION OF WASTEFUL AND FRAUDULENT PRACTICES.—The investigation by the Special Committee of allegations of wasteful and fraudulent practices under subsection (b)(6) shall include investigation of allegations regarding any contract or spending entered into, supervised by, or otherwise involving the Coalition Provisional Authority, regardless of whether or not such contract or spending involved appropriated funds of the United States.

(d) EVIDENCE CONSIDERED.—In carrying out its duties, the Special Committee shall ascertain and evaluate the evidence developed by all relevant governmental agencies regarding the facts and circumstances relevant to contracts described in subsection (a) and any contract or spending covered by subsection (c).

SEC. 7004. COMPOSITION OF SPECIAL COMMITTEE.

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Special Committee shall consist of 7 members of the Senate of whom—

(A) 4 members shall be appointed by the President pro tempore of the Senate, in consultation with the majority leader of the Senate; and

(B) 3 members shall be appointed by the minority leader of the Senate.

(2) DATE.—The appointments of the members of the Special Committee shall be made not later than 90 days after the date of the enactment of this Act.

(b) VACANCIES.—Any vacancy in the Special Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) SERVICE.—Service of a Senator as a member, chairman, or ranking member of the Special Committee shall not be taken into account for the purposes of paragraph (4) of rule XXV of the Standing Rules of the Senate.

(d) CHAIRMAN AND RANKING MEMBER.—The chairman of the Special Committee shall be designated by the majority leader of the Senate, and the ranking member of the Special Committee shall be designated by the minority leader of the Senate.

(e) QUORUM.—

(1) REPORTS AND RECOMMENDATIONS.—A majority of the members of the Special Committee shall constitute a quorum for the purpose of reporting a matter or recommendation to the Senate.

(2) TESTIMONY.—One member of the Special Committee shall constitute a quorum for the purpose of taking testimony.

(3) OTHER BUSINESS.—A majority of the members of the Special Committee, or ⅓ of the members of the Special Committee if at least one member of the minority party is present, shall constitute a quorum for the purpose of conducting any other business of the Special Committee.

SEC. 7005. RULES AND PROCEDURES.

(a) GOVERNANCE UNDER STANDING RULES OF SENATE.—Except as otherwise specifically provided in this resolution, the investigation, study, and hearings conducted by the Special Committee shall be governed by the Standing Rules of the Senate.

(b) ADDITIONAL RULES AND PROCEDURES.—The Special Committee may adopt additional rules or procedures if the chairman and ranking member agree that such additional rules or procedures are necessary to enable the Special Committee to conduct the investigation, study, and hearings authorized by this resolution. Any such additional rules and procedures—

(1) shall not be inconsistent with this resolution or the Standing Rules of the Senate; and

(2) shall become effective upon publication in the Congressional Record.

SEC. 7006. AUTHORITY OF SPECIAL COMMITTEE.

(a) IN GENERAL.—The Special Committee may exercise all of the powers and responsibilities of a committee under rule XXVI of the Standing Rules of the Senate.

(b) HEARINGS.—The Special Committee or, at its direction, any subcommittee or member of the Special Committee, may, for the purpose of carrying out this resolution—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Special Committee or such subcommittee or member considers advisable; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Special Committee considers advisable.

(c) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(1) ISSUANCE.—Subpoenas issued under subsection (b) shall bear the signature of the Chairman of the Special Committee and shall be served by any person or class of persons designated by the Chairman for that purpose.

(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(d) MEETINGS.—The Special Committee may sit and act at any time or place during sessions, recesses, and adjournment periods of the Senate.

SEC. 7007. REPORTS.

(a) INITIAL REPORT.—The Special Committee shall submit to the Senate a report on the investigation conducted pursuant to section 7003 not later than 270 days after the appointment of the Special Committee members.

(b) UPDATED REPORT.—The Special Committee shall submit an updated report on such investigation not later than 180 days after the submission of the report under subsection (a).

(c) ADDITIONAL REPORTS.—The Special Committee may submit any additional report or reports that the Special Committee considers appropriate.

(d) FINDINGS AND RECOMMENDATIONS.—The reports under this section shall include findings and recommendations of the Special Committee regarding the matters considered under section 7003.

(e) DISPOSITION OF REPORTS.—Any report made by the Special Committee when the Senate is not in session shall be submitted to the Clerk of the Senate. Any report made by the Special Committee shall be referred to the committee or committees that have jurisdiction over the subject matter of the report.

SEC. 7008. ADMINISTRATIVE PROVISIONS.

(a) STAFF.—

(1) IN GENERAL.—The Special Committee may employ in accordance with paragraph (2) a staff composed of such clerical, investigatory, legal, technical, and other personnel as the Special Committee, or the chairman or the ranking member, considers necessary or appropriate.

(2) APPOINTMENT OF STAFF.—

(A) IN GENERAL.—The Special Committee shall appoint a staff for the majority, a staff for the minority, and a nondesignated staff.

(B) MAJORITY STAFF.—The majority staff shall be appointed, and may be removed, by the chairman and shall work under the general supervision and direction of the chairman.

(C) MINORITY STAFF.—The minority staff shall be appointed, and may be removed, by the ranking member of the Special Committee, and shall work under the general supervision and direction of such member.

(D) NONDESIGNATED STAFF.—Nondesignated staff shall be appointed, and may be removed, jointly by the chairman and the ranking member, and shall work under the joint general supervision and direction of the chairman and ranking member.

(b) COMPENSATION.—

(1) MAJORITY STAFF.—The chairman shall fix the compensation of all personnel of the majority staff of the Special Committee.

(2) MINORITY STAFF.—The ranking member shall fix the compensation of all personnel of the minority staff of the Special Committee.

(3) NONDESIGNATED STAFF.—The chairman and ranking member shall jointly fix the compensation of all nondesignated staff of the Special Committee, within the budget approved for such purposes for the Special Committee.

(c) REIMBURSEMENT OF EXPENSES.—The Special Committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by such staff members in the performance of their functions for the Special Committee.

(d) PAYMENT OF EXPENSES.—There shall be paid out of the applicable accounts of the Senate such sums as may be necessary for the expenses of the Special Committee. Such payments shall be made on vouchers signed by the chairman of the Special Committee and approved in the manner directed by the Committee on Rules and Administration of the Senate. Amounts made available under this subsection shall be expended in accordance with regulations prescribed by the Committee on Rules and Administration of the Senate.

SEC. 7009. TERMINATION.

The Special Committee shall terminate on February 28, 2007.

SEC. 7010. SENSE OF SENATE ON CERTAIN CLAIMS REGARDING THE COALITION PROVISIONAL AUTHORITY.

It is the sense of the Senate that any claim of fraud, waste, or abuse under the False Claims Act that involves any contract or spending by the Coalition Provisional Authority should be considered a claim against the United States Government.

SA 399. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists

from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

SEC. ___. (a) None of the funds appropriated or made available in this Act or any other Act may be used to fund the independent counsel investigation of Henry Cisneros after June 1, 2005.

(b) Not later than July 1, 2005, the Government Accountability Office shall provide the Committee on Appropriations of each House with a detailed accounting of the costs associated with the independent counsel investigation of Henry Cisneros.

SA 400. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COVERAGE OF MILK PRODUCTION UNDER H–2A NONIMMIGRANT WORKER PROGRAM.

(a) IN GENERAL.—For purposes of the administration of the H–2A worker program in a year, work performed in the production of milk for commercial use for a period not to exceed 10 months shall qualify as agriculture labor or services of a seasonal nature.

(b) DEFINITIONS.—In this section:

(1) H–2A NONIMMIGRANT WORKER PROGRAM.—The term ''H–2A nonimmigrant worker program'' means the program for the admission to the United States of H–2A nonimmigrant workers.

(2) H–2A NONIMMIGRANT WORKERS.—The term ''H–2A worker'' means a nonimmigrant alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

SA 401. Mr. COCHRAN (for Mr. MCCONNELL) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 193, line 23 of the bill, strike ''$500,000'' and insert in lieu thereof: ''$1,000,000''.

SA 402. Mr. COCHRAN (for Mr. MCCONNELL (for himself, Mr. LEAHY, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 192, line 19, after ''March 2005,'' insert ''and the avian influenza virus,''.

SA 403. Mr. COCHRAN (for Mr. LUGAR (for himself and Mr. BIDEN)) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 171, line 13, strike ''$757,700,000'' and insert ''$767,200,000''.

On page 171, line 21, after ''education:'' insert the following ''*Provided further*, That of the funds appropriated under this heading, $17,200,000 should be made available for the Office of the Coordinator for Reconstruction and Stabilization:''.

On page 179, line 24, strike ''$40,000,000'' and insert ''$30,500,000''.

SA 404. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 194, line 7, delete ''Aceh'' and everything thereafter through ''Service'' on line 9, and insert in lieu thereof:

tsunami affected countries

SA 405. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 194, line 19, after the colon insert the following:

Provided further, That funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations, except that such notifications shall be submitted no less than five days prior to the obligation of funds:

SA 406. Mr. BAYH (for himself, Mr. PRYOR, and Mr. CORZINE) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 170 between lines 14 and 15, insert the following:

CHAPTER 3

SEC. 1201. SHORT TITLE.

This chapter may be cited as the ''Patriot Penalty Elimination Act of 2005''.

SEC. 1202. INCOME PRESERVATION PAY FOR RESERVES SERVING ON ACTIVE DUTY IN SUPPORT OF A CONTINGENCY OPERATION.

(a) AUTHORITY.—Chapter 1209 of title 10, United States Code, is amended by inserting after section 12316 the following new section:

''§ 12316a. Reserves: income preservation pay

''(a) REQUIREMENT TO PAY.—The Secretary of the military department concerned shall pay income preservation pay under this section to an eligible member of a reserve component of the armed forces in connection with the member's active-duty service as described in subsection (b).

''(b) ELIGIBLE MEMBER.—A member is eligible for income preservation pay if—

''(1) in the case of a member who is an employee of the Federal Government—

''(A) the member is called or ordered to active duty (other than voluntarily) under a provision of law referred to in section 101(a)(13)(B) of this title;

''(B) pursuant to such call or order, the member serves on active duty outside the United States during at least 6 out of 12 consecutive months; and

''(C) with respect to such active-duty service, the amount of the member's preservice earned income determined under subparagraph (A) of subsection (c)(1) exceeds the amount of the member's military service income determined under subparagraph (B) of such subsection; or

''(2) in the case of any other member, the member—

''(A) meets the requirements of paragraph (1); and

''(B) is not receiving employment income preservation payments from the qualifying employer of the member as described in section 12316b of this title.

''(c) AMOUNT.—(1) Subject to paragraph (2), the amount payable under this section to a member in connection with active-duty service is the amount equal to the excess (if any) of—

''(A) the amount computed by multiplying—

''(i) the preservice average monthly earned income of the member, by

''(ii) the total number of the member's service months for such active-duty service, over

''(B) the amount computed by multiplying—

''(i) the military service average monthly income of the member, by

''(ii) the total number of months determined under subparagraph (A)(ii).

''(2) The total amount of income preservation pay that is paid to a member under this section may not exceed $10,000.

''(d) PRESERVICE AVERAGE MONTHLY EARNED INCOME.—For the purposes of this section, the preservice average monthly earned income of a member who serves on active duty as described in subsection (b) shall be computed by dividing 12 into the total amount of the member's earned income for the 12 months immediately preceding the member's first service month of the period for which income preservation pay is to be paid to the member under this section.

''(e) MILITARY SERVICE AVERAGE MONTHLY INCOME.—For the purposes of this section, the military service average monthly income of a member who serves on active duty as described in subsection (b) is the amount determined by dividing—

''(1) the sum of the total amount of the member's earned income (other than basic pay, special and incentive pays, and allowances) and the total amount of the member's basic pay (under section 204 of title 37), any special and incentive pays paid to the member (under chapter 5 of title 37), and any allowances paid to the member (under chapter 7 of title 37) for the member's service months for such active-duty service, by

''(2) the total number of such months.

''(f) TIME AND MANNER OF PAYMENT.—(1) Subject to paragraph (2), the total amount of income preservation pay that is payable under this section to a member in connection with service on active duty is due and payable, in one lump sum, not later than 30 days after the date on which the member is released from the active duty.

''(2) The Secretary concerned may make advance payment of income preservation pay in whole or in part under this section to a member, under such terms and conditions as the Secretary determines appropriate, if it is clear from the circumstances that it is likely that the member's active-duty service will satisfy the requirements of subsection (b). In any case in which advance payment is made to a member whose period of such active-duty service does not satisfy such requirements, the Secretary concerned may waive recoupment of the advance payment if the Secretary determines that recoupment would be against equity and good conscience or would be contrary to the best interests of the United States.

''(g) DEFINITIONS.—In this section:

''(1) The term ''earned income'' has the meaning given such term in section 32(c)(2) of the Internal Revenue Code of 1986.

''(2) The term 'service month', with respect to service of a member of a reserve component of the armed forces on active duty, means a month during any part of which the member serves on active duty.

''(h) TERMINATION OF AUTHORITY.—This section shall cease to be effective on the first day of the first month that begins on or after the date that is five years after the date of the enactment of the Patriot Penalty Elimination Act of 2005.''.

(b) RECHARACTERIZATION OF EXISTING SECTION ON PAYMENT OF CERTAIN RESERVES ON ACTIVE DUTY.—The heading of section 12316 of title 10, United States Code, is amended to read as follows:

''§ 12316. Reserves: payment of other entitlement instead of pay and allowances''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1209 of title 10, United States Code, is amended by striking the item relating to section 12316 and inserting the following new items:

''12316. Reserves: payment of other entitlement instead of pay and allowances.

''12316a. Reserves: income preservation pay.''.

(d) EFFECTIVE DATE.—Section 12316a of title 10, United States Code (as added by subsection (a)), shall take effect as of January 1, 2003, and shall apply with respect to active-duty service that begins on or after such date.

SEC. 1203. EMPLOYMENT INCOME PRESERVATION ASSISTANCE GRANTS FOR EMPLOYERS OF RESERVES.

(a) AUTHORITY.—Chapter 1209 of title 10, United States Code, as amended by section 1202(a) of this chapter, is further amended by inserting after section 12316a the following new section:

''§ 12316b. Reserves: employment income preservation assistance grants for employers of reserves

''(a) REQUIREMENT TO MAKE GRANTS.—The Secretary of the military department concerned shall make a grant to each qualifying employer to assist such employer in making employment income preservation payments to a covered member of a reserve component of the armed forces who is an employee of such employer to assist the member in preserving the preservice average monthly wage or salary of the member in connection with the member's active-duty service as described in subsection (c).

''(b) QUALIFYING EMPLOYER.—(1) Except as provided in paragraph (2), for the purposes of this section, a qualifying employer is any employer who makes employment income preservation payments to a covered member to assist the member in preserving the preservice average monthly wage or salary of the member in connection with the member's active-duty service as described in subsection (c).

''(2) A State or local government is not a qualifying employer for the purpose of this section.

''(c) COVERED MEMBER.—For the purposes of this section, a member is a covered member if—

''(1) the member is called or ordered to active duty (other than voluntarily) under a provision of law referred to in section 101(a)(13)(B) of this title;

''(2) pursuant to such call or order, the member serves on active duty outside the United States during at least 6 out of 12 consecutive months; and

''(3) with respect to such active-duty service, the amount of the member's preservice average monthly wage or salary (as determined under subsection (e)) exceeds the amount of the member's military service average monthly income (as determined under subsection (f)).

''(d) EMPLOYMENT INCOME PRESERVATION PAYMENTS.—(1) For the purposes of this section, employment income preservation payments are any payments made by a qualifying employer to a covered member in connection with the active-duty service of the member described in subsection (c) in order to make up any excess of the member's preservice average monthly wage or salary over the member's military service average monthly income.

''(2) The total amount of employment income preservation payments with respect to a covered member for which a grant may be made under subsection (a) may not exceed $10,000.

''(e) PRESERVICE AVERAGE MONTHLY WAGE OR SALARY.—For the purposes of this section, the preservice average monthly wage or salary of a covered member who serves on active duty as described in subsection (c) shall be computed by dividing—

''(1) the number of months of employment of the member with the qualifying employer during the 12-month period preceding the member's commencement on active duty as described in subsection (c); into

''(2) the total amount of the member's wage or salary paid by the qualifying employer during such months.

''(f) MILITARY SERVICE AVERAGE MONTHLY INCOME.—For the purposes of this section, the military service average monthly income of a member who serves on active duty as described in subsection (c) is the amount determined by dividing—

''(1) the sum of the total amount of the member's earned income (other than basic pay, special and incentive pays, and allowances) and the total amount of the member's basic pay (under section 204 of title 37), any special and incentive pays paid to the member (under chapter 5 of title 37), and any allowances paid to the member (under chapter 7 of title 37) for the member's service months for such active-duty service, by

''(2) the total number of such months.

''(g) DEFINITIONS.—In this section:

''(1) The term ''earned income'' has the meaning given such term in section 32(c)(2) of the Internal Revenue Code of 1986.

''(2) The term 'service month', with respect to service of a member of a reserve component of the armed forces on active duty, means a month during any part of which the member serves on active duty.

''(h) TERMINATION OF AUTHORITY.—This section shall cease to be effective on the first day of the first month that begins on or after the date that is five years after the date of the enactment of the Patriot Penalty Elimination Act of 2005.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1209 of title 10, United States Code, as amended by section 1202(c) of this chapter, is further by inserting after the item relating to section 12316a the following new item:

''12316b. Reserves: income preservation assistance grants for employers of reserves.''.

(c) EFFECTIVE DATE.—Section 12316b of title 10, United States Code (as added by subsection (a)), shall take effect as of January 1, 2003, and shall apply with respect to active-duty service that begins on or after such date.

SA 407. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 211, strike lines 3 through 8 and insert the following:

AGRICULTURAL AND NATURAL RESOURCES OF THE WALKER RIVER BASIN

SEC. 6017. (a)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary of the Interior (referred to in this

section as the ''Secretary''), acting through the Commissioner of Reclamation, shall provide not more than $850,000 to pay the State of Nevada's share of the costs for the Humboldt Project conveyance required under—

(A) title VIII of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2016); and

(B) section 217(a)(3) of the Energy and Water Development Appropriations Act, 2004 (117 Stat. 1853).

(2) Amounts provided under paragraph (1) may be used to pay—

(A) administrative costs;

(B) the costs associated with complying with—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(C) real estate transfer costs.

(b)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $70,000,000 to the University of Nevada—

(A) to acquire from willing sellers land, water, and related interests in the Walker River Basin, Nevada; and

(B) to establish and administer an agricultural and natural resources center, the mission of which shall be to undertake research, restoration, and educational activities in the Walker River Basin relating to—

(i) innovative agricultural water conservation;

(ii) cooperative programs for environmental restoration;

(iii) fish and wildlife habitat restoration; and

(iv) wild horse and burro research and adoption marketing.

(2) In acquiring land, water, and related interests under paragraph (1)(A), the University of Nevada shall make acquisitions that the University determines are the most beneficial to—

(A) the establishment and operation of the agricultural and natural resources research center authorized under paragraph (1)(B); and

(B) environmental restoration in the Walker River Basin.

(c)(1) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide not more than $10,000,000 for a water lease and purchase program for the Walker River Paiute Tribe.

(2) Water acquired under paragraph (1) shall be—

(A) acquired only from willing sellers; and

(B) designed to maximize water conveyances to Walker Lake.

(d) Using amounts made available under section 2507 of the Farm and Security Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171), the Secretary shall provide—

(1) $10,000,000 for tamarisk eradication, riparian area restoration, and channel restoration efforts within the Walker River Basin that are designed to enhance water delivery to Walker Lake, with priority given to activities that are expected to result in the greatest increased water flows to Walker Lake; and

(2) $5,000,000 to the United States Fish and Wildlife Service, the Walker River Paiute Tribe, and the Nevada Division of Wildlife to undertake activities, to be coordinated by the Director of the United States Fish and Wildlife Service, to complete the design and implementation of the Western Inland Trout Initiative and Fishery Improvements in the State of Nevada with an emphasis on the Walker River Basin.

SA 408. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed by her to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. None of the funds made available by this or any other Act may be used by the Secretary of Energy to provide assistance to any affected unit of local government under section 116(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10136(c)) using a funding distribution formula other than that used to provide assistance for fiscal year 2004.

SA 409. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. VOLUNTARY LEAVE TRANSFERS FOR FEDERAL EMPLOYEES WITH SPOUSES ON ACTIVE DUTY WITH THE NATIONAL GUARD OR RESERVES.

(a) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by inserting after section 6340 the following:

''§ 6341. National Guard and reserve service

''(a) The Office of Personnel Management shall prescribe regulations to treat any period of service described under subsection (b) in the same manner and to the same extent as a period of a medical emergency.

''(b) The period of service referred to under subsection (a) is any period of service performed by the spouse of an employee while that spouse—

''(1) is a member of a reserve component of the Armed Forces as described under section 10101 of title 10; and

''(2) is serving on active duty in the Armed Forces in support of a contingency operation as defined under section 101(a)(13) of title 10.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6340 the following:

''6341. National Guard and reserve service. ''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and apply to any period of service (or portion of such period) described under section 6341(b) of title 5, United States Code (as added by this section) that begins on or after the date of enactment of this Act.

SA 410. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, after line 3, insert the following:

(e) The referenced statement of managers under the heading ''Community Development Fund'' in title II of division G of Public Law 108–199 is deemed to be amended with respect to item number 450 by striking the ''V.I.C.T.M. Family Center in Washoe County, Nevada, for the construction of a facility for multi-purpose social services referral and victim counseling;'' and inserting ''Washoe County, Nevada, for a facility and equipment for the SART/CARES victim programs;''.

SA 411. Mr. SESSIONS (for Mr. BAUCUS (for himself, Mr. GRASSLEY, Ms. LANDRIEU, Mr. LOTT, Mrs. FEINSTEIN, Mr. VITTER, Mr. NELSON of Florida, Mr. BOND, and Mr. MARTINEZ)) proposed an amendment to the bill H.R. 1134, to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments; as follows:

Strike all after the enacting clause and insert the following:

SEC. ___. PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS.

(a) QUALIFIED DISASTER MITIGATION PAYMENTS EXCLUDED FROM GROSS INCOME.—

(1) IN GENERAL.—Section 139 of the Internal Revenue Code of 1986 (relating to disaster relief payments) is amended by adding at the end the following new subsections:

''(g) QUALIFIED DISASTER MITIGATION PAYMENTS.—

''(1) IN GENERAL.—Gross income shall not include any amount received as a qualified disaster mitigation payment.

''(2) QUALIFIED DISASTER MITIGATION PAYMENT DEFINED.—For purposes of this section, the term 'qualified disaster mitigation payment' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

''(3) NO INCREASE IN BASIS.—Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

''(h) DENIAL OF DOUBLE BENEFIT.—Notwithstanding any other provision of this subtitle,

no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 139 of such Code is amended by striking ''a qualified disaster relief payment'' and inserting ''qualified disaster relief payments and qualified disaster mitigation payments''.

(B) Subsection (e) of section 139 of such Code is amended by striking ''and (f)'' and inserting '', (f), and (g)''.

(b) CERTAIN DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS TREATED AS INVOLUNTARY CONVERSIONS.—Section 1033 of such Code (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) SALES OR EXCHANGES UNDER CERTAIN HAZARD MITIGATION PROGRAMS.—For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.''.

(c) EFFECTIVE DATE.—

(1) QUALIFIED DISASTER MITIGATION PAYMENTS.—The amendments made by subsection (a) shall apply to amounts received before, on, or after the date of the enactment of this Act.

(2) DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS.—The amendments made by subsection (b) shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 13, 2005, at 10 a.m., to conduct a hearing on ''The Federal Home Loan Bank System.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, April 13 at 11:30 a.m. in room SD–366 to consider pending calendar business.

Agenda Item 1: To consider the nomination of David Garman, to be Under Secretary of Energy.

In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, April 13, 2005 at 9:15 a.m. to conduct a business meeting on the following agenda:

Nominations: Stephen Johnson, nominated by the President to be the Administrator of the United States Environmental Protection Agency (EPA); Luis Luna, nominated by the President to be EPA's Assistant Administrator for Administration and Resource Manager; John Paul Woodley, Jr., nominated by the President to be Assistant Secretary of the Army for Civil Works; Major General Don Riley, United States Army, nominated by the President to be a Member and President of the Mississippi River Commission; Brigadier General William T. Grisoli, United States Army, nominated by the President to be a Member of the Mississippi River Commission; D. Michael Rappoport, nominated by the President to be a Member of the Board of Trustees of the Morris K. Udall Foundation; and Michael Butler, nominated by the President to be a Member of the Board of Trustees of the Morris K. Udall Foundation.

Resolution: A resolution authorizing alteration of the James L. King Federal Justice Building in Miami, Florida; and Committee resolution for the Calumet Harbor and River, Illinois.

Legislation: Water Resources Development Act of 2005.

The hearing will be held in SD–406.

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

COMMITTEE ON FINANCE

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, April 13, 2005, at 10 a.m., to hear testimony on ''The U.S.-Central America-Dominican Republic Free Trade Agreement.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 13, 2005, at 9:30 a.m. to hold a nomination hearing.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor and Pensions meet in executive session during the session of the Senate on Wednesday, April 13, 2005, at 10 a.m. in SD–430.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, April 13, 2005 at 11:00 a.m. to hold a business meeting to consider pending Committee business.

AGENDA

Legislation

S. 21, Homeland Security Grant Enhancement Act of 2005; S. 335, a bill to reauthorize the Congressional Award Act; S. 494, Federal Employee Protection of Disclosures Act; and S. 501, a bill to provide a site for the National Women's History Museum in the District of Columbia.

Committee Reports

Report of the Permanent Subcommittee on Investigations, titled: ''The Role of the Professional Firms in the U.S. Tax Shelter Industry''; and report of the Permanent Subcommittee on Investigations, titled: ''Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. COCHRAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 13, 2005, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Indian Health.

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

COMMITTEE ON THE JUDICIARY

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Committee on Judiciary be authorized to meet to conduct a hearing on Wednesday, April 13, 2005, at 9:30 a.m. on ''Securing Electronic Personal Data: Striking a Balance Between Privacy and Commercial and Governmental Use.'' The hearing will take place in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Deborah Platt Majoras, Chairman, Federal Trade Commission, Washington, DC; Chris Swecker, Assistant Director for the Criminal Investigative Division, Federal Bureau of Investigation, Washington, DC; Larry D. Johnson, Special Agent in Charge, Criminal Investigative Division, U.S. Secret Service; Washington, DC; and William H. Sorrell, President, National Association of Attorneys General, Montpelier, VT.

Panel II: Douglas C. Curling, President, Chief Operating Officer and Director, ChoicePoint Inc., Alpharetta, GA; Kurt P. Sanford, President & CEO, U.S. Corporate & Federal Markets, LexisNexis Group, Miamisburg, OH; Jennifer T. Barrett, Chief Privacy Officer, Acxiom Corp., Little Rock, AR; James X. Dempsey, Executive Director, Center for Democracy & Technology, Washington, DC; and Robert Douglas, CEO, PrivacyToday.com, Steamboat Springs, CO.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 13, 2005, at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Civil Rights and Property Rights be authorized to meet to conduct a hearing on ''Less Faith in Judicial Credit: Are Federal and State Marriage Protection Initiatives Vulnerable to Judicial Activism?'' for Wednesday, April 13, 2005 at 2 p.m. in SD–226.

Witness List: Mr. Lynn Wardle, Professor of Law, Brigham Young University, J. Reuben Clark Law School, Provo, UT; Mr. Gerard Bradley, Professor of Law, University of Notre Dame Law School, Notre Dame, IN.; and Dr. Kathleen Moltz, Assistant Professor, Wayne State University School of Medicine, Detroit, MI.

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

SUBCOMMITTEE ON PERSONNEL

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Subcommittee on Personnel be authorized to meet during the session of the Senate on April 13, 2005, at 1:30 p.m., in open session to receive testimony on active and reserve military and civilian personnel programs, in review of the defense authorization request for fiscal year 2006.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on April 13, 2005, at 10 a.m., in open session to receive testimony on high risk areas in the management of the Department of Defense in review of the defense authorization request for fiscal year 2006.

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

SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Subcommittee on Trade, Tourism, and Economic Development be authorized to meet on S. 714—Junk Fax Prevention Act, on Wednesday, April 13, 2005, at 2:30 p.m.

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

PRIVILEGE OF THE FLOOR

Mrs. MURRAY. Mr. President, I ask unanimous consent that Linda Jantzen, a Defense fellow in the office of Senator MIKULSKI, be granted floor privileges during the consideration of H.R. 1268, the emergency supplemental appropriations bill.

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

IMMIGRATION LEGISLATION AND THE EMERGENCY SUPPLEMENTAL APPROPRIATIONS BILL

Mr. SESSIONS. Mr. President, I am very troubled that on this Defense supplemental bill, designed to provide the resources necessary for our soldiers in the field to defend themselves and execute the policy of the United States of America against a hostile force, we are now moving into a prolonged and contentious debate over one of the issues that all of us must admit is critically divisive and contentious and important in our country; and that is, the immigration question.

As we all know, the 9/11 Commission made several recommendations involving security issues affecting this country, particularly in identification and better control over those who would come into our country, particularly those trying to come in illegally. That was debated in the intelligence bill. Then an agreement was reached. The House decided to put in that REAL ID language, designed to be consistent with the recommendations of the 9/11 Commission for security purposes—not an immigration bill, security bill language, their version of it. This Senate has not put any such language in the bill at this time.

I will say this. That is one thing. I, as a prosecutor, and somebody who has served on the Judiciary Committee—and we have wrestled with this for some time—have come to the very firm conclusion that the Sensenbrenner language is important for our security. We need to do something like this. We have waited too long, I believe. That is my view.

But now on this floor I am advised we are going to have the Mikulski immigration bill offered, and then we are going to have the Craig-Kennedy AgJOBS bill, which is a bill breathtaking in its scope, an absolute legislative approval of amnesty in an incredible scope, and absolutely contrary to the very generous but liberal position President Bush has taken with regard to immigration. That is going to be run through on this Defense supplemental, and we are going to have to vote on it.

The committees have not studied it. We have not looked at all the alternatives that might be considered or other legislation that I am interested in, such as legislation that would empower our local law enforcement to be better participants in this entire activity. All of that will be swept away, and we will come through with a bill where we give a million-plus people, who are here in our country illegally—they would be granted temporary resident status, by proving that they worked at least 100 hours illegally. And then, if they worked 2,060 hours during a period of 6 years, they then are adjusted to legal permanent residents, what most people call green card holders, a status that is a guaranteed track or pass to citizenship, and they can bring their families with them.

This bill will take 1 million people, and it will put them on a guaranteed track to citizenship, people who have come here illegally.

Now, what about the people who have followed these H–1B, H–2B visa programs who have worked here legally? Can they get advantage of this track? Do they get put on a process by which they become citizens? No. It is only the people who are here illegally.

This is a bad principle. It is a matter of very serious import for law. I was a Federal prosecutor for 15 years. It hurts me to see the indifference by which our Nation has handled our legal system regarding immigration.

Should we allow more people to come here under legitimate conditions? Absolutely. I am for that, legally. I am prepared to discuss that. But I am not for a plan that guarantees amnesty for people who have come here illegally and not providing the benefits to those who may be talented, maybe have the skills we need right now, those who do not have connections to criminal or terrorist groups. We ought to be working on that angle of it.

I am a team player and I want to see things done right, in this Senate. I want to see our leadership succeed. I want to see good policy executed. But we are not going to take this issue lightly. I suggest that it would be an abdication of our responsibility as Senators if we allow this to be rammed through, attached to a bill, without the American people knowing what we are doing. They need to know this. It is going to take some time for them to learn what is being considered here. Senators need to learn what is in this bill. They don't know yet.

This AgJOBS bill had 60-something cosponsors last year. Now I understand it is down to 45. Why? People are reading this thing. It is bad law, bad policy. You tell me—this will be the second time we have passed an amnesty bill, if AgJOBS were to become law. Passing another amnesty bill would do nothing more than send the signal to those around the world who would like to come to the United States that the best way to become a citizen is to come in illegally and hang on; they will never do anything to you, and eventually there will be another amnesty out there? That is why we are concerned about it.

Yes, there are hardship cases. Yes, we want to be fair to everybody. We want to be more than fair. We want to be generous. But we have to be careful if we have any respect for law. Sometimes people think in this body—maybe they have never had to deal with it as I have—that laws don't have much import. They do. They are important. They make statements. A society

that cannot set rules and enforce those rules is not a healthy society. If you would like to know why America is the greatest, most productive, most free country in the history of the world, it is our commitment to the rule of law.

This process is undermining respect for law in a way that I have not seen before, maybe since Prohibition. I think we can improve immigration law. We can be generous with people and try to help them and their families and create something. But it is going to take a good while. It is going to take some hard work.

I for one am not going quietly on this bill. We are going to take time. We are going to have debate. We are going to delay this important defense supplemental bill now to go off on this tangent. But I hope and pray that somehow our leadership and those who are interested in these issues can find a way to put this off for now. Let this bill get passed.

Let's talk about this issue as part of a comprehensive debate. If we did that, we would be serving our constituents a lot better than what we are doing today.

If we go forward and we ram this through without the kind of hearings, debate, taking testimony, studying data, do all that kinds of stuff, our constituents are not going to be happy with us. As a matter of fact, I think they are going to rightly be upset with us. It is a tactic that should not be done on a matter of this importance.

I wanted to make that comment. I know at some point we will be moving forward with the bill. Hopefully the leadership can work with those who are interested in these issues and create a mechanism at some point in the future where it can be fully debated. I am not prepared to allow such a tremendously significant piece of legislation as the AgJOBS bill to go through without a full debate. Every minute that is available to this Senate to debate it should be put on it. The American people need to know what is happening on the floor of the Senate right now. Maybe when we have a vote, we will have the right outcome.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

INTERNAL REVENUE CODE OF 1986 AMENDED TO PROVIDE FOR PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 1134 and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant journal clerk read as follows:

A bill (H.R. 1134) to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAUCUS. Mr. President, today, we will pass legislation in the Senate that provides tax relief to all Americans receiving disaster mitigation grants from the Federal Emergency Management Agency, FEMA. I am pleased that my good friend, Senator GRASSLEY, and I, along with my colleagues, Senators LANDRIEU, BOND, FEINSTEIN, LOTT, MARTINEZ, NELSON, and VITTER could work together to add a necessary and important amendment to H.R. 1134, which exempts disaster mitigation payments from taxation.

For 15 years, FEMA has awarded natural disaster mitigation grants that assist citizens, businesses and communities to take steps to prevent or mitigate damages from future natural disasters. The grants go towards elevating buildings in floodplains, flood proofing, seismic reinforcement, acquisitions or relocations, wind protections for roofs and strengthening of window protections. These grants provide a long-term benefit to society by reducing future loss of life and increasing public safety. In addition to these life-saving benefits, mitigation grants also provide a net cost benefit to society. FEMA conducts a cost-benefit analysis prior to awarding a grant that ensures the cost of funding a project is less than the damages expected to occur in the event of a disaster. FEMA estimates that for every dollar spent on mitigation, an average of eight dollars is saved in the long run.

Let me take a minute to explain the history of the tax issue at hand. Prior to June of last year, recipients of FEMA mitigation grants generally excluded them from income. The tax code states clearly that post-disaster grants were not taxable. But the tax code doesn't specifically describe the tax treatment of mitigation grants. FEMA assumed mitigation grants were treated the same as post-disaster relief grants. However, on June 28, 2004, the Internal Revenue Service issued a legal memorandum stating these mitigation grants were taxable as income. That means that someone who took advantage of mitigation opportunities to prevent future losses would face a significant tax liability. The average mitigation grant is $83,000. That means the average tax on a grant is tens of thousands of dollars. That isn't fair. It was never intended that taxes be collected under these mitigation programs, but under the legal memorandum issued by the Internal Revenue Service thousands of taxpayers may have to file amended tax returns and pay additional tax. Moreover, the Federal Government changed the rules and never made the recipients aware of the potential tax consequences.

I compliment the House for taking up this issue and passing legislation that helps taxpayers who receive mitigation grants after the date of enactment. However, there is a flaw in the House bill. The bill clearly provides tax relief to ''amounts received after the date of enactment.'' What about taxpayers who received mitigation grants in 2004 or 2003 and before? The chairman of the Finance Committee and I have added an amendment that provides absolute certainty for all taxpayers who received grants in past years. Some have argued that the Department of the Treasury can provide tax relief for those who received grants prior to the date of enactment by using the intent gleaned from floor statements and letters from Members of Congress. Let me be clear, Congress writes laws and the clearest intent is in the letter of the law. If our intent is to provide tax relief for those who received grants before the date of enactment, we should write it into the law. And that is what the amendment my good friend Senator GRASSLEY and I have offered.

Before I finish, I want to thank Senators LANDRIEU, NELSON and FEINSTEIN for their tireless work. I can tell you firsthand there was a significant amount of pressure to pass this bill as it was sent from the House. We all wanted to pass this bill as quickly as possible, but we also wanted to be sure we got it right the first time. This bill does that.

I sincerely hope the House will do the right thing and pass this bill with the Senate amendment before the tax filing deadline on Friday.

Ms. LANDRIEU. Mr. President, last year the Internal Revenue Service hit my State like a Category 4 hurricane when it determined that disaster mitigation benefits from the Federal Emergency Management Agency are taxable. We get hurricane warnings when a storm is coming, we can track their paths as they come out of the Carribean and into the Gulf of Mexico. We didn't get any kind of ''tax warning'' from the IRS, but the financial toll on many of my constituents was devastating.

Let me explain what happened. In June of last year, the IRS chief counsel issued an advice letter that determined that FEMA disaster mitigation benefits were taxable as a matter of law. This ruling applied to a variety mitigation grant programs, covering a wide range of natural disasters. The main disasters that concern us in Louisiana are hurricanes and flooding. They are as much a part of life as crawfish boils and Mardi Gras. The key to our peace of mind is the National Flood Insurance program administered by FEMA. In Louisiana, 377,000 property owners participate in the National Flood Insurance program. It is a real Godsend to the people of my state.

The National Flood Insurance program also provides funding for property owners to flood-proof their homes through the flood mitigation grant program. FEMA distributes these grant funds to the States which then pass them along to local communities. The local communities select properties for mitigation and contract for the mitigation services. Communities use these funds to put homes on stilts, improve drainage on property, and to acquire flood proofing materials. These mitigation grants encourage property owners to take responsible steps to lessen the potential for loss of life and property damage due to future flooding. The grants also have the added benefit of saving money in the long term for the flood insurance program.

But the IRS has turned this valuable disaster preparedness and prevention program into a financial disaster for responsible property owners by making these payments taxable. This tax is unfair, unexpected, and an unfortunate policy decision—unfair and unexpected because no one told my constituents that they would be taxed for accepting FEMA disaster mitigation assistance. The local officials in their parish were just as surprised. This tax is unfortunate policy because in the long term, the IRS will undercut the effectiveness of using mitigation as a means of decreasing future costs to the flood insurance program. It will force people to take risks that they will not be hit by a disaster.

I was pleased that the House of Representatives passed a bill, H.R. 1134, to correct this problem. It says that going forward, disaster mitigation benefits are not taxable. But this legislation is not retroactive. It offers no relief to people who are facing a huge tax bill this Friday, April 15, for mitigation funding received in 2004 or earlier years. Virtually every constituent who has written or called my office about this issue received their grant in 2004. This bill will do nothing for them.

I understand that the sponsors of H.R. 1134 and its Senate version S. 586 claim that once it has been passed, the Department of the Treasury will issue some sort of notice to IRS field personnel essentially making the effect of this bill retroactive. Treasury officials, however, cannot cite a legal justification for issuing such a notice. They claim that they can rely on the floor statements of the chairs and ranking members of the House Ways and Means Committee and the Senate Finance Committee as a basis for issuing the notice.

Mr. President, we cannot legislate on a wink and a nod. The right way to make this relief retroactive is to pass the Baucus-Grassley amendment to H.R. 1134 and send it back to the House. This amendment will extend the tax relief in this bill to all recipients of FEMA disaster mitigation assistance past, present, and future. I am proud to be a cosponsor of the amendment. I thank the chairman and ranking member of the Finance Committee for their leadership in bringing this matter to the floor.

April 15th is 2 days away. I urge the other body to take up and pass H.R. 1134 as amended by the Senate, and send it to the President for his signature. This bill will bring peace of mind to thousands of responsible property owners who face an unfair tax burden. We should not allow April 15th to pass without giving these people relief.

Mr. SESSIONS. Mr. President, there is a substitute amendment at the desk. I ask that the amendment be considered and agreed to; the motion to reconsider be laid upon the table; the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The amendment (No. 411) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SEC. ___. PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS.

(a) QUALIFIED DISASTER MITIGATION PAYMENTS EXCLUDED FROM GROSS INCOME.—

(1) IN GENERAL.—Section 139 of the Internal Revenue Code of 1986 (relating to disaster relief payments) is amended by adding at the end the following new subsections:

''(g) QUALIFIED DISASTER MITIGATION PAYMENTS.—

''(1) IN GENERAL.—Gross income shall not include any amount received as a qualified disaster mitigation payment.

''(2) QUALIFIED DISASTER MITIGATION PAYMENT DEFINED.—For purposes of this section, the term 'qualified disaster mitigation payment' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

''(3) NO INCREASE IN BASIS.—Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

''(h) DENIAL OF DOUBLE BENEFIT.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 139 of such Code is amended by striking ''a qualified disaster relief payment'' and inserting ''qualified disaster relief payments and qualified disaster mitigation payments''.

(B) Subsection (e) of section 139 of such Code is amended by striking ''and (f)'' and inserting '', (f), and (g)''.

(b) CERTAIN DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS TREATED AS INVOLUNTARY CONVERSIONS.—Section 1033 of such Code (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) SALES OR EXCHANGES UNDER CERTAIN HAZARD MITIGATION PROGRAMS.—For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.''.

(c) EFFECTIVE DATE.—

(1) QUALIFIED DISASTER MITIGATION PAYMENTS.—The amendments made by subsection (a) shall apply to amounts received before, on, or after the date of the enactment of this Act.

(2) DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS.—The amendments made by subsection (b) shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act.

The bill (H.R. 1134), as amended, was read the third time and passed.

CONGRATULATING UNIVERSITY OF DENVER PIONEERS MEN'S HOCKEY TEAM

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 106 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant journal clerk read as follows:

A resolution (S. Res. 106) congratulating the University of Denver Pioneers men's hockey team, 2005 National Collegiate Athletic Association Division I Hockey Champions.

There being no objection, the Senate proceeded to consider the resolution.

Mr. ALLARD. Mr. President, I rise today for the second year in a row to recognize the recent achievement of the University of Denver Hockey Team. On April 9, 2005, almost a year to the day that they won the 2004 Men's NCAA Division I Championship on the frigid ice of a Boston arena, the Pioneers repeated their amazing feat capturing a second national title in Columbus, OH at this year's Frozen Four. On this particular evening the University of Denver Pioneers defeated the North Dakota Fighting Sioux by a score of 4–1, clinching a seventh overall hockey championship.

At the helm of the University of Denver hockey team for the last 11 years has been coach George Gwozdecky. Coach Gwozdecky came to DU in 1994 and has compiled an impressive record at DU, including his 400th win as a coach a few short weeks ago and his 405th win in the national title game. Coach Gwozdecky has shaped the Pioneer program into one of the elite programs in all of collegiate sports, and he is the only NCAA coach to win a national hockey title as a player, assistant coach, and head coach.

Later today the University of Denver campus will host a rally in honor of the Pioneer hockey champions. While I regret that I can not be there in person to commend this fantastic team, I would like to honor just a few of the great players that made this repeat championship possible. Freshman Peter Mannino, named the Most Outstanding Player of this year's Frozen Four, made an astonishing 44 saves in the championship game including a 23 shot barrage in the third period. Forward Paul Stastny scored two of the Pioneer's four goals with Jeff Drummond and Gabe Gauthier each adding one. Five Pioneers, Forwards Gauthier and Stastny, Defensemen Matt Carle and Brett Skinner, and goalie Mannino were named to the All-Tournament Team.

Today I share my congratulations with the entire University of Denver community. Winning a national title is a rare and precious accomplishment. Winning two championships in a row is all the more rare. This achievement reflects the hard work and dedication of many people. Congratulations to all the DU Pioneers. Congratulations to Chancellor Daniel Ritchie, Provost Bob Coombe, President Mark Holtzman, Interim Director of Athletics Stuart Halsall, Coach Gwozdecky and his staff, and especially the Pioneer players, students and fans. You have made us all very proud.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the resolution and preamble-be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 106) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 106

Whereas the Denver Pioneers first won the National Collegiate Athletic Association (NCAA) Hockey Championship in 1958;

Whereas the University of Denver has won 7 NCAA Division I Men's Hockey Championships, including back-to-back championships in 2004 and 2005;

Whereas on April 9, 2005, the University of Denver won the Frozen Four with a hard fought victory over the University of North Dakota Fighting Sioux; and

Whereas the Championship ended a terrific season in which the University of Denver outscored its opponents 170 to 109 and had a record of 31–9–2: Now, therefore, be it

Resolved, That the Senate congratulates the University of Denver Pioneers men's hockey team, Coach George Gwozdecky, and Chancellor Daniel Ritchie on an outstanding championship season, a season which solidifies the Pioneers' status among the elite in collegiate hockey.

EXECUTIVE SESSION

NOMINATION OF MICHAEL D. GRIFFIN TO BE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. SESSIONS. Mr. President, as in executive session, I ask unanimous consent that the Commerce Committee be discharged from further consideration of Michael Griffin to be the Administrator of NASA, and that the Senate proceed to executive session for its consideration. I finally ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements be printed in the RECORD, the President then be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nomination considered and confirmed is as follows:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Michael D. Griffin, of Virginia, to be Administrator of the National Aeronautics and Space Administration.

Mr. STEVENS. Mr. President, the National Aeronautics and Space Administration represents our Nation's greatest hopes and aspirations. President Bush nominated Dr. Michael D. Griffin to be the next NASA Administrator on March 14, 2005. Dr. Griffin takes over an agency that is embarking on the President's Vision for Space Exploration, which will take America back to the moon and eventually to Mars. The Vision is NASA's biggest mission since the Apollo program began more than 40 years ago. Dr. Griffin will guide NASA on the first steps of this important journey that will define America's presence in space for the next several decades. At the same time, we still mourn the loss of the *Columbia*'s crew as NASA readies the Space Shuttle for its return to flight next month. Dr. Griffin's first task will be to ensure that the shuttle program gets back on its feet safely and effectively. NASA needs its next Administrator immediately, and I thank the Senate for agreeing to the request from Senator INOUYE and myself to discharge and approve this nomination.

Dr. Griffin's extensive background in space and science will serve him and NASA well. He is currently head of the Space Department at the Johns Hopkins University Applied Physics Laboratory. Previously, Dr. Griffin was President and Chief Operating Officer of In-Q-Tel, an independent, nonprofit venture group chartered to identify and invest in cutting-edge commercial technologies for intelligence community applications. He has also served as CEO of the Magellan Systems Division of Orbital Sciences Corporation, as General Manager of Orbital's Space Systems Group, and as the company's Executive Vice President/Chief Technical Officer. Prior to joining Orbital, he was Senior Vice President for Program Development at Space Industries International, and General Manager of the Space Industries Division in Houston.

Dr. Griffin has served in a number of Governmental positions. With NASA, he served as both the Chief Engineer and the Associate Administrator for Exploration, and within the Department of Defense—DOD—he served as the Deputy for Technology at the Strategic Defense Initiative Organization—SDIO. Before joining SDIO, Dr. Griffin played a leading role in numerous space missions while employed at the Johns Hopkins APL, the Jet Propulsion Laboratory, and Computer Sciences Corporation. He holds seven degrees in the fields of physics, electrical engineering, aerospace engineering, civil engineering, and business administration, and has been an Adjunct Professor at the George Washington University, the Johns Hopkins University, and the University of Maryland. He is the lead author on more than two dozen technical papers and the textbook Space Vehicle Design. He is a recipient of the NASA Exceptional Achievement Medal and the DOD Distinguished Public Service Medal. He is also a Registered Professional Engineer in Maryland and California, and a Certified Flight Instructor with instrument and multi-engine ratings.

Dr. Griffin succeeds a close friend and former leader of my staff, Sean O'Keefe. Sean did an admirable job getting the agency's finances under control and, more importantly, holding NASA together after the *Columbia* tragedy. We were lucky NASA had such a leader during that trying time. At the Commerce Committee's hearing on Dr. Griffin's nomination I spoke of my recent travels with Sean, during which I was approached repeatedly by people who raved about Dr. Griffin. They all said he was the man for the job if he could be convinced to accept it. I am pleased the President appointed Dr. Griffin and I look forward to working closely with him and his team of talented professionals.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR THURSDAY, APRIL 14, 2005

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, April 14. 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, and the Senate then begin a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the Democratic

leader or his designee and the second 30 minutes under the control of the majority leader or his designee; provided that following morning business the Senate resume consideration of H.R. 1268, the Iraq-Afghanistan supplemental appropriations bill.

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

PROGRAM

Mr. SESSIONS. Tomorrow morning, following morning business, the Senate will resume consideration of the Iraq-Afghanistan supplemental. We were able to make good progress on the bill today, and we look forward to another productive day tomorrow. Currently we have three amendments pending and we are working with the Democratic leadership to move forward with these amendments. Therefore, Senators should expect rollcall votes throughout the day tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SESSIONS. 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 previous order.

There being no objection, the Senate, at 8:11 p.m., adjourned until Thursday, April 14, 2005, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate April 13, 2005:

EXECUTIVE OFFICE OF THE PRESIDENT

ROBERT J. PORTMAN, OF OHIO, TO BE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, VICE ROBERT B. ZOELLICK, RESIGNED.

CONFIRMATION

Executive nomination confirmed by the Senate Wednesday, April 13, 2005:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

MICHAEL D. GRIFFIN, OF VIRGINIA, TO BE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

DISCHARGED NOMINATIONS

The Senate Committee on Homeland Security and Governmental Affairs was discharged from further consideration of the following nominations and the nominations were placed on the Executive Calendar:

*Howard J. Krongard, of New Jersey, to be Inspector General, Department of State.

*Daniel R. Levinson, of Maryland, to be Inspector General, Department of Health and Human Services.

The Senate Committee on Commerce, Science, and Transportation was discharged from further consideration of the following nomination and the nomination was confirmed:

Michael D. Griffin, of Virginia, to be Administrator of the National Aeronautics and Space Administration.

*Nominee has committed to respond to requests to appear and testify before any duly constituted committee of the Senate.