The Senate met at 9 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

PRIEST

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

O Lord, our Lord, how excellent is Your name in all the Earth. You have set Your glory above the Heavens. Lord, we thank You for blessing our land with productivity and protection. May we never take these gifts for granted.

Use our Senators as Your instruments across the world to fill the emptiness in the lives of others. Lead them to make sacrifices that others may find freedom. Open their minds to divine principles, holy directives, and undeniable truths as they seek to respond to a world in need.

Lord, move each of us with Your power to comfort the sorrowful, strengthen the tempted, inspire the faithful and to save the lost. We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate: Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ISAKSON thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will resume debate on the Energy bill, with the time equally divided until the cloture vote, which is scheduled for 10 a.m., about an hour from now. I expect that cloture will be invoked on the bill today. We have now debated the bill and the amendments for almost 2 weeks, and it is time that we move toward final passage, which I hope and believe will be today.

Senators DOMENICI and BINGAMAN have been on the floor and available to consider amendments during the entire 2-week process. I congratulate them on moving this bill forward in a very efficient and timely way.

I do hope that once cloture is invoked, we will find a way to bring this bill to completion this afternoon or evening. As I mentioned last night before closing, if Members do cooperate and show restraint with their amendments, we could certainly finish at a reasonable hour, and I hope we will accomplish that. If Members wait and come forward at the very last minute, it will be necessary to stay here until very late tonight, indeed until tomorrow. So it really is up to us how we handle it. I encourage our colleagues to come to the floor and talk to the managers as soon as possible if they wish to offer their amendments.

I do think we are on the glidepath to completing this bill. As I mentioned last night, following completion of the bill, hopefully tomorrow, we would begin the Interior appropriations bill. The Democratic leader and I will be having more to say about that.

IRAQI PRIME MINISTER

Mr. FRIST. Mr. President, this morning I have the honor of meeting with Iraqi Prime Minister Ibrahim al-Jafari. The Prime Minister is in the United States to meet with President Bush and other Washington leaders to discuss the next steps in Iraq’s transition to a free and democratic society. I have not yet met the Prime Minister. I look forward to doing so in the next couple of hours.

The Prime Minister deserves great praise for his leadership. He has worked hard as Prime Minister to reach out across ethnic and religious lines. Because of his efforts, Iraq is led by a transitional government that includes ministers from each of Iraq’s ethnic and religious groups.

The Prime Minister’s steady leadership has been inspiring. Next Tuesday, 5 days from now, June 28, will mark the 1-year anniversary of the transfer of sovereignty from the Coalition Provisional Authority to a sovereign Iraqi Government. Since then, Iraq has fought the insurgency with determination as it has undergone truly remarkable changes. Perhaps none was more remarkable than the elections on January 31. On that day, 8 million Iraqis cast their votes for the first democratically elected national assembly in more than 50 years. They came on foot, they came by car and some even came by wagon. They defied all manner of terrorist threat and terrorist intimidation.

It was truly extraordinary. No one who saw the images of those brave citizens emerging from the polling stations, holding aloft those stained, blue-inked fingers, could help but be moved and inspired. While the task of forming
a government has taken much longer than any of us would have hoped, the Iraqi people now turn to the task of drafting a constitution and laying the groundwork for a new round of elections at this year’s end.

Last week, leaders of the 55-member committee charged with drafting the new constitution reached a compromise with the Sunni Arab groups. Together, they decided on the number of Sunni representatives to serve on that committee, which is a major step forward and a significant effort on the part of the majority to reach out to the Sunni leadership. It was also significant because of the impact it could have on the ground.

As we have seen political progress slow, we have watched unfortunately the violence increase. Building and sustaining momentum in the political process is clearly linked to undermining the terrorists and their support. Despite their low turnout in the January elections and the current spate of violence, the Sunnis realized they cannot achieve their aims by standing outside the process or by failing to participate in it.

Like all Iraqis, they have a tremendous stake in the success of Iraq becoming a peaceful and prosperous democracy. They know the best way to ensure the outcome and to ensure their rights is to work constructively with their fellow Iraqis. I am heartened by the efforts of the Shi’a and Kurds leaders to include the Sunnis in the political process.

These are difficult times, and they require thoughtful leadership. The efforts of all parties to reach out and be inclusive deserves our praise and our steadfast support, as do the brave Iraqis who have stepped forward to defend and protect their country. The Iraqi people have suffered more death and casualties than coalition forces. Despite repeated direct attacks on their ranks, every day thousands of young Iraqis continue to volunteer for service. The State Department reports that, as of June 8, more than 160,000 Iraqi security forces have been trained and equipped.

Yes, many of them have made extraordinary efforts to gain and much more to learn before they will be able to act independently, but this will take time as we strive to get 270,000 Iraqis in uniform by July 2006.

Progress is being made. Two or three months ago, I had the opportunity to travel to Jordan and visited one of the Iraqi-Jordanian police training academies. They are on the ground. One can see the progress that is being made in Iraq and with the Iraqi police recruits. One cannot estimate the commitment to seeing the job through.

It is all a difficult task, and it is going to take a lot of determination, but I am confident the Iraqi forces will continue to improve and continue to demonstrate their bravery in the days ahead.

As Iraqis assume a greater responsibility for their own defense, the pace of Iraq’s reconstruction should also gain speed. After decades of corruption and mismanagement by Saddam’s regime, many of Iraq’s towns and cities were in shambles, sewage in the streets, tumultuous schools, unreliable electricity and unreliable and unpotable water. Calling it hard to help the Iraqis rebuild and retool.

We are also helping the Iraqis strengthen the rule of law, a civil society, and private enterprise. A strong democracy means more opportunities, better jobs, more jobs and a brighter future. Opinion polls show a majority of Iraqis remain optimistic about their economic future despite ongoing security concerns. It is all hard work, and it is made much harder by foreign interference.

The State Department reports that while Syria has taken some steps to improve border security, supporters of the terrorists continue to use Syrian territory as a staging ground. On the Iraqi front, Secretary of Defense Rumsfeld and CIA Director Goss report that Iran has sent money and fighters to proteges in Iraq. The fact is, some of Iraq’s neighbors fear a large, prosperous democracy on their borders. They fear that a democratic Iraq will export freedom and liberty to their lands. But fear will not stop freedom’s progress. Iraq will succeed and will become a beacon of hope throughout the region and throughout the world.

We have seen the beginnings in the Cedar Revolution in Lebanon. Freedom is on the march, and the Iraqi people are leading the way.

I urge my colleagues in the Senate to continue to offer our steadfast support. This is an extraordinary opportunity to change the course of history and bring peace and stability to the heart of the Middle East. Such steadfastness will not be easy and will not be without cost, but cost we must succeed. We cannot allow the terrorists to win, and we cannot allow Iraq to fall into chaos, sectarian violence or the rule of extremists. This is going to take a lot of time. It is going to take a lot of money. It is going to take a lot of patience.

The American people need to understand that we will be in Iraq for some time to come. It is vital to the Iraqis that we be there. It is critical to the region that we be there. It is essential to our own security that we be there. Our time line will be driven by success and our exit will depend on the security situation. It will depend on democracy’s advance and the wishes of a sovereign Iraq.

It is clear to me that as Iraqis are able to stand up and provide their own security, without coalition assistance and without foreign intervention, we should be able to begin withdrawing personnel from that region.

When I meet with the new Iraqi Prime Minister later this morning, we will discuss all of these pressing matters. I will let him know America is fully committed to Iraq’s success. I will also tell him we expect continued progress on security, on reconstruction, and the formation of a functioning democracy.

In the end, Iraq, the region, and the United States will be more safe and more secure.

I ask unanimous consent that the time just consumed be counted against the majority’s allocated time prior to the cloture vote.

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

Mr. FRIST. I yield the floor.

RESERVATION OF LEADER TIME

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

ENERGY POLICY ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 6 which the clerk will report.

The assistant legislative clerk read the following:

A bill (H.R. 6) to ensure jobs for our future with secure, affordable and reliable energy.

Pending:

Wyden-Dorgan amendment No. 792, to provide for the suspension of Strategic Petroleum Reserve acquisitions.

Reid (for Lautenberg) amendment No. 839, to require any Federal agency that publishes a science-based climate change document that was significantly altered at White House request to make an unaltered final draft of the document publicly available for comparison.

Schumer amendment No. 811, to provide for a national tire fuel efficiency program.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the Senator from New Mexico, Mr. DOMENICI, and the Senator from New Mexico, Mr. BINGAMAN, or their designees.

The Senator from Massachusetts, Mr. KENNEDY. Mr. President, I understand we have 30 minutes; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. First, I thank my friend and the ranking member, Senator LEAHY, for permitting me to go first so we can attend in an appropriate way the Armed Services Committee and Secretary Rumsfeld. It is typical courtesy on his part.

I yield myself 9 minutes.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

SUPREME COURT VACANCY

Mr. KENNEDY. Mr. President, as we all know, a major debate may soon be underway in the Senate and the country if there is a vacancy on the Supreme Court. It is clear that the Bush administration will be making a vigorous push to choosing its nominee for the vacancy, and the Senate must be well-prepared as well.
The initial major question is whether, for the highest judicial position in the land, President Bush will choose consultation and consensus or confrontation and conflict. I urge the President not to cede this important constitutional responsibility to a narrow faction of his own party—and to groups so extreme they have called for the impeachment of six of the current nine Justices because those Justices refuse to appoint Federal courts.

In the landmark May 23rd agreement, the bipartisan group of 14 Senators spoke clearly for this body on two vital points. First, we intend to remain the world’s greatest deliberative body, where the rules, not raw power, prevail, and where the rights of the minority are respected—not silenced. Second, the agreement sent a strong reminder to the President that the Constitution requires him to obtain both the advice and consent of the Senate before appointing judges. We remind him that we expect him to do so in good faith.

When the Framers of the Constitution adopted our system of checks and balances 218 years ago, they focused intently on the process for selecting judges and judges to be independent, so they gave them lifetime positions and prohibited any reduction in their compensation.

Initially, they were so concerned that Presidents might abuse the power to select judges that they gave the Senate the sole power to appoint Federal judges. But some delegates argued for a Presidential role, and they debated the issue at length.

Benjamin Franklin, always ready with new ideas, pointed to the Scottish system, where the lawyers themselves selected the judges. Invariably, he said, the best and smartest candidates were selected as judges, because the other lawyers wanted to remove their toughest cases. Lawyers did not divide their business among themselves.

In fact, in three separate votes in July 1787, the Framers refused to give the Executive any role in judicial selection, because they did not believe the President could be trusted with that responsibility. They again placed the entire appointment power in the Senate.

Later, as the Constitutional Convention was ending in September, they agreed to compromise, based on the Massachusetts procedure that had used successfully for over a century. To get the best possible judges, the President and the Senate would have to agree on appointments to the Federal courts. The President was powerless to appoint judges without considering the Senate’s advice and obtaining its consent.

For over two centuries that system has worked well. At the Supreme Court level, Presidents have nominated 154 Justices. Most of them were confirmed by the Senate, but some 20 percent were not. Some could not get Senate consent because the Senate did not feel they were qualified for the job, some because they were selected for reasons of politics or ideology with which the Senate did not agree, and some because they were perceived as being too close to the President to be independent.

A few of us who have been here in the Senate for all of the confirmations of the current nine Justices know that most of them were consensus choices. Seven of them—including all six whom the right-wing wants to impeach—were confirmed with strong bipartisan support. Not one of the nine Senators voted against them, and, of those, four received unanimous Senate support.

We learned many things from past debates. One of the most important is that there are large reservoirs of excellent potential nominees among the many capable judges and lawyers in the United States. And, if they are chosen for the High Court, they will receive overwhelming support in the country and in the Senate. Presidents who have listened to the Senate’s advice and selected such candidates have had no problem obtaining Senate consent. President Bush can do that, too. If he takes our bipartisan advice, he will have no trouble obtaining our bipartisan support.

Presidents who have had the most trouble with the confirmation process are those who listened to erroneous advice about the process. As recently as this week, a Member of this body argued in print that:

- Senate practice and even the Constitution contemplate deference to the President and a presumption in favor of confirmation.
- That’s not what the Constitution says. Since the days of George Washington—whose nomination of a Justice was denied consent by the Senate of that day, there has been no “presumption in favor of confirmation” of lifetime judicial appointees. In general, many of us do give some deference to a President and the Executive branch, since they are not lifetime appointments. But even there, if the President overreaches, we act to fulfill our constitutional responsibility.

Three times in my experience, Presidents have pushed the Senate too far on Supreme Court nominations, and the Senate has said “no.” Each time, the White House argued for Senate deference in the Senate, each time with bipartisan support, refused to defer. Two of the nominations for the same vacancy, with members of the President’s own party providing the majority for rejection each time. In the second of those two, the selection was so plainly an arrogant affront to the Senate, that the best argument the proponents could make was that mediocrity deserved representation, too, on the High Court, a proposition the Senate soundly rejected.

Clearly, Senators should not support a nominee just because a President of their party proposed the nomination. The Framers relied on each of us to make independent and individual judgments about the President’s nominees. We do not fulfill our constitutional trust if we merely “placate-the-President.” I have seen repeated examples of Senatorial courage when numerous members of the President’s party—even members of his leadership team—have refused to go along with plainly inappropriate Presidential selections.

We should do exactly what the Framers intended us to do—be joint and co-defenders of our country, and hold the President to the fairness and quality and independence of the Federal courts. We must listen to their voices now, summoning us across the centuries, to uphold that basic ideal, with full devotion to our roles in the checks and balances that have served the Nation so well. We fail them if we march in lockstep with the White House.

As past experience shows, nominees selected for their devotion to a particular ideological agenda are likely to have the most difficulty being confirmed, because that kind of choice rarely achieves a consensus. History shows plainly that the better course is to seek the highest quality candidates who have demonstrated their respect for the rule of law. They respect core constitutional principles, especially those that define the rights of each citizen. They have demonstrated their commitment to finding the best, not making the law. They respect stare decisis, the deference to well-accepted past decisions that have kept the Nation strong by reconciling traditional principles with new needs and challenges. They show respect for the basic structure of Government, especially for Congress when it acts within its established powers. They have demonstrated the ability to subordinate their own ideological and result-oriented preferences to the rule of law.

Especially at the Supreme Court level, the choices should not be partisan choices based on today’s partisan issues. The Justice we may select this year could well be providing justice to our children and grandchildren decades to come. It is more important that the nominee have a strong dedication to principles of justice than a strong position on controversial issues of the day.

It is a disservice to the Court to attempt to install ideological activists bent on making sudden and drastic shifts in the Court’s careful, gradual jurisprudence. The Supreme Court is at its best when it combines extreme, contentious sides, and reaches extreme results that make much of the Nation cringe and leave only the ideological activists satisfied.

Like sausage and legislation, the confirmation of a Supreme Court nomination is not always something pleasant to watch or be part of. The course is set by the President. If the President submits an “in your face” nomination to flaunt his power, it takes time, sweat, and tears before the truth about the candidate is fully discovered and explained to the public and voted on.
We are fortunate to have had a dress rehearsal for the process. Before the White House decided to threaten the Senate with the nuclear option, few Americans had any idea what was happening here and how important it was. It took us, but eventually the public understood the seriousness of the threat to break the rules in order to change the rules, so that for the first time in Senate history, a bare majority of the Senate could impose a gag rule on the Senate and demand the President to exercise absolute power over the courts without meaningful review by the Senate. Fortunately, the Senate stepped back from that brink, and the Senators who reached that bipartisan agreement to make it possible deserve great credit.

Those who want the Senate to be a rubber stamp for a White House nominee to the Supreme Court will undoubtedly try to rush us through our duty. But if we are to do our job for the American people in good faith, the process of considering a Supreme Court nominee cannot be rushed. It will take time to obtain the necessary information and documents, and to review and understand them. It will take time to gather and prepare prepared filings. If the nomination is not a consensual nomination, the hearings will be intensive and extensive. If the nominee is evasive, there will be longer hearings and follow-up questions, which will also take time to analyze. Only when all the information is available and fairly considered, can the nomination go forward.

If President Bush resists his fringe constituencies, and seeks the advice of the Senate as he should, the nomination process can have a happy ending. I hope our colleagues across the aisle will urge the President to respect the May 23rd bipartisan agreement and its memorandum of understanding, and take the time to consult with Members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.” They called for a “return to the early prac- tices,” that reduced conflict and led to consensus. We have not yet noticed an abundance of consultation. And unfortunately, White House officials have declared that the President has no interest in and feels no obligation to assist in implementing this feature of the memorandum. They “encouraged the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.”

I have said repeatedly that should a Supreme Court vacancy arise, I stand ready to work with President Bush to help him select a nominee to the Supreme Court who can unite Americans. I have urged consultation and cooperation for 4 years and have reached out to the President, again, over these last few weeks. I hope that if a vacancy does arise the President will finally turn away from his past practices, consult with us and work with us. This is the way to unite instead of divide the Nation, and this is the way to honor the Constitution’s “advise and consent” directive, and this is the way to preserve the independence of our federal judiciary, which is the envy of the rest of the world.

Some Presidents, including most recently President Clinton, found that
consultation with the Senate in advance of a nomination was highly beneficial in helping lay the foundation for successful nominations. President Reagan, on the other hand, disregarded the advice offered by Senate Democratic leaders and chose a controversial, divisive nominee who was ultimately rejected by the full Senate.

In his recent book, "Square Peg," Senator HATCH recounts how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. In his book, Senator HATCH wrote that he warned President Clinton away from a nominee whose confirmation he believed "would not be easy." Senator HATCH goes on to describe how he suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed "with relative ease." Indeed, 96 Senators voted in favor of Justice Ginsburg’s confirmation, and only three Senators voted against; Justice Breyer received 87 affirmative votes, and only nine Senators voted against. Are these recent examples the only evidence of effective and meaningful consultation with the Senate over our history?

The Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" judges and executive branch officials in helping lay the foundation for consensus. He is the only participant in the process of consulting with Democratic Senators. I wrote to the President, again, last month, urging consultation and even making suggestions on how he might wish to proceed.

Bipartisan consultation would not only improve any Supreme Court selection but, if successful, would also reassure the Senate and the American people that the process of selecting a Supreme Court justice has not become politicized.

The bipartisan group of 14 Senators who joined together to avert the "nuclear option" included the following in their agreement:

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation being the hallmark of the Senate’s confirmation process.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree. Bipartisan consultation is consistent with the traditions of the Senate and would return us to practices that have served the country well. Our fellow Senators have history and the well-being of the Nation on their side in urging greater consultation on judicial nominations. They are right. The Senate has a duty to hold damaging nominations from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is another political institution that has drifted away from the principles that constitute the Nation's judicial branch as places in which "the fix is in."

Our Constitution establishes an independent federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. That independence is what makes our judiciary the model for others around the world. That independence is at grave risk when a President tries to pack the courts with activists from either side of the political spectrum. Even if successful, such an act would lead to judicial confirmation based on politics and would forever diminish public confidence in our justice system.

The American people will cheer if the President chooses someone who unifies the Nation. This is not the time to divide the Nation for the sake of the Supreme Court. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidates with the least number of votes possible, Democratic Senators are urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity.

The independence of the federal judiciary is critical to our American concept of justice for all. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want to avert the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidates with the least number of votes possible, Democratic Senators are urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity.

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together. The American people we represent and serve are entitled to no less.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New York, Mr. SCHUMER. How much time remains?

Mr. SCHUMER. I ask unanimous consent that others who wish to add statements to the record on this subject be allowed to do so.

The PRESIDING OFFICER. The minority side controls 10 minutes.

Mr. SCHUMER. I ask unanimous consent that others who wish to add statements to the record on this subject be allowed to do so.

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

Mr. SCHUMER. Mr. President, I thank my colleague from Vermont, our leader of the Judiciary Committee, for, as usual, being right on point with eloquence and with no malice.

As many know, there is a real possibility that a vacancy on the Supreme Court will be announced shortly. The Supreme Court should finish its term either Monday or Thursday, depending on the caseload.

There is one question American people are asking about the Supreme Court that is, how, if and when a vacancy occurs—and we all pray, of course, for Chief Justice Rehnquist’s health, but if and when a vacancy occurs—how do we avoid the divisiveness that has plagued this body, this town, and the country about Court nominees over the last several years?

The answer is simple. It can be described in one word: consultation. The ball is in the President’s court. If the President chooses to do what he has done on court of appeals nominees—not consult, just choose someone, oftentimes way out of the mainstream, and say take it or leave it—the odds are very high there will be a battle royal over that nomination. If, on the other hand, the President follows the path of what so many other Presidents before him have done—consults with the Senate, with the Congress, both Republicans and Democrats, and takes their advice to heart—we can have a smooth, amiable, easy Supreme Court nomination.

Again, the ball is in the President’s court. Consultation is part of the constitutional process, advise and consent. The Founding Fathers did not use words lightly. The relatively short document of our Constitution is amazing for its brilliance and its brevity. When they decide to put a word in like “advise,” lots of thought has gone in before it appears. Senators seek the advice of the Senate. It does not say in the Constitution, seek the advice of your party or seek the advice of people who agree with you. The intention, it is quite clear, is to seek a breadth of advice.

That is why, today, a letter signed by 44 of the 45 members of the Democrat caucus, asking the President to consult with us, will be sent. The 45th member, Senator BYRD, agrees with the thrust and the concept of our letter but felt so strongly about the issue he is sending his own letter, which I am sure will be in his own wonderful style and make the point well.

The need for advice, the need for consultation, was made clear when the group of 14—seven Democrats and seven Republicans—got together. In their agreement, they wrote:

We believe that, under Article II, Section 2, of the United States Constitution, the word “advice” speaks to consultation between the Senate and the President with regard to the use of the President’s power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination, and for that consideration.

This is a moderate, bipartisan group. They tend to be some of the more conservative Democrats and some of the more liberal Republicans. It is certainly mainstream. Will the President heed their advice and seek the advice of the Senate? If he seeks advice, will it be real? To simply call someone in for a meeting and say, what do you think, and then go about things as if the meeting did not happen is not advice. Real advice requires that you talk to specific nominees in private, saying: What do you think of this name or that name, this person or that person? That is, indeed, what President Clinton did as he consulted Senator HATCH, hardly his ideological soul mate, and many others. Senator HATCH told President Clinton some proposed nominees might be out of the mainstream and garner opposition, at least from the other side of the aisle. But some, even though they would agree with their policies, were in the mainstream and would get through the Senate with relatively little acrimony.

President Clinton took Senator HATCH’s advice and the nominations were smooth.

That is not the only time advice has been sought. In 1869, President Grant appointed Edward Stanton to the Supreme Court in response to a petition from a majority of the Senate and the House. President Hoover presented Senator William Borah, the influential chairman of the Foreign Relations Committee, with a list of candidates he was considering to replace Justice Oliver Wendell Holmes. Borah persuaded Hoover to move the name of the eventual nominee, Benjamin Cardozo, from the bottom of the list to the top, and Cardozo was speedily and unanimously confirmed.

There are many instances of Presidents seeking the advice and consent of the Senate. When the President has done it on judicial nominees here, it has worked. Frankly, the President and the White House have consulted with me about nominations to the district courts in New York and the Second Circuit Court of Appeals. They have actually bounced names off of me and said: What do you think of this one? What do you think of that? As a result, every vacancy is filled quickly with little acrimony and with broad consensus.

Most of the nominee I have supported in my area do not agree with me philosophically. But they are part of the mainstream, and I was willing, able and, in many cases, happy to support them. So it can be done and should be done.

There is all too much divisiveness in Washington. On the issue of the courts, it is our sincere belief on this side of the aisle that the President’s refusal to consult and willingness to nominate someone who are so far out of the mainstream that they cannot be regarded as interpreters of law rather than makers of law. That is the main reason we are at this point of great acrimony in terms of judicial nominations. All of that can be undone by some sincere consultation.

President Bush, when he ran for office and got into office, said he wanted to change the tone and climate in Washington; he wanted to bring people together. That was a noble sentiment, a wonderful sentiment. He can, despite the acrimony that has occurred on judicial nominations and so much else over the last few years, almost like with a magic wand, undo much of it by seeking real consultation should there be a vacancy on the Supreme Court.

On behalf—I believe I can say this without any hesitation—of all 44 of my colleagues on this side of the aisle, we pledge, we pray, with the President to engage in real consultation, to heed the advice and consent of the Constitution, and to come up with a Supreme Court Justice, should a vacancy occur shortly, that we all—from the most conservative to the most liberal member of this body—can be proud to support.

I yield the floor.

The PRESIDING OFFICER. The minority time is expired.

The Senator from New Mexico.

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

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

Who yields time?

Mr. DOMENICI. How much time does the Senator want?

Mr. ISAKSON. Three minutes.

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

Mr. ISAKSON. Mr. President, I thank the Senator from New Mexico for yielding the time.

(The remarks of Mr. ISAKSON are printed in today’s RECORD under “Morning Business.”)

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself as much time as I may use.

Mr. President, fellow Senators, short-ly the Senate is going to vote. We are going to have a cloture vote to decide whether we should bring closure to
what I think has been an excellent 2 weeks of debate about a new American policy, a policy which is directed at trying to make our energy supply for the future more secure for our domestic growth and for our national security.

We have been waiting a long time for this day. If the Senate, indeed, at its pleasure, grants cloture, which I hope we will, it means we will bring to a conclusion an order of a long debate and fulfill a longstanding need for an American energy policy that is encapsulated in this bill, which was produced by the Energy and Natural Resources Committee over weeks of hearings and day after day of debate, with votes, and finally concluding that the bill that is before us is the right thing to do.

Since then, the Senate has exercised its right to consider amendments and discuss them. Some amendments were adopted to change, alter what the committee recommended. But in essence, fellow Senators, we have a rare opportunity today, in a reasonable period of time—we will move on to a vote on cloture—to pass this legislation. That is, in a sense, consistent with the best of the Senate: having amendments openly debated, many of them; views, some in accord with the bill, some in opposition to the bill here on the floor, as witnessed by those who pay attention to what goes on in the Senate.

So I say, as one who has been a participant for a few years, this is an effort to bring this matter to a vote in the Senate, that you can bring this legislation to the House of Representatives. Our Constitution requires that both Houses agree on the legislation. Some do not understand that our Constitution is rather conservative when it comes to passing legislation. You do not just have your vote in the Senate; the House has theirs. Then you have to go to conference and agree on the same text in both Houses, which is done by a committee called a conference committee.

That will occur only when we have voted out a bill. We will vote out a bill only when we have completed debate under our rules. We probably will not conclude debate for a long time unless cloture is imposed. I believe on a domestic bill, cloture should not be invoked arbitrarily or in advance of a reasonable amount of time. People should be permitted to talk, to amend. But, fellow Senators, we have been at this on the floor for enough time. And when you consider the prior efforts, I believe the American people are wondering why we cannot get something done. Why more time? I believe for this activity called cloture is to say we have had enough time. With cloture invoked, sooner rather than later, the bill will be voted “yes” or “no” by the Senate. So I seek that. That is the privilege of saying, we are ready, but with debate, to vote “yes” or “no” soon rather than later. The way we can do that is by voting “aye” on the cloture vote.

I note the presence of Senator Bingaman. I have additional time. Would the Senator care to address the issue of cloture today?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I appreciate my colleague’s comments and his willingness to let me speak for a few minutes.

I join him in urging that we go ahead and invoke cloture on the bill. I do believe we have had a good debate on the Senate floor. We have had a good opportunity for amendments to be offered. The process has been open. I have supported some amendments that have been offered to the bill; I have opposed others. I note my colleague has done the same. I believe each Senator has done the same. That is exactly how the Senate is intended to operate.

Obviously, there are Senators who still have amendments they would like to offer. Some of those amendments will be germane after the cloture vote occurs even if cloture is invoked. Those amendments can be considered by the Senate and disposed of at that time. That is appropriate.

But I understand the scheduling problems the majority leader has and the Democratic leader has as well. They believe they need to move to other legislation early next week, or even as early as tomorrow. Therefore, they would like to go ahead and conclude work on this bill.

This bill is not coming to the Senate sort of ab initio, as they teach you in law school. It has come here after we had a substantial debate on these very same issues two Congresses ago, and again last Congress. As the Senator from New Mexico pointed out, we had a very thorough and open process in the committee. This process we have had on the floor has been a thorough and open process as well. I believe the process that came out of committee was a good product. It was a substantial improvement over current law. And I said that. I believe it has been further improved as we have been working here on the Senate floor in considering amendments to the bill, so I do not doubt it could be improved even more. Some of the amendments which Members may still want to offer may well improve it more, and I may be a strong supporter of those. But clearly this is the process that I think has given everyone an opportunity to participate and offer amendments. It has been a process that has led to a good product which we can take to conference with the House of Representatives. As I say, there will be opportunity for amendments to be offered. So I support cloture. I will support cloture.

I support cloture. I know each Senator can make his or her own mind up about that vote, but I believe the chairman of our committee has worked diligently to get us to this point. I have tried to work with him in that process. I think the majority leader and the Democratic leader are very focused on trying to get conclusion on this legislation. I support their efforts. I yield the floor.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. I ask for the regular order.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on H.R. 6, a bill to ensure jobs for our future with secure, affordable, and reliable energy.

Bill Frist, Pete Domenici, Lamar Alexander, Kay Bailey Hutchison, Jim DeMint, Michael Enzi, Ted Stevens, Larry Craig, Craig Thomas, Mike Crapo, Conrad Burns, David Vitter, Richard Burr, Kit Bond, Wayne Allard, Jim Inhofe, Lisa Murkowski, George Voinovich.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on H.R. 6, as amended, the Energy Policy Act of 2005, shall be brought to a close? The yeas and nays are mandated under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Minnesota (Mr. COLEMAN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted “yea.”

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN) are necessarily absent.

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

The yeas and nays resulted—yeas 92, nays 4, as follows: (Rollcall Vote No. 152 Leg.)

YEAS—92

Akaka
Alexander
Allard
Alexander
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Brownback

Bunning
Burns
Burr
Byrd
Cantwell
Carper
Chadler
Chambliss
Ch plank
Cochran
Collins

Cornyn
Crapo
DeMint
DeWine
Dodd
Donnelly
Domenci
Ensign
Enholm
Feingold
Feinstein

S7209

CONGRESSIONAL RECORD — SENATE

June 23, 2005
Mr. DOMENICI. Madam 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 printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I am pleased to be a cosponsor of this amendment, along with the Senator from Louisiana, Mr. VITTER, and many other Senators. We feel very strongly about this particular amendment.

I first thank the chairman of the committee and the ranking member for the excellent work they have done to move this Energy bill forward to this point. It has been a very difficult, tedious, and time-consuming task that has required a lot of patience and a lot of compromises to get a bill of this nature through this climate. We appreciate their patience and their skill.

This is an amendment both leaders have been working on for many weeks. Amendment No. 891 would basically direct a portion of revenues to six States in the United States that have production of wetlands. Louisiana being the prime State that produces so much of the energy resource for our Nation, but in addition, obviously Texas, Mississippi, to some degree Alabama, there is some production off the coast of California, bringing some—well, and even the State of the Presiding officer, the State of Alaska, that contributes so much to the Nation's energy reserves, has some production off the coast.

Because of this tremendous contribution we have made these many years, let me say willingly and very ably, so many small, medium, and large companies have worked to perfect the technology. They have invented the tools, established the procedures, and they have been pioneers in this industry. Many of the tools and technology invented for the environmentally responsible extraction of these minerals—just in the United States but around the world—have actually been invented and developed in Louisiana. We are extremely proud of the contribution we have made.

In addition to this technological contribution we have made, we have contributed a great deal to the Federal Treasury since this began.

I see my colleague from Louisiana on the floor ready to speak in a few moments, but I would like to make a couple of other comments.

The wetlands in Louisiana are not Louisiana’s wetlands; they are America’s wetlands. They are host to some of the largest commercial shipping in the world. There are seven ports that comprise the ports of south Louisiana—again for the benefit of the Nation, not just Louisiana and, if combined, it is the largest port in the world. There are seven ports that comprise the ports of south Louisiana. We are the part of their life cycle spent in this part of their life cycle spent in this wetland.

In addition to the commerce we support for our Nation, we also serve as a great migratory area for the many bird species in North America. If they do not have a place to land when they come up from South America and Mexico—that is the place they land, that is the place they nest, that is the first thing that is liable to turn off the water, and that is the marshland we are losing.

In addition, this delta, besides the commerce, besides the environmental benefits for birds and other wildlife, is the discharge point for the many bird species in North America. If they do not have a place to land when they come up from South America and Mexico—that is the place they land, that is the place they nest, that is the first thing that is liable to turn off the water, and that is the marshland we are losing.

I have been so pleased to have Senator DOMENICI and Senator BINGAMAN—both Senators from New Mexico—come down to Louisiana to fly over our marsh and see it. You cannot get there any other way. You cannot drive to our coast, you can go to Florida or to the beaches in Mississippi where many of us spent many of our years growing up. There are actually only two beaches, and they are each only about 5 miles long. There are no highways. The only way you can get there is by pirogue, motor boat, skiff, helicopter, or air boat in the marsh. So not many people have seen these wetlands. I have pictures to show any colleague who would like to see them. It is a magnificent patch of land. The Everglades can fit inside it. It is three times the size of the Everglades in Florida. It is a huge expanse we are losing. If we do not capture these revenues in some annual, reliable amount to help the State of Louisiana put the resources into saving this wetlands, it will be, indeed, a great loss to America.

In addition to what this wetlands contributes to the United States, it is not only all the above I have described, but it also drains water from two-thirds of the United States. Without the ability to drain this water out, we would have flooding all the way up the Missouri. As you know, because of the

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Mr. DOMENICI. Madam 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 printed in today's RECORD under "Text of Amendments.")

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Because of this tremendous contribution we have made these many years, let me say willingly and very ably, so many small, medium, and large companies have worked to perfect the technology. They have invented the tools, established the procedures, and they have been pioneers in this industry. Many of the tools and technology invented for the environmentally responsible extraction of these minerals—not just in the United States but around the world—have actually been invented and developed in Louisiana. We are extremely proud of the contribution we have made.

In addition to this technological contribution we have made, we have contributed a great deal to the Federal Treasury since this began.

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The wetlands in Louisiana are not Louisiana’s wetlands; they are America’s wetlands. They are host to some of the largest commercial shipping in the world. There are seven ports that comprise the ports of south Louisiana and, if combined, it is the largest port system in the United States.

We have leveed the Mississippi River for the benefit of the Nation, not just for Louisiana's benefit. Realize, there were people living in Louisiana before the United States was a country. So we have been doing this a very long time. Controlling and taming this river, while it has been a great benefit to the Nation, has come at great cost to the State that holds this mouth of the great Mississippi River.

What do I mean by that? Because we channeled this river, again for the benefit of the Nation so we can ship grain out of Kansas and can ship goods throughout this whole, north, south, east, and west—and serve as the vibrant global port that we are, the river has ceased to overflow its banks. So this great delta, the seventh largest in the world, is rapidly sinking. If we do not get some infusion of revenue through this mechanism and others that we are seeking, we will lose these wetlands. It will not be Louisiana’s loss, it will be America’s loss.

In addition to the commerce we support for our Nation, we also serve as a great migratory area for the many bird species in North America. If they do not have a place to land when they come up from South America and Mexico—that is the place they land, that is the place they nest, that is the first thing that is liable to turn off the water, and that is the marshland we are losing.

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In addition to what this wetlands contributes to the United States, it is not only all the above I have described, but it also drains water from two-thirds of the United States. Without the ability to drain this water out, we would have flooding all the way up the Missouri. As you know, because of the
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geography of our Nation, that water has to leave those areas or businesses and communities will flood.

We think we are making such—we don't think, we know we are making such a great contribution to this Na-
tion in so many ways. We think this amendment is a small initial step to correct that. As Senator LANDRIEU said, these coastal areas have produced $150 billion or more of Federal revenue, virtually no State revenue. This amendment would correct that injustice in a very small way by capturing a small initial step in energy security. We think we are making such a great contribution to this Na-
tion.

That is utterly unfair and this amendment is a small initial step to correct that. As Senator LANDRIEU said, these coastal areas have produced $150 billion or more of Federal revenue, virtually no State revenue. This amendment would correct that injustice in a very small way by capturing a small initial step in energy security. We think we are making such a great contribution to this Na-
tion.

Again, Louisiana has contributed so much. We simply ask an investment back to preserve this wetlands, which is America's, and to recognize the con-
tribution our State makes to the en-
ergy independence of this Nation and to the future economic viability of this Nation.

I want to recognize my colleague from Louisiana, Senator VITTER.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I rise in support of amendment No. 891 as well. I am proud to join my Loui-
sianna colleague, MARY LANDRIEU, in doing so.

I want to make five important points why this amendment is clearly the right thing to do.

First, as Senator LANDRIEU said, this amendment has very broad, very deep, and very bipartisan support. I thank her for her leadership, as well as so many others who have come together and worked to craft a responsi-
bile amendment to move this issue forward in a concrete way.

Senator DOMENICI, the chairman of the committee, has led in an extraor-
dinary way on this issue and is the pri-
mary author of this amendment. We thank him. Senator BINGAMAN, the ranking member of the committee, has led on this amendment as well and is a cosponsor and supportive of it. We thank him. Senator LANDRIEU and I, of course, have worked with Senators COCHRAN, SESSIONS, and others are all coming together, very broad based, in a bipartisan way to support this effort.

That is point No. 1.

Point No. 2 is this is an utterly fair and just thing to do. In this overall de-ate about an energy bill, we are con-
stantly looking for ways to secure our energy future, to increase our energy independence, to lessen our dependence on foreign sources, which is so trouble-
some, particularly in a post-9/11 world. Where in this debate it is important to remember that there are a few States that have been leading that ef-
fort and have been doing their part all along, particularly these five coastal producing States—Louisiana, Texas, Mississippi, Alabama, Alaska, and Cali-
for\nnia to a much lesser extent. So in this energy debate, it is certainly im-
portant to remember that some of us have been pulling our weight and far behind our share. It is important to remember that there are a few States that have been leading that ef-
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portant to remember that some of us have been pulling our weight and far behind our share.

Point No. 3 is that the host States, the coastal producing States, need this revenue to address problems directly related to oil and gas production and our contribution to the Nation's energy security. In my home State of Louisiana, we have an absolute crisis going on. It is called coastal erosion. The easiest way I can summarize it is as follows: Close your eyes and try to picture a piece of land the size of a football field. That piece of land dis-
appears from Louisiana, drifts out into the Gulf, lost forever, every 38 minutes. That is around the clock, 24 hours a day, 7 days a week, 52 weeks a year. The clock never stops. It goes on and on.

That loss is directly related to this oil and gas activity. So we have been contributing to the Nation's energy se-
curity, but the only thing we have got-
ten directly for it is these monumental problems which this revenue will help address.

Point No. 4 is that this amendment does not open any new areas to dril-
ing. It does not provide incentives to open any new areas. Personally, I would like to do that. I think more of America needs to contribute to our en-
ergy security. I think we need to look in other areas. But clearly that is very politically controversial and this amendment is a responsible attempt to do that in any way. So States that are not in the business, that do not want to be in the business, have nothing to fear from this amendment.

Point No. 5 has to do with the budget. All of us, led by Senator DOMENICI, a former budget chairman, have worked extremely hard so that this does not bust the budget in any way. We have bent over backward to fashion this amendment so it is within all the budget numbers.

A budget point of order may never-
theless be raised and I expect it to be raised. I want to explain what that is because it is not busting the numbers built into the budget. There is a re-
serve fund or a contingency fund with-
in the budget that was part of the budget and part of the Budget Act spe-
cifically associated with the Energy bill. This amendment is well within the numbers of that fund and therefore does not go beyond the numbers of the budget. However, in the Budget Act, the chairman of the Budget Committee has the role of having to sign off on the use of that contingency fund. The chairman may not do that. He may therefore raise a budget point of order, and that is his right, and I respect his right and what he views as his obliga-
tion, but I want to make the point very clearly that this is not a technical point of order which is fundamentally different from an amendment which busts the budget numbers, which goes beyond the numbers built into the budget.

We have worked extremely hard with the budget chairman's staff. I might add, hand in glove with them, to make sure this amendment falls within all of the numbers of the budget and is well below that contingency fund number specifically for the Energy bill. So if the budget point of order, it is valid, but it is, in a sense, a techni-
cality because our amendment does not go beyond the numbers built into the budget and the Budget Act.

Mr. GREGG. Will the Senator yield on that point?

Mr. VITTER. I would be happy to yield.

Mr. GREGG. Is it the position of the Senator from Louisiana, therefore, that when a discretionary program is taken and turned into a direct spending entitlement program, that that is a technical point?

Mr. VITTER. No. The point which I just made was that this amendment is well within all of the numbers laid out in the Budget Act. That was the point I was trying to make.

Mr. GREGG. Madam President, would the Senator yield for a question? Mr. VITTER. I will be happy to.

Mr. GREGG. It appears to be the Sen-
ator's position that since this budget point of order involves taking a discre-
tionary program and making it an ent-
titlement program that that is a tech-
nical point.

Mr. VITTER. That is not my—
Mr. GREGG. My position is that is not technical.

Mr. VITTER. If I could clarify and re-
spond to the question, that is not my position at all. My position, which I think I laid out pretty clearly, is this amendment is well within all of the numbers within the budget. It does not bust those numbers. It does not go be-
yond those budget numbers. That is my position, and I believe to the extent the Senator did not argue the point, it is confirmed.

Mr. GREGG. Madam President, would the Senator from Louisiana yield for a question?

Mr. VITTER. I will be happy to.

The PRESIDING OFFICER. The Senator from New Hampshire.
Mr. GREGG. The Senator from Louisiana appears to want to have it both ways, that the chairman of the Budget Committee has a right to make this point of order because the chairman of the Budget Committee is given that authority by the Senate in order to protect the integrity of the budget process, and when the chairman of the Budget Committee rises and asks a question which is the basis of his point of order, which is that this amendment takes a discretionary program and turns it into an entitlement program and asks the Senator from Louisiana does he deem that to be a technical point, the Senator from Louisiana says, no, that is not my argument. My argument is something else. Well, I would simply say to the Senator from Louisiana, he cannot have it both ways. He cannot say to the budget chairman he has the authority to do this and then say to the budget chairman, when he asks the Senator whether it is a technical point when the budget chairman elicits why he is doing it, that it is not a technical point.

It is a very unusual position to take, that moving a discretionary program to an entitlement program is a technical point, and that is the gravamen of the argument of the Senator from Louisiana.

Mr. VITTER. Reclaiming my time, I think I have laid out my position very clearly. This is a bill-based, big-tent, parochial problem. That is a fair amendment, particularly considering everything that these coastal producing States have given the country in terms of our energy security. Unfortunately, we are a very small number of States that have contributed in that way. This is designed to address a very real crisis in Louisiana and other coastal States. By the way, that is not some parochial problem. That is a national problem, as my colleague, the senior Senator from Louisiana, has outlined. It threatens national oil and gas infrastructure. It threatens national maritime commerce and ports. It threatens nationally significant fisheries.

Fourth, we are not opening new areas with this amendment. We are not providing incentives to open new areas with this amendment.

Fifth and finally, we are within all the numbers within the budget.

I thank the chairman of the committee, I thank Senator BINGAMAN and others. I thank my colleague, Senator LANDRIEU, for her leadership on this issue.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I rise in support of this amendment. I am a cosponsor of this amendment. It would dedicate funding for coastal impact assistance to States that currently produce oil and gas from the Federal OCS adjacent to State waters. I have visited the coastal area near Louisiana with Senator LANDRIEU. I know of the very serious concerns which many in that State have about the loss of coastal wetlands caused by a variety of factors, including some activities related to the oil and gas development that has occurred there. Senator LANDRIEU was a tireless advocate for her State on this issue and I know her colleague has as well.

It is important for my colleagues to know what the amendment does not do. The amendment does not modify any current law enforcement agreements. It does not provide an incentive for States to start production. It does not provide for a State opt-in or opt-out for resource assessment or leasing activities. What the amendment does is establish a coastal impact assistance program and provide a stream of revenues for coastal impact assistance to States that already have OCS production off their coast.

Under this amendment, funding would be made available to address the loss of coastal wetlands as well as for other projects and activities for the conservation, protection, and restoration of coastal areas. Mitigation of damage for fish and wildlife and other natural resources, and implementation of federal approved marine coastal and conservation management plans.

In addition, up to a fixed percentage of the funding could be used for mitigation of the impact of OCS activities through funding of infrastructure projects. In other words, the amendment allows funding of certain infrastructure projects and public services, but the amount of funds that can be expended for those purposes is capped.

Before concluding, let me clarify one significant point. I support the amendment because it does provide dedicated funds from the Treasury for coastal impact assistance. The amendment does not provide for future revenue or future revenues or otherwise call for revenue-sharing from the Outer Continental Shelf. I have stated repeatedly my opposition to that idea. It is my view that the oil and gas resources in the OCS belong to the entire Nation, and the revenues generated from the resources, which was earlier discussed but is not part of this amendment, would run contrary to that principle.

In closing, I reiterate my support for this amendment. I hope my colleagues will join me in voting aye for the amendment and waiving the Budget Act, if necessary.

I yield the floor.

Ms. LANDRIEU. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GREGG. I object.

The PRESIDING OFFICER. The Senator may not yield to a quorum call. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.
Ms. LANDRIEU. Will the Senator yield?

Mr. GREGG. After I finish my comments, I will be happy to yield for a question.

The more appropriate approach here, if this is what the game plan is, is probably to fund something such as—use these moneys, if you are going to take money out of the General Treasury and set up an entitlement program for a few States—is to say that program should be for more than a few States. It should be for all the States that have impact from conservation. But I don't think we should be doing even that because I don't think we should be creating new entitlement programs, unwarranted, of this case, creating a new entitlement program.

Louisiana already benefits rather uniquely—and I think this point should be made, and folks should focus on it a bit—from a variety of different funds which are generated by energy, which help them in the area, theoretically, of conservation. They get 100 percent of the royalties for the first 3 miles of drilling. Last year that was over $800 million. They get 27 percent of the royalties for the next 3 miles, and last year that was about $38 million. What we are talking about are royalties beyond those areas, in Federal water—Naval water, Federal water—Federal taxpayers, Federal taxpayers, not State water; Federal taxpayers, Federal taxpayers.

Louisiana is already receiving a fair amount of money through the present royalty process. In addition, due to the creativity—I suspect West Virginia has some very serious conservation issues dealing with the production of coal. There is a pretty good nexus. But this is a production, a General Treasury revenue, that we use the General Treasury to support that effort. No, it says five States have gathered together to take money out of the General Treasury for the purposes of addressing this, that they see as their conservation needs, which have no nexus of any significance that can be proven to the energy production.

Granted, those States do produce a lot of energy and that energy is a benefit to this country and I appreciate the fact that they do that. But New Hampshire produces more energy than we consume—a significant amount more than we consume—because we built a nuclear plant. I will tell you that this is production, this is production, this is an Energy bill. This amendment does not create new production. This amendment does not create new entitlement programs, does not create new entitlement programs, and it does not create conservation issues.

There may be other places that have conservation issues which are probably directly related to the production of energy. I suspect West Virginia has some very serious conservation issues dealing with the production of coal. There is a pretty good nexus. But this is production, a General Treasury revenue, that we use the General Treasury to support that effort. No, it says five States have gathered together to take money out of the General Treasury for the purposes of addressing this, that they see as their conservation needs, which have no nexus of any significance that can be proven to the energy production.

Second, I think it is important to note that this amendment uniquely benefits five States at the expense of the General Treasury. It essentially says those five States have a unique conservation issue which the General Treasury has an obligation to support over other States which have conservation issues.

There are a lot of points that have been raised in presenting this case. There have been substantive points and then there have been arguments that it is not outside the budget and therefore should be paid for.

Let me speak initially to the substantive points. I do respect the comments of the senior Senator from Louisiana, who has said the conservation issue which the General Treasury has an obligation to support, those five States have a unique benefits five States at the expense of other States. It shouldn't start and you pull it again and you finally get it started, you are sending money to Louisiana.

Every time somebody in New Hampshire gets a snowmobile, you are sending money to Louisiana. A lot of people don't get on snowmobiles in Louisiana, but in New Hampshire they do. But we are sending our dollars to Louisiana every time we take out a snowmobile. It is a dedicated stream. I think last year it was $767 million they received out of the royalties to Louisiana. I guess they thought it was such a good idea they would come back again: Let's get another dedicated stream of money. What the heck, if it worked once, why not try it twice?

The problem they have, of course, is that this time there is a budget point of order against it. So they have to convince 60 people that Louisiana should get this unique treatment, after Louisiana already gets 100 percent of the royalties from the 3-mile area, which is over $380 million; 27 percent of the royalties from 3 to 6 miles, which is about $38 million; and $71 million from Dingell-Johnson, which no other State gets in that dedicated stream.

Then they put it forward for a program which has no relationship to energy production. Interestingly enough, if you read the amendment, it appears that not only does it have no relationship to energy production but that the money could actually be spent on just about anything. It could probably go into the General Treasury of Louisiana. It basically will become a revenue-sharing event. It doesn't have to go to conservation. On page 14 it says:

"Mitigation of impacts of Outer Continental Shelf activities through the funding of on-shore infrastructure projects and public services needs."

"Public service needs" is a term that means you can fund anything. You could fund the fact that fishermen are not having a good year fishing or that the casino didn't have a good year of gambling or maybe, as we have seen occasionally in the past, that you wanted to build a Hooters in order to hold the shoreline in place. "Public service needs" is a pretty broad term, and I know there are some very creative people who, when they see language such as this, they see Federal dollars. Give me the dollars, I am going to spend it on whatever.

So this amendment not only does not have a nexus to energy, it doesn't even
necessarily have a nexus to conservation with that language in there. So it has some serious problems.

Those are a few of the substantive problems. There are obviously more. Just the issue of fairness is probably the biggest one.

But the bigger issue, of course, is the attack on the General Treasury. The representation that this is a technical event when you create an entitlement, to me, affronts the sensibility of fiscal responsibility. The creation of entitlements around here has become a game. What happens is the Appropriations Committee, of which I am a Member—and I honor my service there and appreciate my chance to serve on it—has given up massive amounts of spending responsibility to the entitlement side. Why? Because every time they create an entitlement to do something which is a discretionary program, it frees up money to spend on some other discretionary program. So it is a very attractive way, quite honestly, to create an entitlement for a discretionary program because that gives an appropriator freedom to spend the money that has just been freed up—again.

That is how you end up driving up Federal costs. Because suddenly you have taken money, for which there was going to have to be some prioritization because the Appropriations Committee would have had to say: If we spend "$X" million here, we can't spend "$Y" million over there because we can't have it because we are subject to a budget cap. You take that money and put it over on the entitlement side so that money can be spent again.

That is why this is such an outrage as an approach, creating an entitlement. There is no way that, as budget chairman, in good conscience, I can allow this type of activity to go forward without being at least noticed—without getting up and saying: Hey, folks, this is highway robbery. This is a attempt to raid the Treasury, to stick it to the taxpayers twice.

That is why I raised the point of order. I will probably lose it because there is a log rolling exercise going on around here that is significant. But it doesn't mean I should not raise it; That is my job. That is what I am here for. I guess—temporarily, anyway.

So the essence of the problem. Substantively, this is not an energy issue. The State of Louisiana already has many revenue streams, including, ironically, unique revenue streams which they have been successful in the past in gaining. This would be an inappropriate way to limit to five States because conservation is not a unique problem for Louisiana, and there are other States that actually have higher equity arguments relative to impacts from energy directly related to where the conservation dollars are going.

I am sure there are significant conservation issues in Louisiana relative to energy production, but the loss of this frontage doesn't appear to be one of them. And creating an entitlement where there was a discretionary program is just bad fiscal policy.

So that is the reason I will be making some comments later. I am perfectly happy to go to that vote as soon as the parties wish to do so. I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I wanted to briefly respond to each of the major points that the distinguished chairman of the Budget Committee has made because I believe, quite honestly and sincerely, he is misinformed about each of these points.

No. 1, the idea that there is no causal linkage between the problem, at least in Louisiana we are trying to address, and offshore oil and gas production: Nothing could be further from the truth. A distinguished Senator has read "Rising Tide." But I suggest he needs to read a lot more and maybe come to Louisiana.

There are, of course, several causes that have all worked to create this coastal erosion problem, but one of the biggest has been all of the oil and gas service activity which comes off the swampy coast of Louisiana. All of that 50 years of activity has created channelization of our marshes. That has directly led to the intrusion of saltwater into the marshes, loss of vegetation, which is the glue that holds it together, and this coastal erosion.

There is an absolute identifiable, scientifically proven, causal connection between offshore oil and gas activity and this coastal erosion problem. It is not speculative. It has been scientifically proven. Are there other contributing factors? Of course. Is levying of the Mississippi a significant factor? Of course. But there is a direct causal connection.

Point No. 2, the chairman has suggested there is no relation between this money and energy production. Again, nothing could be further from the truth. The amendment specifically states these States share in this fund in direct proportion to their Outer Continental Shelf energy production. The way to calculate how much each State gets is according to what activity, in meeting the Nation's energy needs, has taken place in each State. This is a direct connection between the calculation of the money and this activity. Again, a direct connection in terms of what money the States get directly dependent on what OCS oil and gas activity exists.

Point No. 3 causes me the most angst because we can't have it because we are subject to a budget cap. We can't spend "X" million over there because we are subject to a budget cap. As the chairman knows, there is no way that, as budget chairman, in good conscience, I can allow this type of activity to go forward. This is a raid the budget without at least putting up the red flag.

There is no way that, as budget chairman, I can make an appropriation or other decisions. This is totally can amount to mandatory spending. There are lots of things in the Energy bill that are mandatory spending. Again, nothing could be further from the truth. This amendment is specifically dedicated to the Energy bill. This amendment is well within those numbers.

There are lots of things in the Energy bill that are mandatory spending. There are lots of tax provisions. There are lots of other provisions that basically can amount to mandatory spending. This is the same as that. There are lots of other things that are subject to future decisions or future appropriation or other decisions. This is tantamount to that, and it is within the numbers built into the budget for the Energy bill. We have bent over backwards, worked very hard, to make sure that was the case.

I yield time to the senior Senator from Louisiana, Ms. LANDRIEU.
The PRESIDING OFFICER. There is no time.

The Senator from Louisiana.

Ms. LANDRIEU. I ask unanimous consent to speak for 5 minutes since we have some time left.

The PRESIDING OFFICER (Mr.エンシグ). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I appreciate so much the support we have from both sides of the aisle. A great deal of thought has gone into this amendment. My colleague from Louisiana answered every single one of the objections raised against this amendment by the Senator from New Hampshire. I add just a few words.

First of all, the Senator has done a very good job as budget chairman. I have enjoyed working with the Senator on no less a subject as the education reform issue and trying to move toward a balanced budget. I share his goals in so many ways.

He, of course, is a great advocate for his State, although he is somewhat critical of what we fondly refer to as the Breaux Act in Louisiana. We take that in Louisiana as a great compliment when a Representative, a Senator or a Congressman, can use their committeees to do something that is so warranted and so worthy and so necessary for a State. Senator Breaux served so ably in this Senate for many years. We refer to that act as the Breaux Act.

There is, of course, a relatively substantial amount of money, $50 million a year. It started out at $20 to $25 million and has gone up to $50 million. However, that is a drop in the bucket considering the money that these coastal States contribute to the general fund. As the Senator said, it took it as a compliment to the people of my State. We are entitled to some small amount of money we are asking for. We are willing to share it with the States that did not produce nearly the amount of oil we do, but we do not believe we should have to do that. In fact, the Presiding Officer may remember we have had bills to try to share the money with everyone. No matter what we try, we can share with everyone, but it is never quite enough, never quite right.

We have it right this time because we probably have over 60 supporters of this amendment to give Louisiana and all the coastal States a small share of the money that, yes, they are most certainly entitled to.

Second, in this bill, the use of this money will go to wetlands conservation and resources. There have been a lot of pictures shown of the coast. I will show one of my favorites because this is a delta. This is what we are trying to keep healthy, a place where wildlife can flourish. A lot of people live near marshes like this. When they open their kitchen windows, they do not see interstate or big highways, they see this marsh.

If you live near the Atchafalaya and you open your back windows, you will see a beautiful cypress forest. Most are gone in North America, but we are fortunate to have some in Louisiana we are trying to preserve. If you go out near New Orleans, you will see that Lake Pontchartrain, this is what you see when the sun sets in the evening.

I am tired of people coming to the Senate and putting up pictures of pelicans with oil all over them. We are wise people. We are an industrious people. We are a people who care about our environment. We have cared about it for hundreds of years. And we continue to try to save it.

The Senator from New Hampshire can most certainly appreciate how much we love our State because he loves his, and how smart the people in Louisiana are to use the resources appropriately, the Senator would understand that these are some of the extraordinarily beautiful places that we are trying to save.

There is a delta that is growing in Louisiana. It is the Atchafalaya Delta. It is the largest delta in the world. It is a growing delta. If you look on a map from the satellite, you could see there is land growing off the coast of Louisiana.

We are proud that this Atchafalaya Delta is growing. We are preserving it. The State is spending millions of dollars to buy this land and preserve it.

Any argument in the Senate that the people of Louisiana are to use the resources appropriately, the Senator would understand that these are some of the extraordinarily beautiful places that we are trying to save.

The Senator from Louisiana and I have made our points very well. We appreciate the work of the Senator from New Hampshire and his work on the budget. We understand he has a tough job. But we have a job to do, as well.

That job is to get six-tenths of 1 percent of the money that we generated for this Nation without bellyaching about it. We have been complaining about it. We have patiently and consistently asked for some fair share.

Yes, Senator Breaux was quite successful in managing a small amount of money, but the tab that we have, the Corps of Engineers has helped us to appreciate. The tab that we have to pick up right now in our 20/50 plan is estimated to be $14 billion.

So am I to believe the Senator from New Hampshire expects the 4.5 million people in Louisiana to pick up the tab—$14 billion—to fix the wetlands that is not ours but belongs to everyone, that we did not destroy but the
Mississippi River leveeing destroyed, and put taxes on us to do this? I do not think he would suggest that.

This is a partnership we ask for. We will do our part. The Federal Government should do its part. We are going to come to this issue. I am pleased to be able to answer some of those questions and concerns.

Finally, this is a picture of the wetlands itself from a satellite view. This is Louisiana’s coast. It is very different from Florida, very different from California. And a lot of people have never quite seen it because there are only two places you can get to. One is Grand Isle, which is shown right here, that tiny, little place. It is a beautiful little island, but it keeps getting battered by the hurricanes that continue to come. And Holly Beach is somewhere right around here on the map. It is too small to see on the map.

There are only two roads you can get to. No one can see our coast unless you are one of the thousands of fishermen who come fish and tie their boats up next to the rigs. They actually fish next to the oil and gas rigs. That is where the best fishing is in the Gulf of Mexico. So unless you are one of those fishermen who come fish and tie their boats up next to the rigs, you would not know where this is or what it looks like. But we do because we represent this State.

We are losing this land and must find a way to save it.

This amendment is a beginning. My colleagues have been so patient. Our colleagues have been so helpful. Chairman DOMENICI and Ranking Member BINGAMAN have seen this land.

Again, as my partner from Louisiana said—and I am going to wrap up in a moment—this does not open moratoria. It is not an opt-out or opt-in amendment. It is simply a revenue-sharing amendment. We believe the people of Louisiana and Mississippi and Texas and California and Alaska and Alabama are entitled to some of the money, a small amount of money they are contributing to the general fund that helps us keep our taxes low and funding projects all over the Nation.

Mr. President, 30 more seconds. The Senators have been so patient, but I want to say this one response.

The PRESIDING OFFICER. Without objection.

Ms. LANDRIEU. When the Senator says no other States share the revenues, that is inaccurate. I know he is aware that interior States share 50 percent of their revenues from Federal land in their States. Louisiana does not have a lot of Federal land, Texas has very little Federal land. Mississippi does not have much Federal land. Most of that is in the West. We are different. We are not the West. We are the South, although Texas could claim that. But Louisiana and Mississippi are Southern States. We do not have a lot of Federal land. What we do have is a lot of land right off of here, as shown on the chart, that belongs to the Federal Government. But the Federal Government could not get to it unless we allowed pipelines. There are 20,000 miles of pipelines put under this south Louisiana territory to go all over the country, to keep our lights on and our industries running.

So again, there is revenue sharing. We would like our share. This is going to go for a good cause, for the preservation of an extraordinary marsh. It is time for us to make this decision today for Louisiana and the coastal States.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I appreciate the forthrightness of the Senator from Louisiana. She has made my case. She says it is revenue sharing. I agree with her. She says it is an entitlement. I agree with her. She says they want their share. I agree that is what this plan would do. It would create a new entitlement. It would take money from the general fund and send it to Louisiana.

Fifty-four percent of the money under this amendment goes to Louisiana. The amendment started out as a $200 million annual amendment. Now it is up to $250 million a year, which would mean Louisiana would get about $135 million.

The issue of whether it violates the budget is obvious. It does. And the issue of whether it is technical is obvious. It is not technical. It would create a new entitlement. And it is certainly not technical to say five States should have a unique right to that as compared to other States which have equal arguments of equity relative to conservation.

So it is very hard to understand—well, no, it is not hard to understand. The Senator from Louisiana made the case. They want their share, they want revenue sharing, and they want an entitlement. That is what they are doing after here. It is a grab at the Federal Treasury. Maybe they will be successful. That is the way they are going to do it. They are going to have to at least overcome a point of order and vote to disregard the budget.

At this point, I do make that point of order. Mr. President, this additional spending in this amendment would cause the underlying bill to exceed the committee’s section 302(a) allocation; and, therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I move to waive the applicable sections of the Budget Act with respect to this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I think the fact that this budget point of order has to be waived makes the case there is a budget point of order that lies. It is not an insignificant point of order when it involves creating a new entitlement.

Mr. President, I yield the floor. I would be happy to vote on this now, but the Senator from New Hampshire has reservations about voting now. But it is fine with me to go to a vote.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first, let me say to the Senator from New Hampshire—

Mr. GREGG. Can I get the yeas and nays on the motion to waive?

Mr. DOMENICI. Of course.

Mr. GREGG. Mr. President, I ask for the yeas and nays on the motion to waive?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GREGG. Mr. President, I leave it to the good offices of the chairman of the committee, who is an exceptional floor leader, to tell me when he wants to have a vote.

Mr. DOMENICI. I say to the Senator, you should know that at some point I am going to take 3 minutes to explain my version of the budget.

Mr. GREGG. Mr. President, I look forward to that.

Mr. DOMENICI. You do not have to be here, but I want you to know that so you don’t think I am doing it without your knowledge. I will not take more than 3 minutes explaining what I think it says. All right.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. 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. CORZINE. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. LOTT. 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. LOTT. The pending business is the amendment offered by Senators Landrieu, Domenici, Vitter, and others with regard to the offshore royalty.

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Mr. President, I believe there are some negotiations going on on other issues. My intent is to speak strictly on this amendment, and then I would be glad to put a quorum back in place if there is not another Senator waiting to speak.

To me, this amendment is about energy production, but it is also about basic fairness. I am not going to argue at this point with those who are opposed to oil and gas drilling in various and sundry places. I personally think we should drill where the oil, where the gas is. I know that is a novel idea. I do believe we need a national energy policy that is broad, that will have more production of oil and gas and clean coal technology and hydropower and nuclear plants to ensure independence. I believe we should open more areas than we are prepared to do apparently. But there are risks that go with this.

Particularly in Louisiana, they have paid some prices for what we have had. We have had LNG plants and alternative fuels—the whole package.

I am glad we appear to be getting to the end of this debate and amendment process and hopefully will produce a bill that is broad and will get into conference and will come up with a bill that can be passed. We need to do it for the country.

This legislation is about national security, and it is about economic security. We are dealing with the problems of energy needs, if we don’t become less dependent on foreign imported oil, the day will come when we are going to have a problem. Just remember, those troops in Iraq and Afghanistan and around the world, those sailors steaming in ships, those tanks, those planes, it takes fuel to run them. So it is about national security.

We are an energy-driven economy. We need this diversity. We need more production of oil and gas industries and refineries and nuclear plants and LNG plants. We are prepared to do what is necessary not just for our own people and for the financial benefit of our own but, frankly, for the whole country.

We are prepared to produce fuels and oil and gas and other fuels. We are prepared to refine it and share it with the rest of the country. We are prepared to wheel our power to other parts of the country because we have been willing to take the risk. We are willing to build utility plants.

Other parts of the country don’t want to drill. They don’t want coal. They don’t want nuclear power. They don’t want hydropower. They don’t want utility plants. They don’t want anything. But they want to flip the switch and have the lights come on. They want to get in their SUVs and drive off into the sun. We need this diversity. We need more production of oil and gas

Now we are accused of trying to bust the budget. No, we are trying to get a fair share. It is not big money in my State, but it would make a huge difference. When you come from a small 2.8-million-population State with a history of property that has been taken, when we are making some progress now—we are not 50th or 49th or 48th on most lists; we are moving up the line, creating more jobs, more businesses, better technology, education, better roads—we have problems. We have problems that are being disturbed or destroyed. We are losing some land, as they are in Louisiana. We do have some environmentally sensitive and some historic sites we need to preserve, protect, and improve. We are prepared to do the dirty work. We are prepared to take the risks. We are prepared to do the right thing and share it with America. But we do think we should get a little bit of the return on the royalties that go through our hands to the rest of America.

This is not a great money grab by Louisiana or Texas, Alabama. This is a way that we can get some help from there. If that, we are going to have the benefit that will help our people and preserve the areas we live in and love. We are accused of being insensitive to the environment and to conservation. Well, this will give us a way to do something about it. Québecians, we don’t do what we need to do because we cannot afford it; we do not have the money. I plead with my colleagues from all parts of the country: Look at what we are doing. Look at what problems we are coping with, and look at what we will do with this small amount of money.

By the way, the budget allowed $2 billion in this energy area for us to make some decisions on. Yes, it can be given to on a point of order at the committee or on the floor or out of conference. But there was money allowed, and this amendment gets well within that number. I think this is a valuable budget item. Although I don’t dispute that the chairman has that authority, I want him to have that authority. Chairman Judd Gregg is doing his job. I am not mad at him. I told him I hope he will do his job and I hope he will do it for effect, but don’t get mad about it. If anybody should get mad, the Senators from Louisiana and the Texans should get mad, and the Mississippians, too.

I support this amendment. I plead with my colleagues, let us have a little bit to help ourselves, and we will in turn help the country.

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

Mr. LOTT. I yield to the Senator from Louisiana.

Ms. LANDRIEU. The Senator from Mississippi has made such excellent points, and we appreciate his comments and support. The Senator may want to express for a moment the terror that reigned south Louisiana, Mississippi, and Florida last hurricane season with the unusual number of storms.
that came up through the Gulf of Mexico and how frightening it is to people on the coast when these wetlands continue to disappear. The intensity of those storms gets greater and greater, and the damage to property and the threat to life grows very serious.

As a Senator who lives on the Gulf of Mexico, maybe just a word to talk about what happened to our States last hurricane season.

Mr. LOTT. Mr. President, we have greater threats to our day, one of those hurricanes will go right up the mouth of the Mississippi River and inundate New Orleans. When Hurricane Ivan was coming through the gulf last year, when it got to the hundred-mile marker, it was headed for my front porch. Then it veered to the east and missed us by about 90 miles and did a lot of damage.

What can we do about that? First of all, you have to have evacuation routes. We need more money for roads to allow people to get out of harm’s way. The best buffer against the damage is the wetlands, the protective barrier islands, protective areas. The only reason my house hasn’t been wiped out is because we have a seawall in front of my house. It is up on a relatively high point. My house is 11 feet up off the ground, what we call an old Creole house.

It survived hurricanes for 150 years. But these estuaries, these areas outside the main area in which we live, are critical because once that high wind and water hits that area, it begins to lose its strength. If we keep losing land into the gulf, across the Gulf of Mexico, the hurricane damage—even though the violence may not increase, the damage will really increase. This is just one aspect.

By the way, we have to be prepared to get people off these oil rigs and out of the Gulf of Mexico. We have to have infrastructure that begins to do that. This will help us achieve that goal.

I yield to my colleague from Mississippi.

Mr. COCHRAN. Mr. President, I appreciate the Senator’s remarks. I assure him that I support everything he has said, and I agree it is now time for us to recognize that the initiative of the Senators from Louisiana, Senator Vitter and Senator Landrieu, and others, including my colleague from Mississippi, deserves to be supported. It deserves our support.

I understand the question about the budget, but I am reminded about an appeal that I had to defend one time in the Supreme Court of the State of Mississippi. The lawyer on the other side started off his brief he filed with the supreme court, and he said that this is a classic example of a claim not being paid on the basis of a mere technicality. Well, of course, there was a lot more to it than just that. The technicality was a real impediment to the appeal being filed by my opponent in that case. But I was reminded of that when I was walking over here. This is an issue that could go either way, in terms of the point of order and the provisions of the Budget Act. The Senator has made that point, and I congratulate him for doing that.

We are not quarreling with the fact that you may not be out of order, but you should not as a matter of the overriding national interest. It is a national interest; the integrity of the Gulf Coast States are at risk. We have before us a solution to the problem, and it is in the interest that we support it. That is the argument that is being made to the Senate right now. So however this vote is couched, in terms of a motion to waive the Budget Act or on the validity of the point of order, I hope the Senate will come down on the side of the Gulf coast Senators who are trying to solve a problem that is in the national interest. We ought to recognize that and vote that the point of order is invalid.

Mr. LOTT. I thank my colleague from Mississippi for his comments and his knowledge of the issue and the procedures we are dealing with. It is a great comfort to have him here.

One final note. I yield the floor. I thank Senator Domenici and Senator Bingaman for working with the Senators who are sponsoring this legislation to try to help us find a way to make this effort, to get it at a level that would be helpful. We do that, that would not be a budget buster, that would comply with the amount of money that was allowed in the budget resolution.

So I commend Senators Vitter and Landrieu, and I hope we will be able to get this provision approved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, on behalf of the American people, I thank the managers of this Omnibus Energy bill for their leadership in producing a comprehensive and broadly supported proposal.

If the American people think bipartisanship is dead in Congress, they should look at this bill and how it is being managed on the floor these past 2 weeks.

On behalf of the people of Utah, I want to thank the managers of this Omnibus Energy bill for their leadership in producing such a comprehensive and broadly supported proposal.

If the American people think that bipartisanship is dead in Congress, they should take a look at this bill, and how it is being managed on the floor these past 2 weeks.

I must commend the leadership of Chairmen Domenici and Grassley, and their Democratic counterparts, Senators Bingaman and Baucus as the Senate considers this critically important piece of legislation.

In addition, I want to thank Chairmen Grassley and Senator Baucus for working so closely with me on the energy tax incentive package, now part of the Omnibus Energy bill.

In particular, this bill includes a number of provisions of great importance to Utahns, provisions I authored. These include my CLEAR Act, which promotes alternatives in the transportation sector, my Gas Price Reduction through Increased Refinery Capacity Act, and my proposal to improve the treatment of geothermal powerplants.

I am also grateful to the leadership of the Energy Committee, Chairman Domenici and Senator Bingaman, for agreeing to include the major provisions of another bill of keen interest to Utahns, my bill, the Oil Shale and Tar Sands Promotion Act, S.1111, which was cosponsored by Senators Bennett and Allard.

Our bill would promote development of the largest untapped resource of hydrocarbons in the world. There is more recoverable oil in the oil shale and oil sands of Utah, Colorado, and Wyoming than in the entire Middle East.

The chairman and his staff have done yeoman work and cannot have a compromise on S.1111 that is agreeable to all sides and that can be accepted into this bill. I thank both leaders for that effort.

And finally, I thank them for including my bill, S. 53, in the Energy bill. S. 53 would amend the Mineral Leasing Act to authorize the Secretary of the Interior to issue separately, for the same area, a lease for tar sands and a lease for oil and gas, thus freeing up a new resource of natural gas in our Nation.

Now, I would like to turn to the Hatch-Bennett amendment on high level nuclear waste, which we filed in an effort to bring some focus to our Nation’s policy for handling spent nuclear fuel.

In my hand is an article from yesterday’s Washington Post.

The headline reads, “Bush Calls for More Nuclear Power Plants.” And the article goes on, “President Bush called today for a new wave of nuclear power plant construction as he promoted an energy policy that he wants to see enacted in a bill now making its way through Congress.”

The President is calling for a robust nuclear power strategy, and his reasons are clear: nuclear power is clean and safe, and there is an abundant supply of cheap uranium in Northern America.

But my question is, “What are we going to do with all the waste?” We cannot have a nuclear power strategy until we know what to do with all the spent nuclear fuel.

And what is becoming quickly apparent to me and to the people of Utah is that we do not have a coherent national nuclear waste policy. Until we do, we are putting the cart before of the horse.

For years, I have supported sending this high level nuclear waste to the desert of Nevada.

To be honest, it has never been an easy vote for me, because it was against the wishes of my friends and colleagues from that State. However, it
has been our national policy for more than two decades to build a site at Yucca Mountain, a safe, remote location, where spent fuel could be taken over by the Federal Government and buried deep beneath the desert.

Even though Utah does not use or produce power, I have recognized the need to have a nuclear power program in the U.S. that relies on a plan to safely handle our waste. In other words, we need a strong nuclear waste program.

Here is a picture of the desert area where Yucca Mountain actually is. You can see it is desolate and out in the middle of nowhere.

Unfortunately, a few nuclear power utilities are attempting to hijack our Nation’s nuclear waste strategy by joining forces to build an away-from-reactor, aboveground storage site for one-half of our Nation’s high-level nuclear waste on a tiny Indian reservation in Tooele, UT.

The Goshute Band lives right on the reservation, and many of the families of the Skull Valley reservation are directly adjacent to the Air Force’s Utah Test and Training Range and Dugway Proving Grounds where live ordnance is used.

Here is an illustration of an F-16 that flies regularly in this area.

This location proposed for the aboveground storage of half of our nuclear waste sits directly under the flight path of 7,000 low altitude F-16 flights every year.

Even if this area were truly remote from all civilization, which it is not, its location alone should disqualify it for the storage of even one cask of high level waste. But that’s the problem with allowing private interests to establish our nuclear waste strategy, economics can get in the way of reason and safety.

Mr. President, 80 percent of Utah’s population sits within 50 miles of the Skull Valley reservation.

Represented on this picture are the type of communities we have near that place.

As a crow flies, Skull Valley is less than 15 miles away from Tooele City, one of the fastest growing cities in Utah, which is becoming a major suburb of Salt lake City.

Skull Valley is only about 30 miles from the Salt Lake City International Airport, and let us not forget that many of the families of the Skull Valley Band live right on the reservation, and half, if not more, of them are against this. These families face, by far, the greatest risk.

While this group of utilities, known as Private Nuclear Storage, or PFS, applied for a license from the Nuclear Regulatory Commission, the Commission’s three judge Atomic Licensing Board ruled that the threat of a crash from an F-16 was too great to allow a license for the proposed facility. Not letting science get in its way, PFS came back later after two of the three judges were replaced with new ones, this time making a different pitch even though all the facts remained the same.

As a result, the two new judges ruled, in a two-to-one decision, that the risk of a crash from an F-16 was low enough to allow the license.

One has to wonder who in the world would allow the license for a small tribe in this area with this type of danger. The trustee I don’t think could possibly do that. Nevertheless, they ignored the prior commission and went ahead and did it.

However, Judge Peter Lam, the senior member of the panel, and its only nuclear engineer, gave a very strong dissent. I would like to quote from Judge Lam’s dissent.

The proposed PFS facility does not currently have a demonstrated adequate safety margin against accidental aircraft crashes. . . . This lack of an adequate safety margin is a direct manifestation of the fundamentally difficult situation of the proposed PFS site: 4,000 spent fuel storage casks sitting in the flight corridor of 7,000 F-16 flights every year.

Judge Lam also cited the inadequacy of the new methodology used to determine that the site would be safe.

He writes:

In this current proceeding, the Applicant has performed an extensive probability analysis and a structural analysis to rehabilitate its license application. As explained below, the Applicant’s probability and structural analyses both suffer from major uncertainties. These uncertainties fundamentally undermine the validity of the analyses.

Mr. President, with 7,000 F-16 flights every year, one can imagine that emergency landings are not uncommon at the training range, and I am unhappy to report that crash landings are not rare, either.

In the last 20 years, there have been 70 F-16 crashes at the Utah Test and Training Range, and a number of these crashes have occurred well outside the boundaries of the training range.

I have found it baffling that the Final EIS for the Skull Valley plan does not require PFS to have any on-site means to handle damaged or breached casks. Rather, the NRC staff deemed the risk of a cask breach is so minimal that they did not have to consider such a scenario in their EIS. I find this conclusion dubious and dangerous in light of the facts relating to F-16 overflights.

In his dissent, Judge Lam refers to the threat of accidental aircraft accidents. He doesn’t even go into the possibility of terrorists. Since the events of September 11, we have learned that one of our Nation’s most serious threats may come in the form of deliberate suicidal attacks. It would seem inconceivable that a Government entity would consider giving their endorsement of the PFS plan without thoroughly taking into account the added terrorist threat our Nation now faces.

Yet the Nuclear Regulatory Commission has refused to reopen the Environmental Impact Statement to consider this new threat, even though post-9-11 studies have been completed by all of the utilities licenses by the NRC.

It is apparent they just want to dump this stuff somewhere. I have to say, if this continues, I am certainly going to do some reconsidering myself.

I found this especially troubling since the NRC has never granted a license for the storage of more than about 60 casks, but the Skull Valley site will hold up to 4,000 casks of this waste.

I want my colleagues to understand that not only is the size of the PFS proposal a gigantic precedent, but issuing itself a license for a private away-from-reactor storage site has never been done and runs counter to the Nuclear Waste Policy Act which limits the NRC’s license storage sites only at Federal facilities or onsite at nuclear powerplants.

Former Secretary of Energy Abra- hamin his letter to members of the Utah congressional delegation, Secretary Abra- hamin his letter to members of the Utah congressional delegation, Secretary Abra- ham issued a policy statement that barred any DOE reimbursement funds from being used in relation to the Skull Valley site. This would include industry members who would lease space at the site. He said: In his dissent, Judge Lam refers to the threat of accidental aircraft accidents. He doesn’t even go into the possibility of terrorists. Since the events of September 11, we have learned that one of our Nation’s most serious threats may come in the form of deliberate suicidal attacks. It would seem inconceivable that a Government entity would consider giving their endorsement of the PFS plan without thoroughly taking into account the added terrorist threat our Nation now faces. Yet the Nuclear Regulatory Commission has refused to reopen the Environmental Impact Statement to consider this new threat, even though post-9-11 studies have been completed by all of the utilities licenses by the NRC. It is apparent they just want to dump this stuff somewhere. I have to say, if this continues, I am certainly going to do some reconsidering myself.

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Utahns are well aware of the points I have made today. Because of the risks we face associated with the PFS proposal, we know better than any that our Nation's nuclear waste policy is broken. It was with good reason that our Nation's nuclear waste policy was built on the expectation that the Federal Government, namely the Department of Energy, would take possession of spent nuclear fuel rods. What better example do we need than the PFS plan to see why private industry should be allowed to develop a nuclear waste strategy?

Think about it. PFS is a shell corporation. If anything went wrong, Utah is going to eat it. That is all there is to it. It is ridiculous.

I understand why our colleagues from Nevada oppose the Yucca Mountain site. I am getting more and more understanding of that as I go along. But if they are concerned about waste at Yucca Mountain, it does not mean they should be in a position to evaluate the Skull Valley site, which is so flawed as to be inherently dangerous, extremely dangerous.

In closing, let me drive home one point. Our President has called for a dramatic increase in our Nation's capacity to generate nuclear power. As Congress considers that proposal, I ask: Should any increase we might authorize rest on a nuclear waste policy established by the Federal Government or should that capacity be developed with a proper plan to handle nuclear waste?

Do we want the Federal Government to take possession of our high level nuclear waste or do we want to allow private companies to control the transport, storage, and security of this waste? And with shell corporations at that. If that is to be our policy, then I need to inform our colleagues that our Nation's nuclear power strategy is a house built on sand.

Let me summarize my remarks. We Utahns are adamantly opposed to the storage of spent nuclear fuel at the Skull Valley reservation. The current site that has been selected by a consortium made up of eight utilities has several fatal flaws, including the fact that it contemplates a facility that is, one, located fewer than 50 miles from the Salt Lake Valley where 80 percent of our fellow Utahans live; two, directly under the Utah Test and Training Range where roughly 7,000 low-altitude F-16 training flights take place each year, many with live ordnance, and over a range where 70 crashes have taken place already; and three, on the small Skull Valley Goshute Indian reservation where about 40 of the band's 120 total members reside—only 40. Moreover, the Skull Valley Band's leadership is in question. Leon Bear, the band's current chairman, has been accused by his colleagues of drug-related vote of no confidence. In addition, Mr. Bear recently pleaded guilty to Federal criminal charges and is awaiting sentencing relating to his management of tribal financial resources.

I would like to know if my friend, the chairman of the Senate Energy Committee, believes that storing spent nuclear fuel on a privately run and private facility, such as the Skull Valley reservation in Utah, is a component of our national nuclear waste policy.

Mr. DOMENICI. Mr. President, in response to that question, I would say that our energy policy for handling high level nuclear waste is to store it at the proposed DOE site at Yucca Mountain. I don't know whether the Skull Valley site will receive the regulatory approval it needs. That is not my decision. However, in my view, our focus should remain on a solution that puts this waste directly in the hands of the Federal Government.

Mr. HATCH. Mr. President, I thank the chairman for that clarification.

I ask again that this bill be sent to the Senate Energy Committee. I have done such a great job in bringing both sides together to pass what will be one of the most important energy bills in the history of the world. It certainly is going to do a lot for our country if we will continue to follow this through conference and get it back for final passage. It is long overdue.

I know it has been an ordeal for Senator DOMENICI in particular and others as well. I pay my tribute to them for the hard work they have put into this bill. Everything we consume goes by rail, truck, air, or a combination thereof before it gets to the store or to our homes or to our places of business. This bill is essential for lower gasoline and diesel costs for transport of these products.

We need to have an affordable energy source for our economy, for jobs, and the competitiveness of our country in the future because many of these jobs are going overseas. Everything we consume is going to eat it. That is all there is to it. I am getting more and more un-
higher prices, and when farmers have to pay higher prices to run their tractors or to fertilize their fields, that means the cost of food goes up, which affects us all in that way as well.

Look at our prices—and these prices are from February, and prices of natural gas costs not only the farmers but everyone up in this country since this report. In the United States of America, we are over $7 for 1 million Btus of natural gas and it is rising.

Take the United Kingdom, Great Britain is currently paying $3.65, Ukraine is $1.70. Russia is less than a dollar per 1 million Btus. You say, well, we are not competing with them. Who are we competing with them? We are competing with them, as well as with South America. Look at the prices of natural gas in South American countries: $1.50 in Argentina compared to over $7 in the United States. In North Africa, it is less than a dollar.

What about real competition we are facing in the loss of manufacturing jobs we have been seeing in North America? China and India are increasing in their economies and, of course, demand for oil, natural gas, coal and other fuels is going up, too, exacerbating the prices. We see China now trying to buy up our gas-line infrastructure and specifically Unocal.

For our national security, it’s important that we have a comprehensive review of the types of investments State owned Chinese companies are making in international and U.S. based energy resource projects.

Even there, where China has this booming economy, their price is $1.50 compared to us. The same with Japan. India pays half the price we do in natural gas, $3.10 per 1 million Btus. Our friends in Australia pay $3.75 for a million Btus of natural gas.

As a result of what we are seeing in these higher natural gas prices, we are already losing jobs in this country. The chemical industry, one of our Nation’s largest users of natural gas, has watched more than 100,000 jobs, one-tenth of the U.S. chemical workforce, disappear just since the year 2000.

Recent studies by the National Association of Manufacturers and the American Chemistry Council found that 2 million jobs could be saved if Congress lays out a fresh blueprint for the supply, delivery, and efficient use of all forms of energy, including clean burning natural gas.

To address the natural gas crisis that is crippling our American farmers and manufacturers, we need a positive, proactive strategy for greater fuel diversity. The bill does just that by supporting clean coal. It supports nuclear energy and a whole host of renewable technologies, such as biofuels and incentives for fuel cells.

In the area of nuclear, I think it is one of the most important aspects of the bill. What one thinks of the generation of electricity, we ought to be using clean nuclear and clean coal technology while allowing natural gas to be utilized not for base load electricity generation but rather for manufacturing jobs, and in our homes.

The President’s Nuclear Power 2010 Program is designed to work with the nuclear industry in a 50/50 cost-sharing arrangement. It also addresses some of the risks and litigation aspects of it. One thing that is not in this measure but I am going to work on in the future is the repository.

The Senator from Utah, Mr. Hatch, was talking about Yucca Mountain. I fully understand why the people in Nevada would not want to have highly radioactive fuel rods that are radioactive for 40,000 years. What we need to do long term is look at what France is doing with nuclear power. What they have done is taken a technology that was started in this country on reprocessing and they have perfected it. We ought to be reprocessing this nuclear fuel, those spent fuel rods. If we do that, it is a much more efficient and much more cost-effective way of doing it. It is much less volume, and are decreased. That is something we need to do long term. It is not in this measure, but we need to move forward with it in the future.

Also in this bill we have set efficiency standards for everything from buildings to appliances that will help reduce our demand for electricity and natural gas.

Ultimately, we need to produce more natural gas. This amendment talks about coastal States that are committed to more exploration, the impact on their coastal areas and allowing them to get some assistance to these States closest to the exploration.

What I am going to say is not part of this amendment, but the issue of exploration off the coasts of different States came up during the hearings in our committee. It is not necessarily part of this measure, but I said, the people of the Commonwealth of Virginia, this is an issue of some interest in our General Assembly. Our State legislature, in a very strong bipartisan action, stated that they were in favor of allowing or at least determining if there is any natural gas—not oil but natural gas—far off the coast of Virginia, beyond the viewedash, and, in the event that there is, allowing Virginia to share some of those revenues. That is not going to be part of this measure. But I said to Senator Bingaman, it is not part of this measure.

I realize things move slowly around here, slower than some of us would like, but I do think that the people in the States should have more of a say in energy production. Right now, if one looks at those coastal areas, it is all subject to the whims of the Federal Government. The Federal Government says they own it; the Federal Government will determine if it is in a moratorium or not.

I am one, having been Governor, who would actually like the people in the States to have more prerogatives. There may be a different batch of folks in the Senate, and we may have a different President who says, No, we are going to do this, we do not care what the people of New Jersey think; we are going to go forward and explore. I would like to see the representatives of the people of the States and also allow the people in the States, if they so choose to explore, to actually share in those revenues.

I also suggested that in Virginia, we ought to use a good portion of it for universities and colleges to reduce in-state tuition costs; another big chunk for transportation to alleviate traffic congestion; and another portion to the coastal areas, such as places like Virginia Beach, for things like beach replenishment. That is just something I would like to see ultimately allowed, but that is not part of this measure.

I also do think that I know the President’s views on the inventory issue. Why spend money looking off those coasts because the people of Florida, North Carolina, New Jersey, and maybe South Carolina as well, do not want to. So why waste the money? However, if the people of Georgia and Virginia would like it off their coasts, allow them to at least find out what is out there and then make a determination therefrom. That might be the good compromise to this issue in conference.

This measure that Senator Landrieu and Senator Vitter have brought up has to do with Louisiana and a great deal, obviously, with the gulf coast. They have certain needs in Louisiana. Being in Cajun country and all around the gulf, I know a lot of the money is put in for transportation to alleviate traffic on the gulf coast. For those purposes, I know this is a very big issue to the people of Louisiana. We should be thankful to the people of Louisiana for the efforts they have made in the exploration off their coast because they are powering this country.

Granted, natural gas prices are high, and maybe we will get more production out of Alaska, and maybe we will get some more out of Louisiana or maybe off of Mississippi, but I am not sure that they have great coastal impacts, not because of the exploration way off in the Gulf of Mexico but because of the services to transport it, just the nature of the bayous. It is just the topography, that they have coastal erosion there that is of great concern to everyone in the State of Louisiana, especially south Louisiana. They are all proud of that sportsman paradise, as they call it.

I strongly support Senator Domnick’s and Senator Bingaman’s effort in this bill to consider the needs of producing States. Long term, what we are looking at is supporting, creating, and
preserving manufacturing jobs and finding environmentally safe ways to increase production of clean burning natural gas. It is important for jobs in this country. It is important for our national security to be less dependent on foreign energy. We need to be more independent, and, of course, we need to be much more competitive for investments and jobs if we are going to be the world capital of innovation.

So I urge my colleagues most respectfully to vote for this amendment that allows coastal impact assistance to States closest to this exploration. We have listened in meetings to Senator Vitter argue very persuasively to me and to others, I hope, and the same with Senator Landrieu in a variety of forums as well—they have made a persuasive argument for Louisiana, but ultimately it is a persuasive argument for the United States of America.

I thank my colleagues for their attention. Importantly I thank my colleagues in anticipation of a positive vote for this amendment and moreover getting this Energy bill passed so that this country can become more independent of foreign oil, foreign oil and gas, that we can have more jobs, and make this country more competitive for investment and creativity in the future.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before the Senator from Virginia leaves the floor, might I say to all of those who pay attention to these issues that the Senator is a new member of the Energy Committee, and I wondered when we made up the committee why the Senator had chosen to be on the committee. Then I found out that Virginia has a terrific interest in a lot of these issues, and I found that the Senator was very knowledgeable and a very good participant. The Senator helped us get a good bill. I commend the Senator on his analysis today. This is a bill that affects us in a big way, especially in the natural gas area.

Clearly, we are at our knees. People say it is the gas pump, but it is also the price of natural gas that is causing America great trouble. We have resources. We just cannot use them because we need new technology and we need to do a better job of getting them ready for the marketplace so that we do not damage the air. We are working on that, and I thank the Senator for that.

Also, I want to compliment the Senator on seeing the value of the offshore resources of the United States. I am not suggesting that I understand each State title, but I understand that there is a lot of natural gas offshore. No. 2, I do understand it can be produced with little or no harm to anybody. A lot of it can be produced if it is there.

I commend the Senator for realizing that is an American asset and he would like very much for the Congress to face up to that.

I yield to the Senator.

Mr. ALLEN. I say to my chairman that the reason I wanted to get on his committee was because I believed that this Energy bill was the most important legislation we will pass in this Congress. It is about our competitiveness, jobs in this country, as well as our independence or less dependence on foreign oil and foreign energy, whether it is natural gas, liquefied natural gas, and all the rest.

I have been increased by the bipartisan way the Senator has methodically tried to move this measure forward that has great importance for the future of our country, not just for the next 5 or 10 years but, indeed, for generations to come. It is a model for how we can work in a bipartisan way. Does everyone get everything they want? No. But I think the American people ultimately will be much better off, there will be more people and families working, and we will be more competitive, thanks to the Senator's leadership.

I am very proud and pleased to have been appointed and elected to the Energy Committee, and I look forward to working with the chairman. He is a magnificent leader with the right vision for this country.

Mr. DOMENICI. I thank the Senator. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I support the Landrieu/Vitter amendment. As a State that is a producer of oil and gas off its shore, I certainly believe we should have some slight, minor benefit from that effort, particularly in light of the fact that State after State just blithely announces they will not have any off their shore. I believe that a 2-percent part of the revenue that is going to the Federal Government to the States that bear the burden of this offshore program is not too much to ask. It is not a violation of the budget. The money is set aside that can be spent on this. It is a question of priority. I believe we should go forward with that.

I wish to say how much I appreciate the remarks of Senator ALLEN. I believe he has analyzed our energy situation well. I would also join in my praise for Chairman DOMENICI for his work. He understands that nuclear and other energy sources have to be increased to have us more energy independent. It is not just one step that we can take. Frankly, if one wants my opinion, and I believe it is correct, the area most overlooked, the area in which we can have the largest short-term surge of energy in our country that can be so important for our economy and jobs is offshore production of oil and gas, particularly natural gas.

We had an amendment just yesterday that I joined with my colleagues from California to support—it did not pass—to have more controls over the building of liquefied natural gas terminals in our States, to give the States some more ability to participate in that process.

Why do we have liquefied natural gas terminals? We have not had them before. The reason is we are not producing enough natural gas in our country; we are leasing resources worldwide offshore that can be produced around countries such as Qatar in the Persian Gulf—some of whom have been friends, some of whom have not been friends of the United States—so they would have us produce it on those waters, to liquefy it at great expense, transport it around the world to some terminal in my hometown in Mobile, AL, and then put it in our pipelines. And where does the money go? Where does 100 percent of the royalty money go in that circumstance? It goes to the Saudi Arabians and the Qatars and Venezuela and those other countries, sucking out huge sums of money from our country. Why not could knowledge in in our national economy if we produced the existing supplies of natural gas that are off our shores.

I go down to one of the prettiest beaches in America, it is becoming recognized—Gulf shores, AL. You can stand on those beaches and at night you can see the oil rigs off the shore. We have not had a spill there. In fact, I had the numbers checked, and I understand there was one spill off Louisiana in 1970. None of that reached the shore.

By the way, as all who have studied this know, natural gas is far less a threat to our environment, if there is a leak, than is oil. Oil is thicker and heavier and can pollute if there is a large amount spread on our shore. But we have not had any of that, and hundreds—thousands—of wells have been drilled and produced in the Gulf of Mexico. According to the Energy Committee, 65 percent of all energy produced from oil and gas comes from the Gulf of Mexico. That is a tremendous amount right off our coast. So Texas and Louisiana and Alabama have participated in that. Yet under the law of the United States and the tax provisions of our country, you cannot receive any revenue from it. It is moving in interstate commerce. You can't tax a truck going through your State, under the Constitution. You can't tax fuel going through a pipeline. So you produce it, and it moves out.

An LNG terminal, by the way, some have said, is an asset to your community. It only has about 30 jobs, and it does have some safety risk, no doubt. Some say a lot. I don't know how much, but it has some safety risk. It has some tendency to diminish the property value for sure. But you can't tax it because it is the interstate flow of a resource.

So they want these States to continue to be serving the American economy with no compensation whatsoever. The 2-percent figure that has been proposed here is not at all unreasonable to me. I think that is a modest charge, in fact.
Let me tell you the extent of the hypocrisy that goes on. My colleagues from Florida, the leaders in the State of Florida, have beautiful beaches such as we have. We border their beaches. They declare you cannot have a well if you are in the sight of the beach. They said they can’t have an oil well so close—even outside of the sight of the beach. In fact, they are objecting to drilling oil wells 250 miles from the Florida beaches, as if this is somehow some religious event of cataclysmic proportions, if somebody were to drill an oil or gas well—mostly gas wells—out in the deep Gulf of Mexico. You know what. They are proposing right now, they desire and are moving forward with a plan to build a natural gas pipeline from my hometown of Mobile, AL, to Tampa, FL. They want to take the natural gas produced off the shores of Alabama, Mississippi, Louisiana, put it in a pipeline and move it to their State so they can have cheaper energy, and I want to have the great to have anything within 100 to 250 miles of their State. This is not correct.

Mr. President, I know you are a skilled lawyer and a JAG Officer in the military, but I want an U.S. attorney and representative of the U.S. Government. Let me tell you, under the law of the United States, Florida does not own the land 200 miles off its shore. I have to tell you, that is U.S. water. There is no doubt about it. For the Senator from Florida knows, who is here on the floor—this amendment is a coastal issue. From Florida knows, who is here on the floor as well, is not a drilling amendment from Louisiana, who is here on the floor—this amendment is a coastal issue. From Florida knows, who is here on the floor—this amendment is a coastal issue. From Florida knows, who is here on the floor—this amendment is a coastal issue from Florida knows, who is here on the floor—this amendment is a coastal issue.

I have enjoyed working with her on this legislation.

Ms. LANDRIEU. Will the Senator yield for a question?

Mr. SESSIONS. I am pleased to.

Ms. LANDRIEU. If the Senator will yield, I believe you have made so many excellent points, and I am not sure I heard them. Maybe if he would repeat—right now we are building a pipeline from Alabama to Florida? Could the Senator explain that, again? I am not sure people understand that you are building a pipeline from Alabama and sending the gas—where?

Mr. SESSIONS. To Tampa, FL, to some of those people, I guess, who have the multimillion-dollar mansions on the coast, who want to use that natural gas to cool their hot houses. I remember when it first came up, this debate was ongoing, former Congressman “Sonny” Callahan, from Mobile, was in the House. I suggested that he put in a pipeline to Mobile. He said no. I mean he said no, he needed the pipeline. If they don’t want to produce any oil and gas, why should they get it? And he did, almost perhaps as a bit of humor, but also to raise a serious point. People want to utilize this resource but they are opposing its production.

But let me ask the Senator from Louisiana this question. Don’t you think that some of the areas, such as California and others, that are so hostile to producing offshore, are ill-informed? Most of those people don’t realize that it is huge risk that their entire beaches are going to be threatened every day, but we have not had problems in our beaches. Have you in Louisiana?

Ms. LANDRIEU. I thank the Senator for that question. I would like to respond this way. I do think there is a lot of misunderstanding and fear associated with an industry that not everyone knows about. As the Senator knows, 30 years ago, the industry was relatively new and mistakes were made and technology was being tried out. We just did not have all the environmental data that we have today. But as the Senator knows, in every industry there has been tremendous advancement made.

Not too long ago I was watching a program on television that was showing in another country that is also developed in the Nation. I think the chairman from New Mexico would appreciate this. The whole program was about how in the early days people really wanted to have water, clean water, but they needed it warm for many purposes, just for convenience and health, and cleanliness. They couldn’t figure it out. So they kept trying to figure out a way to get hot water to people’s houses.

But what would happen is these early hot water pumps, as you know, would blow up, they would blow the whole house up and people were actually killed; they lost their lives. But did we stop trying to bring hot water into the homes of Americans?

I know this might seem to be a small matter to people who live in the United States, but turning on a faucet, in your home, for clean, drinkable cold and hot water—this is a huge issue today. But Americans did not stop with that technology. So today we take it for granted. Everybody can go home and turn the hot water on and it comes out and nobody blows up.

Mr. President, I have heard from Senator from Alabama is absolutely correct. There are people who just do not know. This technology is very safe. Plus, we have the Coast Guard, we have Federal agencies, we have the State court system, and the Federal court system, in answer to your question, that all enforce the laws, and agencies that are “Johnny on the spot” if something goes wrong.

Are there accidents? Yes. Can things go wrong? Yes. But I think as we start telling people more, and give people more information—the Senator from Alabama is correct—then they can make better decisions for the country. Again, to be respectful, if some States have accepted this information and still make the choice not to do that, it might be their prerogative. But the Senator is absolutely correct. For those States such as Alabama, such as Mississippi, such as Texas and Louisiana, that have decided this is in their State’s interests and the fact they are participating in drilling for oil and gas off the coast of Mexico, off our coast?

Ms. LANDRIEU. The Senator is correct. There is some thought that perhaps Cuba may open drilling and Canada may open drilling. But again, this amendment that the Senator has co-sponsored almost to the exclusion of the colleague from Louisiana, who is here on the floor as well, is not a drilling amendment. It is not touching the moratoria. It is not laying down any boundary changes whatsoever. It is a coastal impact—assistance revenue sharing for only the current producing States. So while there has been an extended debate—because we are not able to go to a final vote because there are some things that are being worked out and there has been an extended debate in this country, they have to talk to their congressmen, our friends from Florida knows, who is here on the floor—this amendment is a coastal impact amendment.
We have already debated the moratoria issue. We have debated the drilling issue. We could not come to a compromise on that so that issue is going to be saved to another day. I have said to my friends from New Jersey and my friends from Florida and to my friends from Virginia and to you, the Senator from Alabama, this debate is not going to go away. We are going to have to continue to debate it. But this is not the debate at this moment. This debate now, this amendment that has been supported is about coastal revenue sharing, coastal impact assistance for States that produce oil and gas.

If I could, I wanted to make mention of something that would help the country understand, I think. This is from the Department of Energy, Energy Information Agency’s Report of 2001.

These numbers will have changed, obviously, since 2001, but probably not by too much, and I doubt the quarter will change too much.

This is all energy produced—nuclear, hydro, geothermal, wood, wind, waste, solar, oil, natural gas, and coal. That is everything—nuclear, hydro, geothermal, wood, wind, waste, solar, oil, natural gas, coal.

There are only 11 States in the Union that produce more energy than they consume. All of these States, starting from No. 1, California, all the way down to Vermont, use more energy than they produce. Again, I am aware that we are a Nation of 50 States. Some States grow sweet potatoes, some States grow Irish potatoes; some States make tractors, some States make automobiles.

But the problem here is that some are saying we don’t want to produce energy but we want the benefits. So I am saying to my friends on all sides, if you don’t want to drill for oil and gas on your shore or off, then put up a nuclear powerplant. If you don’t want to put up a nuclear powerplant, put up windmills. If you don’t want to put up windmills, you have to try to do something to generate energy for this country.

That is my only argument. That is not this amendment. This amendment is just recognizing that the States that have—let me just say this. I am trying to speak the truth here. Not only does Louisiana produce more than it uses, but please remember how much industry we have. Most of the chemical plants are in Louisiana, New Jersey, Illinois. Those are the areas where there are a lot of chemical plants.

We are proud of the petrochemical industry. But we also supply all of those manufacturing facilities—huge manufacturing facilities—that produce products that are not just bought by Louisiana; these chemicals go into better products we create in America. We sell them overseas, we sell some to ourselves.

Not only are we producing all the gas and energy we need, we are fueling all of our plants and then exporting. When you add that on top of the numbers on my chart—and I want this corrected for the record. I am not sure this chart counts offshore; I think this may be just onshore. I don’t think this counts offshore. If you add that, these numbers go up exponentially.

Wyoming gets the first prize. Some States say, We do not have the resources. I understand that. Not everyone has oil and gas. Not everyone has coal. The point Senator DOMENICI has been trying to make is, but please everybody has an ability to do something. Either conserve more, do not let SUVs come to your State if that is what you want to do, or produce more. That is the point—not on this amendment—one of the points of this bill.

Mr. SESSIONS. First, the Senator is exactly correct. This amendment is a very modest amendment. It has nothing to do with production of oil and gas. It is with frustration that our State has what is a goal and we also has not been able to receive any compensation, and many other States seem to be slamming the door on even considering that.

I ask the Senator if there is not a difference in safety and environmental impact when we deal with natural gas as opposed to oil? And is it not true that much of the energy capacity in the Gulf of Mexico and probably off our other States, is natural gas? I know that is important. We have probably seen a tripling of natural gas prices.

I know the Senator agrees that pipelines commence out of the gulf coastal areas—Alabama, Mississippi, Louisiana, Texas—that move the natural gas all over the country, and those States, if the price keeps going up when they heat their houses, they heat their water, their industries utilize natural gas, those prices are going up, also, which threatens their economic competitiveness. It is not that our States have a particular benefit from having the production. It goes in the pipelines that move it all over the country.

Ms. LANDRIEU. The Senator is correct. The Senator from Louisiana could answer as well, Senator VITTER. I will yield to him for a response.

We get the benefit of jobs. We are happy for the jobs, and we are proud of the technology we are developing.

The Senator from Alabama is correct. This oil and gas that comes through our State and is generated in the coastal States, to the benefit of everyone to try to keep the lights on in Chicago, New York, California, and Florida. We are happy to do it. We are not even complaining. We are just saying, in light of this, could it control the microphones? The Senator from Louisiana does not have the ability to yield to the Senator from Louisiana.

Mr. SESSIONS. Mr. President, we had a nice discussion and I thank the Chair for reminding us of that.

Before I yield the floor, I have enjoyed discussing this with the Senators from Louisiana, Senator LANDRIEU and Senator VITTER.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will yield momentarily.

I say to the Senators who are listening and to their staffs, we are in the process of trying to put together a short list of amendments that are absolutely necessary. We are getting close to the end—the end will be here when 30 hours have elapsed and then we could have a series of votes, but I don’t think anyone wants that.

The Democratic and Republican staffers are taking these amendments and they are working together to see how many are absolutely necessary.

I say to the Senators, because we will have to go back and call you all. If you are serious about an amendment, there are people on the Democratic side and the Republican side and in the respective cloakrooms waiting and talk with you through your staffs or otherwise as to what you want to do about the amendments.

Clearly, there are numerous amendments and I am sure they are all not going to be offered. They were subjected in good faith, but I am sure they are not intended to be voted on before we finish.

Would Senators on both sides of the aisle—I think Senator BINGAMAN agrees—try to help by getting word to the cloakrooms whether they are serious, whether they want to work on their amendments so we can put our list together.

Mr. NELSON of Florida. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. NELSON of Florida. It is my understanding the Senator wants to get this bill done quickly. I certainly support him in his desire to get that done quickly. It is also my understanding, in order to achieve that goal, the two managers of the bill are presently negotiating down the number of amendments.

Is it correct, the understanding that the Senator from Florida has, that the amendments that would be agreed to take up would not include any amendments having to do with the Outer Continental Shelf drilling?

Mr. DOMENICI. Might I say it this way. We are not going to agree unilaterally or even together what the list is. Senators have to agree. So, Senator, you and others who do not want that on the list, you will be there and you will say no, and so it will not be on that list. That is the best way to say it. I will not say it on the list unless the Senator from Louisiana does not have the ability to yield to the Senator from Louisiana.
Mr. NELSON of Florida. Indeed. And this Senator from New Hampshire is relying on the information that we both have, as I said, that there were both Senators from New Mexico and Florida who are trying to get with the legislation. I certainly want you to get there and get them fast.

Basically you come up with a list of amendments that you wish to consider, and you would consider under unanimous consent that those amendments would be considered and you would consider under unanimous consent that the list to be considered for the rest of the debate on the bill before final passage is governed by the Parliamentarian. Therefore, we find ourselves being held tomorrow, very important matters into the Federal Treasury from the Outer Continental Shelf—lo and behold, those amendments would not be offered for further attempts at drilling on the Outer Continental Shelf—lo and behold, those amendments have been filed and they were declared germane by the Parliamentarian. Therefore, regardless of all of the agreements that have been made, they can be brought up at any time.

The Senator from New Jersey, Senator CORZINE, and this Senator from Florida, are insisting the debate remain on the Landrieu amendment as a means, as the clock is ticking, and with most of the Senate having an interest in the selection of the purposes of many schedules that need to be met for tomorrow, including a number of BRAC Commission hearings, especially in the State of New Mexico, that are being held tomorrow, very important pieces of business that Senators need to attend.

What the managers of the bill are presently doing, because the Senator from New Jersey and this Senator from Florida are insisting the debate remain on the Landrieu amendment as a means, as the clock is ticking, and with most of the Senate having an interest in the selection of the purposes of many schedules that need to be met for tomorrow, including a number of BRAC Commission hearings, especially in the State of New Mexico, that are being held tomorrow, very important pieces of business that Senators need to attend.

So the Senator from New Jersey and this Senator from Florida, simply recognized the clock is ticking, in order that those amendments will not be brought up, are continuing to keep the debate on the Landrieu amendment. At such time as we expect the normal process would be done, which is the winnowing down of the remaining amendments, we then would ask for unanimous consent from the Senate to take up only those remaining amendments and that those amendments will not include the amendments further causing the drilling off the Outer Continental Shelf. So that is the parliamentary procedure we find ourselves in.

Now, I have heard a number of statements on this floor over the last several days. I wish to clarify. I also wish to bring an update to the Senate. As shown in this picture, this is what we have at stake in Florida. It is the pristine beaches. That is not the only reason for not wanting to drill off the coast of Florida, but that is one of the reasons, and it is a major reason. We do have a $50 billion-a-year tourism industry. This is called restricted airspace. Is it any wonder why the training of pilots for the new F-22 Stealth Fighter is at Tyndall Air Force Base? Is it any wonder why the training of pilots from all branches of the military for the new F-35 Joint Strike Fighter is at Eglin Air Force Base? It is not any wonder when you realize the place they train is out over the Gulf of Mexico, most of which is restricted airspace, and most of which has had now increased training coming because the Navy Atlantic Fleet training was shut down on the island of Vieques off of Puerto Rico. Most of that training has come to northwest Florida. That training is off the Gulf of Mexico. You cannot have surface ships coordinating and training with aircraft, which are practicing with their targets on virtual land masses that have been created by computer, the way you have oil rigs down there on the surface of the Gulf of Mexico. That is another reason.

But I want to dwell for a minute on this reason right here as shown on this picture. I said I had a new picture. I do. This picture is a week old. This is an oil spill that just occurred off of Louisiana in the last week. There have
been now 600 pelicans threatened, and 200 pelicans have died from this oil spill. This was a relatively minor oil spill: 560 gallons—13 barrels—of oil, a relatively minor spill. You can see the damage it has done.

Now, I have shown other pictures out here. Shown on this picture is what we do not want. And shown on this picture is what we want. That is why the Senators from Florida, the Senators from other states such as North Carolina and South Carolina, the Senators from New Jersey—and you could go on up the coast and start in the North with Washington, Oregon, and California—that is why these Senators are so concerned about the protection of the interests of their particular States.

Now, this next picture is of an oil spill from years ago. I think this was so concerned about the protection of California—that is why these Senators are with Washington, Oregon, and California that we want to go to the West Coast and start in the North and work our way down. There is what we want. That is why the Senators from other coastal States such as North Carolina, the Senators from Florida, the Senators from California is what we want. That is why the Senators from other States want to go to the West Coast and start in the North and work our way down. Shown on this picture is what we do not want. Shown on this picture is what we want. We do not want to see the damage it has done.

Now, I want to address what has been stated here. It is as if Florida is not doing its part, as suggested by the list that was shown earlier of those that are net-plus of energy and those that are net-minus of energy. Is this the way we are going to solve our energy crisis? I think we ought to all be doing each thing we can to solve our energy crisis. It is absolutely inexusable that America today is in a position whereby we are importing almost 60 percent of our daily consumption from foreign shores. That is not only inexusable, that is unsustainable, when you consider the defense interests of our country. That is why so much of the slogan we hear in the oil coming from the Mideast and the Persian Gulf region.

By the way, 15 percent of our daily consumption comes from Venezuela. Guess what. We do not exactly have good relations with the Government of Venezuela these days. And the President of Venezuela, Hugo Chavez, from time to time beats his chest and lectures in the garage. It is fully powered up in its electrical side of the hybrid. It is usually a powerplant that is fueled by something other than oil.

If we really want to do something, we have to do something about miles per gallon. I wish to share with the Senate a recent experience I had talking with the former Director of Central Intelligence, Jim Woolsey, about a proposal that he had that I thought makes great deal of sense on the domestic side. This proposal, according to his statistics, have the equivalent of having vehicles that would run at 500 miles per gallon. This is not science fiction. Let me tell you the three components. The first thing to do with the fact that we already mix ethanol with gasoline, the ethanol being made primarily from corn. That is an expensive process, but we do that. In different places, there are various percentages of that ethanol. The ethanol and the gasoline burn together, and the ethanol starts replacing the gasoline.

What if you could replace that gasoline with more ethanol so that, say, it is 50 percent gasoline and 50 percent ethanol? I would like it that was not economical because it is very expensive to get that ethanol from corn. Jim Woolsey has said you can make ethanol from prairie grass. We have 31 million acres of prairie grass in the United States that have to be harvested each year, cutting the grass. You would have refined processes, just like in making ethanol from corn, but you have a different ingredient, and it would be much cheaper to make the ethanol. I am talking about a proposal that the gasoline burn together, the gasoline—and in other words, gasoline—will have ethanol?

What the experts are telling me is you could use the same engines that we have. Perhaps they would have to have a little bit of tweaking to accommodate 50 percent ethanol and 50 percent gasoline, but look how much oil per day we would be saving just with that. That is just the first component.

The second component is, what happens if you take the new automobile engines into hybrid engines? A hybrid engine is what the Japanese have already done so successfully that they have these long waiting lists for these cars that have hybrid engines, that have computers that shift to electricity at one point and to gasoline at another point. The Japanese automakers’ cars today—and they have been for several years—are getting better than 50 miles per gallon. That is the second component.

So what happens if you take fuel which is a mixture of gasoline and ethanol and put it into hybrid cars which are being run off of electricity and the mixture of fuel is that you start to see you are beginning to use less and less oil, and you are allowing technology to start working for us.

But there is a third component; that is, taking your hybrid vehicle—that is in your garage at night when you are not using it—and just plugging it in, so that in the morning when you are ready to use your vehicle, your battery is fully charged up to its capacity. It would be using electricity that has been coming from a powerplant that is usually a powerplant that is fueled by something other than oil.

So now you have a car that leaves the garage. It is fully powered up in its battery, so as it is going to its electric motor. That is the third component. I think this is a very important one. It is an extra reserve. The gasoline side does not have to produce all that much for the electrical side of the hybrid.

And, by the way, when it is over on the gasoline side, it is using a lot less oil because it is mixed with ethanol. What Jim Woolsey has told a number of Senators is the calculations are that, under present standards, you would actually have a car that would be the equivalent of 500 miles per gallon. Can you imagine what that would do to our dependence on foreign oil, since our personal vehicles are, in fact, the major factor in our daily consumption of oil? We are talking serious changes. We are talking about not having to have a foreign policy— and I want to recognize my colleague because I want to hear what she says—where we, the United States, become the protector for the entire civilized world of the oil supply flowing out of the Persian Gulf region.

I am talking about a United States foreign policy that, Lord forbid, if radical Islamists were to cause the Saudi Royal Family to fall and then the other gulf states start falling like dominos and suddenly radical Islamists are in control of a major source of the world’s oil supply—you can imagine what that would do to the rest of the free world and the industrialized world. We are talking about major crisis.

And how much of a threat is it that there is such a crisis? Look what we are dealing with in Iraq today. Who are the insurgents? Most of the terrorists in the world are now coming there not only to kill our boys and girls but are coming there to train to be terrorists and to train in the area of Afghanistan. It is easier for them to come where all the action is in Iraq. Lord help us if ever radical Islamists took over in Iraq.

Ms. LANDRIEU. Will the Senator yield?

Mr. NELSON of Florida. I am happy to yield to my distinguished and very persistent colleague from the State of Louisiana.

Ms. LANDRIEU. I thank the Senator from Florida.

I wanted to say that he has made some excellent points about our need for energy independence. He has stated it eloquently and correctly in terms of our overdependence. In large measure that has been what so many of our debates in the last few weeks have been.

As the Senator knows, the underlying bill we are trying to get to a final vote on within a few hours actually addresses so many of the concerns the Senator has so rightly raised. He is correct that we can move to a new kind of vehicle that you can plug in at night, drive during the day, switch from electricity to gasoline. That gives
us extraordinary hope, without compromising our industry, without Draconian measures. What he spoke about is real, it is not fantasy, and it is in this bill. The ethnol provisions that he talked about are in this bill because of the Senator from New Jersey, Mr. CORZINE, and Senator BINGAMAN, a Republican and a Democrat. Yes, they are from the same State, but they have different views—some more conservative, some more liberal. But they have come together, this balanced bill.

We are attempting to pass this good bill today. We are very close. We are down to the last few amendments. The Senator from Florida has made some excellent points. I also want to say he has been tireless in his advocacy for Florida. He is a Senator from Florida, along with Senator MARTINEZ. They have been down here for hours telling us about their beautiful beaches. We acknowledge it. In Louisiana—I tease the Senator from Florida—we know about those beaches. We grow up on those beaches as well. People from Mississippi and Alabama and Louisiana spend a lot of time on those beaches. We want to help them preserve their beaches.

I wanted to ask the Senator: Does he intend, if we can get our situation cleared up, to support the amendment we have on the floor, which is a revenue coastal impact assistance sharing? He has been so good in his comments about how he knows what the Senator from Louisiana said this morning that in his opinion this might be the most significant piece of legislation we might pass this Congress.

We have tried for 14 years. The Senator from Florida is aware we have tried to pass an energy bill. This is not an easy bill to pass, not because Democrats and Republicans disagree, but because regions of the country disagree about how best to achieve that goal. It is an extremely difficult piece of legislation.

If we had not had the two leaders we had, with the patience of Job—as I have said many times, I don’t know how they have brought us to this point. I know it is the Domenici-Bingaman amendment that is pending. Senator VITTER and I are cosponsors. Both Senators from Mississippi came earlier to speak on the amendment. We hope sometime in the next hour or so—hopefully sooner—to get a vote on the amendment—it would be a bipartisan vote—and then move on to take care of the other amendments and finalize the bill.

The Senator from Florida knows that despite our differences on this issue, we will agree to debate it in the future. This debate will go on. The underlying debate is not about the moratoria. It is not a drilling amendment. I look forward to having his support.

Mr. NELSON of Florida. This Senator thought the agreement to support the amendment of the Senator from Louisiana is that the Senator from Louisiana would forever and always support the Senator from Florida to keep the rigging off of the coast of Florida. Senator LANDRIEU has been such a tremendous advocate for the interests of her State. She has a need that is in front of the Senator. This Senator intends to help her, even though this Senator would certainly appreciate a little more help in the future from the Senator from Louisiana.

I want to point out again why the Senator from New Jersey, Mr. CORZINE, and I have been so exercised about now that this amendment is out there, filed, and it is germane to the bill, an amendment offered by Senator ALEXANDER, why it is such anathema to us. I will simply give you the explanation. When they say: Oh, we are just going to let States decide if they want to have the drilling off their coasts, there is something known as seaward lateral boundaries that are drawn as to what is the waters off of a State according to a Law of the Sea Treaty which by the way, was never ratified by the United States, so it is not the law of this country. Let me show you what the line would be off the State of Florida for the State of Louisiana under that Law of the Sea Treaty.

This is Louisiana. This is Mississippi. This is Alabama. And this is the line on the latitudes of Alabama and Florida. Guess what would be considered under the drawing of these lines called seaward lateral boundary. One of our colleagues from Virginia said this morning that in his opinion this might be the most significant piece of legislation we might pass this Congress.

Mr. CORZINE. I thank my colleague, who is pointing out the legal argument about seaward lateral boundaries which those that would end up applying in a practical sense where drilling might occur. There is also the reality of oil spills, some associated with drilling for natural gas which has occurred on more than a small percentage of situations in drilling for natural gas, and oil spills moved with the flow of the tides. As is shown in the map the Senator from Florida is presenting, not only do you have a legal boundary, you have a practical boundary because seaward lateral boundaries are no boundaries in the water. And there are no boundaries for fish to swim.

There are grave risks if the environmental and ecological elements of protection are not thought about. And there is a huge common benefit for many States with regard to both their economies and the quality of life and lifestyles are developed. That has to be put in measurement and measured against what is going to be gained.

In the case of New Jersey and the Mid-Atlantic and North Atlantic region, earlier tests show very limited supplies of natural gas and oil on that Outer Continental Shelf. Why do we
want to put ourselves at that kind of risk on a cost-benefit analysis? I ask the question. Is that the same kind of analysis at which my distinguished colleague from Florida has arrived?

Mr. NELSON of Florida. Indeed it is. But you feel passionately about us for the reasons that I have articulated much earlier. When somebody then wants to claim the patina of legality suddenly for their State’s waters and, in fact, allow the drilling off the coast of another State, then it is starting to get absolutely when we have to put our foot down.

As the Senator from New Jersey was talking, it occurred to me that I want to show, once again, these charts. This is from the Exxon Valdez, which is many years ago. But that was last week. That is last week off the coast of Louisiana. That is what we want to prevent.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. I ask unanimous consent to be allowed to speak as in morning business.

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

CONSULTATION ON SUPREME COURT NOMINEES

Mr. CORNYN. Mr. President, I want to talk about the anticipated vacancy on the U.S. Supreme Court. Whatever the timeframe for a vacancy on the Court, the process for selecting the next Associate or Chief Justice should reflect the very best of the American judiciary, not the worst of American politics. We deserve a Supreme Court nominee who reveres and respects the judiciary, not the worst of American politics. We deserve a Supreme Court nominee who reveres and respects the judiciary, not the worst of American politics.

This morning, a number of our colleagues on the other side of the aisle asked to be consulted about any future Supreme Court nomination. Let me answer those questions. First, we should be clear. Although consultation, in theory, may or may not be a good idea, there is no constitutional requirement or Senate tradition that obligates the President, or anyone in the executive branch, to consult with individual Senators, let alone with the Senate as an institution.

Second, consultation may or may not be a good idea, but Senators should be have in a manner that is both respectful and such a special consultation in the Supreme Court nomination process, if they expect the administration to meet them halfway.

At a minimum, the President should consider the following three conditions before agreeing to any special consultation with any particular Senator. First, whoever the nominee is, the Senate should focus its attention on judicial qualifications, not personal political beliefs. Second, whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan or personal attacks. Third, whoever the nominee is, the Senate should apply the same fair process that has existed for more than two centuries, and that is confirmation or rejection by a majority vote.

First, as I said, there is no constitutional or Senate tradition requiring consultation with individual Senators, let alone with the Senate as an institution.

The text of the Constitution contemplates no formal role for the Senate as an institution—let alone individual Senators—to advise on selecting Justices on the Supreme Court, or on any Federal court.

As renowned constitutional scholar and historian, David Currie, has pointed out, President George Washington did not consult with the Senate. I quote: “Madison, Jefferson, and Jay all advised Washington not to consult the Senate before making nominations.”

Professor Michael Gerhardt, the top Democrat adviser on the confirmation process, has similarly noted that “the Constitution does not mandate any formal prenomination role for the Senate to consult with the President; nor does it impose any obligation on the President to consult with the Senate prior to nominating people to confirmable posts.”

My second point: If there is to be any consultation, the Senate must first show that it will behave itself in a manner worthy of such a special role in the Supreme Court nomination process. After all, there is a right way and a wrong way to handle the merits of a Supreme Court nominee. And history itself provides some useful benchmarks.

First, whoever the nominee is, the Senate should focus its attention on judicial qualifications—not on personal political beliefs.

When President Clinton nominated Ruth Bader Ginsburg to the Court in 1993, Senators knew that she was a brilliant lawyer with a strong record of service in the law. Senators knew that she served as general counsel of the American Civil Liberties Union, a liberal organization that has championed the abolition of traditional marriage laws and attacked the Pledge of Allegiance. And they know that she had previously written that traditional marriage laws are unconstitutional; that the Constitution guarantees a right to prostitution; that the Boy Scouts, Girl Scouts, Mother’s Day, and a woman may not be conscripted into an institution; that courts should force taxpayers to pay for abortions against their will; and that the age of consent for sexual activity should be lowered to the age of 12. The Senate, nevertheless, confirmed her by a vote of 96 to 3.

Similarly, when Steven Breyer, nominated in 1994 by President Clinton, and Antonin Scalia, nominated in 1986 by President Reagan, the Senate recognized that these were brilliant jurists with strong records of service. Breyer had served as solicitor general under President Ted Kennedy on the Senate Judiciary Committee. His nomination to the Court was opposed by many conservatives because of alleged hostility to religious liberty and private religious education, while Scalia was known to hold strongly conservative views on a number of topics. The Senate, nevertheless, confirmed them by votes of 97 to 9 and 98 to 0, respectively.

Second, whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan political or personal attacks.

Unfortunately, as we know, respect for nominees has not always been the standard—at least it has not always been observed.

Lewis Powell, a distinguished member of the U.S. Supreme Court, during his nomination process was accused of demonstrating “continued hostility to the law,” and waging a “continual war on the Constitution.” Senate witnesses warned that his confirmation would mean that “justice for women would be ignored.” John Paul Stevens, also with a distinguished record of service on the Supreme Court, was charged during his confirmation hearings with “blatant insensitivity to discrimination against women.” Anthony Kennedy, also on the Court, was scrutinized for his “history of pro bono work for the Catholic Church,” and found to be “a deeply disturbing candidate for the United States Supreme Court,” according to some accounts.

David Souter, also on the U.S. Supreme Court, during his confirmation process, was described as “almost neanderthal,” “biased,” and “inflammatory.” One Senator actually said Souter’s civil rights record was “particularly troubling” and “raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution.” That same Senator condemned Souter for making “reactionary arguments” and for being “willing to defend the indefensible” and predicted that, if confirmed, Souter would “turn the clock back on the historic progress of the last 40 years.” At Senate hearings, witnesses cried that, “I tremble for this country if you confirm David Souter,” warning that “women’s lives are at stake,” and even predicting that “women will die.”

The best apology for these ruthless and reckless attacks is for them never to be repeated again. Unfortunately, recent history is not particularly promising. Even before President Bush took office in January 2001, the now-leader of the opposition party in the Senate told Fox News that “we have a right to look at John Ashcroft’s religion.” to determine whether there is “anything with his religious beliefs that would cause us to vote against him.” And over the last 4 years, this President’s judicial nominees have been labeled “boob,” “Neanderthal,” and even “turkeys.” Respected public servants and brilliant jurists have been called “scary” and “despicable.”
Third, whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries when it comes to confirmation or rejection—by an up-or-down vote of the majority.

One thing we do differently on the other side of the aisle have recently asked to be consulted about any future Supreme Court nomination—even though the Constitution provides only for advice and consent of the Senate, not individual Senators, and only with respect to the appointment of any Federal judge. If Senators want an extraordinary and unconstitutional role in the Supreme Court nomination process, the President should first consider seeking a commitment from them to subscribe to the three principles that I have talked about briefly above. After years of unprecedented obstruction and destructive politics, we must restore dignity, honesty, respect, and fairness to our Senate confirmation process. That is the only way to keep politics out of the judiciary.

Mr. McCONNELL. Will the Senator yield for a question before yielding the floor?

Mr. CORNYN. Yes.

Mr. McCONNELL. I was listening carefully to my friend’s comments about the process by which we react to the President’s nominees to the Supreme Court. Did I hear my colleague correctly, in discussing the issue of what is or is not a mainstream nominee, that Ruth Bader Ginsburg, for whom I voted—and I believe the final vote was something like 96 to 3—had at one time speculated that there might be a constitutional right to prostitution? Did she not suggest at some point in one of her writings?

Mr. CORNYN. The distinguished assistant majority leader is correct.

Mr. McCONNELL. Also, had she not suggested at one point that there be a uni-sex “Parent’s Day” instead of a Father’s Day or a Mother’s Day, or something similar to that?

Mr. CORNYN. Again, the distinguished assistant majority leader is correct.

Mr. McCONNELL. I ask my friend from Texas, is it not the case that many nominations that have been sent up here by Presidents have opined, from time to time, controversial or provocative views, particularly if they have opined as a teacher, that might strike many of us on this side of the aisle, and I suspect a majority on the other side, as outside of the mainstream to the left?

Mr. CORNYN. I say to the distinguished assistant majority leader that any lawyer—and we are likely to get a lawyer nominated for this important job on the Supreme Court—is going to have taken on behalf of a client, someone they have represented, or if they have taught, as the question suggests, during the course of their academic musings, programs, or writings, in Law Journal articles or otherwise, they are going to engage in the kind of intellectual exercise speculating perhaps about the limits of the law or what the law would or would not be under a particular set of circumstances. It is simply unreasonable to ascribe to those nominees, let’s say, the views or some of the opinions they have taken on behalf of a client, some time they have written on perhaps the limits of the Constitution or what would or would not stand up in a particular court decision. I agree we should be fair to the nominee. We should require they rule in accordance with precedent and the intent of Congress when it comes to interpreting Acts of Congress. But we should not try to mischaracterize them or paint them as out of the mainstream by viewing in isolation some of these writings or representations in their legal practice.

Mr. McCONNELL. Finally, let me ask, is it not largely the case, I ask my colleague from Texas, that until the last few years, controversial or provocative views have, in fact, not been used as a rationale for defeating nominees, assuming they are lacking in qualifications or “outside the mainstream” as a rationale for defeating otherwise well-qualified nominees?

Mr. CORNYN. As the distinguished assistant majority leader knows, there has been a mischaracterization of the record of many nominees who have come up in recent times and one I hope we have the knowledge of the occurrence of such a vacancy at this time, our friends implored the White House to consult with them in selecting a Supreme Court nominee. It is on this subject that I wish to make a few observations in the event such a vacancy were to occur.

From time to time, Senators may suggest to a President who he should nominate to the Federal bench. Sometimes Presidents agree with the suggestions, and sometimes they do not. This White House has observed this practice, and I believe it will continue to do so. But we should not confuse the solicitude that any President may afford the views of individual Senators on a case-by-case basis with some sort of constitutional right of 100 individual Senators to co-nominate persons to the Federal court.

Unfortunately, I am afraid our Democratic friends are under a misapprehension that they have a guaranteed individual right of co-nomination. In the past, our colleague Senator SCHUMER has said that in his view—in his view—the President and the Senate should have “equal roles” in picking judicial nominees.

And just last week, and again on the floor this morning, my good friend from Vermont said that he “stands ready to work with President Bush to help him select a nominee to the Supreme Court.”

Such a view of the confirmation process is completely at odds with the plain language of the Constitution, the Framers’ intent, common sense, and past statements of our Democratic friends themselves.

Let’s start with the Constitution. Article II, section 2 provides that the President, and the President alone—no one else—“nominate[s] . . . the President shall nominate.” It does not say “the President and the Senate shall nominate,” nor does it say “the President and a certain quantity of individual Senators shall nominate.” It says “the President shall nominate”—the plain words of the Constitution. It then adds that after he nominates, his nominees will be appointed “by and with the Advice and Consent of the Senate” as the plain language meaning of article II, section 2 is confirmed by the Founding Father who proposed the very constitutional language I just cited. Alexander Hamilton wrote that it is the President, not the President and a certain quantity of individual Senators who nominates judges. Specifically, in Federalist No. 66, Alexander Hamilton wrote:

“It will be the Office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice—I repeat, no exertion of choice—on the part of the Senate. They may defeat

SUPREME COURT NOMINEES

Mr. McCONNELL. Mr. President, I listened with interest this morning to the remarks of our Democratic colleagues. They talked about a potential Supreme Court vacancy. While we have not yet had the confirmation of a vacancy at this time, our friends implored the White House to consult with them in selecting a Supreme Court nominee. It is on this subject that I wish to make a few observations in the event such a vacancy were to occur.

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one choice of the Executive and oblige him to make another; but they cannot them-

selves choose—they can only ratify or reject the choice (of the President).

Nothing could be more clear—Alex-

ander Hamilton's Federalist No. 66 in-

terpreting the plain language of article II, section 2 of the Constitution.

The Framers were, of course, as we

all know, brilliant. They recognized that the judicial confirmation process would not work at all if we allowed the

President and a multitude of individual Senators selecting judges. How could a

President hope to accommodate the views of 100 different Senators on who he

should nominate, each of whom might submit their own slate of Supreme Court

nominees? That is why the only person who

won a national election is charged with

the power of nomination—the only person

who won a national election is charged with the power of nomination.

Our Democratic friends at one point

at least recognized this as well. For ex-

ample, during Justice O'Connor's con-

firmation hearing, my good friend from

Delaware, the former chairman of the

Judiciary Committee, said:

I believe in that Senate there were

at least 100 of us. Here we are saying this should

be part of the record—everything. Some will have

one issue but, rather, would be people

who are mainstream conservatives who

would be acceptable to most of us because we believe—my test, and I think

it is the test of most of us is not on any one issue but, rather, would be people

who would interpret the law, not make it,

I do not like judges who are ideologues. I do not like judges at the extremes. Obviously, the President has

named some judges at the extremes, but my judicial committee, under my instructions in New York, where we do not say anyone is knocked out on the far left.

That is because ideologues want to make law. They are so sure they are right that they can ignore everybody else.

Consultation is what it is all about. In my judgment, consultation is the only way to avoid the kinds of con-

frontations which I am sure none of us likes when it comes to judges. To call it political, that does not pass the

laugh test.

That I heard—and again, I was not

here—where my friend from Texas and I

believe my friend from Kentucky were having a debate on what should be

allowed to be in the record in terms of if

and when a Supreme Court Justice is

selected. I was not there, but they considered and argued while in court

should not be considered because they were representing a client, or it should

not be this or it should be that.

The nomination and the confirm-

ation of a U.S. Supreme Court Justice and a U.S. Chief Justice is one of the

most important things we shall do as Senators. Let me put my colleagues on

notice: Everything should be on the record—everything. Some will have

less importance, some will have more

importance, but to already, before

someone is even nominated, start say-

ing, Oh, this should not be part of the

record, that should not be part of the

record, sounds a little defensive.

I am sure we would not know any-

thing about the nominee; just take the

President's recommendation. Well, for-

nagin—that it was probably 30—26 people

try to choose 1 nominee was far more
difficult than 1 choosing a nominee.

But make no mistake about it, they

wanted the Senate to be very active.

In fact, as I know from our history and we have repeated on this floor, al-

though it does not seem to make much

of a dent, the early Senate rejected one

of George Washington's nominees, and

I believe in that Senate there were

eight Founding Fathers on the Court.

They ought to know better than any

of us. Here we are saying this should

not be part of the record, that should
not be part of the record. Maybe my colleagues are being a little defensive. Maybe they do not want—I do not know who the nominees will be. I have no idea. But maybe they are worried that if all the facts came out, the American people might not want to confirm the nominees. I am of the other view. Justice Brandeis stated that sunlight is the greatest disinfectant. The more we see and the more we learn, the better we will be prepared.

I see my good friend, our great leader from Hawaii up here to the floor of the Senate, and I do not want to delay him.

In conclusion, one, we plead with the President to consult with the minority, as President Clinton did, as President Hoover did, as President Grant did, and as so many others. That will make the process go more easily. When the American people ask us what can avoid the kind of confrontation we have seen with judges, there is a one word answer: consultation. Advise, as in advise and consent.

The ball is in the President’s court. He can determine whether we have the kind of process the American people want—careful, thorough but harmonious and bipartisan. If he does something insulting—or he can be like Zeus from Mount Olympus and throw down judicial thunderbolts and say: This is the nominee. Then maybe some of his minions will say: You cannot admit this fact about the nominee or that fact about the nominee. That is not legitimate. That will not create a harmonious process in this body.

We are on the edge of perhaps a nomination for the U.S. Supreme Court—again, one of the most important things we Senators do. Let us hope, with consultation, it will occur in a harmonious and bipartisan way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

WE ARE ALL AMERICANS

Mr. INOUYE. Mr. President, according to press reports last evening one of the principal advisors to the President, Mr. Karl Rove, criticized Democrats for failing to respond to the attacks on 9/11. He is reported to have said that the Democratic Party did not understand the consequences of the Sept. 11, 2001, attacks. He is quoted saying, “Liberals saw the savagery of the 9/11 attack but to prepare our emotions and offer therapy and understanding for our attackers. Conservatives saw the savagery of 9/11 and the attacks and prepared for war.”

Oftentimes in press reports, words are taken out of context or simply misquoted. I would hope that is the case here. I would hope that the views that were reported to have been expressed do not really represent the thoughts of Mr. Rove and certainly not the President.

It is not often that I come to the floor to question what someone might have said. My view is that most of the time it is better to just remain silent and not to dignify the remarks which might have been made in the heat of partisan rhetoric, but this is a bit different.

All of us who were in the Congress at that time recall the discussion. Like all Americans we saw the jetliner crash into the Twin Towers on our televisions and we could all see the smoke rising from the Pentagon just across the river.

Perhaps Mr. Rove forgets what that day was like as we evacuated our offices and tried to maintain an aura of calm for the American public. Perhaps he forgets the spontaneous action of many of my colleagues who gathered on the steps of the Capitol to sing “God Bless America.” It wasn’t Republicans on the steps and it wasn’t conservatives, it was Americans. All colors, all religions, both parties came together in a patriotic symbol to demonstrate the resolve of America.

Mr. Rove must also not remember that the Senate was in the hands of a Democratic majority in September 2001. It was the Democratic majority, acting with the Republican minority, which pushed through a resolution authorizing the use of force to go after Osama Bin Laden. There was no dispute between the parties on this issue. We all agreed that we had to defeat this enemy of America.

I was Chairman of the Defense Appropriations Subcommittee at that time. I worked with my colleague Ted Stevens to put together an emergency appropriations bill to support the Defense Department’s requirements to mount an attack on the terrorists. It was a bipartisan plan that provided the administration wide latitude to respond to this tragedy. There was no dissent. We were united across party lines.

Perhaps Mr. Rove just forgets. I cannot forget visiting the Pentagon and seeing the extent of the damage and the continuing rescue efforts with my colleague Senator Stevens. I vividly recall flying to New York City one week later to tour the site of the disaster. I will never forget the acrid smell that still arose through the smoke from the site as we flew over the area in a helicopter. I will forever recall seeing the widows of lost firefighters being escorted, and literally held up, by other New York emergency workers as they visited the site.

It has been often in our Nation’s history that we have been tested. As a student of history when we suffered a savage attack as we did on Dec. 7, 1941 at another time in our Nation’s history when we suffered a savage attack we stood together.

At the time the Nation responded in a bipartisan fashion to respond to that awful attack. Our response to the 9/11 attack was similar. All Americans were outraged by the attack and we proved our resolve to respond. To claim that we had a monopoly on a patriotic response or a will to act is not only factually in error it is an insult to all Americans.

I have been in politics for many years. I understand the use of partisan political rhetoric to play to an audience. I also know that in this era of instantaneous information, erroneous statements can become accepted as facts. This statement, if it truly reflects the views of the President’s advisor, needs to be refuted before it can be thought of as being historically accurate.

There has been a lot said in the press recently about demanding apologies for statements that have been spoken. The White House needs to take a look at these statements and consider an appropriate response to repudiate these words.

Patriotism is not owned by one political party. Our national resolve is not Democratic or Republican. It is American.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

WE ARE ALL AMERICANS

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be excused from the Senate between the hours of 3 p.m. and 6 p.m. today.

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

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

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

Mr. KENNEDY. Mr. President, I ask for recognition in my own right and I ask my comments be printed in an appropriate place in the RECORD and be given as in morning business.

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

Mr. DOMENICI. Mr. President, I see the distinguished Senator from Massachusetts. I know he wants to speak, I do want to explain the position I am in.

I am trying very hard to get the amendment that is pending voted on. Mr. Stevens and I have been waiting for a long time.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I see the distinguished Senator from Massachusetts. I know he wants to speak.

I am trying very hard to get the amendment that is pending voted on. Mr. Stevens and I have been waiting for a long time.

Both Senator Bingaman and Senator Domenici have to leave. Our scheduled time of departure is 3:30 to get home to go to a BRAC Commission meeting where six commissioners will be there. Both Senator Bingaman and Senator Domenici have to leave. Our scheduled time of departure is 3:30 to get home to go to a BRAC Commission meeting where six commissioners will be there.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I want to accommodate and respond to my friend colleague. What I would like to find out is, if I could be part of an unanimous consent request to simply be recognized after the business
the Senator needs to do, I am happy to accommodate him.

Mr. DOMENICI. The Senator wants to be recognized for a speech.

Mr. KERRY. I want to be recognized to be able to speak immediately after the business the Senator has to conduct. If I can be so recognized, I would appreciate it very much.

Mr. DOMENICI. So long as there is no misunderstanding, the business I am talking about would include a vote.

Mr. KERRY. I understand. The Senator needs to have a vote now, and I will happily accommodate that.

Mr. DOMENICI. I am appreciative. I thank the Senator so much.

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

Mr. KERRY. I understand I am part of the unanimous consent request to be recognized after the vote.

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. Yes, indeed. As soon as this business is finished on the pending amendment, he will be recognized for whatever time he needs.

In order to save time, I wonder if I could have 2 minutes of colloquy with the Senator from New Jersey, who is part of the proposal we are trying to finish. No amendments, just a colloquy with reference to the subject matter. I know the Senator from New Jersey is here. This colloquy has to do with some amendments he is pulling down that put our compromise together so we don’t have any amendments that offend you. He wants to ask me about two amendments which he will withdraw.

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

The Senator from Louisiana.

AMENDMENT NO. 802 RECALLED

Mr. VITTER. Mr. President, I rise to engage in a colloquy with the distinguished chairman about one amendment, particular, amendment No. 802. It is based on an underlying bill I introduced, the Alternative Energy Enhancement Act, which would provide some regulatory structure and some royalty sharing for new alternative energy that is developed offshore, particularly on the Outer Continental Shelf. These are new forms of energy which are not in production now, things such as solar energy, thermal energy, wave energy, methane hydrate.

First, I compliment the chairman for his work on the bill because the underlying bill includes most, if not all, of the regulatory provisions of my bill. What it does not include is royalty sharing. I would like to ask the chairman if he could continue to work with me as this energy bill goes to conference to create a fair system of royalty sharing for these new forms of energy, noting that it is absolutely no loss to the Federal Treasury because those revenues are not coming in yet.

Mr. DOMENICI. The Senator has my assurance. Just as I have tried to do that in the past, I will continue to do it. It cannot be included in this bill for a lot of reasons, including those the Senators from offshore States understand. We will continue to work on it and see how we can move it along in due course.

Mr. VITTER. I thank the chairman.

Mr. DOMENICI. Will you pull your amendment after this colloquy?

Mr. VITTER. Yes, this first amendment is No. 802. My second amendment we can deal with much later on. We don’t have to deal with it immediately.

Mr. DOMENICI. Will you withdraw it?

Mr. VITTER. Mr. President, I withdraw amendment No. 802.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. CORNYN. Mr. President, I rise to add my support to the Domenici amendment No. 891. However, before I proceed, I want to extend my gratitude and congratulations to the chairman and ranking member of the Energy and Natural Resources Committee, Senator Domenici and Senator Bingaman, for their hard work in producing this Senate energy bill.

Congress has tried several times to approve a comprehensive energy bill. Under their wise guidance and counsel, I believe that we will be successful this time. It is critical that we provide the country with the resources and tools to meet our growing energy needs and this bill will go a long way in accomplishing that goal.

It is toward this same goal that I support this amendment that would share a portion of the revenues generated by on-shore oil and gas and operations with coastal producing States. As we work to address our Nation’s growing energy needs and to increase our domestic production of oil and gas, there will be enormous pressures placed on the communities along our coasts that serve as a platform to these operations. There are a variety of forms and present a number of challenges. By giving coastal States an arrangement that States with in-land development already have by sharing some of these oil and gas revenues, we can mitigate some of these pressures. This includes assistance with conservation of critical coastal habitats and wetlands to providing coastal communities with help for infrastructure and public service needs. There has been a debate going on the issue of coastal erosion in Louisiana, but I want the Senate to know that parts of Texas are experiencing some of the very same problems.

I also appreciate the comments and reservations expressed by the distinguished Chairman of the Budget Committee. As a member of the Budget Committee, I recognize the significance and implications of waiving the Budget Act. However, in this case, the budget resolution does contain a specific provision in the Budget Act that says if a point of order is made, the Senate may waive the point of order. So the issue before the Senate is whether we should waive the point of order. I want to make two points.

First, the Energy and Natural Resources Committee, which has the bill on the floor, was allotted $2 billion. People think we were allotted a lot of money. We were allotted $2 billion to be spent by the committee on matters pertaining to this bill. We have a debate as to whether we can spend it on this amendment or whether we have to spend it on the bill in committee. The Senator from New Mexico maintains that we should, as a Senate, say the $2 billion was given to the committee. We are spending it on legitimate committee business, and we ought to be allowed to spend it on this amendment. We do not break the budget; we just use the money we were allotted. So it isn’t a budgetary question. It is a budgetary question, and whether we waive based upon whether we should have used it in the committee or whether we could use that very same amount of money on
the floor of the Senate. That is the issue.

I yield back any time I have.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I am now recognized for 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. GREGG. Mr. President, it is important to review the bidding here. The situation is that a budget point of order has been raised. It is properly founded, and there is a motion to waive it. The logic behind the point of order is very simple. We are taking a discretionary program and moving it over to be an entitlement program to benefit five States, primarily Louisiana, which will get 54 percent of the money that is allocated. It is hard to understand why we would want to create a new entitlement program simply for Louisiana to address their conservation concerns.

There are a lot of States that have conservation concerns. There is, in my opinion, virtually no nexus between the conditions which will be addressed theoretically by this amendment, should it pass, and the energy that is being sought off the coast of Louisiana. Even if there were, it would be inappropriate to pass such an amendment to create a new entitlement unless you included other States which had the same type of impact, because they were producing energy, on their environment. Furthermore, we have heard a great deal about how Louisiana has a right to this money. They have an entitlement to this money. Those were the words used by my friends across the aisle. As we look at the numbers relative to how funds are disbursed from the Federal Government, it appears that Louisiana is doing pretty well.

For every dollar Louisiana sends to the U.S. Treasury, Louisiana gets $1.43 back. That is darn good. They are getting a 43-cent bonus on every dollar they spend from what they send up here. Of the five States that will benefit from this, all of them get more money back than they send to Washington, and four get substantially more money. In fact, they are in the top 10 of States to get more money back.

The equities of this Louisiana case are weak, to say the least. When you throw into the factor that they already have wind—the only State in the country—for all the money raised as a result of people running lawmakers in places such as Montana, Oregon, or Massachusetts, you end up, if you start your lawmaker or your snowblower, sending money to Louisiana to help them with environmental mitigation. They already have a fund, and they want more on top of that.

The issue is simple. We passed a budget. The other side of the aisle didn’t participate in the process. The Republican side of the aisle did. We passed a budget. Now the question is, Are we going to enforce that budget or are we going to spend money creating an entitlement program that is totally outside of the bounds of the budget, which is wrong, and which has no equity behind it, other than that group of States decided to raid the Federal Treasury.

It seems to me we have to make some decisions as to whether we are going to enforce the budget process. I note that the administration supports this point of order and opposes this amendment. I hope my colleagues will join me in that position, also.

I yield back the remainder of my time.

The yeas and nays have been ordered, as I understand it.

Mr. DOMENICI. Mr. President, before the yeas and nays are called, I think we have a unanimous consent agreement that everybody put their fingerprints on, I will read it, after which time we will vote.

I ask unanimous consent that the list of amendments that I send to the desk be the only first-degree amendments remaining in order to the bill, including the managers’ amendment, which are enumerated; provided further that this agreement does not waive the provisions of rule XXII; further, that upon disposition of the pending Domenici amendment, no further amendments relating to the issue of OCS moratorium and natural gas and oil exploitation be in order to the bill, with the exception of amendments Nos. 802 and 804, to be offered by the distinguished Senator Vitter; and that upon his statements of amendments, the amendments will be withdrawn. I modify that to strike the amendment we have already recalled, and that was amendment No. 802. So I strike No. 802, which has already been recalled. The rest of the proposal we will leave with the Senate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The final list of amendments is as follows:

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<tr>
<th>Amendment</th>
<th>Sponsor</th>
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<tbody>
<tr>
<td>Talent—#891; Baucus—#846; Rocky Mountain Fund; (to be withdrawn); Durbin—#992; CAFE, #993; Small Business Next Generation Lighting; Lautenberg—#778; P-FUELS; Inouye/Akaka—#876; Deep Water Renewable Thermal Energy; Pryor—#881; Weatherization Assistance Credit; Dodd—#892; 808: Power Rates in New England; Schumer—#810; Uranium Exports; Obama—#851; Sununu—#873; Bond/Levin—#925; Salazar—#882; Energy’s Package.</td>
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Mr. DOMENICI. I understand that we will proceed to an up-or-down vote. Mr. President, I might say to the Senate, after this vote, I don’t believe either Senator from New Mexico will be here for the remainder of the votes. Senator Lamy will play the manager of the bill. I thank everybody for their cooperation to get the bill this far. I yield the floor.

The PRESIDING OFFICER. The amendment is on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), and the Senator from Alaska (Mr. STEVENS).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN), would have voted “yea.”

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN), are necessarily absent.

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

The result was announced—yeas 69, nays 26, as follows:

(Roll Call Vote No. 153 Leg.)

YEAS—69

Akaka, D.C., 43; Alexander, R., 43; Baucus, D., 46; Bennett, R., 42; Bays, D., 42; Bennett, R., 42; Boxer, D., 42; Brown, D., 42; Brownback, R., 42; Cantwell, D., 42; Carper, D., 42; Carper, D., 42; Corker, R., 42; Corzine, D., 42; Craig, R., 42; DeWine, R., 42; Dole, R., 42; Domenici, R., 42; Murray, R., 43; Nelson (FL), 43; Nelson (NE), 43; Obama, D., 43; Pryor, D., 43; Reed, D., 43; Roberts, R., 43; Rockefeller, R., 43; Salazar, D., 43; Sarbanes, D., 43; Schumacher, R., 43; Sessions, R., 43; Shelby, R., 43; Smith, D., 43; Snowe, R., 43; Stabenow, D., 43; Talent, D., 43; Thune, R., 43; Vitale, R., 43; Voinovich, R., 43; Warner, D., 43.

NAYS—26

Allard, R., 26; Burns, R., 26; Byrd, D., 26; Chafee, R., 26; Chambliss, R., 26; Coburn, R., 26; Collins, R., 26; Crapo, R., 26; Dorgan, R., 26; Feingold, D., 26; Gregg, R., 26; Graham, R., 26; Grassley, R., 26; Hagel, D., 26; Harkin, D., 26; Inouye, D., 26; Johnson, R., 26; Kinzinger, R., 26; Kennedy, D., 26; Ky, D., 26; Lautenberg, D., 26; Levin, D., 26; Lieberman, D., 26; Lincoln, D., 26; Lott, R., 26; Martino, R., 26; Mikulski, D., 26; Moran, R., 26; Nelson (NE), 26; Nelson (FL), 26; Portman, R., 26; Specter, R., 26; Sununu, R., 26; Thomas, D., 26; Wyden, D., 26.

NOT VOTING—5

Conrad, R., 5; Collins, R., 5; Coburn, R., 5; Crapo, R., 5; Dorgan, R., 5; Feingold, D., 5; Gregg, R., 5; Grassley, R., 5; Hagel, D., 5; Harkin, D., 5; Inouye, D., 5; Johnson, R., 5; Kinzinger, R., 5; Kennedy, D., 5; Ky, D., 5; Lautenberg, D., 5; Levin, D., 5; Lieberman, D., 5; Lincoln, D., 5; Lott, R., 5; Martino, R., 5; Mikulski, D., 5; Moran, R., 5; Nelson (NE), 5; Nelson (FL), 5; Portman, R., 5; Specter, R., 5; Sununu, R., 5; Thomas, D., 5; Wyden, D., 5.

The PRESIDING OFFICER. On this vote, the ayes are 69, the nays are 26.

Three-fifths of the Senators, duly chosen and sworn, having voted in the affirmative, the motion is rejected. The point of order fails.

Under the previous order, the Senator from Massachusetts will be recognized, and the first question is on agreeing to amendment No. 891.

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

The PRESIDING OFFICER. The quorum is present; the Senate will proceed.

The PRESIDING OFFICER. The Senator from Massachusetts will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. 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 question is on agreeing to amendment No. 891.

The amendment (No. 891) was agreed to.
The PRESIDING OFFICER. The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to comment about certain statements made this morning that were somewhat critical of the President’s commitment on a prospective Supreme Court nomination. One of the Senators from the other side of the aisle said that there would be a battle royal unless there was consultation that met the requirement of the other side of the aisle. Two other lengthy speeches were also presented along the same line.

There has been a letter submitted by some 44 Senators that called for consultation by the President on the issue of a Supreme Court Nomination. However, I think the first thing to acknowledge is that there is no vacancy. It would be premature to be critical. It would be premature to raise the issue in a confrontational sense until the matter is considered.

A number of us had occasion to have lunch with members of the Supreme Court last week, and the Chief Justice looked remarkably fit. We saw him when he administered the oath to the President 5 months ago, when he was helped down to the podium, a little shaky and his voice a little faltering, but last Thursday he looked remarkably well. What he intends to do or what anyone else intends to do remains to be seen, but it is hardly the line, given the kind of confrontation in this body which we have seen on the judicial nomination process, to be looking to pick a fight. I am not saying anyone is picking a fight—just that we ought to pick a fight. I am not saying anyone else intends to do it, but last Thursday he looked remarkably fit. We saw him when it occurred—in a spirit of comity, and with the systematic filibuster and the interim appointment, and we are past that.

We have a very heavy responsibility. If a vacancy occurs on the Supreme Court, it is presumptuous of me to try to get somebody who can be confirmed; somebody who is acceptable to the Senate. If we are to fail in that and have an eight-person Court, it would be dysfunctional. As we all know, there are many 5-to-4 decisions. The country simply could not function with 4-to-4 court.

It would be my hope that we would lower the rhetoric and not put anybody in the position of being compelled to respond to a challenge. Let us not challenge each other. Let us not challenge the President. Let us move toward consultation.

This is something I have discussed with the distinguished Democratic leader Mr. REID. Also, Senator LEAHY and I have talked about the subject at length. I think we have established—as Senator LEAHY called—it an atmosphere of comity in the Judiciary Committee. Such that we will approach this very important duty with tranquility, comity, and good will to do the work of the American people and not presume that the President is going to pick someone characterized as out of the mainstream or someone objectionable.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. REID. First, I underscore what the distinguished chairman of the Judiciary Committee said. We all hope that Chief Justice Rehnquist’s health permits him to continue serving on the Court. I became an admirer of his during the impeachment proceedings. I got to know him. He has a great sense of humor, and we all know he has a tremendous will, which I wish him the very best health. So I hope we do not have to consider a vacancy in the Supreme Court.

I would say to my friend, the distinguished chairman of the Judiciary Committee, we on this side of the aisle, as most all of the Senate, have the greatest respect for ARLEN SPECTER. We are very happy with the relationship he has with the ranking member, with the Chairman of the Judiciary Committee that is that is going to allow us to get work done in the Judiciary Committee. They have respect and admiration for each other.

I always joke with Senator SPECTER that he is one of the people who have read his book—and I have read his book. But my feelings about the Senator from Pennsylvania have only increased in recent years, especially during the last few months when he has responded so well to the illness that he has. We are all mindful of the physical strength this man has. So anything we do in the Judiciary Committee is never disrespectful of the chairman of the Judiciary Committee.

I say, I attended one of the press events, and I think there was only one, dealing with the Supreme Court, that we talked about today. It was not a battle royal. It was a very constructive statement that we all made.

We are hopeful and confident the President will follow through. Like Senator HATCH’s relationship with President Clinton, it was a good way to do things. As a result of the work done with President Clinton and then Senator HATCH, we were able to get two outstanding Supreme Court Justices—Ginsburg and Breyer. No one can complain about the intellect or the hard work and what they have done for our country and for the Court.

We believe there should be advice and consent on all judicial nominations but at least on the Supreme Court. As the Senator from Pennsylvania said, the President a month ago indicated he wants to do this today. I wanted to remind the President, in the letter we sent to him, that he should follow what he said before.

We look forward to a hearing. I have spoken to our ranking member, Senator LEAHY, and he is in the process of working with the Senator from Pennsylvania to come up with a protocol, how we proceed on Supreme Court nominations.

This is a very unusual time in the history of this country. We have gone more than 11 years without an opening in the Supreme Court. As a result of that, staff is not as familiar with how things have happened in the past, and most Senators were not even here when the Supreme Court vacancies were filled. We—time—at least many of the Senators.

So I say to my friend from Pennsylvania, we look forward to working with you and the administration if, in fact, there is a vacancy on the Supreme Court, and even if there is not a vacancy on the Supreme Court. I believe it is important that you and Senator LEAHY work toward a protocol so when
one does come up, it is not catchup
time. I say if there is no Supreme
Court vacancy, we look forward to
working with you on the many things
over which the Judiciary Committee
has jurisdiction. We are confident your
experience and intellect and love of the
law will allow this body to be a better
place.

Mr. SPECTER. I thank the Senator.

The PRESIDING OFFICER. The Sen-
ator from Massachusetts.

KARL ROVE

Mr. KERRY. Mr. President, last
night in New York City, Karl Rove
made some comments to the Conserva-
tive Party of New York that need to be
discussed on this floor and for which
an apology is needed.

None of us here will ever forget the
hours after September 11, the frantic
calls to our families after we evacuated
the Capitol, the evacuations them-
selves, the images on television, and
then the remarkable response of the
American people. We elected the floor
as one to answer the attack on our
homeland.

I remember being in a leadership
meeting just off the Chamber here at
the moment that the plane hit the Pen-
tagon. I could see the plume of smoke.
Then the word came from the White
House that they were evacuating and
that we should evacuate. I will never
forget the anger I felt as we walked out
here, numbers of people running across
the street, and I turned to some-
body else walking with us and I said,
“We’re at war.” That was the reaction
of the American people. That was the
reaction of everybody in the Senate
and Congress.

We drew strength when our fire-
fighters ran upstairs in New York City
and risked their lives so that other
people could live. When rescuers rushed
into smoke and fire at the Pentagon,
we took heart at their courage. When
the men and women of flight 93 sac-
rificed themselves to save our Nation’s
Capitol, when flags were hanging from
front porches all across America and
strangers became friends, it brought
out the best of all of us in America.

That spirit of our country should never
be reduced to a cheap, divisive political
applause line from anyone who speaks
for the President of the United States.

I am proud, as my colleagues on this
side are, that after September 11, all of
the country rallied together to support
President Bush’s call for unity to meet
the danger. There were no Democrats,
there were no Republicans, there were
only Americans. That is why it is real-
ly hard to believe that last night in
New York, a senior adviser, the most
hard to believe that last night in
New York, a senior adviser, the most

Mr. JOHNSON. May I direct a ques-
tion to my colleague from Massachu-
setts?

Mr. KERRY. I am happy to yield for
a question.

Mr. JOHNSON. Is it your view that
Mr. Rove understands that the men
and women in uniform in Afghanistan and
Iraq are Republicans and Democrats in
political registration and political phi-
losophy, but they are Americans work-
ing together to protect us, to protect
our Nation?

As my friend from Massachusetts
knows, my oldest son, a staff sergeant
in the U.S. Army, served in combat—he
is a Democrat—in Afghanistan and
Iraq. There is no political division
among those young men and women
fighting and endangering their lives
each and every day in those countries.

They are responding to the call of their
country, to endure their lives. They
fought heroically, Republicans and
Democrats alike. For anyone to sug-
pose that there are differences of mo-
tive about protecting America, about
responding to 9/11, is beyond the pale.

Do you believe Mr. Rove understands
that or do you believe that he honestly
thinks that the defense of this country
is a partisan issue?

Mr. KERRY. Mr. President, let me
say to the Senator, first of all, every
one of us is proud of him and proud of
him and proud of the service of his
son. I remember talking to the Sen-
ator from South Dakota about how he
felt while his son was in harm’s way.
I feel there were a sort of clear state-
ment about the insult of Karl Rove’s
comments, it is the question asked by
the Senator. I don’t know if Karl Rove
understands that. His comments cer-
tainly do not indicate it. But I will tell
you this: It raises the question of
whether he is, as many have suggested,
prepared to say anything for political
purpose.

I think he owes your son. I think he
owes every Democrat. I have been to
Iraq. I met countless soldiers who came

American who is every bit as com-
fighted to committing as is he.

For Karl Rove to equate Democratic
policy on terror to indictments or to
therapy or to suggest that the Demo-
cratic response on 9/11 was weak is dis-
graceful.

Just days after 9/11, the Senate voted
98 to nothing, and the House voted 420
to 1, to authorize President Bush to use
all necessary and appropriate force
against terror. And after the bipartisan
vote, President Bush said:

“I’m gratified that the Congress has united
so powerfully by taking this action. It sends
a clear message. Our people are together and
we will prevail.

That is not the message that was
sent by Karl Rove in New York City
last night. Last night, he said: “No
more needs to be said about their
motives.” The motives of liberals.

I think a lot more needs to be said
about Karl Rove’s motives because they
are not adequately armored. They are
the motives that were ex-
pressed in that spirit that brought us
together. They are not the motives of a
Nation that found unity in that crit-
ical moment—Democrat and Repub-
lican alike, Americans.

If the President really believes his
own words, if those words have mean-
he should at the very least expect
a public apology from Karl Rove. And
frankly, he ought to fire him. If the
President of the United States knows
the meaning of those words, then he
ought to listen to the plea of Kristen
Brightweiser, who lost her husband
when the Twin Towers came crashing
down. She said:

“If you are going to use 9/11, use it to make
this Nation safer than it was on 9/11.

Karl Rove doesn’t owe me an apology
and he doesn’t owe Democrats an apol-

He owes the country an apology.

He owes Kristen Brightweiser and a lot
of people like her, those families, an
apology. He owes an apology to every
one of those families who paid the ulti-
mate price on 9/11 and expect their
Government to be doing all possible to
keep the unity of their country and to
fight an effective war on terror.

The fact is, millions of Americans
across our country have serious ques-
tions about that, and they have a right
to have a legitimate debate in our Na-
tion without being called names or
somehow being divided in a way that
doctors and nurses are being called.

The motive of Democrats.

The fact is that mothers and fathers of
service people spend sleepless nights
among those young men and women
fighting and endangering their lives
in the United States, is twisting, purposely
twisting those days of unity in order to
divide us for political gain.

Rather than focusing attention on
Osama bin Laden and finding him or
rather turning attention on just
smashing al-Qa’ida and uniting our ef-
fort, as we have been, he is, instead,
challenging the patriotism of every

That is what Americans expect of us,
and that is what is going to make this
country safer in the long run.

I yield the floor.
up to me and said, “I voted for you” or people who said “I support you” or people who said they are just Democrats. This comment by Karl Rove insults every single one of them who responded to the call of our country, as did every Senator on this side of the aisle in voting to go into Afghanistan and in supporting the troops across the board. If we are going to get things done and find the common ground here, this is not the way for the most senior adviser to the President to be talking about our country.

I remember the storm created in the last week over the comments of a Senator. Here is a senior adviser to the President of the United States who has insulted every Democrat in this country, every patriot in this country who is trying to do their best to protect our troops and provide good policy to our Nation. To suggest there was a weak response, when we voted 98 to 0, is an insult to that vote and to the unity of the moment as to the words of his own President, and I think he owes an apology to your son and to all of those soldiers.

I yield the floor.

Mr. DURBIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. First, Mr. President, I ask unanimous consent that the order for amendment No. 810 be temporarily set aside and that following that time the quorum call be rescinded.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for amendment No. 810 be temporarily set aside and that following that time the quorum call be rescinded.

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

Mr. SCHUMER. I am. I do not have that much to say, and we limited the time. I do not want to finish before Senator KYL gets here. His staff has told him to get here. I guess I can talk about a lot of different subjects until he gets here.

Mr. CRAIG. I withdraw the UC for that purpose.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. First, Mr. President, I ask unanimous consent that following my remarks Senator KYL be recognized.

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

AMENDMENT NO. 810

Mr. SCHUMER. Mr. President, I rise today to offer an amendment with my colleague from Arizona to strike language from this Energy bill that would undermine years of progress toward combating nuclear terrorism in an effort to solve a problem that does not exist.

I have often said that the prospect of a nuclear attack on America’s soil is our nightmare. That is why I, like many of my colleagues, have been so aggressive in pushing the administration to install nuclear detection devices in our ports, and to take other measures to make sure that nuclear materials cannot be obtained by terrorists and used against us. The human, environmental, and economic impact of such an attack on the United States—any part of our dear country—would be almost unfathomable.

So I urge my colleagues to contemplate that when they are examining what exactly the provision in the Energy bill would do. For years, we have prohibited what this provision of the Energy bill would allow. The supporters of the language claim that it is necessary to avert an impending crisis in the supply of medical isotopes used in radiopharmaceuticals. A
look at the current isotope industry raises some serious questions as to whether that is what is really going on here. Isotope producers currently make isotopes for use in radiopharmaceuticals and other products by taking a mass of fissionable material, known as fuel, and using it to produce neutrons through another mass of fissionable material; that is, the target. Reactors have traditionally used highly enriched uranium, HEU, which can be used to make a nuclear bomb, for fuel and to produce LEU.

The Law that we enacted over 10 years ago, in the Energy Policy Act of 1992, has encouraged reactors to shift to low-enriched uranium. And the difference is very simple. It does the same medically, but it cannot be used to create a nuclear weapon. What we do in present law is require that any foreign reactor receiving exports of United States HEU, highly enriched uranium, work with our Government in actively transitioning to LEU, low-enriched uranium, the kind that cannot be used in bombs. It makes common sense, complete common sense. Why the heck would we want to encourage companies to have HEU?

Now, the language in the Energy bill undoes that. After 12 years of it working, after 12 years of everyone getting the medical isotopes they need, and after 12 years of moving countries away from HEU—highly enriched uranium—this bill would send them back to LEU, the language in the Energy bill needlessly and dangerously undercuts this requirement. What does it do? It exempts research reactors that produce medical isotopes from current U.S. law.

As our Nation continues to fight the war on terror, now is clearly the wrong time to relax export restrictions on bomb-grade uranium and potentially increase the demand for that material. By increasing the amount of bomb-grade uranium in circulation around the world, the language in the Energy bill would create an unacceptable risk by heightening the possibility that weapons-grade uranium could be lost or stolen and fall into the hands, God forbid, of terrorists with known nuclear ambitions.

What makes this language even more astonishing is that it creates so much risk for no reward by claiming to fix a problem that does not exist. Supporters argue that the amount of LEU in the material necessary to produce isotopes. Let me repeat that. No producer has ever been denied a shipment of the material necessary to produce isotopes. Let me repeat that. No producer has ever been denied a shipment of LEU targets have not been developed is incorrect, and the U.S.-developed LEU target "has been successfully irradiated, disassembled, and processed in Indonesia, Argentina, and Australia," a move from HEU to LEU because of our law.

In conclusion, the reality of this situation is that terrorists do not care if the weapons-grade uranium they can try to get their hands on was meant for a military or medical purpose. All we know they care about is how they can use it to attack our Nation and harm our way of life.

If we learned anything from the attacks on September 11, it should be that we can never again afford to underestimate the ingenuity or determination of those who would cause us harm. Likewise, we must take every step possible that they can never lay their hands on the materials they would need to launch an attack of mass destruction against the United States.
Mr. President, a needless risk is a reckless risk, and that is exactly the type of risk the language in the Energy bill lays before us. I urge my colleagues to support the existing law that has effectively combated nuclear proliferation without degrading the quality of health care in the United States cooperatively to try to get to the production of these isotopes with low enriched uranium. That is a goal that I think everybody agrees with. We need to have that incentive so that when we export this, we are exporting for the very reason that is cooperating with us.

What the Energy bill did was to eliminate that requirement of cooperation. It is stricken from the language. That is wrong. If we want an incentive for cooperation with us, we have to retain the existing law's language. That is why the Schumer amendment is critical, to ensure that we can both continue to produce these medical isotopes, but also to do so in a way that does not proliferate highly enriched uranium around the world.

The manufacturer of this product in Canada has enough of this material right now to build a couple of bombs. In Canada that is probably OK, as long as we don't have it in our hands. But you eliminate that requirement of cooperation, all of us will have a real problem on our hands. Were something bad to happen, each one of us would be responsible for that. That is the reason the Schumer amendment is so important.

My second-degree amendment, if it is agreed to, simply requires a study and report to us about the status of the development of this technology, whether it is cost beneficial and whether it is scientifically achievable. With that, I ask unanimous consent that the amendment be put to a voice vote.

Mr. KYL. Mr. President, I rise in opposition to the Schumer amendment. Let me compliment Senator KYL for his willingness, over the last 24 hours, to work in this area. He knows how fragile this is.

Mr. KYL. If I could, Mr. President, just inquire of the manager of the bill, we don't have a set 30 minutes yet, but that is the desire; is that correct?

Mr. CRAIG. We are hoping that adds in.

Mr. KYL. Mr. President, let me take a moment to say that I totally agree with Senator SCHUMER that we need to restore what Senator SCHUMER did and then turn time over to an opponent of the amendment, perhaps the Senator from North Carolina.

Mr. CRAIG. Mr. President, will the Senator from Arizona yield?

Mr. KYL. Yes.

Mr. CRAIG. Mr. President, as we tried to craft the UC, we gave this issue of the Schumer amendment 30 minutes. So I would hope we could keep in the spirit of 15 and 15 so we can keep ourselves on track this evening. So the opponents would have 15 minutes, as we finish fashioning this UC.

Mr. KYL. If I could, Mr. President, just inquire of the manager of the bill, we don't have a set 30 minutes yet, but that is the desire; is that correct?

Mr. CRAIG. We are hoping that adds in.

Mr. KYL. Mr. President, let me take a moment to say that I totally agree with Senator SCHUMER that we need to restore what Senator SCHUMER did and then turn time over to an opponent of the amendment, perhaps the Senator from North Carolina.

Mr. CRAIG. If I could, Mr. President, I rise in opposition to the Schumer amendment. Let me compliment Senator KYL for his willingness, over the last 24 hours, to try to bring assurances, through the amendment, that we both agree we need to get to, that we had language that would do it. We do have a slight disagreement because I believe the language that is in the bill does meet the move towards low-enriched uranium. I believe that the health of the American public should be at the forefront of our consideration. Because if, in fact, we adopt a policy that eliminates the availability of radiopharmaceuticals, then we have to turn outside the country for those capabilities that exist, that technology has created over the last decade, and, in many cases, the treatments for cancer.

An interruption that happened from you and Senator Inhofe, requesting in our second-degree amendment, if it is agreed to, simply requires a study and report to us about the status of the development of this technology, whether it is cost beneficial and whether it is scientifically achievable. We know how fragile this is because we are reliant on reactors outside this country for those radiopharmaceuticals.

Mr. KYL. Mr. President, hopefully, Senator SCHUMER will agree that when this is all decided—and I hope it is decided with the language that the entire Energy Committee worked on and what is in the House language and has been there—when it is all said and done, I hope we find a way to either get the Department of Energy or somebody to begin to produce low-enriched uranium in this country. It is an awful policy that we still turn outside the country for radioactive isotopes for medical isotopes, but there is a rich history of that. The Department of Energy has looked at this since 1992. They looked at Los Alamos and using the reactors there to begin to make low-enriched uranium. Then they looked at Sandia. Then they talked about privatizing Sandia. The net result was, in the year 2000, the Department of Energy came to the conclusion that they were going to disband this effort, that they couldn't figure out how to do it. The fact is, there is not a lot of profit generated from it. But this is clearly a treatment that will grow as researchers find new tools for it.

I know there is an attempt to try to add a requirement of time limit on all the patients in America that are relying on the decision we are going to make tonight. We would spend a lot more time on individual health bills.

Nuclear medicine procedures using medical isotopes are heart disease, cancer, including breast, lung, prostate, thyroid and non-Hodgkin's lymphoma, and brain, Grave's disease, Parkinson's, Alzheimer's, epilepsy, renal failure, bone infections. Our ability to use radiopharmaceuticals to an organ, where now we can see that organ without an incision, without opening a person up, a noninvasive way to determine exactly what is happening in the human body and, on the oncology side, a way to treat cancers, when we can take the chemotherapy product and send it right to where we want those cells to be killed.

I would like to submit, for the record, a letter from the Nuclear Regulatory Commission, a letter signed by me to the members of the Conference, dated March 31, 2003, and a letter signed by Senator Inhofe, requesting information from you and Senator Inhofe, requesting in our second-degree amendment, if it is agreed to, simply requires a study and report to us about the status of the development of this technology, whether it is cost beneficial and whether it is scientifically achievable.
Mr. BURR. They have been consulted. They are the agency that determines whether a license is granted. It was suggested that this is some willfully program, that anybody who wants to send highly enriched uranium out to a reactor somewhere just simply does that, and hopefully we get back radiopharmaceuticals. That is not the case. This provision is contingent upon licensing, where they apply to the Nuclear Regulatory Commission. They are instructed by the Atomic Energy Act as to the process they go through, currently in the law, that was written by Senator Schumer in 1992. Over the years, the interpretation of that provision has changed. Over the years, that has caused indecision at the Nuclear Regulatory Commission.

It was that indecision, that vagueness in the current law that Senator SCHUMER is attempting to strike and go back to provision in law that the Nuclear Regulatory Commission has said: We don't feel that we can successfully make this evaluation without you clarifying the parameters you want us to be in.

So in short, we asked the Nuclear Regulatory Commission to write us on the language and asked them if it cleared it up, asked them if, in fact, this provision continues to have no objections to the provision pertaining to the export of HEU targets for the production of medical isotopes by specified countries.

I know there are others anxious to speak. I have so much more to say. I see the chairman of the bill has stood and may have a unanimous consent request. But I would like to see if my colleague from Arkansas is prepared to speak in opposition to the Schumer amendment.

The PRESIDING OFFICER. The Senator from North Carolina in speaking in opposition to the Schumer amendment.

Mrs. LINCOLN. Mr. President, I would like to take a few moments. I rise to join the Senator from North Carolina in speaking in opposition to the Schumer amendment. I certainly am concerned that the amendment be voted on, as the carefully crafted provision from the bill that seeks to ensure that Americans will maintain a reliable supply of medical isotopes or the radiopharmaceuticals used to diagnose and treat so many diseases. We are on the brink, all of us here, working hard to increase funding for the discovery of eliminating these diseases.

In the meantime, being able to provide the hope and work forward in the manner which we can to make sure that all of the safety and caution that needs to be there is there, will remain there, while we still enjoy the unbelievable technologies that have been discovered in recent medicine.

I thank the Senator from North Carolina for yielding. I do encourage my colleagues to rise in opposition to the amendment so that we can go back to what is in the underlying bill. I think it will prove well for all of those who suffer from many diseases that we can treat with these medical isotopes.

I yield the floor.

Mr. CRAIG. Mr. President, I will attempt to offer a unanimous consent now that will finalize action on the Schumer amendment and move us to the Sununu amendment.

I ask unanimous consent that Senator SCHUMER be recognized to offer his amendment No. 810 and that there be—

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KYL. Further reserving the right to object, would the manager of the bill negotiated and very thoroughly vetted in the underlying bill that will keep us on the right track and make sure that these 14 million Americans and their families will continue to have the access to these pharmaceuticals that they need, while we continue to work forward in the manner which we can to make sure that all of the safety and caution that needs to be there is there, will remain there, while we still enjoy the unbelievable technologies that have been discovered in recent medicine.

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I yield the floor.
at this time have an estimate—we will temporarily lay this aside for the presentation of another amendment and then back to this amendment and, with the 30 minutes, presumably, we would be voting at about 6 o'clock or thereabouts; is that understood?

Mr. CRAIG. That is correct.

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

Mr. CRAIG. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

AMENDMENT NO. 810

Mr. SCHUMER. Mr. President, I call up my amendment No. 810. The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York, [Mr. SCHUMER], proposes an amendment numbered 810.

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

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

The amendment is as follows:

(Purpose: To strike a provision relating to medical isotope production)

Beginning on page 385, strike line 3 and all that follows through page 401, line 25.

Mr. SCHUMER. Mr. President, I will let some of the opponents speak now, since I have spoken, unless my colleagues from Arizona would like to speak. We could have some of the opponents go.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I will speak for a moment. I am responding both to the amendment from Idaho and also to the Senator from Arkansas. The Senator from Idaho is correct. Under existing law, we have had numerous shipments since 1992, and we have been producing these medical isotopes, and everyone has been perfectly safe. That is what the Schumer amendment seeks to do—to ensure that the existing law is in place. So that condition the Senator from Idaho spoke to is precisely the good condition that would prevail if the Schumer amendment is adopted and we return to existing law.

The problem is that an amendment was inserted in the Energy bill in committee which strikes existing law and takes away from that. It is a pro-proliferation issue, not a medical issue. That is what I say to the Senator from Arkansas.

There is no suggestion that there is going to be any lack of medical treatment as a result of the existing law. Since 1992, we have had medical isotopes available for treatment, and we are going to have them available in the future. There is nothing in existing law that takes away from that. It is an attempt by somebody to scare people into believing that somehow or another the existing law—in effect since 1992—is somehow going to result in a lack of medical isotopes. That is false, and it is pernicious. Whoever is trying to spread this notion should not do that because it will scare people into thinking there are not going to be medical isotopes available for treatment. Nothing could be further from the truth.

The existing law has worked. Not once has an export license been denied. So let's forget this scare tactic. We are going to have the medical isotopes that we need.

The real question here is proliferation. We have had a law that has worked very well since 1992. We are trying to move toward low-enriched uranium. Listen to what the Secretary of Energy has had to say about this. In a speech delivered on April 5, Secretary Samuel Bodman said:

It is my hope that the Administration should set a goal of working to end the commercial use of highly enriched uranium in research reactors.

Yet some of my colleagues ask: Why must we ship these isotopes internationally at all? Does this pose security risks?

My answer: An emphatic no! Let me explain why.

It is understandable to be concerned about the shipment of enriched uranium outside of the United States. And, of course, I share your concern. But it is important to recognize that these shipments are safe and secure. The U.S. Nuclear Regulatory Commission tracks and licenses all of the shipments for medical isotope production. The NRC takes its job very seriously. Without objection, it is so ordered.

The U.S. Nuclear Regulatory Commission licenses all of these statements of medical isotope production. The NRC takes its job very seriously. This is a phenomenally safe track record that we have in the United States. Since 1971, there have been more than 45 million successful shipments of radioactive materials. Shippers, State regulators, government agencies, and states themselves carefully handle and track each and every shipment—time after time. The result: The isotopes can do what they are made to do—fight deadly disease.

Doctors conduct 14 million procedures each year in the United States using medical isotopes to diagnose and treat cancer, heart disease and other serious sicknesses. We must ensure a reliable supply of medical isotopes so that doctors can carry out these procedures.

The diagnosis and treatment of diseases like cancer, heart disease and other dreaded diseases depend on radioactive materials and the Nuclear Regulatory Commission tracks and licenses all of these statements of medical isotope production. The NRC takes its job very seriously. This is a phenomenally safe track record that we are involved in.

Mr. President, hundreds of thousands of Americans depend on medical isotopes to diagnose and treat life-threatening diseases.

It is also a fact that we do not produce these isotopes in the United States. We must ship enriched uranium to processors in Canada and Western Europe that produce the isotopes and return them to hospitals in the United States.
The availability today of advanced, high-density low enriched uranium fuels allows great progress toward this goal.

The Department of Energy’s Reduced Enrichment for Research and Test Reactors program Web site states:

This law has been very helpful in persuading a number of research reactors to convert to LEU.

That is existing law, which we want to retain. Why would we want to strike the one provision in existing law that helps us to achieve this goal? The provision that says that the recipient of this enriched uranium has to provide assurances to the United States that it is cooperating with us toward this goal—something is going on here, Mr. President, and it is not good.

Let me also say, with regard to this myth about the lack of medical isotopes, the fact is that DOE’s Argonne National Laboratory characterized this very claim as a “myth,” adding that the U.S.-developed low-enriched uranium has been successfully irradiated, disassembled, and processed in Indonesia, Argentina, and Australia.” Furthermore, HEU exports for use as targets in medical isotope production are not prohibited under current law. Such export has ever been denied under that law, as I said. Current law is intended to encourage conversion to low-enriched uranium, which can’t be used to make nuclear bombs.

But in no way does it prohibit the export of highly enriched uranium. We are looking at a technological stage where we can mass produce through low-enriched uranium.

The bottom line is this: Current law has been working, as the Senator from Idaho so eloquently noted. It provides the medical isotopes we need. No export license has ever been denied. Recently, the Secretary of Energy made the point that we are trying to convert, eventually, to low-enriched uranium, and the current law that requires recipients of enriched uranium to work with us toward that goal has worked very well toward this end.

Why would we eliminate that requirement of cooperation, when we are trying to make sure that this highly enriched uranium doesn’t proliferate around the globe? As I said, a company in Canada that is currently working with us has enough of this stuff for two bombs. It would not be a good idea for us to allow further proliferation of highly enriched uranium around the world when we are concerned about terrorists getting a hold of a nuclear weapon. Let’s keep the law in place.

I urge my colleagues to support the Schumer amendment.

This law has been very helpful for many reasons. The Nuclear Regulatory Commission. When the question is asked, Who asked for change? the answer is simple: The Nuclear Regulatory Commission. This is with over 10 years of working with the current language. And as time has gone on and technology has changed, and as the requirement for the size of what we are producing has changed, in 2000, it was the Nuclear Regulatory Commission that, in fact, suggested they needed Congress’s help.

Let me address the last fact Senator KYL brought up, of the Argonne Laboratory currently produces medical isotopes using LEU target technology, which is unable to even meet the current needs in Argentina medical community. Indonesia has ceased any further testing of the U.S.-developed LEU through the technical obstacles. We all want low-enriched uranium. After this is over, I hope this body will take on that challenge, the challenge of domestically producing medical isotopes and the Department of Energy will probably have a hold of the science to give them to us when we instruct the Department to go back to what they dropped in 2000, after they have reviewed it, and look at our reactors here and how we accomplish production, whether we can make money for it.

I want to go back to health, though. Some have suggested that health is not important. Health is important. I list it up here on the chart. Annually, over 14 million nuclear medicine procedures are performed in States that require medical isotopes manufactured from highly enriched uranium. Patients and doctors in the United States are 100 percent reliant on the import of medical isotopes that are used with highly enriched uranium. That is a fact. Every day, over 20,000 patients undergo procedures that use radiopharmaceuticals developed to diagnose coronary artery disease and assist in assessing patient risk for major cardiac-related deaths, such as strokes. This is not just what we treat; this is what we prevent from happening through this diagnostic tool. The CDC estimates that 61 million Americans—almost one-fourth of the U.S. population—lives with the effects of stroke or heart disease, and heart disease is the leading cause of disability among working adults.

Medical isotopes are one of the tools used to diagnose and treat many forms of cancer. X cancer, and medical isotopes are also used to help manage pain in cancer patients, such as decreasing the need for pain medication when cancer spreads or metastasizes to the bone. Thyroid cancer. Radiopharmaceuticals are used to diagnose and treat thyroid disorders and cancer which, according to the American Cancer Society, is one of the few cancers where the incidence rate is increasing.

Mr. President, we are talking about dealing with real health problems that everybody can come up with new treatments. But that treatment is held in limbo until we decide. Non-Hodgkins lymphoma is the fifth most common cancer in the United States. According to the American Cancer Society, approximately 56,000 new cases of non-Hodgkin’s lymphoma will be diagnosed in 2005. The voice of proliferation, Alan Kuperman of the Nuclear Control Institute, said he doubts that the debate about the language that is currently in the Energy bill:

This provision is not controversial and, thus, likely to remain in the energy bill when if it is enacted.

I hope that to say.

Ironically, an amendment originally drafted to pave the way for continued HEU exports which is his interpretation, not that of the committee for isotope production may have the unintended consequences of terminating them.

That is exactly the opposite of what those who suggest the need for this amendment is. Even the person who is the most outspoken that our committee has done that we attempted to do. We have written exactly the right language.

Without a secure and permanent supply of medical isotopes, it is unlikely that new nuclear medicine procedures will be researched or developed. If, in fact, we suggest we will cut off this source, why would any researcher around this country look at how to further what they can do with medical isotope technologies, which has been allocated to Senator BOND.

My colleague from Arkansas stated it very well. This is not just Members of the Senate who are suggesting we have read the language and it is right; it is the American College of Nuclear Physicists, the American Society of Nuclear Cardiology—and the list goes on. Every Member can see it. Can this many health care professionals be wrong?

Separate this, as Senator KYL suggested, this is a proliferation issue, and it is a health issue. As to the health issue, I do not think anybody questions the value of this product for the health of the American people.

There is no better gold standard on deciding whether an application or license should be approved than the Nuclear Regulatory Commission. The Nuclear Regulatory Commission is still in charge of this process. That has not changed. It will not change. If it is a proliferation security risk, it will not just be the Nuclear Regulatory Commission that screams, it will be the Government—the House and Senate, the White House—that screams.

The PRESIDING OFFICER. There is 7 minutes remaining to the opposition which has been allocated to Senator BOND.

Mr. BURR. Mr. President, I want to maintain the 7 minutes for Senator BOND. I thank Senator KYL for the grace and generosity. I think it is unfortunate that we have not. I urge Senators to defeat this amendment. Protect the patients.
Mr. CRAIG. Mr. President, how much of that time remains of the window of 7 minutes for the Schumacher side?  

The PRESIDING OFFICER. There is 10 minutes remaining on the Schumacher side.  

Mr. CRAIG. A total of 10.  

Mr. KYL. Mr. President, let me use part of that 3 minutes right now to ask unanimous consent to print in the RECORD a statement and a letter from the Physicians for Social Responsibility.  

Mr. CRAIG. A total of 3 minutes.  

Mr. KYL. I have that request.  

Mr. KYL. Mr. President, for the record, I have a request to introduce a statement and a letter from the Physicians for Social Responsibility.  

The PRESIDING OFFICER. Without objection, the request is granted. As a result, HEU exporters have been able to avoid ever having to move to an LEU target, as the Energy bill language itself, could almost entirely replace the South African reactor, by itself, could almost entirely replace Nordion’s entire current production.  

stop the proliferation of weapons-grade uranium  

Support the Schumacher and Kyl amendments to the energy bill.  

Senator SCHUMER and Senator KYL intend to offer amendments (Amendments S10 and 990, respectively) to the Energy Bill to eliminate language that would undermine U.S. efforts to encourage reductions in the circulation of weapons-grade uranium. Senator SCHUMER and KYL urge their colleagues to support these amendments, which will maintain current restrictions on the export of bomb-grade uranium and reduce the probability that nuclear material will wind up in terrorists’ hands.  

Isotope producers currently make isotopes for use in radiopharmaceuticals and other products by taking a mass of fissionable material, known as fuel, and using it to shoot neutrons through another mass of fissionable material. Reactors that traditionally used highly enriched uranium (HEU), which can be used to make a nuclear bomb, for fuel and targets. Language in the Energy Policy Act of 1992 has encouraged reactor operators to shift to low-enriched uranium (LEU), which cannot be used to create a nuclear weapon, by requiring any foreign reactor receiving exports of U.S. HEU to work with the United States in actively transitioning to LEU.  

Section 621 of the Energy Bill dangerously undermines this requirement by exempting research reactors that produce medical isotopes from current U.S. law. It would weaken efforts to reduce the amount of weapons-grade uranium in circulation around the world and reward producers that have been most resistant to complying with U.S. law. It would do so by allowing facilities to avoid ever having to move to an LEU “target”, even if it is technically and economically feasible to do so. This is in direct contradiction to Secretary of Energy Bodman’s call to “set a goal of working to end the commercial use of highly enriched uranium in research reactors.”  

As our nation continues to fight the War on Terror, now is clearly the wrong time to relax export restrictions on bomb-grade uranium and potentially increase the demand for that material. Not only does the language in the Energy bill pose a threat to national security, it seeks to fix a problem that does not exist. Supporters of the language argue that relaxing restrictions on medical isotopes if current law is not changed. No producer has ever been denied an export license for HEU to be used in medical treatment because of restrictions in the 1992 Energy Policy Act. Indeed, all that a facility must do to continue to receive these exports is work in good faith with the United States on eventual transition to LEU when it is technically and economically feasible. This is not an unreason-
A final illustrative statistic is that worldwide peak capacity production today is 250 percent of current world demand. So, we do indeed have a surplus of production capacity. Worldwide enrichment capacity is more than twice worldwide demand.

There is therefore absolutely no need to put at risk an entire city by allowing nations to build their own bomb-grade uranium. Furthermore, there is absolutely no need to be concerned about a potential supply problem. If we were to use the same logic as with oil, we would never have left the oil cartel. Yet, we do not have reserves of oil for three to five years. We have reserves of enriched uranium for decades. So, there is absolutely no need to be concerned about this.

The purpose of Schumer amendment was to phase out HEU exports in order to reduce the risk of this material being stolen by terrorists. The Schumer amendment was focused on reducing civilian HEU commerce. However, there is a distinction to "fuel," are used exclusively for research reactors to convert from HEU to LEU.

We wish to underscore that the existing law does not discriminate against Canada or any other foreign producer. Indeed, in 1966, the U.S. Nuclear Regulatory Commission (NRC) ordered all domestic, licensed nuclear research reactors to convert from HEU to LEU fuel as soon as suitable LEU fuel for their use became available. The NRC recognized that prevention of theft and diversion of HEU from civilian facilities cannot be assured solely through safeguards, but rather requires a phase-out of HEU commerce. The Schumer Amendment applied the same standard to foreign operators. Supporters of the new legislation, like the American College of Nuclear Physicians, have argued erroneously that the Schumer Amendment "was not drafted with medical uses of HEU in mind." In fact, the approximately 500-word Schumer Amendment uses the word "targets," in distinction to "fuel," are used exclusively for the production of medical isotopes. Thus, it is readily apparent that the current law is designed to cover any HEU targets that are used in medical isotope production.

We also wish to underscore that conversion of isotope production from HEU to LEU is technically and economically feasible. Australia has produced medical isotopes using LEU for twenty-five years. Argonne National Laboratory, the main consequence of Nordion is therefore that supply is not currently endangered by restrictions on exports of HEU. The United States now gets most of its medical isotopes from Energy Canada, Ltd. from which Nordion, which still produces such isotopes at its aging NRU reactor and associated processing plant. The Schumer Amendment does not support removal of the requirement that targets be specially designed for its new isotope production facility. It is further apparent that Nordion currently enjoys excess production capacity.

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The Physicians for Social Responsibility, representing 30,000 physicians and health professionals nationwide, is writing to urge support for the Schumer amendment and opposition to the language supported by the Senator from North Carolina.

As noted, the letter says:

As physicians and health care professionals, we support the use of medical isotopes, but this legislation—

Meaning the legislation in the Energy bill is not necessary to ensure the supply of medical isotopes to U.S. hospitals and clinics.

Under existing law, medical isotope production capacity has grown to 250 percent of demand. In addition, no medical isotope producer has ever been denied a shipment of HEU as a result of the successful incentivization of efforts to convert to LEU. The Schumer-Kyl amendment would guarantee continued use of HEU to produce medical isotopes until LEU substitutes are available, on efforts to eventually convert to LEU when possible.

It makes the point that under existing law, we have all the medical isotopes we need, but we also have something else. We have assurances from these producers that they are working with the United States to eventually try to move away from using highly enriched uranium, which makes nuclear bombs, and move instead to low-enriched uranium, when that is possible.

The essence of the Schumer amendment is to retain the law because the language that is in the bill right now eliminates that requirement of assurances. Why on Earth would we want to do that?

I urge my colleagues to support the Schumer amendment. I simply note that if there is any confusion, after the Schumer amendment is dispensed with, the Kyl second-degree amendment will be automatically voted on or adopted, and that provides for a study and a report to the Congress on the status of this situation so that instead of having competing claims by all of us, we will have a bill on which we can all rely to help guide us in the future. In the meantime, it seems to me only to make sense to keep current law in effect.

Mr. President, might I inquire if there is more than 7 minutes remaining on the Schumer side?

The PRESIDING OFFICER. There are precisely 7 minutes remaining on the Schumer side.

Mr. KYL. I leave it to the manager at this point to determine what to do.

Mr. CRAIG. Mr. President, I ask, consistent with the unanimous consent request, that we set the Schumer amendment aside for consideration of the Sununu amendment.

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

Mr. CRAIG. The Sununu amendment has 30 minutes equally divided allotted under the unanimous consent agreement.

The PRESIDING OFFICER. That is correct.
June 23, 2005

CONGRESSIONAL RECORD — SENATE

S7245

Mr. CRAIG. I thank the Chair.

Mr. WYDEN. I ask unanimous consent to speak for up to 5 minutes and then allow my friend and colleague to conclude on behalf of the Sununu-Wyden amendment.

The PRESIDING OFFICER. Does the Senator from New Hampshire yield 5 minutes?

Mr. SUNUNU. I yield 5 minutes to the Senator from Oregon.

Mr. WYDEN. Mr. President, I rise in support of the Sununu-Wyden amendment to strike the so-called incentives title of this legislation because I believe this title is a blank check for boondoggles. The fact is, we are now at the point when some of the special interests in this country are trying to triple-dipping. They are going to get tax incentives as a result of the tax cut; they are going to get loan guarantees under the amendment of the distinguished Senator from Nebraska; and this amendment, this section that we seek to strike, offers additional loan guarantees.

These loan guarantees are not only costly, they are also risky. American taxpayers would be required, under title XIV, to subsidize as much as 80 percent of the cost of constructing and operating new and untried technologies. According to the Congressional Budget Office, the risk of default on these projects funded by guarantees is between 20 percent and 60 percent. The amendment that Senator SUNUNU and I offer today would block this unwise and risky investment and stop throwing good taxpayer money after bad.

I see my friend from Tennessee is here. He heard me discuss this to some extent in the Energy Committee. I have believed that this legislation is already stuffed with a smorgasbord of subsidies for various industries. As I touched on earlier, the buffet of subsidies is so generously laden that you are going to have industries in this country come back for seconds and even third helpings from this taxpayer-subsidized buffet table.

You look for examples: the Hagel amendment which provides secured loan guarantees for virtually the same projects and technologies as title XIV loan guarantees; coal gasification, advanced nuclear power projects, and renewable projects receive up to 25 percent of their estimated costs for construction activity, acquisition of land and financing. There is no need to double the subsidies for these projects with the incentives under title XIV as well. I want to be clear. I am not against incentives for new technologies. That is why, as a member of the Finance Committee, I supported the energy tax title that provides tax benefits for a variety of energy technologies, ranging...
from fuel cells and renewable technologies to fossil fuel and nuclear energy. So I am already one who has voted, at this point in the debate, to say that we ought to have some incentives with respect to these promising industries.

But what concerns me is the double-and triple-dipping. There is an important difference between the tax incentives that I supported in the Finance Committee and the loan guarantees under title XIV. The tax incentives that we are looking at on a bipartisan basis in the Finance Committee reward those who produce or save energy. By contrast, the loan guarantees subsidize projects whether they produce energy or not.

As I mentioned, the Congressional Budget Office says there is a very substantial risk of failure. I might even be persuaded to go along with the 25-percent subsidy provided by the Hagel amendment to help kick-start new energy technologies, but I don't think it is a wise use of taxpayer money to provide up to an 80-percent subsidy for the very same projects that would also get a 25-percent subsidy under the Hagel amendment.

Just with that example alone, you are talking about some projects that would receive a subsidy of 105 percent. With respect to who reaps the benefits from these extraordinary loan guarantees, we know a variety of interests are coming from all over the country. We still remember WPPSS, the nuclear powerplants where there was a huge default and we had many ratepayers very hard hit. Our ratepayers are still paying the bills for the powerplants that were planned years ago but were never built. Skyrocketing cost overruns led to defaults. The collapse shows that Federal loan guarantees are a gamble that taxpayers should not be forced to take.

I am very hopeful my colleagues will support the Sununu-Wyden amendment. At this point, I think it is fair to say that we have voted for multiple subsidies for a lot of the industries that we hope will help to some degree cure this country's addiction to foreign oil. But at some point the level of subsidies ought to stop. I urge my colleagues to support the amendment, and I yield.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I don't know that all has been said, but most nearly all has been said. Let me speak briefly about the Sununu amendment.

If I have heard it once, I have heard it a lot of times in the last few years: Oh, we need new technology. We need innovation. We need clean energy. Of all those kinds of things are at the threshold of the American consumer's opportunity: Sequestration of carbon, new nuclear technology, biomass, hybrid cars—some of those are beginning to enter the market—coal gasification—here we have a very large part of our energy being supplied by coal; we want to clean it up so we can continue to use it—high-efficiency natural gas turbines, hydrogen, and on and on and on.

New technologies are wonderful, but something is being lost. When we get them started, get them into the marketplace, allow them to be mainstreamed, create the cost effectiveness, the duplication, and multiplying effects that occur in the marketplace. That is why, in working this major piece of energy legislation for our country, we looked at incentives. We also looked at assuring that we protect the American taxpayer, who is also now, because we failed over the last 5 years to develop cost energy because being taxed at the pump higher than any of these incentives would ever tax them. Yet we have some who would suggest that this is simply the wrong approach—to add some incentive, to build guarantees, to do in the solar industry, in the nuclear industry, and coal industry, to continue to develop new ideas and new technologies. I am not so arrogant, as an elected representative, or someone here in Washington, to think that only those working in the Department of Energy in Washington, DC, can know or understand what kind of technologies are deserving of a billion-dollar loan subsidy or a $500 million loan guarantee. That is the problem with this kind of a program. It presupposes that the only people who understand technology and how it might make a contribution to our energy markets and our environment reside in Washington. That is wrong.

We need more competitive markets. We need to do something about the costs of regulation, but we do not need to put the taxpayers on the hook for privately owned and operated powerplants that are operated by successful, profitable corporations. I wish them well. I want to see them compete, but I do not want to put taxpayers on the hook for the cost.

I urge my colleagues to support this amendment that is endorsed and supported by those concerned about the cost to the Federal budget as well as those concerned about the environment. I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, first I apologize to my colleague, Senator SCHUMER of New York. It was just a slip of the tongue by the Senator from Idaho, I am sure. Senator SCHUMER may be in trouble if he is easily confused with me when he goes back home to New York.

Mr. CRAIG. I do apologize. I do know the difference, and I apologize. Mr. SUNUNU. No offense taken, but I would say, lightheartedly, that you might wish to apologize to the Senator from New York.

If the owners of these powerplants were paying the risk premium, then the Congressional Budget Office would not estimate that in the year 2006 there will have to be $85 million in appropriated taxpayer resources to support this program; or, in 2007, $85 million; or 2008, $85 million; or 2009, $85 million; or 2010, $85 million. The owners of these powerplants are not picking up the risk. That money will have to be appropriated because there will be risks borne by the Federal Government, by the taxpayer, when these loans are issued. To suggest otherwise is to misunderstand how the program operates.

With regard to technology, let me close in response on this broad point of our concerns for technology. I also would like to see new and innovative technologies brought to the market. Only, when I talk about the importance of those new technologies, I then do not hesitate to say I have confidence in the engineers and scientists and investors and financial people, who are working in the solar industry and nuclear industry and coal industry, to continue to develop new ideas and new technologies. I am not so arrogant, as an elected representative, or someone here in Washington, to think that only those working in the Department of Energy in Washington, DC, can know or understand what kind of technologies are deserving of a billion-dollar loan subsidy or a $500 million loan guarantee.

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We need more competitive markets. We need to do something about the costs of regulation, but we do not need to put the taxpayers on the hook for privately owned and operated powerplants that are operated by successful, profitable corporations. I wish them well. I want to see them compete, but I do not want to put taxpayers on the hook for the cost.

I urge my colleagues to support this amendment that is endorsed and supported by those concerned about the cost to the Federal budget as well as those concerned about the environment. I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I would hope that, otherwise, all time could be used on the Sununu amendment, understanding there is still a minute to close at the time of the vote and that we can return now to the Schumer amendment. Senator BOND is on the Senate floor, and he could utilize his 7 minutes prior to Senator SCHUMER utilizing his 7 minutes in closure so we could bring these two amendments to a close and to a vote.

The PRESIDING OFFICER. The Senator yields back the time in opposition to the Sununu amendment?
Mr. CRAIG. We have no objection. I yield back time on our side.

AMENDMENT NO. 810

The PRESIDING OFFICER (Mr. DE MINT). There are now 7 minutes per side on the Schumer amendment.

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I urge my colleagues to oppose the amendment by Senator SCHUMER and Senator KYL to prevent cancer patients from getting the cancer medicine they need. Both Senator SCHUMER’s first-degree amendment and Senator KYL’s second-degree amendment would strip provisions we put in the Energy bill to ensure cancer patients continue to have a reliable and affordable source of cancer medicine. We cannot do this to our cancer patients.

Cancer is a scourge that affects millions of people across the Nation in each of the small towns of Billings, MT, in my family. Cancer will strike over a million people this year, 30,000 in my home State of Missouri, and cancer will kill 12,000 Missourians this year. Cancer takes our mothers and fathers. Cancer takes our sisters and brothers. But many people beat cancer.

Section 621 of the Energy bill will help people beat cancer. Cancer patients beat cancer with nuclear medicines, also known as medical isotopes, to detect and treat their cancer. Doctors use slightly radioactive forms of iodine, xenon, and other substances to help them find and diagnose breast cancer, lung cancer, prostate cancer, and other cancers. Doctors also use nuclear medicines to treat cancer patients fighting non-Hodgkin’s lymphoma, thyroid cancer, and relieve cancer symptoms such as bone pain.

Andrew Euler, seen here, is a boy from the small town of Billings, MT, in my home State. Drew was 8 years old when cancer struck him. Drew’s parents described the day the doctors told them that their son had cancer as the most horrific experience of their lives. The Euler family learned that cancer is the leading cause of death among children like Drew under 15 years of age. Thyroid cancer will strike 23,000 Americans this year and take the lives of 1,400 children and adults.

With the help from the fine cancer doctors at Washington University in St. Louis, Drew underwent surgery and received doses of nuclear medicine in the form of radioactive iodine to treat his cancer. Drew, I am happy to say, is now cancer-free and living a normal teenage life of basketball, skateboarding, and swimming. Having good doctors and access to medicine is a blessing too many take for granted. Drew and many others across our country are alive today because of the nuclear medicine administered after his surgery.

Section 621 of the Energy bill, which Senator BURR and I authored, will ensure that cancer patients like Drew can continue to get and afford the cancer medicine they need.

This provision is needed because the Atomic Energy Act requires industry to change the way they make nuclear medicines. The law requires a shift from highly enriched uranium, HEU, to low enriched uranium, LEU. I have no problem with the switch. Indeed, our energy provisions encourage this switch. We have had a problem with current law making no accommodation for supply disruptions or affordability. That means cancer patients might not get their medicine.

Currently, law was written that way to address issues with current reactors but is now being applied to nuclear medicine. It would force a premature switch in the nuclear medicine production process before we have a feasible and affordable alternative. That would mean cancer patients could not get the medicine they need at prices they could afford. Section 621 still requires a production changeover but not before we know that patients will retain affordable access to their medicine.

Unfortunately, some leading stakeholders want to strip this cancer medicine provision from the bill. Opponents of this provision somehow think that making the cancer medicine that helps our children and terrorists build a bomb, but that is simply not the case. The nuclear medicine production process is highly regulated by the U.S. Nuclear Regulatory Commission. Raw material shipments of HEU are conditioned under strict requirements, including armed guards. These shipments go to Canada and back because no U.S. reactor is designed to make medical isotopes. We send HEU because that is the only raw material target that the Canadian reactor can accept.

In the post-9/11 world, we are obliged to take this concern seriously, check it out, and see whether it is valid. I can assure my colleagues that the concern is not something to worry about. Homeland security is fully protected in the production of nuclear medicines. No one has to take my word for it. We wrote to the U.S. Nuclear Regulatory Commission to ask them whether the shipment of nuclear materials endangers homeland security. The NRC said it did not. Indeed, they said:

The NRC continues to believe that the current regulatory structure for export of HEU provides reasonable assurance that the public health and safety and the environment will be adequately protected and that these exports will also not be inimical to the common defense and security of the United States.

The full response is for official use only, so I cannot describe it on the Senate floor. This has been cleared. I will be happy to share the full response with any Senator who wishes to see it. Other underlying issues raised by stakeholders that are addressed in our provision. The section only applies to nuclear medicine production, not reactor fuel. It allows HEU so long as there is no feasible and affordable alternative. Once the Department of Energy finds that a feasible and affordable alternative exists, then the switch occurs and the provision sunsets.

These provisions sound reasonable because they are the outcome of a compromise. Section 621 represents a compromise reached in the Energy bill in the last Congress. Indeed, this section has garnered nothing but unanimous approval as it has gone through the committee process. The Energy Committee approved it unanimously during their markup. My colleagues on the Environment Committee approved this section unanimously last Congress and I am proud to be a part of the medical community support this provision and strongly oppose attempts to strike it such as the Schum and Kyl amendments. These groups include: The National Association of Cancer Patients, American College of Nuclear Physicians, American College of Radiology, American Society of Nuclear Cardiology, Council on Radionuclides and Radiopharmaceuticals, National Association of Nuclear Pharmacies, and Society of Nuclear Medicine.

Of course, Drew Euler was most outspoken, Alan Kuperman. Ironically, he says this amendment, originally drafted to pave the way to continued HEU exports, would actually do away with them. We would go to LEU faster, is his conclusion.

We urge our colleagues to oppose the Schumer amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I thank the Senate and would only make this point. Some have made the accusation that this legislation weakens existing export controls. This amendment, originally drafted to pave the way to continued HEU exports, would actually do away with them. We would go to LEU faster, is his conclusion.

We urge our colleagues to oppose the Schumer amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. It is now my understanding that Senator SCHUMER will close, and the 7 minutes remaining includes the 2 that had been allotted in the original UC.

Mr. SCHUMER. I am going to take 3½ minutes and yield the closing 3½ minutes to my colleague from Arizona, Senator KYL.

The PRESIDING OFFICER. The Senator from New York.
Mr. SCHUMER. Mr. President, again, the argument is simple: Do we want nuclear proliferation? If we do, we allow highly enriched uranium to be floating around the world with very few checks.

There is no issue of health. Let me repeat that: every single user in this country and in other countries who needs isotopes has gotten them. Let me quote from Physicians for Social Responsibility, a group that has been involved: Contrary to its stated intentions, the provision added to this bill, would do nothing to ensure the supply of medical isotopes to the United States because that supply is not currently endangered by restrictions on exports of HEU.

So the bottom line is simple: We want sick people to get these isotopes. They are all getting them. But why do we have to trade away the ability to prevent highly enriched uranium from proliferating around the world? God forbid the consequences to our country if a terrorist steals such uranium or it gets lost.

No U.S. firm has any interest in this. It is one Canadian firm that does not want to pay the extra price that other firms have been paying to require foreign countries to convert from HEU, highly enriched uranium, which can be used for weapons, to low-grade uranium, LEU, which cannot.

So the argument is simple. There are a large number of organizations that support our amendment, many of them concerned with nuclear proliferation and, of course, organizations concerned with health such as Physicians for Social Responsibility.

The argument is clear-cut. This amendment never should have been put in the Energy bill. The policy that our country has had for the last 12 years has been working very well, and we have had our cake and eaten it, too. Everyone gets isotopes, and various reactors and foreign countries are required to convert from HEU to LEU. Right now, we are worried about Iran. We are worried about North Korea. We are worried about terrorists stealing weapons-grade uranium, and we are now doing something here, mainly at the behest of one Canadian company, to allow more of that uranium out on the market.

If my friends on the other side could point to a single person who is denied the isotope they need for health purposes, they might have an argument, but they do not. The argument is simple: the cost to one Canadian company versus our ability to prevent weapons-grade uranium, highly enriched uranium, from proliferating around the world.

I hope we will go back to present law, stay with present law, stick to the law that has been supported by both the Administration and the Republican and Democratic, and prevent the danger of nuclear terrorism from getting any greater than it is.

I yield my remaining time to my colleague and friend from Arizona, Jon KYL.

The PRESIDING OFFICER. The Senator from Arizona has 4 minutes.

Mr. KYL. Mr. President, my colleagues and I have been told that Senator SCHUMER and I are in total agreement on something, and I cannot wait to tell them why and hope that will persuade them that if the Senator from New York and I are in agreement on something, there must be something in it. Indeed, both Senator SCHUMER and I have been very strong advocates against proliferation of nuclear material.

The chairman of the Senate Foreign Relations Committee, Senator LUGAR, is strongly in agreement with the position that Senator SCHUMER and I are taking. He will be listed as one of the people in support of the Schumer-Kyl approach.

Mr. SCHUMER. Mr. President, again, the argument is clear-cut. This amendment never should have been put in the Energy bill. The policy that our country has had for the last 12 years has been working very well, and we have had our cake and eaten it, too. Everyone gets isotopes, and various reactors and foreign countries are required to convert from HEU to LEU. Right now, we are worried about Iran. We are worried about North Korea. We are worried about terrorists stealing weapons-grade uranium, and we are now doing something here, mainly at the behest of one Canadian company, to allow more of that uranium out on the market.

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I hope we will go back to present law, stay with present law, stick to the law that has been supported by both the Administration and the Republican and Democratic, and prevent the danger of nuclear terrorism from getting any greater than it is.
The amendment (No. 810) was agreed to.

Mr. SCHUMER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 873

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, under the unanimous consent, we now have the Sununu amendment with a minute allocated to each side for closing comments.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I yield 1 minute for closure to the Senator from Tennessee.

Mr. ALEXANDER. Mr. President, if Chairman DOMENICI were here tonight, he would urge our colleagues to oppose the Sununu amendment because it is critical to this clean energy bill. If we want lower natural gas prices, we need new technologies for carbon sequestration, for advanced nuclear, for solar, for biomass, and for hybrid vehicles. We need to invest in these options and jump start them. We have done that throughout our history in America. That is our secret weapon, our science and technology, research and development. Chairman DOMENICI likes the existing provision because this is for new technology. It is not a free ride.

Chairman DOMENICI would urge Members, as I do, to vote no on Sununu-Wyden because his existing provision jumps start new technologies for a clean energy bill from coal plants to sequestration to advanced nuclear to solar, new technologies not in general use. It costs the Government nothing, according to the scoring of the Congressional Budget Office. It is like an insurance policy. The user of the guaranteed premium.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, there are nearly $4 billion in estimated loan guarantees over the next 5 years in this title. Those absolutely will cost the Federal Government something. That is exactly why money, $400 million, has to be appropriated to support them.

I was pleased to work on this amendment with Senator Wyden to whom I yield the remainder of my time.

Mr. WYDEN. Mr. President, when it comes to subsidies, without the Sununu-Wyden amendment, some of the country’s deepest pockets will be triple-dipping. These industries get subsidies under the tax title from Finance. That is dip 1. The Hagel amendment, yesterday adopted, provides loans. That is dip 2. Title XIV that we seek to strike provides loan guarantees of up to 80 percent. That is dip 3. I urge Senators to join all the country’s major environmental groups, all the country’s major organizations representing taxpayer rights and support the bipartisan Sununu-Wyden amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 873.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

The amendment (No. 873) was agreed to.

NOT VOTING—2

Bingaman Domenici

The amendment (No. 810) was agreed to.

Mrs. SCHUMER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.
1 supplier, and, if not, what steps should be taken to diversify United States supply; and
(H) any other aspects of implementation of section 194 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) that have a bearing on Federal nonproliferation and antiterrorism laws (including regulations) and policies.
(3) Timing; consultation.—The National Academy of Sciences shall—
(A) conduct in full consultation with the Secretary of State, the staff of the Reduced Enrichment in Research and Test Reactors program, the National Nuclear Security Administration, and other interested organizations and individuals with expertise in nuclear nonproliferation; and
(B) submitted to Congress not later than 18 months after the date of enactment of this Act.
Mr. KYL. Mr. President, my amendment would simply add a reporting requirement.
Current law—as the Schumer amendment to the Energy Policy Act of 1992—is intended to phase out U.S. exports of highly enriched uranium in order to reduce the risk of that material becoming available to terrorist sponsors or diverted by proliferating states for nuclear weapons production. The importance of phasing out these exports is glaringly obvious in the post–September 11 world, as we are confronted with terrorist-sponsoring regimes, such as North Korea and Iran, that are intent on developing nuclear weapons and terrorist organizations that would like nothing more than to attack the United States using a nuclear weapon.
As I mentioned a few years ago about suspicions that he is trying to obtain chemical and nuclear weapons, Osama bin Laden said:
If I seek to acquire such weapons, this is a religious duty. How we use them is up to us.

I have long been concerned that the United States currently has a surplus of highly enriched uranium, which cannot be used as the core of a nuclear bomb—when it becomes technically and economically feasible to do so. In practice, the number is much larger.

Section 621 of the pending bill would essentially exempt HEU to five countries for medical isotope production from the standards set by the 1992 Schumer amendment. If enacted, it would allow foreign companies to receive U.S. HEU for use in medical isotope production “targets” without having to commit to converting to low-enriched uranium.

Second-degree amendment would simply add a requirement for a report from the National Academy of Sciences that will result in an isotope deficiency. But that claim does not mesh with the facts. Nordion produces about 40 percent of the world’s supply of medical isotopes today; worldwide production capacity is 25 percent of current worldwide demand.

That means that, even without Nordion’s medical isotopes, production could still reach 210 percent of world demand.

Finally, it is important to note that no company has ever been denied an export license under the Schumer amendment for HEU to be used in targets for medical isotope production AND current law has, as intended, incentivized countries to begin to convert to LEU. The Netherlands is one good example; conversion of that country’s Petten reactor (to LEU fuel) is scheduled to be completed by 2006.

Senator SCHUMER’s amendment, which I strongly support, strips section 621 of H.R. 6. Maintaining current law restrictions will ensure that the United States plays an active role in encouraging other countries to convert to using low-enriched uranium. All that they must do in order to continue to receive the HEU is to agree to convert to low-enriched uranium—which cannot be used as the core of a nuclear bomb—when it becomes technically and economically possible to do so and actively cooperate with the United States on that conversion. This is not unreasonable.

And, as I mentioned, there is no danger of running out of medical isotopes at this time—the largest supplier to the United States currently has a surplus of U.S. HEU and worldwide maximum production capacity is more than twice demand.

My second-degree amendment would simply add a requirement for a report from the National Academy of Sciences. That report includes an analysis of the effectiveness of current law (the Schumer amendment) in compelling conversion to low-enriched uranium; the likely consequences with respect to nonproliferation and antiterrorism initiatives of removing current restrictions; whether implementation of current law has ever caused an interruption in
the production and supply of medical isotopes to the U.S.; and

Whether the U.S. supply of isotopes is sufficiently diversified to withstand an interruption of production from any one supplier.

It is prudent to conduct such a comprehensive study before we even consider lifting the restrictions in current law, as opposed to after lifting them, as the energy bill language would do.

The report would be due 18 months after enactment of the Energy bill. So, even if Nordion were cut off from U.S. exports tomorrow, the due date would be long before Nordion’s surplus HEV runs out.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

The amendment (No. 990), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, we are going to move as quickly as we can. It appears that we can complete all work on this bill tonight. We have a few remaining amendments. I am going to offer an unanimous consent request at this time and, hopefully, we can cut the time down from it, if our colleagues will expedite their effort on behalf of these amendments that are outstanding.

Mr. President, I ask unanimous consent that the following Senators be added as cosponsors: DODD, CANTWELL, LAUTENBERG, KENNEDY, REED of Rhode Island, and BOXER.

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

Mr. DURBIN. I ask unanimous consent that the following Senators be added as cosponsors: DODD, CANTWELL, LAUTENBERG, KENNEDY, REED of Rhode Island, and BOXER.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors: DODD, CANTWELL, LAUTENBERG, KENNEDY, REED of Rhode Island, and BOXER.

The amendment (No. 990), as modified, was agreed to.

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

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

The amendment is set aside under the order.

The PRESIDING OFFICER. The amendment is set aside under the order.

AMENDMENT NO. 902

Mr. DURBIN. Mr. President, I call up amendment No. 902.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senate from Illinois (Mr. DURBIN), proposes an amendment numbered 902.

Mr. DURBIN. I ask unanimous consent that the following Senators be added as cosponsors: DODD, CANTWELL, LAUTENBERG, KENNEDY, REED of Rhode Island, and BOXER.

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

Mr. DURBIN. Mr. President, it is my understanding, under the terms of the agreement, that we have 40 minutes on our side, and there are 40 minutes under the control of Senators BOND or LEVIN.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. Mr. President, I start by reading a paragraph, but it is not from an environmental magazine or a political magazine or from a liberal magazine. It is from BusinessWeek, published in their most recent online edition of June 20, entitled, "Congress, Ignoring the Obvious Fix." I will read this paragraph because it describes where we are at this moment in time:

As Congress puts the final touches on a massive new energy bill, lawmakers are about to blow it. That's because the bill, which they hope to pass by the end of July, almost certainly won't include the one policy initiative that could seriously reduce America's dependence on foreign oil: A gasoline tax that would increase mandated increase in the average fuel economy of new cars, SUVs, light trucks and vans.

That is BusinessWeek. They say that Congress, is about to blow it. Sadly, BusinessWeek is correct because you can search this bill, page after page, section after section, and find no reference to the obvious need in America to increase the fuel efficiency of the cars and trucks that we drive.

The obvious fact that I am proposing addresses the CAFE standards. This amendment would result in more fuel-efficient vehicles in America. This amendment would incrementally increase fuel economy standards in automobiles over the next 10 years.

Regardless of what the opponents of this amendment say, technology is available to reach these goals, the safety of our vehicles need not be compromised in the process, and we don't have to lose American jobs in order to have safer, more fuel-efficient cars.

I suggest to those who have no faith in the innovative capacity of our Nation that America has risen to the challenge before. We can do it again.

Before I explain my amendment and highlight why improving fuel efficiency would be a priority, let me read from a few headlines that make this debate especially important.

This was in this week’s Washington Post:

Gas price rises as oil hits a record high.

What was the dollar amount, the latest amount? It was $59.42 a barrel—record high amounts for oil. In my State of Illinois, the average price of gasoline is $2.16 per gallon.

From the Wall Street Journal, here is the big headline:

Big Thirst for Oil is Unslaked, Demand by U.S., China Rises.

The Wall Street Journal says:

Oil consumption remains strong even as petroleum prices approach $60 a barrel, sparking concerns that growing demand could spur still-higher prices and further dampen economic growth.

Philip Verleger, senior fellow at the Washington-based Institute for International Economics, says:

I can see oil at $90 a barrel by next March 31.

I have read from BusinessWeek. We understand their consideration of this provision. They understand that if we do not deal with more fuel-efficient vehicles, we are ignoring the obvious.

I am offering this amendment to give my colleagues an opportunity to put America back on track, to reduce consumption of oil-based products by our transportation fleet by increasing fuel economy standards.

The BusinessWeek online piece continues:

If we don't act now, a crisis will probably force more drastic action later.

I first say to my colleague following this debate, I wish them all a happy 30th anniversary. It was 30 years ago we faced an energy crisis in America. This year marks the 30th anniversary of the Energy Policy and Conservation Act that created the original CAFE program and responded to that crisis.

Listen to these oil prices that brought America’s economy to its knees 30 years ago. I am going back to October of 1973. The price of oil rose from $3 a barrel to $5.11 per barrel, sending a shock across America. By January, just a few months later, the prices were up to $11.65 a barrel. At the time, however, the United States was only dependent on foreign oil for 28 percent of its use. That percentage has grown to 58 percent today.
Put it in context: 30 years ago, 28 percent of our oil was coming from overseas, and we were dealing with $11 a barrel. Today, 58 percent is, and we are dealing with $59.60 a barrel, roughly speaking. So we have seen a dramatic increase in our dependence, a dramatic increase in price, and there is no reason to believe it is going to end. We are captives of OPEC and that cartel.

When MAria Cantwell came to the floor of the Senate and offered an amendment to reduce America’s dependence on foreign oil by 40 percent over the next 20 years, it was soundly defeated. I think only three Republicans joined the Democrats who supported it.

To think we are overlooking in a debate on an energy bill dependence on foreign oil and the inefficiency of cars and trucks tells you how irrelevant this debate is. Any serious debate about America’s energy future would talk about our dependence—overdependence on oil—and there is no reason that we continue to drive cars and trucks that are less fuel efficient every single year.

The recent prices that have shown up also create anxiety over oil exports from America and take a toll on our economy. This past Friday, the United States, Britain, and Germany closed their consulates in Nigeria, in its largest city of Lagos, due to a threat from foreign Islamic militants. The countries we are relying on for fuel are politically shaky, and we depend on them. If they do not provide the oil, our economy suffers, and American families and consumers suffer.

In response to the 1973 oil embargo, Congress created the CAFE program and decided at the time to increase the new car fleet fuel economy because it had declined from 14.8 miles per gallon in 1967 to 12.9 miles per gallon in 1973. Today we face even more embarrassing statistics. Today we consume more than 3 gallons of oil per capita in the United States, whereas other industrialized countries consume 1.3 gallons per capita per day, and the world average is closer to a half a gallon per capita per day. We use four times more oil than any nation.

The amendment I am proposing would increase passenger fuel economy standards by 12.5 miles per gallon over the next 11 years, increasing fuel economy standards for nonpassenger vehicles on the average of 2.5 miles per gallon in the same time period, for a combined fleet average of nearly 34 miles per gallon. I am increasing it 5.3 miles per gallon over current plans. Current NHTSA rule-making would only raise it to 22.2 miles per gallon by 2005.

The average mileage of U.S. passenger vehicles peaked in 1988 at 25.9 miles per gallon and has fallen to an estimated 24.4 in 2004.

Let me show one chart which graphically depicts the sad reality. Remember the oil embargo I talked about, in 1973, the panic in America, the demand that our manufacturers of automobiles increase the fuel efficiency of cars over the next 10 years? They screamed bloody murder. They said the same things we are going to hear from my colleagues tonight in opposition to this amendment. They said if you want cars that get so many miles per gallon, they are going to kill 10 million jobs. America is going to be riding around in little dinky cars such as golf carts. I heard exactly the same words on the Senate floor today.

Furthermore, if you want more fuel-efficient cars, they are going to be so darned dangerous, no family should ride in them. This is what our big three said back in 1973: We can’t do this; it is technologically impossible. Frankly, if you do it, we are going to see more and more foreign cars coming into the United States.

Thank God Congress ignored them. We passed the CAFE standards. Looked at what happened. Fuel-efficiency cars in a 10-year period went up to their highest level ever. It happened after the current oil crisis. It is flat or declining in some areas. It tells us, when we look at both cars and trucks, that our fuel efficiency has been declining since 1985. How can this be good for America? How can this make us less energy dependent? How can this clean up air we breathe? It cannot.

People will come to the floor of the Senate today and say: We think every American ought to buy and drive the same kind of car or truck they drove in 1973. But that is not the way the world is. Is it or is it not? It is flat or declining in some areas. It tells us, when we look at both cars and trucks, that our fuel efficiency has been declining since 1985. How can this be good for America? How can this make us less energy dependent? How can this clean up air we breathe? It cannot.

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We have to understand that there is one American-made car on the market today that even cares about fuel efficiency—the Ford Escape hybrid. That is the only one. The others are made by manufacturers around the world, and they are not making too many of these Ford Escape hybrids. In the first quarter of this year, Ford made 5,274. Take a look at the competition. Japan again, sadly, got the jump on us. When they came up with their Honda Accords and Civics, they ended up selling 9,317 and then 14,604 the first quarter. Toyota was 13,602, and look at the number here: 34,225.

What I am telling you is, how could Detroit miss this? When we look at the big numbers, the total sales for these cars for hybrids sold, total hybrids sold in 2004 before we ended up having an American car on the market was 83,000 vehicles. Where was Detroit? Where are they now? The only place one can turn is a Ford Escape hybrid. What are they waiting for? Do they want the Japanese to capture another major market before they even dip their toe in the water?

We have to understand that there is demand in America for more fuel-efficient cars. We also have to understand the technology is there to dramatically increase gas mileage. This Ford Escape hybrid my wife and I drive is getting a little better than 28 miles a gallon. I wish it were a lot better. Sadly, some of the Japanese models are a lot better. At least it is better than the average SUV by a long shot and better than most cars we buy. They can do a lot better, if Ford, General Motors, and Chrysler would only update their technology. Instead, they are stuck in the past. They are going to sell more this year of what they made last year. They cannot
Let’s create an incentive for Detroit and for Tokyo. Let’s create an incentive for all manufacturers that are selling cars in the United States, an incentive that lessens our dependence on foreign oil, cleans up the air, and gives us safe, very clean technology. Those who are convinced that America cannot rise to this challenge do not know the same Nation I know. We can rise to it. We can succeed. We can meet our energy needs in the future by making good sense today in our energy policy.

Mr. NELSON of Florida. Will the Senator yield?

Mr. DURBIN. Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator from Florida has 22 minutes remaining.

Mr. DURBIN. I will be happy to yield to the Senator from Florida.

Mr. NELSON of Florida. I thank the Senator for laying out so clearly the writing on the wall. Their current model is fuel efficient. The auto industry, sadly, has fought against safety belts, airbags, fuel system integrity, mandatory recalls, side impact protection, roof strength, and rollover standards. I am not surprised they are fighting against safety. But I amappointed. They just don’t get the marketplace. As the price of oil goes up and the price of gas goes up, Americans want an alternative—a safe car they can use for themselves and their family that is fuel efficient.

Let me talk about the loss of jobs. The argument is made that if we have more fuel-efficient cars, we are just going to be giving away American jobs. It comes from the same industry where General Motors announced 2 weeks ago they were laying off 25,000 people, and Ford announced they were laying off 1,700 this week. They have to see the writing on the wall. Their current models are not serving the current market. The sales are going down while the sales from foreign manufacturers are going up.

There was an auto industry expert on NPR a few weeks ago, Maryann Keller. She said:

General Motors has been focused in the United States on big SUVs and big pickup trucks. . . . It worked as long as gas was cheap, but gas is not cheap. . . . They really have not paid attention to fuel economy technology, nor have they paid attention to developing crossover vehicles which have better fuel economy. They’ve just been very late to the party and that’s probably their primary problem today in the marketplace.

We ought to ask the American people what they want. We are going to hear a lot of people stand up and say what they want. I will tell you what the latest poll says: 61 percent of Americans favor increasing fuel-efficiency requirements to 40 miles a gallon. They get it; they understand it. The problem is they can’t buy it. If you want to buy an American car that meets this goal in your family’s mind, there is only one out of twelve. It is not available. It will be in another year or two, but the Japanese have beaten us to the punch again.

Mr. NELSON of Florida. Would it not be something if we could start to have all new vehicles be required, in some way, to be hybrid and/or higher miles per gallon standard, if that were combined with an additional thing like ethanol into gasoline, ethanol that could be made from corn, prairie grass—that is on 31 million acres; all it needs is to be cut—instead of a more expensive process of corn, although that certainly is a good source of ethanol. Would we not start to see exponentially our ability to wean ourselves from dependence on foreign oil? Mr. DURBIN. The Senator from Florida has a vision that I share, and that is alternative fuels, fuels that are renewable such as those the Senator has described, ethanol and biodiesel, and vehicles that do not use as much fuel.

Senator OBAMA and I have a public meeting every Thursday morning, and there was a real sad situation today. A group of parents brought in children with autism to talk about that terrible illness and the challenges they face. More and more of that illness, and others, are being linked to mercury. Whether it is in a vaccine, I do not know; whether it is in the air, most certainly it is. If we are not making emissions by reducing the amount of fuel that we burn, would my colleagues not believe we would be a healthier nation?

I cannot believe people can rationally stand on the Senate floor and say what we need is to give Americans a choice of driving a car that burns gasoline and gets 6 miles per gallon; boy, that is the American way. Well, that is selfish. It really is. We ought to be looking at national goals that bring us, as an American family, together to do the responsible thing.

Let me ask Senator from Florida. I thank the Senator for being so eloquent in laying out what is a looming crisis. The crisis is going to hit us. We may not suspect it. It may hit us in the way of radical Islamists suddenly taking over major countries where those oilfields are, such as Saudi Arabia. If that occurs, Lord forbid. Then we are going to have countries where those oilfields are, such as Saudi Arabia. If that occurs, Lord forbid. Then we are going to have such as Saudi Arabia. If that occurs, Lord forbid. Then we are going to have

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. NELSON. Mr. President, I yield myself 15 minutes.

I rise to address some of the lingering questions regarding Corporate Average Fuel Economy, or CAFE standards. I was hoping this debate would not be necessary because we have debated it, and it was resolved. It was by a process in place, and it is working. Obviously, we are here again. We have been through this CAFE debate in the 107th
and 108th Congresses, and with the Durbin amendment before us we get to go through it once again in this Congress. Surely, my colleagues remember that both of the previous CAFE amendments in the last two Congresses were soundly defeated.

What were they? Because Members of this body realize that CAFE is a complex issue that requires thought and scientific analysis, not just political rhetoric.

The Bond-Levin amendment that was passed in 2003 by a vote of 66 to 30 required the National Highway Traffic Safety Administration, or NHTSA, to increase CAFE standards as fast as technology becomes available. It is a scientific test based on science, not politics.

We must recognize at the beginning that the Durbin amendment costs lives, costs U.S. jobs, and deprives consumers of their basic free will to choose the vehicle that best fits their needs and the needs of their families. Neither the lives of drivers or passengers nor the safety of walkways nor the livelihood of autoworkers and their families should be placed in jeopardy so Congress can arbitrarily increase infeasible and scientifically unjustified standards for fuel efficiency.

Any fuel efficiency standard that is administered poorly, without a sound scientific analysis, will have a damaging impact on automobile plants, suppliers, and the fine men and women who build these vehicles.

There have been many arguments that a large increase in CAFE standards is needed to pressure automakers to invest in new technologies which will consistently increase automobile fuel efficiency. Automobile manufacturers already utilize advanced technology programs to ensure the improvement of fuel efficiency; the restriction of emissions and driver and passenger safety, and they are being pushed to do so by NHTSA regulations.

Auto manufacturers are constantly investing capital in advanced technology research by the integration of new products, such as hybrid electric and alternative fuel vehicles and higher fuel efficiency vehicles. So far, the auto industry has invested billions of dollars in developing and promoting these new technologies. Diverting resources from further investments in these programs in favor of arbitrarily higher CAFE standards would place a stranglehold on the technological breakthroughs which are already taking place.

Alternative fuels, such as biodiesel, ethanol, and natural gas, have continuously been developed to service a wide variety of vehicles. The automotive industry continues to utilize breakthrough technology which focuses on the development of advanced applied science to produce more fuel-efficient vehicles, while at the same time producing innovative safety attributes for these vehicles.

Furthermore, modifications need time to be implemented. According to the National Academy of Sciences:

Any policy that is implemented too aggressively (that is, too much in too short a period of time) has the potential to adversely affect manufacturers, suppliers, employees and consumers.

The NAS further found that no car or truck can be prepared to reach the 40 miles per gallon or 27.5-mile-per-gallon level required for the following year. The Durbin amendment would require it in 11. That makes it clear that if we try to shové unattainable standards down the throats of automakers, the workers and the companies, we will have a problem.

What will we have achieved by doing so? There is the false perception that the Federal Government has done nothing to address CAFE standards.

Nothing could be further from the truth. On April 3, 2003, NHTSA set new standards for light trucks for the model years 2005 through 2007. These standards are 21 miles per gallon this year; 21.6 next year; and 22.2 the following year. These increases in light truck CAFE standards that occurred between 1986 and 1996. This recent increase is the highest in 20 years.

In addition, by April 1 next year, NHTSA will publish new light truck CAFE standards for model year 2008 and possibly beyond. Most stakeholders expect a further increase in CAFE standards for these years as well.

It is important to understand that NHTSA is doing this, utilizing scientific analysis as a basis for these increases. We must proceed with caution because higher fuel economy standards, based on emotion or political rhetoric, not sound science, can strike a major blow to the economy, the automobile industry, auto industry jobs, and our Nation. Highway safety and consumer choice will also be at risk.

Let cars NHTSA's evaluate standards is the appropriate way to do it, and that is what almost two-thirds of the Members of this body decided when we brought the last Levin-Bond amendment before us.

In an April 21 letter this year, Dr. Jeff Runge, Director of NHTSA, said:

The Administration supports the goal of improving vehicle fuel economy while protecting passenger safety and jobs. To this end, new fuel economy standards must be based on data and sound science.

Those advocating arbitrary increases may try to avert any discussion of the impact on jobs or dismiss the argument. However, I have heard from a broad array of union officials, plant managers, local automobile dealers and small businesses who have told me that unrealistic CAFE standards cut jobs.

In light of the economic difficulties currently facing GM and Ford, the UAW believes it would be a profound mistake to require them now to shoulder the additional economic burdens associated with extreme, discriminatory CAFE standards. This could have an adverse impact on the financial condition of these companies, further jeopardizing production and employment for thousands of workers throughout this country.

The UAW continues to strongly oppose these amendments because we believe the increases in CAFE standards are excessive and discriminatory, and would unfairly threaten thousands of jobs for UAW members and other workers in this country.

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

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

WASHINGTON, D.C., June 17, 2005.

DEAR SENATOR: Next week the Senate is scheduled to continue debate on the comprehensive energy legislation. At that time, the Senate may consider a number of amendments relating to Corporate Average Fuel Economy (CAFE) standards.

The UAW strongly supports the Levin-Bond amendment, which would require the Department of Transportation to engage in rulemaking to issue new fuel economy standards for cars and light trucks, based on a wide range of factors such as technological feasibility, and the impact on employment. This amendment is similar to the Levin-Bond amendment that was approved by the Senate in the last Congress. The UAW supports the approach contained in this amendment because we believe it can lead to a significant improvement in fuel economy, without jeopardizing the jobs of American automotive workers.

The UAW understands that Senators McCain and Feingold are preparing amendments that I would mandate huge increases in the CAFE standards. These amendments are similar to proposals that have been considered and rejected decisively by the Senate in previous Congresses. The UAW strongly opposes these amendments because we believe the increases in the CAFE standards are excessive and discriminatory, and would directly threaten thousands of jobs for UAW members and other workers in this country.

In light of the critical need for a comprehensive approach to fuel economy and emissions standards, the UAW again calls upon the Senate to approve such increases. The UAW is particularly concerned that the structure of these proposed amendments
The UAW continues to believe that improvements in fuel economy are achievable over time. But we believe that the best way to achieve this objective is to provide tax incentives for domestic production and sales of advanced technology (hybrid and diesel) vehicles, and to focus on the Department of Transportation to continue promulgating new fuel economy standards that are economically and technologically feasible.

Thank you for your consideration of these important issues.

Sincerely,

ALAN RUTHER, Legislative Director.

DEAR MAJORITY LEADER FRIST: The U.S. Senate is in the choice of considering various energy-related provisions and amendments to the comprehensive energy bill which passed the Committee on Energy and Natural Resources earlier this month. It has come to our attention that amendments may be forthcoming calling for increases to the Corporate Average Fuel Economy (CAFE) standards including light trucks. The organizations listed below strongly oppose any increase in CAFE standards.

Our opposition is based on concerns that such a federal mandate will have a negative impact on consumers and translate directly into a narrower choice of vehicles for America’s farmers and ranchers, who depend on affordable and functional light trucks to perform the daily rigors of farm and ranch work. Our groups cannot support standards that increase the purchase price of trucks, while decreasing horsepower, towing capacity, and torque. In addition, recent studies indicate that an aggressive increase in the CAFE standard for light trucks could add over $3,000.00 in the purchase price per vehicle. This would result in yet another added production cost for U.S. farmers and ranchers that cannot be passed on when selling farm commodities.

On behalf of farm and ranch families across the country who rely on affordable light trucks and similar vehicles for farming and transportation needs, we urge you to oppose any amendments calling for an increase in CAFE standards.

Sincerely,

NATIONAL CATTLEMEN’S BEEF ASSOCIATION,
AMERICAN FARM BUREAU FEDERATION,
AGRICULTURAL RETAILERS ASSOCIATION,
NATIONAL CORN GROWERS ASSOCIATION,
The Fertilizer Institute,
NATIONAL MILK PRODUCERS CONFEDERATION,
NATIONAL GRANGE,
AMERICAN SOYBEAN ASSOCIATION.

- MAY 13, 2005.

Hon. Pete Domenici,
Chairman, Senate Energy and Natural Resources Committee, DC.

DEAR CHAIRMAN DOMENICI: The Senate Energy and Natural Resources Committee will soon consider various energy-related provisions and amendments to the comprehensive energy bill which passed the U.S. House of Representatives a few weeks ago. It has come to our attention that amendments may be forthcoming calling for increases to the Corporate Average Fuel Economy (CAFE) standards including light trucks. The organizations listed below strongly oppose any increase in CAFE standards.

Our opposition is based on concerns that such a federal mandate will have a negative impact on consumers and translate directly into a narrower choice of vehicles for America’s farmers and ranchers, who depend on affordable and functional light trucks to perform the daily rigors of farm and ranch work. Our groups cannot support standards that increase the purchase price of trucks, while decreasing horsepower, towing capacity, and torque. In addition, recent studies indicate that an aggressive increase in the CAFE standard for light trucks could add over $3,000.00 in the purchase price per vehicle. This would result in yet another added production cost for U.S. farmers and ranchers that cannot be passed on when selling farm commodities.

On behalf of farm and ranch families across the country who rely on affordable light trucks and similar vehicles for farming and transportation needs, we urge you to oppose any amendments calling for an increase in CAFE standards.

Sincerely,

NATIONAL CATTLEMEN’S BEEF ASSOCIATION,
Public Lands Council, The Fertilizer Institute, National Corn Growers Association, National Grange, American Farm Bureau Federation, Agricultural Retailers Association, National Milk Producers Federation, National Association of Wheat Growers.

Mr. BOND. This is very important to know because 1 out of every 10 jobs in our country is dependent on new vehicle production and sales. The auto industry is responsible for 13.3 million jobs, or 10 percent of private sector jobs. Auto manufacturing contributes $243 billion to the private sector, over 5.6 percent of the private sector compensation. Every car the Union is an auto State. Let us take a look at that chart. The occupant of the chair is from North Carolina. That has 158,000. The State of Illinois has 311,000. My State has 221,000. The State of Michigan has 1,007,500.

I have heard it said that we should not worry about these jobs. The proponents of the amendment to increase it say that it is not going to do any harm.

But I do adopt this amendment you can kiss tens of thousands of good, high-paying, American, union manufacturing jobs goodbye. I am not willing to do that to the 36,000 men and women working directly in the automotive industry, not to the over 200,000 men and women who work in auto-dependent jobs in my State.

But it is not just jobs. It is safety. According to the National Academy of Sciences:

Without a thoughtful restructuring of the program . . . additional traffic fatalities would be the tradeoff if CAFE standards are increased by any significant amount.

You see, we have learned in the past that when you have politically inspired CAFE increases which cannot be achieved with technological means, the only way of achieving them is by making the cars lighter, 1,000 pounds to 2,000 pounds lighter.

Do you know what. More people die in those smaller cars than in the full-size cars that they replace. Since it began, we are running about 1,500 deaths a year. In August of 2001, the NAS issued a report which found that between 1,500 to 2,000 people in 1993 alone were killed in these smaller automobiles. It is not just smaller automobiles hitting larger automobiles—43 percent of those deaths were in single-car accidents.

My colleague from Illinois has suggested we disregard these statistics as estimates. These are not estimates, these are dead people. These are people who died from politically inspired CAFE. That is what we are talking about. Excessive CAFE standards pressure manufacturers to reduce the weight for light trucks, completely do away with larger trucks used for farming and other commercial purposes.

My colleague from Illinois mentioned golf carts—yes, golf carts would comply. But certainly the pickup trucks that a lot of farmers in my State drive would not make it.

If an increase in fuel economy is brought about by encouraging downsizing, we will practically eliminate small cars, it will cause additional traffic fatalities. The notion that people’s lives and safety are hanging in the balance because of unwarranted CAFE increases should cause all of us some concern. The ability to have a choice of the vehicle assures the safety of one’s family. It should not be a sacrifice that must be made in favor of arbitrary fuel efficiency standards.

I don’t want to tell the people in my State or any other State they are not allowed to purchase an SUV because Congress decided it would not be a good choice. That sounds like the command and control economy of the Soviet Union.

Another very important point is the impact of increased CAFE standards on consumer choice and affordability. Despite the record high cost of gasoline sales, light truck sales have continued to skyrocket. In the past 2 years, sales of light trucks have almost tripled. In May of 2006, full-size pickup trucks occupied three of the top five sales positions, including the No. 1 and 2 spots. From these numbers and from these
charts it is obvious that consumers consistently favor safety, utility, performance, and other characteristics over fuel economy. The only way to stop sales of these vehicles would be to enact Soviet-style mandates, declaring that manufacturers could no longer produce light trucks and SUVs, and consumers could no longer buy them.

Some people in this body apparently believe our fellow Americans cannot be trusted to make the right choice when purchasing a vehicle. As far as I am concerned, when you get down to having the Government making the choice or the consumer making the choice, I am with the consumer.

Just how arbitrary would these CAFE cost increases be to consumers? The CBO last found that raising fuel standards for cars and trucks by 4 miles per gallon could cost consumers as much as $3.5 billion. I also have a copy of a recent letter that was sent to Chairman DOMENICI and Majority Leader FRIST from a consortium of agricultural organizations which states that “recent studies indicate that an increase in CAFE standards for light trucks could add over $3,000 to the purchase price per vehicle. It is signed by the National Cattlemen’s Association, the National Corn Growers, the American Farm Bureau, National Milk Producers and the National Association of Wheat Growers among others. They oppose these arbitrary increases because they believe they will have a negative impact on consumers, and translate directly into a narrower choice of vehicles for America’s farmers and Ranchers, who depend on affordable and functional light trucks to perform the daily rigors of farm and ranch work.” I submitted this letter for the Record.

Finally, I must dispel the myth that CAFE increases reduce our Nation’s dependence on foreign oil. According to the American International Automobile Dealers:

Despite the utopian CAFE advocates, experience shows that CAFE does not result in the reduction of oil imports. The import share of U.S. oil consumption was 35% in 1974. Since that time, new car fuel economy has doubled but our oil imports share has climbed to almost 60%.

In that 30 year time frame, the consumption of gasoline has increased and not decreased. The bottom line is that after 30 years of CAFE standards, our nation is more dependent on foreign oil than ever before.

I believe that there are other better ways to reduce our Nation’s dependence on foreign oil than massive increases in CAFE standards. These include promoting the development and use of alternative fuels such as ethanol, bio-diesel and natural gas. We should pass legislation that encourages the development of advanced fuel technology such as hybrid and fuel cell vehicles and alternative sources of energy. We should also focus on increasing domestic supplies and energy that include oil and natural gas.

We must talk about what is technologically feasible and what will produce better fuel economy, while continuing to preserve and produce jobs, and not risk the lives of drivers and their families on our nation’s roads. We must continue to ensure the safety of drivers and their children, and we must not throw out of work the wonderful American men and women who are making these automobiles in my state and across the entire nation.

In light of this, Senator LEVIN and I have reintroduced an amendment that was adopted by the Senate in the previous two Congresses, which maintains the authority of the National Highway Traffic Safety Administration—subject to public comment—to determine passenger auto standards based upon the “maximum feasible” level. Under the Bond-Levin Amendment, determinations to this feasibility level include the following factors:

No. 1. Technological feasibility:
No. 2. Economic practicability:
No. 3. The effect of other government motor vehicle standards on fuel economy;
No. 4. The need of the nation to conserve energy;
No. 5. The desirability of reducing U.S. dependency on foreign oil;
No. 6. The effects of fuel economy standards on motor vehicle safety, and passenger safety;
No. 7. The effects of increased fuel economy on job quality;
No. 8. The adverse effects of increased CAFE standards on the competitiveness of U.S. manufacturers;
No. 9. The effects of CAFE Standards on U.S. employment;
No. 10. The cost and lead time required for the introductions of new technologies; and
No. 11. The potential for advanced hybrid and fuel cell technologies.

Every factor, which I have just mentioned, played a role in the consideration of setting future fuel efficiency standards for vehicles. The Bond-Levin amendment provides for these impacts and leaves it to the experts at NHTSA to develop viable standards based on this criteria and sound scientific analysis.

The Bond-Levin amendment also extends the flexible fuel or “dual fuel” credit to continue to provide incentives for automakers to produce vehicles that can run on alternative fuels such as ethanol or gasolene blends. So far these incentives have been successful in putting more than 4 million alternative fuel vehicles on our nation’s roads. This will be another positive step in helping our Nation reduce its dependence on foreign oil.

Again, this debate is about safety, jobs, consumer choice and sound scientific analysis.

I urge my colleagues to oppose the arbitrary and unscientific Durbin amendment, and to support the Levin-Bond 2nd degree amendment.

I yield to my colleague from Michigan—how much time does he want?
June 23, 2005

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which they ought to look at in setting this number.

First, maximum technological feasibility.

Second, economic practicability.

Third, the effect of other Government vehicle standards on fuel economy—because we have other standards, in terms of clean air and emissions, which bear on fuel economy. Someone, NHTSA, should take that into account.

Fourth, the need to conserve energy.

Fifth, the desirability of reducing U.S. dependence on foreign oil.

Next, the effect on motor vehicle safety. This is a point which Senator Bond has made, which the National Academy of Sciences has commented on.

Next, the effects of increased fuel economy on air quality.

Next, the adverse effects of increased fuel economy standards on the relative competitiveness of domestic motor vehicle manufacturers as compared to their foreign competitors.

Next, the effect on U.S. employment.

Next, the cost in lead time required for introduction of new technologies.

Next, the potential for advanced technology vehicles, such as hybrid and fuel cell vehicles, to contribute to significant fuel usage savings.

Next, the effect of near-term expenditures required to meet increased fuel economy standards on the resources available to develop advanced technologies.

Finally, to take into account the report of the National Research Council entitled “Effectiveness and Impact of Corporate Average Fuel Economy Standards.”

There are 13 factors that ought to be considered in a rulemaking, instead of just an arbitrary seizure on a number that is then put into law and imposed on everybody arbitrarily.

The Durbin amendment, in addition to setting an arbitrary number, worsens the discriminatory features of the existing CAFE system because there are inherent discriminatory features in that system that give an unfair competitive advantage to foreign automotive manufacturers while not benefiting the environment. The reason for this is a bit complicated. I hope every Member of this body will look very hard at the CAFE system and not just look at the amendments that are before us, but also look at the situation we have where CAFE already gives a discriminatory boost to imported vehicles. The CAFE system gives this boost, not because the vehicles are more efficient—because they are not. The same size imported vehicles have about the same fuel economy as the same size domestic vehicles.

I want to give some examples. There is no difference in terms of fuel economy. But the CAFE system, because of the way it has been designed, gives a discriminatory boost to imports because motor vehicle manufacturers provide a full line of different sized vehicles, which results in a lower fleet average.

Let's just take four vehicles. This is a comparison of vehicle fuel economy, pound per pound. We are looking at vehicles of the same size.

Here is an example of a large SUV. The Chevrolet Suburban weighs 6,000 pounds. The Toyota Sequoia weighs the slightly lighter, 5,500 pounds. So the Sequoia, in this case, is actually lighter than the Suburban. But the Sequoia, Toyota, is less fuel efficient—although it is slightly lighter—than the Chevrolet Suburban. That is easy to see that the Toyota gets 14 miles per gallon; the Toyota 4Runner, slightly less fuel efficient, although they are the same weight, 4,500 pounds.

The example of a large pickup truck, the Chevrolet Silverado, and the Toyota Tundra tells the same story. The Toyota Tundra, slightly less fuel efficient than the Chevrolet Silverado.

The Chevrolet Venture and the Toyota Sienna both weigh exactly the same, 4,250 pounds. The Chevrolet Venture is slightly more fuel efficient than the Toyota Sienna.

The point of this is to try to bring the fact that, when you have vehicles of about the same weight, you have about the same fuel economy. In these cases slightly better fuel economy on the part of the Chevrolet and the Jeep, that is better.

You never get that impression from the charts that we see from the Senator from Illinois. That is not the impression that you get. He says that Toyota does everything more efficiently than we do the hybrids. We, on the other hand, do all the big vehicles.

We do not make all the big vehicles. As a matter of fact, the growth in the sales of Toyotas and Hondas, when it comes to light trucks primarily pick up trucks and SUVs is dramatically greater than anything they are doing in the area of hybrids. Their hybrid sales are a peanut compared to the growth in light truck sales. Hybrids represent 1 percent of the market, but when you look at the light truck sales on the part of Toyota and Honda, there are dramatic increases in numbers of sales of those vehicles. That is not because they are more fuel efficient, they are not. In some cases, they are slightly less. Let's assume they are the same. The sale of those light trucks has nothing to do with their fuel efficiency. It has to do with legacy costs, but I am not going to get into that at this point.

So we have a situation where, because of the CAFE system, which is designed to look at the entire fleet average, because the imports have traditionally had a lot smaller vehicles, smaller fuel engines in their fleet, they have a lot more "headroom" to sell all the light trucks they want without being penalized under the CAFE system.

It doesn't look like the environment one bit good to tell people you can buy a Toyota Tundra but not a Chevrolet Silverado. But that is what the CAFE system does.

That is what the CAFE system does. Toyota has "headroom"—and I will give you the numbers in a moment—to sell huge additional numbers of their vehicles but a company like GM does not. That does nothing for the environment because it is no more environmentally friendly. Why are we doing that to ourselves? Why are we doing that to our American jobs?

The growth in sales of the imported vehicles is dramatic. It overwhelms the numbers of hybrids they are selling. But that is not because the Toyota and Honda vehicles are more fuel efficient. I cannot say that enough times. It is not because they are more fuel efficient. They are not more fuel efficient. At best, they are equal.

What good does it do to tell folks: You can buy a Tundra but not a Silverado? Why are we doing that to ourselves? It is not for the environment because it is no more environmentally friendly. Why are we doing that to ourselves? Why are we doing that to American jobs?

The growth in sales of the imported vehicles is dramatic. It overwhelms the numbers of hybrids they are selling. But that is not because the Toyota and Honda vehicles are more fuel efficient. I cannot say that enough times. It is not because they are more fuel efficient. They are not more fuel efficient. At best, they are equal.

Mr. BIDEN. If the Senator will yield, I have trouble with the amendment of the Senator from Illinois, but I also

Mr. LEVIN. It could be done. And NHTSA has a right to do that under our bill if it is logical to do that. But we should not set the number. We could say to NHTSA, and it is a perfectly logical argument, it seems to me that you should have the same mile per gallon standard for the same size vehicle. That is a logical argument. But that is not what is in this amendment. This builds on a defective system and makes it worse.

Mr. BIDEN. If the Senator will yield, I have trouble with the amendment of the Senator from Illinois, but I also
have trouble with the amendment of the Senator from Michigan. It seems to me we have a problem, a big problem. I don’t think we can meet the standard of the Senator from Illinois in time, and I think it would damage American jobs significantly.

But I don’t understand why we do not bite the bullet and say, whether NHTSA does it or not, you can’t drive a Toyota that gets less miles than a Dodge Durango or an American-made car because you have a fleet average.

The PRESIDENT proclaims SENATOR. The Senator from Michigan should be advised his time has expired.

Mr. DURBIN. Mr. President, how much time is remaining on each side?

The PRESIDENT OFFICER. The Senator from Illinois has 9 minutes 20 seconds.

Mr. DURBIN. I will speak for a few minutes and yield to my colleague and friend from Missouri.

To the Senator from Delaware, I am talking fleet average. That applies to German, Japanese, American cars—to all cars. The argument, buy a Toyota Tundra do not buy a Chevrolet Silverado, it is not true. This is not a standard for American-made cars but a standard for cars sold in America from wherever they are manufactured.

Yes, the rules will apply to American manufacturers the same as they apply to others. Don’t we want that? Isn’t our goal to reduce the consumption of oil in America and our dependence on foreign oil? I no more stand here and put a discriminatory amendment up for American manufacturers and workers and say, You have to play to a higher standard than Japanese, German, Swedish, or whatever the source might be of the other car. This is a fleet average. It does not mean that every car has to meet this average. It is an average, which means there will be larger cars and larger trucks that will get lower mileage, but there must be more fuel-efficient cars that bring it to an average number.

Let me also talk about the unrealism of my proposal. For the record, increasing the fuel efficiency of passenger cars by 12½ miles per gallon over the next 11 years, the argument that it is beyond us, Americans cannot imagine how we would do such a thing—NHTSA has required that trucks in our country increase their fuel efficiency by 22 miles a gallon over 2 years. So they are improving by more than a mile a gallon over 2 years. My standard for all is 12½ miles over 11 years. Why is this such a huge technological leap? I don’t think it is.

I yield for a short question on a limited time.

Mr. BIDEN. I truly am confused. I don’t doubt what the Senator says. I don’t fully understand it.

If it is fleet average, Toyota makes an automobile I am making this up—that gets 60 miles per gallon when people drive around in Tokyo that they will not sell here at all in order that they can make a giant Toyota truck that gets poorer mileage or as poor mileage as our truck, and they get to sell it here because they have averaged out their fleet.

My question is, Why don’t we just say, based on the weight of these vehicles, everybody has to meet the 20-miles-a-gallon standard, not an average, because people are not buying two-seater 60-mile-per-gallon vehicles here as they are in Europe where it is $4 a gallon. That is my question.

Mr. DURBIN. Let me say to the Senator from Delaware, if that is the loophole, I want to close it.

Mr. BIDEN. I think it is.

Mr. DURBIN. I am concerned about what is sold in America. I am concerned about the oil that is consumed in America and the gasoline consumed in America. I don’t care if Toyota makes a car that is sold in Australia and what the mileage might be. That is their concern.

For us to take the attitude or approach that we are not even going to hold the manufacturer to any higher standards with fuel efficiency in my mind is a concession that we will be dependent on foreign oil for as long as we can imagine.

The amendment requires all car companies to keep within a standard, not an average, because people are not buying two-seater 60-mile-per-gallon vehicles here as they are in Europe where it is $4 a gallon. That is my question.

Mr. DURBIN. The Senator from Missouri says I am engaged in a “Soviet survival” approach to the economy. I will just tell him that I don’t believe it was a Soviet-style approach which enacted CAPE in the first instance and resulted in such a disciplined line in our dependence on foreign oil.

As to the argument that this kills jobs, the idea this kills jobs, I ask unanimous consent to have printed in the RECORD a letter of endorsement from the Transport Workers Union of America. Here is one union that supports it.

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


DEAR SENATOR: On behalf of the 130,000 members of the Transport Workers Union and transit and rail workers everywhere, we urge you to vote for the Durbin CAPE amendment to the pending energy bill to raise fuel economy standards.

The amendment requires all car companies in America—both domestic and foreign—to increase average fuel efficiency. This is a straightforward, science-based, and efficient approach that is clearly in the national interest that it is difficult to understand how anyone could oppose it:

(1) National Security—in an era when the United States is under attack from foreign fanatics, it is of critical importance to reduce our dependence on foreign oil imports.

(2) Air Pollution—Opponents of environmental use in America have set the need for established, proven science. There is no dispute that auto emissions are one of the major sources of air pollution in the modern era.

(3) Reducing Health Costs—Auto emissions are a major cause of asthma and other respiratory diseases and a major contributor to the rising health care costs in America.

These costs are, in turn, a major factor in the difficulty American manufacturers have in competing with foreign manufacturers.

It would be disingenuous to pretend that the members of the Transport Workers Union do not have a major stake in reducing the threat of auto emissions to the death, healthcare, pollution cleanup, and enforcement—of automobile use. Certainly anything that would stop the extreme subsidizing of auto use in America and allow the marketplace to drive consumers to the most efficient use of transportation resources would increase jobs for the rail and transit workers we represent.

But that is an important point. Tightening auto fuel efficiency standards would not, as some argue, reduce American jobs. It would simply transfer them from one industry to another—to an industry which is not only highly unionized and highly compensated, but which promotes the national interest of security, a clean environment and lower health care costs.

We urge you to vote for the Durbin fuel economy amendment to the energy bill.

Sincerely,

ROGER TAUBS, Legislative Director, Transport Workers Union.

Mr. DURBIN. And I might also say the National Environmental Trust says that by 2020, nearly 15,000 more U.S. autoworkers would have jobs because of a higher fuel efficiency standard, a 14-percent increase in average annual growth in U.S. auto industry employment, an auto industry that is declining in terms of the people who are working there.

In terms of the savings, the Senator from Missouri was troubled by the notion that American consumers would spend $3.6 billion for this new technology in these more fuel-efficient vehicles. What the Senator does not acknowledge is that by making that investment of $3.6 billion, under my amendment the savings in fuel to consumers will be over $10 billion; $3.6 billion in new cars and trucks, $110 billion of savings to consumers.

So would you get rid of an old gas guzzler to have a more fuel-efficient engine if it meant a trip to the gasoline station did not require taking out a loan at a local bank? Of course you would. That is only smart and only sensible.

Let me also say on the issue of safety, if you see the memo on safety on the vehicles involved, we know that we have the potential here of building vehicles that are safer and fuel efficient. We have statistics that relate to cars and trucks sold, but, in fairness, these statistics are in a period from 1994 and 1997. I will assume SUVs are a lot safer today.

But if you think it is a given that an SUV is safer than a car, the Honda Civic, at 2,500 pounds, had a death rate of 47 per million registered vehicle miles; a 5,500-pound vehicle—twice as large—a four-wheel-drive Clancy Suburban, had a death rate of 57 per million registered vehicle miles. Other popular SUVs are even more lethal during that period: four-door Blazers, at 72 deaths.
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per million; the shorter-wheel-base two-door Blazer had an appalling 153 deaths per million; the Explorer, 76; Jeep Grand Cherokee had 52; and of course, in fairness, Toyota 4Runner, a large SUV, 126 deaths per million.

The notion that SUVs are automatically the problems with rollovers, and we know that some of the difficulties with even the larger cars have to be reconciled. To assume that a larger, bigger SUV is always safer is not proven by these numbers, these statistics.

Let me also say what I propose would apply to Toyota and Honda SUV’s sold in America as well. I honestly believe we should hold those to the same standard.

Mr. BOND. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. BOND. I have trouble explaining to my Chrysler workers when I want to raise the CAFE standard. They are not happy with me. I voted against it last time.

My friend from Michigan, if you can drive a Toyota into that Chrysler parking lot that gets less mileage than the vehicle being made in that Chrysler plant under the way CAFE standards are set, you would be able to do that because the fleet average means you can drive in a big old Toyota getting 16 miles to the gallon or 17 miles to the gallon, but you could not drive the Dodge Durango that gets 18 miles a gallon—1 mile better—because the fleet average causes the Durango to be out of the ballpark.

That is my problem with all of this. That is why I cannot vote for what the Senator is suggesting even though I agree with the thrust of what he is saying. That is why I have difficulty with my friend from Michigan. He solves that problem in a sense, but he does not solve the larger problem of kicking the requirements higher.

I thank the Senator.

Mr. DURBIN. How much time remains?

The PRESIDING OFFICER. The Senator from Illinois has 8 minutes 40 seconds.

Mr. DURBIN. I also say about a Bond-Levin amendment that will be offered that it does not set goals for increased fuel economy for oil savings. That is unfortunate. It gives the decisionmaking over to the National Highway Traffic Safety Administration. They do not have a very good track record in holding the automobile maker selling in America to increased fuel efficiency.

I like dual E85 vehicles. I think those are sensible. Sadly, at this point, there are very few places to turn to to buy the fuel.

My colleague, Senator Obama, was talking about a tax treatment that would give incentives to set up these E85 stations. It was, unfortunately, not included in the bill. I think it should have been. Right now, there are precious few to turn to. Dual-fuel use is part of the Bond-Levin amendment, but it is a very rare occurrence where you can actually find the E85 fuel to put in your car. Plus, we find when they are dual-fuel vehicles, which the Senators rely on a great deal for their savings, fewer than 1 percent of the people actually use the better fuel. They use either the inefficient, more expensive source of energy for their car. They do not use the E85 fuel.

Sadly, the Bond-Levin amendment will increase our 2015 oil consumption by almost as much as we currently import from Saudi Arabia. So no more fuel efficiency, a response to the problem which is not realistic and, unfortunately, even more dependent on foreign oil in the future.

Mr. President, I reserve the remainder of my time.

Mr. LEVIN. Mr. President, I wonder if the Senator from Missouri would yield 30 additional seconds to me to put a statement in the RECORD.

Mr. BOND. I so yield, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this is a National Academy of Sciences finding about the CAFE system that the Senator from Delaware made reference to. It states: . . . one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers that are no more fuel efficient, a response to the problem which is not realistic and, unfortunately, even more dependent on foreign oil in the future.

Mr. President, I reserve the remainder of my time.

Mr. LEVIN. Mr. President, if the Senator from Missouri would yield 30 additional seconds to me to put a statement in the RECORD, the Senator from Missouri, Mr. BOND, would yield to me.

Mr. PRESIDENT. The Senator from Missouri.

Mr. BOND. I so yield, Mr. President.

Mr. BOND. I have trouble explaining to my Chrysler workers when I want to raise the CAFE standard. They are not happy with me. I voted against it last time.

My friend from Michigan, if you can drive a Toyota into that Chrysler parking lot that gets less mileage than the vehicle being made in that Chrysler plant under the way CAFE standards are set, you would be able to do that because the fleet average means you can drive in a big old Toyota getting 16 miles to the gallon or 17 miles to the gallon, but you could not drive the Dodge Durango that gets 18 miles a gallon—1 mile better—because the fleet average causes the Durango to be out of the ballpark.

That is my problem with all of this. That is why I cannot vote for what the Senator is suggesting even though I agree with the thrust of what he is saying. That is why I have difficulty with my friend from Michigan. He solves that problem in a sense, but he does not solve the larger problem of kicking the requirements higher.

I thank the Senator.

Mr. BOND. I reserve the remainder of my time.

Mr. PRESIDENT. The Senator from Michigan.

Mr. BOND. I so yield, Mr. President.

Mr. BOND. I thank my friend for yielding me time.

Mr. BOND. I am happy to yield.

Mr. TALENT. Mr. President, Mr. President, I thank my friend for yielding me time.

Mr. TALENT. Mr. President, Missouri is an auto State. Each year the hard-working employees of six assembly plants produce 5 million cars and light trucks that are shipped around the country. In fact, we have 221,000 auto-related workers in Missouri. There are 6.6 million auto-related jobs around the country.

I raise the question: What happens to our automobile economy, what happens to the workers, what happens to the people who buy them, what happens to the people on the highways if suddenly our auto manufacturers are forced to make unreasonable changes in fuel economy standard?

When enacted, CAFE established a 16.7-mpg level for combined car and light truck fuel economy. That level increased to 17.5-mpg in 1982 and to 20.7-mpg in 1996. Since the early 1970s, new vehicles have continued to become more fuel efficient. According to the EPA data, efficiency has increased steadily at nearly 2 percent per year on average from 1975 to 2001 for both cars and trucks.

Fuel economy rates in cars have more than doubled in the past generation, from 14.2 miles per gallon in 1974 to more than 28.1 miles per gallon in 2000. Today’s light truck gets better mileage than the compact cars from the 1970s. This bipartisan approach, offered by Senator Levin and the Senior Senator from Missouri, increases fuel economy. It does it in a way that also allows the domestic manufacturing industry in our U.S. economy to thrive as well. The two are not mutually exclusive. We can accomplish both goals. If we do not legislate higher CAFE standards it will have a negative effect on the American economy and on manufacturing jobs in America. If we do it wrong, we will not even benefit the environment the way we should.

I drive a Ford, and I just toured the Ford Motor plant in Kansas City. I listened to the car manufacturers, the
working men and women in the unions who build the cars, and the other impacted groups, and the significantly higher CAFE standard creates a real possibility of costing thousands of Americans their jobs, including many of the 221,000 auto-related workers in Missouri. The Ford F150 pickup truck is made in Kansas City. They estimated that an increase in CAFE standards to the 34-mpg that others are suggesting would raise the price of the truck by $3,000. That is a lot of money to a worker or a construction worker considering a purchase. Adding $3,000 or more to the sticker price of a new SUV or truck hurts sales and it kills jobs. This compromise offered by Senators BOND and LEVIN is a reasonable measure that gives our U.S. automakers equal footing with their foreign counterparts. The adverse effects of an increased fuel economy standard will have a negative effect on the relative competitiveness of U.S. manufacturers. The argument is strongest against the American auto industry. The American-manufactured vehicles, like those made in Missouri, are just as fuel efficient as the imports. However, they are put in a negative position, because of the structure—this fact that it looks at a fleetwide average rather than looking at class of vehicles compared to class of vehicles. Nothing is gained for the environment if an imported SUV is bought instead of an American vehicle. If the foreign SUV is at least as fuel efficient as the foreign SUV. Nothing is gained for the air, but a lot of American jobs are lost. This is the impact of a 36-mile-per-gallon combined car/truck standard on five manufacturers. Honda only has to increase theirs by 20 percent; Toyota, 36 percent; GM, 51 percent; Ford, 56 percent; DaimlerChrysler, 59 percent.

Instead of saying the same size vehicle will be subject to the same CAFE standard on mileage standards where they lump together all vehicles of a manufacturer, and the results are, in my judgment, bizarre and costs huge numbers of American jobs without the benefit to the environment. While CAFE standards do not mandate that manufacturers make small cars, they have had a significant effect on the designs manufacturers adopt—generally, the weights of passenger vehicles have been falling. Producing smaller, lightweight vehicles that can perform satisfactorily by being low-power, fuel-efficient engines is the most efficient way for automakers to meet the CAFE standards.

The only way for U.S. automakers to meet the unrealistic numbers that others are proposing is to pull back significantly on the manufacturing of the light trucks, minivans, and SUVs that the American consumers want, that the people of my State and the people of the other States want—to carry their cars, to work safely and conveniently, to do their business.

Levin-Bond asks the Department of Transportation to consider rulemaking that would also consider the effect on U.S. employment, the effect on near-term expenditures that are required to meet increased fuel economy standards on the resources available to develop advanced technology. It puts in place a rational system of weighing at many criteria which are relevant to the question of where the new standards for fuel economy ought to be instead of arbitrarily picking a number out of the air. CAFE should be addressed through a rational rulemaking process by experts and for experts over a fixed period of time that then makes a decision on what the new standards should be. Politicians who don’t fully understand the technologies involved should not arbitrarily set unattainable CAFE standards.

As we struggle to get our economy moving again, we ought to be developing proposals that will increase the number of jobs—not eliminate them. We are debating this obscure theory of fuel economy that auto manufacturers are relatively unconstrained by CAFE because of a fleet mix, not because they are more fuel efficient class by class. For those who say, too bad, we must force the U.S. Big Three to build more fuel-efficient cars and trucks, do you know that under CAFE it doesn’t matter what the companies manufacture and build? It is calculated based on what the consumer buys.

Our auto manufacturers can produce vehicles anywhere, 40 miles per gallon. Sure, they can. They can produce electric vehicles which even do better than that. The question is: Are there people who want to buy them? Light trucks today account for about 50 percent of GM sales, 60 percent of Ford sales, and 73 percent of DaimlerChrysler sales. There are over 50 of these high econ models in the showrooms across America today. But guess what. They represent less than 2 percent of total sales. Americans don’t want them. You can lead a horse to water; you can’t make him drink. You can lead the American consumer to a whole range of lightweight, automobiles, but you can’t make them buy them.

Additionally, with the higher cost of new vehicles, construction workers and parents aren’t going to afford the more expensive new light truck. More older, less efficient cars will stay on the road longer. How does that improve our air quality or reduce the need for imported oil?

Let’s put this debate in perspective. Support the American autoworker, support the American economy, support the Levin-Bond amendment and oppose the unreasonable proposal from Senator DURBURY.

Mr. President, I sure agree with what the Senator from Delaware was saying, and the Senator from Michigan, so I do not have to repeat it all. I want to make what I think are four brief points.

Let me clarify, whether you meet CAFE standards does not depend on the cars you offer to sell. It depends on the cars that people actually buy. It is very important to remember that. That is the reason for the problem with the amendment of the Senator from Illinois that the Senator from Michigan and Senator BIDEN both mentioned. The Japanese have been more effective in capturing more of the smaller car market. American manufacturers have been more effective in capturing the SUV and truck market. Now, the Senator from Illinois says we missed a bet by going after the truck and SUV market.

Well, the Japanese don’t think so. The Senator from Michigan made the point, they have been going like a house afire to try to capture precisely that market. And the amendment of the Senator from Illinois would make it much easier for them to do it.

The reason is, the trucks and the SUVs we sell now are general fleet. They tend to be big and, therefore, have somewhat lower mileage. So if the amendment of the Senator from Illinois was adopted, the American auto manufacturers could continue to sell lower mileage bigger trucks and bigger SUVs and still comply with his standard under the CAFE laws. The result would be they would be able to capture the SUV and truck market.

His amendment would not cause people to buy fewer large SUVs and trucks. It would cause them to buy fewer American SUVs and American trucks. That is the point the Senator from Michigan made and my friend from Missouri have made.

Now, the Senator from Illinois talks about monster SUVs. I have to comment, people do not buy SUVs or trucks because they have lower gas mileage. They buy them generally for safety and utility. We went through this in my family. We used to drive smaller cars. When we started having kids, my wife put her foot down and said: The car you have been driving, it was small and you always said you never got in an accident. We have kids now. You have to get a bigger car. That is the first time we bought an SUV. That kind of decisionmaking goes on all over the United States.

Let me close by commenting on some of what the Senator from Illinois said about our auto manufacturers. He was criticizing decisions they made and mentioning they are having difficult some troubled times. Is that a reason to heap a new burden on them? It is true they have not been as effective as any of us would have liked in capturing the small-car market. Is that a reason to take the larger truck market from them? It is true that America relies too much on overseas oil. Is that a reason to send our jobs overseas?

We have an alternative in front of us that is going to encourage greater fuel economy: higher mileage automobiles. That is the reason the amendment of the Senator from Michigan has said, rather than arbitrary. It is the Bond-Levin amendment.
I urge the Senate to adopt that amendment and stay the course. It is working, and it will protect American jobs.

I thank the Senate, Mr. President. I yield whatever time I have.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my friend from Missouri.

Mr. President. I ask unanimous consent that the Senator from Missouri, Mr. TALENT, and the Senator from Kentucky, Mr. BUNNING, be added as cosponsors to the amendment.

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

Mr. BOND. Mr. President, I yield 2 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. TALENT, President, as co-chairman of the Senate Auto Caucus, I am pleased to join with my colleagues, Senator BOND and Senator LEVIN, as a cosponsor of this corporate average fuel economy standards amendment to the Energy bill. It is an important issue, and it impacts on the economy of our country, the environment, and the safety of the traveling public.

There is no doubt that each of us wants the automobile industry to make cars, trucks, SUVs, and minivans that are energy efficient. It is not only good for the environment, but it means more money in the pockets of the American consumers because they are going to spend less money at the gas pump.

However, I am deeply concerned that the artificial and arbitrarily chosen CAFE standard supported by some of my colleagues will have a devastating effect on jobs in Ohio. Ohio is the No. 2 automotive manufacturing State in America, employing more than 630,000 people either directly or indirectly. I have heard from a number of these men and women whose livelihood depends on the auto industry and who are, frankly, very afraid about their future.

There is genuine concern that a provision mandating an arbitrary standard could cause a serious disruption and shifting in the auto industry resulting in the loss of tens of thousands of jobs across the Nation.

Domestic automakers build the light trucks that consumers want. DaimlerChrysler's fleet of light trucks makes up more than 50 percent of its entire company sales and includes the Jeep Liberty and the Jeep Wrangler in Toledo, OH, and employs approximately 5,200 workers at this plant. If an arbitrary CAFE provision is mandated that targets light trucks, this plant could close because Chrysler would be forced to redistribute their manufacturing base to build more small, high-mileage cars.

The concern of auto workers was evident at the polls in Ohio last November. Voters rejected a candidate for President who had advocated an arbitrary standard that would have cost jobs and raised prices on the vehicles that consumers demand.

Another concern is that an arbitrary standard would have a harmful effect on public safety, as well as put a severe crimp in the manufacturing base of my State of Ohio which is already under duress because of high natural gas costs, litigation, health care costs, and competition.

In 2001, new vehicle sales of trucks, SUVs, and minivans outpaced the sale of automobiles for the first time in American history. This remarkable result can be attributed to a number of factors, but what is often cited is the fact that these vehicles are seen as safer.

On the other hand, the Bond-Levin amendment is a rational proposal based on sound science that will keep workers both in Ohio and nationwide working, allowing these men and women to continue to take care of their families and educate their children while also encouraging greater fuel efficiency and safer vehicles.

This amendment calls for the Department of Transportation to increase fuel economy standards based on several factors including the following: technology feasibility; economic practicability; the need to conserve energy and protect the environment; the effect of a vehicle on motor vehicle safety; and the effect on U.S. employment.

I believe this is a much more responsible approach that will improve the fuel efficiency of our Nation's vehicles while also protect public safety of our Nation's economic security.

This amendment also requires that the Department of Transportation complete the rulemaking process that would increase fuel efficiency standards for 2008 model vehicles. If the administration doesn't act within the required timeframe, Congress will act, under expedited procedures, to pass legislation mandating an increase in fuel economy standards consistent with the same criteria that the administration must consider.

This administration is already taking steps to improve fuel efficiency. As you know, in 2003, the National Highway Traffic Safety Administration enacted the largest fuel efficiency increase for light trucks in over 20 years. By 2007, fuel efficiency requirements will increase to 22.2 miles per gallon from the 20.7 miles per gallon that had been in place through the 2004 model year.

The amendment will also increase Federal research and development for hybrid electric vehicles and clean diesel vehicles.

Additionally, the amendment will increase the market for alternative-powered and hybrid vehicles by mandating that the Federal Government, where feasible, purchase alternative powered and hybrid vehicles.

I believe that this guaranteed market will encourage the auto industry to continue to increase their investment in research and development with an eye towards making alternative-fuel and hybrid vehicles more affordable, available, and commercially appealing to the average consumer.

As a matter of fact, I have ridden in a hybrid manufactured by DaimlerChrysler and I have driven a fuel-cell automobile manufactured by General Motors. I firmly believe that my children and grandchildren will one day be driving automobiles that run on hydrogen and give off only water. However, it will take time for the technology that makes these vehicles possible to be cost-effective and for these vehicles to be marketable.

Until then, I believe that consumer demand will continue to drive the market place. While truck, SUV, and minivan demand is not expected to decrease any time soon, automakers will meet this demand.

In the meantime, many consumers are making the decision to move from light trucks to smaller vehicles as their needs change. In light of today's gas prices, consumers will demand more fuel efficient vehicles that do not jeopardize their personal and family safety.

For example, my daughter-in-law currently drives a full-size van. As the mother of four young children, she has needed the space and flexibility a van provides in order to accommodate the necessary safety seats for my grandchildren. Now that the children are getting older and are able to travel without car safety seats, she is looking into purchasing a station wagon. Such a vehicle will meet her needs while saving fuel over the long term.

Consumer demand changes as our families change because of trends and fuel prices, automakers will change to meet that demand. These changes in auto manufacturing should be driven by consumer choice, not by a government-mandated arbitrary standard.

The Bond-Levin amendment is supported by the AFL-CIO, the UAW, the U.S. Chamber of Commerce, the automotive industry, the American Farm Bureau Federation and a number of other organizations.

I urge my colleagues to support the Bond-Levin amendment. It meets our environmental, safety and economic needs in a balanced and responsible way, contributing to the continued and needed harmonization of our energy and environmental policies.

Mr. MCCAIN. Mr. President, I support increasing corporate average fuel economy standards. In fact, I have supported strengthening CAFE standards for several years, and in 2002 I introduced legislation that would have significantly improved such standards. My strong support for raising CAFE standards makes it all the more difficult for me to oppose the amendment offered by Senator DURBIN this evening.

When this body considers legislation, we must always be mindful of distinguishing between the advisability and the feasibility of the proposal before us. I strongly support the Durbin amendment's goals of lowering our reliance on foreign oil and of reducing
the emission of greenhouse gases. I strongly support those goals. But this amendment, sadly, does not appear to be achievable without significantly and detrimentally affecting our economy.

Mr. President, there are realistic options available to us. For example, I support legislation that would require passenger cars and light trucks to meet the same average fuel economy standard of 27.5 miles within a reasonable amount of time. I will continue to support legislation that would require passenger cars and light trucks to meet the same average fuel economy standard of 27.5 miles within a reasonable amount of time. I will continue to work with my colleagues to improve science and beneficent improvements to our Nation’s average fuel economy.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Illinois has 6 minutes 53 seconds. The Senator from Missouri has 1 minute.

The Senator from Illinois.

Mr. DURBIN. Thank you very much, Mr. President.

Take a look at this chart and see what is going on in America. As the price of gasoline goes up, this voracious appetite for SUVs, which are cars for which you can get 50 miles per gallon, and more. People want them, which is why the Senator drives, happen to be cars for which you can get 50 miles per gallon, and more. People want them, which is why the Senator drives, happen to be cars for which you can get 50 miles per gallon. Detroit does not make cars for which you can get 50 miles per gallon. Detroit does not make cars for which you can get 50 miles per gallon, and more.

When the price of gasoline goes up, we need a car that is going to make America less dependent on foreign oil so we do not get involved in wars, so we do not have to walk hand-in-hand with Saudi sheikhs around America; we want to be less dependent and you will join us, America, the businesses and families of this country would stand up and say: We are ready.

I wish to say, in response to the Senator from Ohio, the Chair of the Senate Committee on Energy and Natural Resources, that this is the Senate’s opportunity to pass legislation that would require the car I am provided in the Senate is a big, heavy car. It is picked for that purpose. Whatever.

There is a message there. We have to revitalize this industry by thinking forward instead of thinking backward. If you use innovation and creativity, you can make it. The price of gas is going up. You have to have a more fuel-efficient vehicle. You can reach it if you use innovation and creativity. Unfortunately, that is not occurring today.

Let me close with a comment. I opened with from BusinessWeek magazine:

As Congress puts the final touches on a massive new energy bill, lawmakers are hot to slow the increase in the price of gas which you can get 50 miles a gallon and more. People want them, but they cannot buy an American version. What is Detroit waiting for?

Look where we are as a nation. When we took the leadership—Senator Boxer may call this Soviet-style leadership, command-and-control leadership—In 1975 and said we were going to have more fuel-efficient vehicles, look at that increase in average miles per gallon in a 10-year period of time—dra- matically. Look what has happened since then—flat-lining.

As we have increased our dependence on foreign oil, our cars and trucks are less and less fuel efficient. The end is near, my friends. It is going to reach us sooner rather than later if we do not accept the reality that we need to say, if America is going to be truly less dependent on foreign oil, we have to set standards that move us toward energy conservation and energy efficiency. The first place to start is in the cars and trucks we drive.

I think if a President, if a Congress, stood up and said: ‘‘America, we are in a big problem,’’ the President of Detroit came out with a fuel-efficient car; we need one that is going to make America less dependent on foreign oil so we do not get involved in wars, so we do not have to walk hand-in-hand with Saudi sheikhs around America; we want to be less dependent and you will join us, America, the businesses and families of this country would stand up and say: We are ready.

Mr. President.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, does the Senator from Missouri have time remaining?

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I reserve my time.

Mr. DURBIN. In the interest of picking up a few more votes, I yield back all my time.

The PRESIDING OFFICER. The Senator from Illinois yields back all his time.

The Senator from Missouri.

Mr. BOND. I yield back all my time as well.

The PRESIDING OFFICER. The Senator yields back his time. All time has expired.

The junior Senator from Missouri.

Mr. TALENT. Mr. President, I have talked to both sides to get permission for a unanimous consent request allowing me to offer an amendment that is acceptable to both sides on a voice vote.

AMENDMENT NO. 819

So I ask unanimous consent to be permitted to offer amendment No. 819 and proceed to a vote right after I explain it.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, some of us have to catch a flight. I was hoping we would get the vote off here.

Mr. CRAIG. Let me work this through. This will take a minute or 2 for the Senator from Missouri. It has been agreed to. It will be a voice vote, and then we will move immediately to the votes.

Mrs. BOXER. I object if it is more than a minute. That is how close it is. I can give him a minute.

Mr. TALENT. Thirty seconds.

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

The clerk will report the amendment. The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself, Mr. JOHNSON, Mr. BOND, and Mr. DORGAN, proposes an amendment numbered 819.

The amendment is as follows:

(Purpose: To increase the allowable credit for fuel use under the alternatively fueled vehicle purchase requirement.

On page 420, strike lines 5 through 16 and insert the following:

SEC. 702. FUEL USE CREDITS.

(a) IN GENERAL. —Section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220) is amended to read as follows:...
**SEC. 312. FUEL USE CREDITS.**

(a) Definitions.—In this section:

(1) Biodiesel.—The term ‘biodiesel’ means a diesel fuel substitute produced from nonedible renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Energy Policy Act of 2005 (42 U.S.C. 7545).

(2) Qualifying volume.—The term ‘qualifying volume’ means—

(A) in the case of biodiesel, when used as a component of fuel containing at least 20 percent biodiesel by volume—

(i) 450 gallons; or

(ii) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of the average annual alternative fuel use, and

(B) in the case of an alternative fuel, the amount of the fuel determined by the Secretary to have an equivalent energy content to the amount of biodiesel defined as a qualifying volume under subparagraph (A).

(b) Allocation.—

(1) In general.—The Secretary shall allocate 1 credit under section (b) to a fleet or covered person for each qualifying volume of alternative fuel or biodiesel purchased for use in a vehicle operated by the fleet.

(2) Limitation.—The Secretary may not allocate a credit under this section for the purchase of an alternative fuel or biodiesel that is required by Federal or State law.

(c) Use.—At the request of a fleet or covered person seeking a credit under paragraph (1), the Secretary shall provide written documentation to the Secretary supporting the allocation of the credit to the fleet or covered person.

(d) Treatment.—A credit provided to a fleet or covered person under this section shall be considered to be a credit under section 508.

(e) Issuance of Rule.—Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Secretary shall issue a rule establishing procedures for the implementation of this section.

The table of contents of the Energy Policy Act of 1992 is amended by striking the item relating to section 312 and inserting the following:

Sec. 312. Fuel use credits.

Mr. TALENT. Mr. President, this is an amendment that has been accepted by unanimous consent and voice vote by the Senate in the past. It would allow municipalities to help meet their responsibilities of reducing pollution.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 925 offered by the Senators BOND and LEVIN.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators are necessarily absent: the Senator from New Mexico (Mr. DOMENICI), and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGMAN), the Senator from Connecticut (Mr. DODD), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 64, nays 31, as follows:

No. 925 offered by the Senators BOND and LEVIN.

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

The PRESIDING OFFICER. The amendment (No. 925) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. McCONNELL. The following Senators are necessarily absent: the Senator from New Mexico (Mr. DOMENICI), and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGMAN), the Senator from California (Mrs. BOXER), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ‘yea.’

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

The result was announced—yeas 28, nays 67, as follows:

No. 902.

The amendment (No. 902) was rejected.
Mr. CRAIG. Mr. President, 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.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, before I move to a couple of other items to complete our work this evening, I will yield the floor to the Senator from Georgia for a brief statement.

The PRESIDING OFFICER. The Senator from Georgia.

(The remarks of Mr. CHAMBLISS are printed in today’s RECORD under “Morning Business.”)

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 831
(The amendment is printed in the RECORD of June 21, 2005, under “Text of Amendments.”)

AMENDMENT NO. 832, AS MODIFIED
On page 724, line 12, insert before “shall enter” the following: “, in consultation with the Administrator of the Environmental Protection Agency,”.

On page 726, line 5, insert “and the Administrator of the Environmental Protection Agency” after “Interior”.

On page 726, line 10, insert before “shall report” the following: “and the Administrator of the Environmental Protection Agency, after consulting with states.”.

On page 726, line 13, strike “Secretary’s agreement or disagreement” and insert “agreement or disagreement of the Secretary of the Interior and the Administrator of the Environmental Protection Agency”.

AMENDMENT NO. 871, AS MODIFIED
(Purpose: To provide whistleblower protection for contract and agency employees at the Department of Energy at the appropriate place, insert the following:

SECTION. WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF THE DEPARTMENT OF ENERGY.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) in subparagraph (C), by striking ‘and’ at the end;

(2) in subparagraph (D), by striking ‘that is indemnnified’ and all that follows through ‘12344,’ and

(3) by adding at the end the following: ‘(E) DE NOVO JUDICIAL DETERMINATION.—Section 211(b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)) is amended by adding at the end the following:—

(1) Southern Illinois University Coal Research Center;

(2) University of Kentucky Center for Applied Energy Research; and

(3) Energy Center at Purdue University.

(c) GASIFICATION PRODUCTS TEST CENTER.

In conjunction with the activities described in sections (a) and (b), the Secretary shall construct a test center to evaluate and commercial and technical viability of different processes of producing Fischer–Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(2) AGREEMENTS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall offer to enter into agreements—

(A) to carry out the activities described in subsection (a) at the facilities described in subsection (b); and

(B) for the capital modifications or construction of the facilities at the locations described in subsection (c).

(3) EVALUATIONS.—Not later than 3 years after the date of enactment of the Act, the Secretary shall begin, at the facilities described in subsection (c), evaluation of the technical and commercial viability of different processes of producing Fischer–Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(4) CONSTRUCTION OF FACILITIES.—

(A) IN GENERAL.—The Secretary shall construct the facilities described in subsection (c) at the lowest cost practicable.

(B) GRANTS OR AGREEMENTS.—The Secretary may make grants or enter into agreements or contracts with the institutions of higher education described in subsection (b).

(c) COST SHARING.—The cost of making grants under this section shall be shared in accordance with section 1002.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subchapter $65,000,000 for the period of fiscal years 2006 through 2010.

AMENDMENT NO. 85
(Purpose: To establish procedures for the reinstatement of leases, insert after paragraph (1) and the Secretary—

The amendments were agreed to as follows:

AMENDMENT NO. 811; 832, AS MODIFIED; 871, AS MODIFIED; 886; 899, AS MODIFIED; 903, AS MODIFIED; 909; 913, AS MODIFIED; 919, AS MODIFIED;

851, AS MODIFIED; 892, AS MODIFIED; 903, AS MODIFIED; 913, AS MODIFIED; 919, AS MODIFIED.

On page 7, after line 23, add the following:

AMENDMENT NO. 808
(Purpose: To establish a program to develop Fischer–Tropsch transportation fuels from Illinois basin coal.

On page 346, between lines 9 and 10, insert the following:

SEC. 4. DEPARTMENT OF ENERGY TRANSPORTATION FUELS FROM ILLINOIS BASIN COAL.

(a) IN GENERAL.—The Secretary shall carry out a program to evaluate and technical viability of advanced technologies for the production of Fischer–Tropsch transportation fuels, from Illinois basin coal.

(b) DE NOVO JUDICIAL DETERMINATION.—Section 211(b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)) is amended by adding at the end the following:

(1) Southern Illinois University Coal Research Center;

(2) University of Kentucky Center for Applied Energy Research; and

(3) Energy Center at Purdue University.

(c) GASIFICATION PRODUCTS TEST CENTER.

In conjunction with the activities described in subsections (a) and (b), the Secretary shall construct a test center to evaluate and commercial and technical viability of different processes of producing Fischer–Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(2) AGREEMENTS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall offer to enter into agreements—

(A) to carry out the activities described in this section, at the facilities described in subsection (b); and

(B) for the capital modifications or construction of the facilities at the locations described in subsection (c).

(3) EVALUATIONS.—Not later than 3 years after the date of enactment of the Act, the Secretary shall begin, at the facilities described in subsection (c), evaluation of the technical and commercial viability of different processes of producing Fischer–Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(4) CONSTRUCTION OF FACILITIES.—

(A) IN GENERAL.—The Secretary shall construct the facilities described in subsection (c) at the lowest cost practicable.

(B) GRANTS OR AGREEMENTS.—The Secretary may make grants or enter into agreements or contracts with the institutions of higher education described in subsection (b).

(c) COST SHARING.—The cost of making grants under this section shall be shared in accordance with section 1002.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subchapter $65,000,000 for the period of fiscal years 2006 through 2010.

AMENDMENT NO. 85
(Purpose: To establish procedures for the reinstatement of leases, insert after paragraph (1) and the Secretary—

The amendments were agreed to as follows:

AMENDMENT NO. 811; 832, AS MODIFIED; 871, AS MODIFIED; 886; 899, AS MODIFIED; 903, AS MODIFIED; 913, AS MODIFIED; 919, AS MODIFIED;

851, AS MODIFIED; 892, AS MODIFIED; 903, AS MODIFIED; 913, AS MODIFIED; 919, AS MODIFIED.
(iii) the term ‘significant increase’ means—

(I) with respect to the price of heating oil, natural gas, gasoline, or propane, any time the change exceeds 10 percent and

(II) with respect to the price of kerosene, any increase which the Administrator, in consultation with the Secretary of Energy, determines to be significant.

(B) The Administration may make such loans, either directly or in cooperation with banks or other lending institutions through such agreements to participate on an immediate or deferred basis, to assist a small business concern that has suffered or that is likely to suffer substantial economic injury on or after January 1, 2005, as the result of a significant increase in the price of heating oil, natural gas, gasoline, or kerosene occurring on or after January 1, 2005.

(C) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(D) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through such agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under all such loans would exceed $1,500,000, unless such borrower constitutes a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the $1,500,000 limitation.

(E) For purposes of assistance under this paragraph—

(1) a declaration of a disaster area based on conditions specified in this paragraph shall be required, and shall be made by the President or the Administrator; and

(2) if no declaration has been made pursuant to clause (i), the Governor of a State in which a significant increase in the price of heating oil, natural gas, gasoline, propane, or kerosene has occurred may certify to the Administration that small business concerns have suffered economic injury as a result of such increase and are in need of financial assistance which is not otherwise available on reasonable terms in that State, and upon receipt of such certification, the Administration may make such loans as would not exceed $1,500,000.

(F) Notwithstanding any other provision of law, loans made under this paragraph may be used by a small business concern described in subparagraph (B) to convert from the use of heating oil, natural gas, gasoline, propane, or kerosene to a renewable or alternative energy source, including agriculture and urban waste, geothermal energy, cogeneration, solar energy, wind energy, or fuel cells.

(G) Conforming Amendments.—Section 3(k) of the Small Business Act (15 U.S.C. 632(k)) is amended—

(A) by inserting ‘‘significant increase in the price of heating oil, natural gas, gasoline, propane, or kerosene after ‘‘civil disturbance’’’;

(B) by inserting ‘‘other’’ before ‘‘economic’’;

(c) GUIDELINES AND RULEMAKING.—

(1) Guidelines.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration and the Secretary of Agriculture shall, in consultation with the Senate and the House of Representatives, a report on the effectiveness of the assistance made available under section 7(b)(4) of the Small Business Act (15 U.S.C. 638(b)(4)(A)(iii)), as added by this section.

(2) Funding.—Funds available on the date of enactment of this Act for emergency loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.) shall be available to carry out the amendments made by subparagraph (A) to meet the needs resulting from natural disasters.

AMENDMENT NO. 98, AS MODIFIED

An amendment intended to be proposed by Mr. Brownback

(VI) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1054 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this paragraph), and as authorized under section 202(1) of the Clean Air Act. If the Administrator promulgates such regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from regulated gasoline than the reductions that would be achieved under sections 211(k)(1)(B) of the Clean Air Act as amended by this clause, then sections 211(k)(1)(B) of the Clean Air Act as amended by this clause, and sections 211(k)(1)(B) of the Clean Air Act as amended by this clause shall be null and void and regulations promulgated thereunder shall be rescinded and have further effect.

AMENDMENT NO. 105

(Purpose: To make a technical correction)

At the end of subtitle H of title II, add the following:

SEC. 2. ENERGY POLICY AND CONSERVATION TECHNICAL CORRECTION.

Section 609(c)(4) of the Public Utility Regulatory Policies Act of 1978 (as added by section 609(c)(4) of the Public Utility Regulatory Policies Act of 1978, 15 U.S.C. 6363(d)) is hereby amended by striking ‘‘(42 U.S.C. 6303(d))’’ and inserting ‘‘(42 U.S.C. 6303(d))’’.

AMENDMENT NO. 106

(Purpose: To require the Secretary to carry out a study and compile existing science to determine the risks or benefits presented by cumulative impacts of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using the open-rack vaporization system.)

On page 755, after line 25, insert the following:

SEC. 13. SCIENCE STUDY ON CUMULATIVE IMpACTS OF MULTIPLE OFFSHORE LIQUEfIED NATURAL GAS FACILITIES.

(a) IN GENERAL.—The Secretary in consultation with the National Oceanic Atmospheric Administration, the Commandant of the Coast Guard, affected recreational and commercial fishing industries and affected energy and transportation stakeholders) shall carry out a study and compile existing science (including studies and data) to determine the risks or benefits presented by cumulative impacts of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the
Gulf of Mexico using the open-rack vaporization system.

(b) ACCURACY.—In carrying out subsection (a), the Secretary shall verify the accuracy of available science and develop a science-based evaluation of significant short-term and long-term cumulative impacts, both adverse and beneficial, of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using or proposing the open-rack vaporization system on the fisheries and marine populations in the vicinity of the facility.

AMENDMENT NO. 1007
(Purpose: To improve the clean coal power initiative)

AMENDMENT NO. 1008
(Purpose: To clarify provisions regarding relief for extraordinary violations)

On page 696, lines 24 and 25, strike "unlawful on the grounds that it is unjust and unreasonable" and insert "not permitted under a rate schedule (or contract under such a schedule) or is otherwise unlawful on the ground that it is unjust and unreasonable or contrary to the public interest."

AMENDMENT NO. 831, AS MODIFIED
(Purpose: To require the Secretary to establish an Energy Information Fusion FuelHybrid Vehicle Commercialization Initiative, and for other purposes)

On page 424, between lines 7 and 8, insert the following:

SEC. 706. JOINT FLEXIBLE FUEL/HYBIRD VEHICLE COMMERCIALIZATION INITIATIVE.

(a) DEFINITION.—In this section:

(1) ELIGIBLE ENTITY.—The term eligible entity means—

(A) a for-profit corporation;

(B) a nonprofit corporation; or

(C) an institution of higher education.

(2) PROGRAM.—The term "program" means the applied research program established under subsection (b).

(b) ESTABLISHMENT.—The Secretary shall establish an applied research program to improve technologies for the commercialization of—

(1) a combination hybrid/flexible fuel vehicle;

(2) a plug-in hybrid/flexible fuel vehicle;

(3) harnesses.—In carrying out the program, the Secretary shall provide grants that give preference to proposals that—

(a) achieve the greatest reduction in miles per gallon of petroleum fuel consumption;

(b) achieve not less than 250 miles per gallon of petroleum fuel consumption; and

(c) have the greatest potential of commercialization to the general public within 5 years.

(d) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register procedures to verify—

(1) the hybrid/flexible fuel vehicle technologies to be demonstrated; and

(2) that grants are administered in accordance with this section.

(e) REPORT.—Not later than 260 days after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report that—

(1) identifies the grant recipients;

(2) describes the technologies to be funded under the program;

(3) assesses the feasibility of the technologies described in paragraph (2) in meeting the technology goals described in subsection (b); and

(4) identifies applications submitted for the program that were not funded; and

(5) makes recommendations for Federal legislation to achieve commercialization of the technology demonstrated.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 2005 through 2010—

(1) $1,000,000 for fiscal year 2005; and

(2) $20,000,000 for fiscal year 2008.

AMENDMENT NO. 1029, AS MODIFIED
On page 342, strike lines 1 through 19 and insert the following:

SEC. 407. WESTERN INTEGRATED COAL GASIFICATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall carry out a project to demonstrate production of energy from coal mined in the western United States using integrated gasification combined cycle technology (referred to in this section as the "demonstration project.").

(b) COMPONENTS.—The demonstration project—

(i) may include repowering of existing facilities;

(ii) shall be designed to demonstrate the ability to use a variety of types of coal (including subbituminous and bituminous coal with an energy content of up to 16,000 Btu/lb.) mined in the western United States;

(iii) the demonstration project shall be located in a western State at an altitude of greater than 4,000 feet above sea level;

(iv) the Federal share of the cost of the demonstration project shall be determined in accordance with section 1002.

(c) LOAN GUARANTEES.—Notwithstanding title XIV, the demonstration project shall not be eligible for Federal loan guarantees.

AMENDMENT NO. 1009
(Purpose: To provide a Manager's amendment)

The amendment is printed in today's RECORD under "Text of Amendments."

AMENDMENT NO. 813
(Purpose: To provide for understanding of access to procurement opportunities for small businesses with regard to Energy Star products and, for other purposes)

On page 52, line 24, strike "efficiency; and" and all that follows through page 53, line 8 and insert the following:

"(C) understanding and accessing Federal procurement opportunities with regard to Energy Star technologies and products; and"

"(D) identifying financing options for energy efficiency upgrades.

"(2) The Secretary, the Administrator of the Environmental Protection Agency, and the Administrator of the Small Business Administration shall make program information available to small business concerns directly through the district offices and resource partners of the Small Business Administration, including small business development centers, women's business centers, and the Service Corps of Retired Executives (SCORE), and through other Federal agencies, including the Federal Emergency Management Agency and the Department of Agriculture.

"(B) The Secretary, on a cost shared basis in cooperation with the Administrator of the Environmental Protection Agency, shall provide to the Small Business Administration all advertising, marketing, and other written materials necessary for the dissemination of information under paragraph (2).

"(4) There are authorized to be appropriated such sums as may be necessary to carry out this subsection, which shall remain available until expended."

AMENDMENT NO. 786 WITHDRAWN
Mr. CRAIG. I ask unanimous consent that the Wyden amendment be withdrawn.

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

PURCHASE REPEAL AND FERC MERGER AUTHORITY
Mr. SHELBY. Will the chairman yield for a question?

Mr. DOMENICI. I will be happy to yield.

Mr. SHELBY. I thank the chairman. As the chairman is aware, repeal of the Public Company Utility Holding Act of 1935 has been a priority of the Senate...
Banking Committee for almost 25 years. As recently as 1997 and 1999, the Senate Banking Committee reported PUHCA repeal bills out of committee. As chairman of the Banking Committee, I have been pleased to work with the Chairman of the Energy Committee that PUHCA repeal was included as part of a comprehensive Energy bill.

I congratulate the chairman for reporting a bill out of Committee that includes PUHCA repeal. Nevertheless, I have concerns that the expanded merger review authority for FERC provided for in the Electricity title undermines the important policy goals behind PUHCA repeal. It is widely understood that PUHCA has served its purpose and is outdated. Now, PUHCA acts as a barrier to interstate capital flows, and other Federal laws make the PUHCA regime redundant.

The purpose of PUHCA repeal legislation is to eliminate these duplicative and unnecessary regulatory burdens. I am concerned that PUHCA repeal is undermined by legislation providing FERC with enhanced merger review authority over utility companies. I do not believe that Congress should repeal PUHCA, only to replace it with a burdensome regulatory framework administered by FERC. But I am afraid that may be exactly what we are doing in the Electricity title of this bill. I do not believe that Congress should require enhanced FERC merger authority as a prerequisite for PUHCA repeal.

I would ask the chairman to consult with me during conference to ensure against this result. As the Senate Banking Committee has done recently, I think it is important that we repeal PUHCA without creating additional regulatory burdens.

Mr. DOMENICI. I thank the Senator from Alabama for his remarks, and I share his concern regarding additional FERC merger review authority. I look forward to working with him during conference to ensure that PUHCA repeal is not accompanied by the grant of unnecessary merger review authority to FERC.

Mr. SHELBY. Thank you, Mr. chairman.

ELECTRIC TRANSMISSION PROPERTY DEPRECIATION

Mr. THOMAS. Mr. President, I would like to speak about an amendment I filed to the tax title of this bill on electric transmission property depreciation and engage Mr. GRASSLEY in a colloquy on this important issue if I may.

I did not push this issue to a vote during the committee markup, and I don’t intend to do so on the floor either since I understand the provision is included in the House version of the bill and enjoys broad support in both the House and the Senate.

That said, I felt it was important to underscore the importance of energy infrastructure in the United States. It is completely irrelevant how much we have in the area of energy-producing resources if we can’t transport that energy to where it is needed.

And electric transmission capacity is a prime example.

There are a number of barriers to building additional transmission capacity, among them being stringent regulations at the federal, state, and local levels; NIMBY-ism, in other words, those who want it, but not in their backyard; and high capital costs.

My amendment—which would have incorporated my bill, S. 815, into the tax title—addresses the substantial investment required to build additional capacity.

I thank Senators SNOWE, BINGAMAN, Bunning, and SMITH for cosponsoring both the bill and the amendment.

The provision would shorten the depreciation life of electric transmission property from the current 20 years to 15 years, thereby substantially reducing the cost.

I understand Chairman GRASSLEY’s hesitancy to include provisions in the Senate package that are already covered in the House bill. However, I am asking for the Chairman’s commitment to ensure that this provision is included in a final energy package.

Mr. GRASSLEY. I agree that energy infrastructure, particularly electric transmission capacity, is a critical component of our domestic energy policy, and I am helping you ensure that it is included in the final energy bill.

SEC. 263. HYDROELECTRIC RECLINING REFORM

Ms. CANTWELL. Mr. President, Section 261 of the underlying bill contains provisions designed to reform the hydroelectric relicensing process. These provisions are the result of a hard-won compromise, and I thank the chairman and ranking member, along with Senators CRAIG, SMITH and FEINSTEIN for their leadership on this issue. In particular, we significantly differ from previous House- and Senate-passed versions, as they will allow States, tribes and the public to propose alternative licensing conditions, and will further allow these entities to trigger the trial-type hearing process outlined in this section. I believe these public participation provisions are key improvements in this legislation. I would also like to more fully explore the process by which alternative conditions proposed by these stakeholders should be considered.

Before an alternative condition or prescription to a license may be approved, the Secretary must concur with the judgment of the license applicant that it will either cost significantly less to implement, or result in improved operation of the hydro project for electricity production—at the same time it provides for adequate protection of the resource—or in the case of fishway prescriptions, will be no less protective than the fishway initially proposed by the Secretary. This provision does not provide the license applicant a so-called veto power over proposed alternatives, because this judgment requires the Secretary’s concurrence. In addition, it is the Senate’s intent that these judgments be supported by substantial evidence as required by Section 313 of the Federal Power Act. I would like to ask the senator from Iowa from this point forward to ask the following question: If the Secretary determines that a license applicant’s judgment has been based on inaccurate data and thus fails to meet the test of being supported by substantial evidence—will the Secretary withhold his or her concurrence?

Mr. DOMENICI. The Senator from Washington is correct in expressing our intent that the license applicant’s judgment be supported by substantial evidence. It is not our intent to provide an incentive for applicants to provide poor data in order to prompt the rejection of a condition by other stakeholders. If the Secretary of a resource agency determines that the evidence provided by the license applicant is of insufficient quality and therefore does not meet the substantial evidence test, the Secretary should not concur with the license applicant’s judgment in the matter.

Mr. SALAZAR. Mr. President, I am pleased join with the distinguished majority leader in support of H.R. 6.

I am particularly pleased with the bill’s support for integrated coal gasification, IGCC, technology development and deployment into commercial use. Our Nation needs a comprehensive energy policy which promotes new, cleaner, and more advanced generation technologies.

I have been increasingly concerned with the challenges associated with developing IGCC technology for burning Western coal. Western coal is a valuable resource and crucial to our economy; however, both cost and technological difficulties have prevented deployment of IGCC in the West. That is why I support a provision for a Western IGCC Demonstration Project, Section 407. This project would allow for development of an IGCC technology designed to use Western coal and in a cost-effective manner.

I have also been increasingly concerned with the need to address climate change. The promise of IGCC technology’s ability to reduce carbon dioxide emissions should be realized as soon as possible. The Western IGCC demonstration project shall include a carbon technology component.

I wish to also take this opportunity to clarify an important point. There have been media reports expressing concern that the Western IGCC demonstration project is special legislation designed to benefit a single company building a new project in Wyoming. I can assure you that neither this provision, nor any other provision I have spoken to, is designed for any specific project or any specific company. My sincere objective is simply to provide for the development of an IGCC
As a result of these changes, the incentives included in section 1403, which include loan guarantees, would apply to the development of projects that will utilize various gasification technologies to produce clean transportation fuels from any of our coal types, including bituminous, sub-bituminous, and lignite coals.

Mr. DOMENICI. The Senator is correct.

Mr. CONRAD. Again, I thank the distinguished chairman of the Energy Committee for working with me to ensure that facilities will be eligible for these incentives for coal-to-liquids technologies. It is my hope that North Dakota's coal resources will play an important role in reducing our dependence on foreign oil, allowing us to create jobs here at home and clean our environment.

GOVERNOR'S AUTHORITY

Mr. VITTER. Mr. President, I would like to discuss a Governor's authority to approve the issuance of a license for an offshore LNG facility.

Mr. DOMENICI. I understand that intend to emphasize the current role of a Governor in the licensing of offshore LNG facilities pursuant to the Deepwater Port Act.

Mr. VITTER. The Senator is correct. In Louisiana, there has been a tremendously amount of controversy involving the licensing of offshore LNG terminals recently related mainly to a technology for reheating the gas called open rack vaporization. My amendment is designed to emphasize the Governor's current authority under the Deepwater Port Act. Under current law the Deepwater Port Act allows the Governor of a state to approve—or be presumed to approve—the issuance of a license for an offshore LNG terminal?

Mr. VITTER. That is correct. So, no changes to existing law are necessary in order for the Governor to approve or disapprove issuance of a license for offshore LNG facilities.

Mr. DOMENICI. The Senator saying that a Governor currently has a clear opportunity to disapprove that a license be issued for any offshore LNG terminal?

Mr. VITTER. A Governor has never attempted to use this authority. In the case of Louisiana, we have two licensed offshore LNG facilities and the Governor of Louisiana approved both of these facilities. Louisiana has lost thousands of jobs due to the high costs of energy. The underlying bill does much to address this challenge and LNG will play an important role in addressing the increasing demand for natural gas.

I thank the Senator from New Mexico for clarifying the Governor's authority to approve or disapprove an offshore LNG facility.
I certainly could offer the amendment for a vote at this time, but may I first inquire of the chairman whether he shares my concern with the BLM policy regarding the amount of oil and gas drilling being permitted in the potash region?

Mr. DOMENICI. This has been an evolving problem for some time now and I share the Senator’s concern about whether the proper balance is being struck. Particularly in light of available technologies, I believe that there should be a way to produce oil and gas in the potash area without interfering with the recovery of the potash resource. My desire is to see both a vibrant potash industry and a vibrant oil and gas industry in the region, with both generating strong economic activity and employment.

Mr. CORNYN. I share the Chairmen’s views and would further inquire whether the chairman would be willing to work with us on the course of the conference on the energy bill to assure that this problem with BLM policy is properly addressed?

Mr. DOMENICI. I would tell the Senator that we would be pleased to give him that commitment.

Mr. CORNYN. I thank the Chairman.

Ms. CANTWELL. Mr. President, I wish to clarify for my colleagues the intent of section 1270 of the underlying Energy bill, which is a provision of extreme importance to my Washington State constituents. Ratepayers in my State were harmed by the Western energy crisis and the manipulation and fraud associated with Enron to its wholesale electricity markets. A number of proceedings remain underway at the Federal Energy Regulatory Commission, which will determine the relief granted to consumers harmed by Enron’s unlawful trading practices. An important issue that remains is whether utilities—such as Washington State’s Snohomish County Public Utility District—should be forced to make termination payments to Enron, for power Enron never delivered in the midst of its scandalous collapse into bankruptcy.

The intent of section 1270 of the underlying bill and the technical corrections we have adopted today is simply to affirm that the Federal Energy Regulatory Commission has exclusive jurisdiction under sections 205 and 206 of the Federal Power Act to determine whether these termination payments should be allowed. This provision expresses Congress’s belief that the issues surrounding the potential requirement to make termination payments associated with wholesale power contracts are inseparable and inextricably linked to the common carrier’s jurisdictional responsibilities.

Mr. CRAIG. I would like to inquire of the Senator from Washington, does section 1270 preclude or in any way prejudice the manner in which FERC employs its jurisdiction in matters currently pending before the Commission?

Ms. CANTWELL. This provision in no way prejudices or predetermines FERC’s decisions in those matters. During the Senate Energy Committee’s work on this legislation, the supporters of this amendment and I initially considered offering an amendment that would have gone further to require a certain outcome, had the commission decided not to pursue that amendment in response to concerns that were raised by colleagues. Section 1270 of this legislation is completely neutral regarding how the commission exercises its authority under the underlying legislation. As such, the provision does not in any way implicate what is known as the Mobile-Sierra doctrine, related to which standard FERC should apply to its review of jurisdictional wholesale power contracts.

Mr. CRAIG. How does the technical amendment adopted today further clarify the committee and Congress’s intent in regard to section 1270 of the underlying legislation?

Ms. CANTWELL. The clarifications to section 1270 effectuated by the amendment accepted today are consistent with the committee’s intent in adopting section 1270. In addition, they are completely consistent with Supreme Court precedent.

The committee sought assurances that section 1270 would not disturb underlying legal doctrines such as the Mobile-Sierra doctrine or the separation of powers principles. The amendment provides clarity that section 1270 is not intended to otherwise disturb or modify the Mobile-Sierra doctrine by adding the phrase “or contrary to the public interest.” This phrase, when coupled with the standard recital of FERC’s exclusive authority to determine whether a charge is just and reasonable, makes it clear that Congress is making no pronouncements regarding the manner in which FERC exercises its authority, but rather only that it is the appropriate forum to resolve termination payments.

Mr. CRAIG. How does the technical correction effectuated by the amendment accepted today advance the public interest?

Ms. CANTWELL. The clarifications provided by the amendment is completely consistent with Supreme Court precedent on the separation of powers principle.

Mr. CARPER. Mr. President, I would like to take a moment to discuss with my friend, the Senator from Montana, a tax incentive which I believe is very important to our efforts to reduce fuel consumption in America. As you know, Senator BAUCUS is the ranking Democrat on the Senate Finance Committee and has a great understanding of our nation’s tax policy, as well as a great institutional memory of tax legislation through the years. Senator BAUCUS and Senator GRASSLEY, the chairman of the Finance Committee, provide us with advice and counsel concerning tax policy and do a superb job in that role.

The specific incentive I would like to discuss with my friend from Montana is a provision included in the House energy bill to encourage the use of clean diesel passenger vehicles. It is called the “diesel advanced lean-burn” tax credit, and it would give consumers a credit on their income taxes when they purchase a clean diesel vehicle meeting the “diesel advanced lean-burn” tax credit, and it would give consumers a credit on their income taxes when they purchase a clean diesel vehicle meeting stated fuel efficiency and environmental requirements. I am very supportive of this provision and want to encourage my colleagues to consider it when the Senate energy bill is conferenced with the House bill.

Why is that? Why do I think this provision is so important to our energy policy and the environment?

Diesel fuel contains more energy than gasoline, resulting in fuel economy increases of more than 40 percent compared to equivalent gas powered autos.

In fact, the Department of Energy estimates that 30 percent diesel penetration in the U.S. passenger vehicle market by 2020 would reduce net crude oil imports by 350,000 barrels per day.

So why aren’t diesel vehicles more common on U.S. roads? Because until recently, they have been considered significantly dirtier in terms of air pollution. But the technology has
changed. Today, you will have a difficult time telling a new diesel car from its gasoline counterpart. New diesels are clean, quiet, and powerful. And they will get even cleaner with the introduction of low sulfur diesel fuel in the United States late next year as the result of new regulations.

Diesel engines have become increasingly popular in Europe over the last 20 years to the extent that market penetration now exceeds 40 percent. The situation is very different in the U.S. where diesel accounts for only 1 percent of light vehicles.

Clean diesel engines provide the perfect platform for the use of BioDiesel which comes from products grown here at home by American farmers. The greater demand for this renewable product, and the less petroleum imports from overseas to meet our fuel needs.

We now have the opportunity to take advantage of the advances in clean diesel technology and to do what we can to get more of these fuel efficient vehicles on the road.

In the 2003 Energy Bill there was a tax incentive for “new advanced lean burn” cars, and the House recently passed an Energy Bill containing essentially the same provision.

So with that background, I wanted to ask my friend from Montana whether it is correct that high efficiency diesel vehicles often considered “lean burning” vehicles?

Mr. BAUCUS. First, let me compliment my friend for his thoughtful discussion of this issue. The Senator from Delaware has obviously done a fair amount of homework on automobile technology, and I appreciate his insights on the benefits of clean diesel technology. Let me also congratulate the Senator on his work with Senator von Steuben and others on the recently introduced legislation to encourage heavy-duty diesel engines through retrofitting. We adopted that measure as an amendment to the energy bill earlier this week, and I think it is an important addition, so I thank the Senator for his work in that regard.

Now, to respond to the Senator's question concerning the diesel lean-burn provision from the House bill. Under the House provision, the tax credit would be available for the purchase of vehicles meeting certain fuel efficiency and emissions standards. As long as a vehicle met those standards, it would be considered a “lean burning” vehicle and thereby merit the tax credit to the purchaser.

Mr. CARPER. The 2003 conference legislation contained incentives for lean-burn diesel vehicles. Is it fair to say that you are interested in this technology and in promoting cleaner diesel cars in the U.S.?

Mr. BAUCUS. I agree with my colleague that regulating diesel is promising technology. We did include the diesel lean-burn credit in the energy conference measure in 2003. As you know, in the Senate bill, we have included similar incentives for the purchase of other energy-efficient vehicles—hybrids, alternative fuel vehicles and fuel cell vehicles. We often start out with different positions than our House counterparts, and typically we come together at the end of each bill in conference. I think any new technology warrants serious consideration if it can help make U.S. vehicles more fuel efficient and lessen our dependence on foreign oil.

Mr. CARPER. I certainly hope that the Senate conferees will carefully consider the tax incentives provided in the House version of the bill for these types of vehicles?

Mr. BAUCUS. I believe we should, and I believe we will. I am confident that the clean diesel credit will get very careful consideration by the Senate conferees.

Mr. CARPER. I thank my friend for taking this matter with me, and I would encourage my colleagues who will be negotiating the tax provisions of the Energy Bill with the House Representatives to do just that—to carefully consider the benefits that new clean diesel vehicles have to offer. I think the Senate recognizes the substantial, that diesel passenger vehicles are already very clean and will get even cleaner next year when low sulfur fuel becomes available, and that a transition toward this technology will pay dividends for the country over the next few years. This is something we can do which will have an almost immediate positive effect, and I encourage my colleagues to consider this incentive positively.

Mr. CANTWELL. Mr. President, I rise to speak to a particular section of the comprehensive energy bill (S. 10) that we have been discussing for the past 2 weeks. My comments focus specifically on section 1270 of this legislation.

Section 1270 was an amendment I offered in the Energy & Natural Resources Committee mark-up of this legislation. It was accepted after considerable debate and discussion, on a bipartisan voice vote. Since then, I have continued to work with my colleagues on the Energy Committee, to further clarify and perfect this language. In fact, I was pleased to work with my colleague from Idaho, Senator Craig, as well as amendment to this language, amendment No. 886, to refine it even further.

This provision, entitled “Relief for Extraordinary Violations,” is extremely important to the consumers of Washington State and ratepayers in other parts of the West, who bore tremendous costs as a result of Enron’s schemes to manipulate our wholesale electricity markets. The principle at the heart of this provision is simple. The consumers of Washington State and my State are not responsible for the deep pockets for Enron’s bankruptcy. The same ratepayers who have paid so dearly for the Western energy crisis and Enron’s schemes to manipulate markets should not be forced to pay even more—four years later—for power that Enron never even delivered.

I must thank my colleagues on the Energy Committee for their thoughtful consideration of this provision. Particularly my colleagues from the Pacific Northwest and West as a whole who have seen first-hand the toll the crisis has taken on our economy and our constituents. I must also extend my gratitude to the rest of the members of the committee, and to the chairman and ranking member for indulging what was a very thoughtful debate on this issue.

At the conclusion of the committee debate, this Senator was extremely satisfied; first, because of the very nature of the debate itself, in which—for almost an entire hour—a bipartisan group of Senators focused their valuable time and attention on a situation that is highly complicated, and likely unprecedented in the history and application of our Nation’s energy laws. And second, because, at the end of the day, the committee struck a blow for justice and for Western consumers. It was an important statement.

As my colleague appreciates by now, my State was particularly ravaged by the western energy crisis of 2000–2001. Of many, my State’s districts, Public Utility District No. 1 of Snohomish County, had a long-term contract with Enron, to purchase power. The contract was terminated once Enron began its scandalous collapse into bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under the contract through so-called “termi-...
later this year about how to cleanup the Enron mess, that the bankruptcy court cannot overturn FERC’s decision about whether these “termination payments” are just, reasonable or in the public interest. It says to FERC, “do your job to protect consumers, and when you make a decision, that decision will stand.” Interpreting our nation’s energy consumer protection laws is not the job of a bankruptcy judge.

Now, this Senator has a very strong opinion on this matter in general. I believe there is no way no stretch of the imagination, or interpretation of law in which these termination payments could be deemed just, reasonable or in the public interest, knowing everything we know today about what Enron did to the consumers of my state. In fact, during committee debate on the underlying provision in this bill, some of my colleagues suggested that we should just out-right abrogate these contracts, declare them null and void on their face. But what we recognized, relying on the legal expertise of the committee staff, is that an act like that—as tempting as it may seem—would pose certain constitutional issues. We recognized that this provision—another one of my colleagues suggested that we need Congress to express its will in this matter. I have, as my colleagues know, had substantial differences with FERC over the course of the past few years. But I am glad to say today, after 4 long years, it appears that the commission may be on the right track on this issue. This March, FERC issued a ruling in which the commission definitely found that the termination payments at issue here “are based on profits Enron projected to receive under its long-term wholesale power contracts executed during the period when Enron was in violation of conditions of its market-based rate authority.” For the first time in the history of FERC, the commission found that Enron was in violation of its market-based rate authority at the time victimized utilities such as Washington’s Snohomish PUD inked power sales contract with the now-bankrupt energy giant. That FERC process is on-track to wrap-up this year; but so long as that process is ongoing, utilities like Snohomish have been operating under the threat that the bankruptcy court would swoop in and demand payments for Enron, regardless of the terms of market manipulation and fraud. In a series of rulings, the bankruptcy court has expressed its will to do just that. What this provision does is ensure the bankruptcy court cannot force these utilities and their consumers to make termination payments that aren’t just, unreasonable or contrary to the public interest.

Section 1270 states that notwithstanding any other provision of law, and specifically the bankruptcy code, FERC’s “sole exclusive disposition” to make these determinations. Many of my colleagues might naturally assume that this provision merely sets forth what is already the case. But as I stated earlier, that is not necessarily the case. This provision is necessary and critical because the Federal bankruptcy court has already concluded that it will not defer to FERC with respect to whether our constituents will be required to make these payments. Not only has the bankruptcy court not deferred to FERC, it compounded the seriousness of the issue by enjoining FERC from proceeding with its own specific inquiry into whether Enron is owed termination payments. It forced FERC to stop on a matter that FERC had said required its special expertise.

Imagine making it through the arduous and frustrating, years-long process of proving the case against Enron and proving it to FERC, only to find out at the end of the day that the bankruptcy court would intervene and force these termination payments anyway. It is this situation—a collision between FERC and a bankruptcy court—that poses the danger. It is critical that this issue be decided by the forum with the specialized expertise in matters relating to the sale of electricity with a stated mission of protecting ratepayers, and that is the Federal Energy Regulatory Commission.

Let me conclude by saying that I am very pleased that this provision has broad bipartisan support as well as the support of the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association. I believe my colleague from Oregon, Senator SMITH, said it exactly right when he essentially said that no Senator Republican or Democrat should feel any limitation in “lending their shoulder to this wheel,” to get this situation fixed. Senator SMITH, Senator A LLEN, and Senator C RAIG all mention the invaluable assistance from the minority leader, Senator REID, but also Senator ENSIGN. While Senator ENSIGN does not serve on the Energy Committee, he played a crucial role in ensuring that colleagues on both sides of the aisle understood the importance and reasonableness of this measure, and the importance of this provision to him and to the people of Nevada.

I thank my colleagues, look forward to the passage of this provision out of the Senate and to working together to ensure that the final product included in legislation that emerges from the Energy bill conference with the House of Representatives.

Mrs. MURRAY. Mr. President, I would like to express my support for a provision in this energy legislation that provides relief for Washington State ratepayers who suffered from Enron’s market manipulation schemes.
All of us from the West Coast remember the energy crisis of 2001, when consumers and businesses were hit with massive increases in the cost of energy. Many in California faced shortages and brownouts. In Washington State, we felt the pressure, as well. Washington State ratepayers have been continually penalized for failures in the energy market and failures by Federal energy regulators. While there were many causes for the energy crisis, the root of the problem is the fact that energy companies, such as Enron, manipulated the marketplace to take advantage of consumers.

As we saw throughout the crisis, the Federal Energy Regulatory Commission did not take aggressive action to protect consumers from market manipulation. In fact, over the last several years, as we in the West have sought to clean up the mess that these companies left in their wake, FERC has continued to drag its regulatory feet.

For more than 3 years, many of us in the Northwest delegation have been urging FERC to better protect consumers, and provide relief to ratepayers, from the market manipulation at the height of the 2001 energy crisis. FERC was urging companies to enter into long-term contracts at high-ly-inflated rates, advice which many Northwest companies followed.

In 2001, FERC found that the market manipulation occurred during the 2001 energy crisis, but indicated it would be unlikely that Washington State ratepayers would be reimbursed for the harm done by the manipulation.

When Western utilities—including Snohomish PUD, which was hit particularly hard—terminated their contracts with Enron, Enron turned around and sued them for ‘termination payments.’ It was very disturbing for all of us to see FERC agree that there was manipulation, but leave Washington ratepayers holding the bag—with no relief—for the harm they experienced in 2001 due to the manipulation.

I am pleased that this energy legislation addresses this important issue by giving FERC exclusive jurisdiction to determine whether termination payments are required under certain power contracts are unjust and unreasonable.

This is wonderful news for Washington State ratepayers because of a March 2005 order, in which FERC found Enron in violation of its market-based authorizations. Snohomish PUD signed its power contract. This provision ensures Snohomish PUD’s ratepayers will not be required to pay the non-bankrupt Enron for power the region did not receive.

Mr. President, I support this provision as it will protect Northwest ratepayers and give FERC more tools to better police the energy market.

Mr. ENSIGN. Mr. President, I rise to thank my colleagues for including a provision in this bill which gives the people of Nevada a fair chance to keep their hard earned money away from the clutches of Enron.

Enron is still seeking to extract an additional $326 million in profits from my State’s utilities for power that was never delivered. Enron, after all of its market manipulation and financial fraud, is still trying to profit from its wrong-doing at the expense of each and every Nevadan.

Section 1270 of the Energy Policy Act ensures that the proper government agency will determine whether Enron is entitled to more money from Nevada. That ensures the Federal Energy Regulatory Commission. When FERC was established by Congress, its fundamental mission was, and remains, to protect ratepayers. FERC has specialized expertise required to resolve the issues surrounding some of the contracts that Enron entered into and eventually terminated.

Many of my colleagues know that Enron has filed for bankruptcy protection. There is an issue in the bankruptcy case as to whether Enron can use unenforced, voided long term contracts. The enforceability of these contracts should not be decided by a bankruptcy court. A bankruptcy judge does not have the specialized expertise required for this job. A bankruptcy court is responsible for enforcing contracts, creditors, FERC, on the other hand, sees a more complete picture that includes protecting the interests of the general public.

This is why section 1270 is so important. It is a provision that is limited in scope. It does not seek to resolve the issue in the favor of one party. Though many Senators from affected States may have been tempted to legislate the outcome, we have refrained from doing so. Let me set the stage for why this provision is so critical. It is a complicated issue that should be told in order to understand why I so strongly support this provision and why I believe the provision should be enacted into law.

There are two major utilities that serve Nevada: Nevada Power and Sierra Pacific Power. Both need to buy power in the wholesale power market to meet the growing energy needs of Nevada. Las Vegas is the fastest growing city in the country. It takes a lot of power to keep the lights on in Las Vegas, Reno, and other parts of our growing State. At the height of the western electricity crisis, when spot market prices for electricity were going not just through the roof but through the stratosphere, FERC urged utilities like the Nevada utilities to reduce their purchases of spot supplies and enter into long-term contracts for electricity.

That is precisely what the Nevada utilities did. Enron was one of the biggest suppliers of wholesale electricity at that time. Starting in December 2000, the Nevada utilities entered into long-term contracts with Enron to meet a significant portion of their long-term needs. At the time, no one was aware of Enron’s on-going criminal conspiracy to manipulate the market. No one knew that Enron had engaged in fraud to hide its true financial picture.

The prices that the Nevada utilities agreed to pay were truly outrageous. The prices fully reflected Enron’s success in manipulating the market. Prices were three times as high as the threshold that FERC had established as a ceiling price that would trigger close scrutiny under the just and reasonable standard. As a result, in November 2001, the Nevada utilities asked FERC to review the rates to determine whether those contract prices were just and reasonable.

Two days after the Nevada companies filed their complaints against Enron, Enron filed for bankruptcy. Its financial house of cards had finally collapsed. As one definitive study of Enron concluded, Enron had been insolvent for a long time. That is precisely what the Nevada utilities cause to terminate the contracts. Under the unique terms of this agreement, however, the commercial party that is “in the money” will still be able to benefit if the contract is rescinded. So while the Nevada companies could terminate the contract, they still would have had to pay Enron the difference between the contract price and the market price at the time of terminating, to say nothing of the need to buy replacement power.

When Enron entered bankruptcy, the price for electricity had fallen to the level powered had sold for prior to Enron’s market manipulation. This demonstrates that there was a huge difference between the artificially and unlawfully manipulated price that Enron commanded at the time of the contract and the market price at the time Enron filed for bankruptcy. Given the huge financial hit that the Nevada companies would have had to pay to terminate the Enron contracts, the Nevada companies continued to honor their commitment to purchase power under these contracts.

In March 2002, the Public Utilities Commission of Nevada refused to allow the Nevada utilities to pass more than $400 million in purchased power costs on to ratepayers. As a result, the credit ratings of the Nevada utilities fell. As a result of the terms of the WSPPA, this downgrade gave Enron the right to request assurances regarding the Nevada companies’
intentions with respect to their contracts. In meetings and in telephone calls, the Nevada Companies assured Enron that they would be able to pay Enron everything that would be owed under the contracts.

The FPA required Enron to use "reasonable" discretion with respect to the contracts. Despite this requirement, Enron terminated the contracts with the Nevada companies and demanded that the Nevada companies pay Enron termination payments totaling $326 million. These termination payments represent pure profit to Enron on power that Enron never delivered. By pure profit, I mean just that. The termination payments are calculated, as I previously noted, by the difference between the cost of power today and the outrageous, manipulation-based prices Enron was able to extract during the energy crisis that Enron had unlawfully created.

The Nevada companies refused to make payment. At this time, it was known that Enron had manipulated the entire western market. As part of Enron's bankruptcy, an "adversary proceeding" was initiated to determine the cause of these transactions and whether Enron would be allowed to continue to profit under fraudulent contracts at the expense of Nevada's ratepayers.

At this point, the legal proceedings become complex but the proceedings should be summarized so my colleagues will understand exactly what has happened.

On June 24, 2003, FERC determined that the "just and reasonable" standard of review is not applicable to the Nevada companies with respect to their long-term contracts with Enron. This decision was made because FERC argued that it had previously "pre-determined" that the contracts would be just when they assured Enron its authority to sell electricity at market-based rates years earlier.

On the very next day, FERC withdrew Enron's authority to sell electricity at market-based rates because of its "market manipulation schemes that had profound adverse impacts on market outcomes" which violated its "market-based rate authorizations."

The bankruptcy court judge, on August 23, 2003, ruled on a summary judgment motion that the Nevada utilities were required to pay Enron $326 million in termination payments. The court held that, because FERC had not found that Enron's contracts should be modified by virtue of its market manipulation, the filed-rate doctrine applied. It further ruled that it did not need to defer to FERC on whether Enron had complied with the tariff since it could interpret the tariff as well as FERC.

On October 6, 2003, the Nevada Companies filed a complaint with FERC. The complaint sought to have FERC determine: Enron's termination was unreasonable under the tariff; Enron was not entitled to termination payments on equitable grounds; and, assuming Enron was otherwise entitled to termination payments, the contract provision should be set aside as contrary to the public interest.

Then, on July 22, 2004, FERC set for hearing an adversary proceeding to decide whether Enron's termination was reasonable. FERC deferred ruling on the issue of whether the contract should be set aside under the public interest standard until that issue became "necessary." At the hearing, FERC did not address the reasonableness of Enron's claims. On that same day, FERC ruled in a separate case that Enron could be required to disgorge all of its profits.

On September 30, 2004, FERC's administrative law judge denied Enron's motion to dismiss the case. Finding, among other things, that FERC's specialized expertise is required.

U.S. District Court Judge Barbara Jones reversed a ruling of the bankruptcy court on October 15, 2004. The Nevada companies' case challenges the issue of whether the Nevada companies owed Enron the termination payments. The district court found that the Nevada companies had offered timely assurances and that the issue of whether Enron terminated reasonably was issues of fact which required a trial.

On December 3, 2004, the bankruptcy court enjoined FERC from further proceedings after finding that FERC had violated the "automatic stay" provisions of the Bankruptcy Code. A hearing on termination payments was tentatively scheduled for this coming July. Currently, motions for interlocutory appeal are pending before a U.S. District Court Judge.

Despite the ruling of a FERC administrative law judge that FERC's expertise was necessary to interpret the master tariff's requirement that a terminating party act "reasonably," the bankruptcy court enjoined FERC from further considering this issue. Section 1270 of this legislation confirms the decision of the FERC administrative law judge. This section says the judge is correct and the bankruptcy court is wrong. It makes clear that, in this limited matter, FERC has the exclusive jurisdiction to determine the merits of the claims at issue.

This provision is very reasonable. It is a targeted response to a clash among competing jurisdictions. The bankruptcy court, FERC, or any tribunal, should decide this issue. If Congress doesn't address the issue of jurisdiction now, the Supreme Court will have to do so years from now. That need not happen. Congress can decide this jurisdictional issue. The decision of the Senate, as reflected in Section 1270, is the right decision.

The language of the amendment tracks Supreme Court precedent that recognizes that Congress can choose to give jurisdiction over issues to administrative agencies when the jurisdiction is consistent with the core functions of the agency. In this instance, the recognition of authority to FERC to decide this matter is narrow. It relates solely to the legality of Enron collecting additional profits in the form of termination payments for power not delivered. It is also directly related to the bankruptcy proceeding to ensure just and reasonable rates and guard against market manipulation.

I want to assure my colleagues that this provision does not encroach upon the sanctity of contracts. It merely provides for proper framing whether Enron complied with its tariff obligations. Likewise, it also does not alter the standard of review for challenging the contract. Congress is not picking a standard; it is only picking a forum.

Mr. President, this reasonable provision has the support of key industry leaders such as the National Rural Electric Cooperative Association, the American Public Power Association, and the Edison Electric Institute. It has bipartisan support. Anyone who has been as harmed by Enron as ratepayers in my state have understands the need to ensure that only the most qualified tribunal should rule on whether Enron can collect additional $326 million in windfall profits.

Mr. SALAZAR. Mr. President, as I have said time and again during this debate over the last several weeks, America is being held hostage to its over-dependence on foreign oil. This Energy bill is our first step in setting America free.

From the National Renewable Energy Laboratory in Golden to the balanced development of oil and gas, Colorado is already playing a big part in setting America free.

With a huge, untapped resource called oil shale, Colorado can play an even bigger role in this effort. If properly developed, oil shale that exists in my great State of Colorado has the potential to be part of a strategy to address America's dependence on foreign oil.

Colorado is home to tremendous deposits of oil shale, a type of hydrocarbon bearing rock that is abundant in Western Colorado, as well as Utah and Wyoming. Estimates place the potential recoverable amount of this type of oil as high as 1 trillion barrels. Let me say that again—1 trillion barrels.

Let me put that in perspective: Saudi Arabia's proven conventional reserves are said to be around 261 billion barrels.

Several of our colleagues argued earlier this spring that ANWR is a resource so remarkable that we must open that pristine land to drilling. According to the U.S. Geological Survey—the most conservative estimate—technically recoverable oil is 7.7 billion barrels—billion bbl—but there is a small chance that, taken together, the fields on this Federal land could hold 10.5 billion bbl of economically recoverable oil. That's one percent of the potential oil shale.

Assuming we use 15 million barrels of oil a day just for transportation, oil
shale could keep our transportation going for another 200 years.

Colorado has some experience in trying to access this potential asset. We have had two boom and bust periods, one in the 1800s and the other in the 1980s.

The most recent story is about the “Boom & Bust” Colorado experienced during the last oil shale development cycle that began in the 1970’s and ended in May of 1982 on “Black Sunday.”

I will never forget the powerful lessons of Black Sunday.

Colorado invested millions in new towns, only to see thousands of residents flee when oil prices fell, leaving behind them a devastated real estate market.

Communities that invested heavily in schools and roads and housing could no longer meet the burden of paying for this critical infrastructure.

Buildings on the Western Slope—and even in Denver—were built and left empty if the construction was completed at all.

Towns that thought they were seeing a bright future, struggled to deal with crippling unemployment.

The technical challenges of oil shale and the searing memories of Black Sunday have taught all of Colorado some important lessons.

We now recognize that oil shale’s potential can only be realized if it is approached in the right way. Oil shale must be considered a marathon and not a sprint.

I believe, as many in Colorado do, that oil shale research and development must be conducted in an open, cautious and thoughtful manner that includes our local communities.

As Congress instructs Federal agencies to consider oil shale research and development leasing and commercial leasing, it must give careful consideration to environmental and socio-economic impacts and mitigations as well as the sustainability of an oil shale industry.

Colorado is a team player. The people of my State are ready to share the abundant natural resources with which we have been blessed. In exchange, Colorado expects to have a seat at the table.

That is why I introduced the Oil Shale Development Act of 2005. I am very pleased that it has been incorporated into the Energy bill we are now considering.

I believe the oil shale provision in this Energy bill is a thoughtful approach to future oil shale development. It is full of commonsense provisions that build on the lessons we learned in that painful experience 30 years ago. It directs leasing for research and development;

It requires a programmatic Environmental Impact Study to ensure that we take a comprehensive environmental look at potential commercial leasing; It directs the Secretary of Interior to work with the States, local communities, and industry to identify and respond on issues of primary concern to local communities and populations with commercial leasing and development;

and it insists that States—not the Federal Government—retain authority over water rights.

I know we are going to hear more and more about oil shale development in the Rocky Mountain west. That is as it should be, and we will embark on a thoughtful, balanced approach to oil shale development with this bill.

Mr. ALLEN. Mr. President, as we move forward on Energy legislation crucial for our country’s national security, jobs, and competitiveness, I wish to raise an issue which is threatening global energy security. The surging demand for energy in developing countries coupled with the dynamic rise in power and influence of government operated energy companies is changing the global energy market.

Specifically, I am concerned about the role of the People’s Republic of China with its national oil companies, and the potential adverse effects on U.S. energy supplies. I am also concerned about our ability to compete for energy assets.

The technical challenges of oil shale and the searing memories of Black Sunday have taught all of Colorado some important lessons.

Mr. JEFFORDS. Mr. President, I rise today to congratulate my colleagues on our efforts to pass an energy bill through the Senate that does not include exemptions for the oil and gas industry from drinking water and clean water protections. Section 327 of H.R. 6 as reported contains an exemption to the Safe Drinking Water Act for the practice of hydraulic fracturing. Section 326 of H.R. 6 contains an exemption for the oil and gas industry from obtaining stormwater discharge permits under the Clean Water Act, rolling back fifteen years of environmental
This exemption for hydraulic fracturing is not the only step backwards that the House energy bill takes. Section 328 of the bill exempts the oil and gas industry from stormwater protections in the Clean Water Act. Section 328 of the bill waives the requirement that the underground injection control program in the Safe Drinking Water Act be approved by the EPA. This will allow oil and gas construction sites that otherwise would not meet water quality standards to discharge their fluids directly into or near underground sources of drinking water. This exemption for hydraulic fracturing occurs when fluids are injected at high rates of speed into rock beds to fracture them and allow easier harvesting of natural oils and gases. It is these injection fluids, and their potential to contaminate underground sources of drinking water, that are of high concern. In a recent report, the EPA acknowledged that these fluids, many of them toxic and harmful to people, are pumped directly into or near underground sources of drinking water. This same report cited earlier studies that indicated that only 61 percent of these fluids are recovered after the process is complete. This leaves 39 percent of these fluids in the ground, risking contamination of our drinking water.

In the December 2004 study on hydraulic fracturing identified diesel as a "constituent of potential concern." Prior to this, EPA had entered into a Memorandum of Agreement with three of the major hydraulic fracturing corporations, whom all voluntarily agreed to ban the use of diesel, and if necessary select replacements that will not cause hydraulic fracturing fluids to endanger underground sources of drinking water. However, all parties acknowledged that only technically feasible and cost-effective actions to provide alternatives would be sought.

Litigation over the last several years has resulted in findings that hydraulic fracturing should be regulated as part of the underground injection control program in the Safe Drinking Water Act. Yet, EPA indicated in a letter in December of 2004 that they have no intention of regulating hydraulic fracturing to ensure that they would review 400 engineering studies at every oil and gas—related construction site. The language of the Act and the legislative history of this section indicate that when adopted, section 402(1) was intended to give a narrow exemption for specific circumstances in the oil and gas industry that did not include construction activities at every oil and gas—related site.

I urge the conference committee on H.R. 6 to reject the Clean Water and Safe Drinking Water Act exemptions included in the House energy bill. These provisions represent a major step backward in efforts to protect our water quality and could pose a direct threat to the safety of drinking water sources. If this amendment is adopted, these actions will no longer be required. In FY 2002/2003, the Alaska Department of Environmental Conservation estimated that they would review 400 engineering studies at every oil and gas construction site from taking action to protect water quality.

Section 402(1) of the Clean Water Act contains a limited exemption for specific types of uncontaminated discharges from specific types of oil and gas sites from stormwater permit requirements. The language of the Act and the legislative history of this section indicate that when adopted, section 402(1) was intended to give a narrow exemption for specific circumstances in the oil and gas industry that did not include construction activities at every oil and gas—related site.

I urge the conference committee on H.R. 6 to reject the Clean Water and Safe Drinking Water Act exemptions included in the House energy bill. These provisions represent a major step backward in efforts to protect our water quality and could pose a direct threat to the safety of drinking water sources. If this amendment is adopted, these actions will no longer be required. In FY 2002/2003, the Alaska Department of Environmental Conservation estimated that they would review 400 engineering studies at every oil and gas construction site from taking action to protect water quality.
in the U.S. These three companies, Halliburton Energy Services, Inc., Schlumberger Technology Corporation, and BJ Services Company, voluntarily agreed not to use diesel fuel hydraulic fracturing fluids while injecting into underground sources of water for coalbed methane production.

In addition, EPA conducted its study on hydraulic fracturing impacts and released its findings in a report entitled, “Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs.” The report concluded that hydraulic fracturing poses little chance of contaminating underground sources of drinking water and that no further study was needed.

On July 15, 2004, the EPA published in the Federal Register its final response to the court’s remand. The Federal Register notice (Legal Environmental Assistance Foundation (LEAF), Inc., v. United States Environmental Protection Agency, 276 F. 3d 1253), the Agency determined that the Alabama underground injection control (UIC) program for hydraulic fracturing, approved by EPA under section 1425 of the SDWA, complies with Class II well requirements.

We are concerned that the Agency’s execution of the SDWA, as it applies to hydraulic fracturing fluids, is providing inadequate public health protection, consistent with the goals of the statute.

First, we have questions regarding the information presented in the June 2004 EPA Study and the conclusion to forego national regulations on hydraulic fracturing in favor of an MOU to limit diesel fuel use. In the June 2004 EPA Study, EPA identifies the characteristics of the chemicals found in hydraulic fracturing fluids, according to their Material Safety Data Sheets (MSDS), identifies harmful effects ranging from eye, skin, and respiratory irritation to carcinogenic effects. EPA determines that the presence of these chemicals is not present in sufficient concentrations to cause harm. This conclusion is based on the Agency’s findings in a report entitled, “Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs” (June 2004 EPA Study, p. 4–17.)

a. How did the Agency select particular field engineers and/or witnesses to present these findings?

b. Did the Agency consider the three separate hydraulic fracturing events (June 2004 EPA Study, p. 4–17.)

1. How did the Agency select specific field engineers, including the company in charge of the fracturing, with which they were affiliated?

c. How did the Agency select the three separate hydraulic fracturing events to witness?

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (June 2004 EPA Study, p. 4–17.)

e. Which companies were observed?

f. Was prior notice given of the planned witnessing of these events?

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does “3” represent?

h. Finally, please explain why the Material Safety Data Sheets (MSDS) were not used to identify as potentially being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

i. The Agency concluded in the June 2004 study that even if these chemicals are present, they are not present in sufficient concentrations to cause harm. The Agency bases this conclusion on the lack of clinical evidence that exposure to drilling fluids causes harm. Please explain what data EPA collected and how observations support the Agency’s finding in the federal register notice (Legal Environmental Assistance Foundation (LEAF), Inc., v. United States Environmental Protection Agency, 276 F. 3d 1253), that 39 percent of fluids remaining in the ground are not present in sufficient concentrations to adversely affect underground sources of drinking water.

j. After identifying BTX compounds as the major constituent of concern (June 2004 EPA study, page 4–15), the Agency entered into an MOU with industry to eliminate diesel fuel from hydraulic fracturing fluids.

k. a. How does the Agency plan to enforce the provisions in the MOU and ensure that its terms are met?

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes to ensure that diesel fuel is not used?

c. Will the Agency require states to monitor for diesel use as part of their Class II UIC Programs?

d. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

What action does the Agency plan to take should such return occur?

e. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

f. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel hydraulic fracturing?

3. a. The Agency also states that it expects even if diesel were used, a number of factors would decrease the concentration and availability of BTX. Please elaborate on the data and observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

b. We are aware that the EPA response to the court remand leaves several unanswered questions. The Court decision found that hydraulic fracturing wells “fit the definition of a Class II wells.” (LEAF II, 276 F.3d at 1263), and mandated back to EPA to determine if the Alabama underground injection control program was in compliance with Class II well requirements. On July 15, 2004, EPA published its finding in the Federal Register

that the Alabama program complies with the requirements of the 1425 Class II well requirements. (69 FR No. 135, pp 42341.) According to EPA, Alabama is the only state that has provided a scientifically valid hydraulic fracturing approved under section 1425. Based on this analysis, it seems that in order to comply with the Court’s finding that hydraulic fracturing must be regulated, if it is a part of a Class II definition, the remaining states should be using their existing Class II, EPA—approved programs, under 1422 or 1425, to regulate hydraulic fracturing.

To date, EPA has approved Underground Injection Control programs in 34 states. Approval dates range from 1981–1996. Do you plan to commission a national survey or review to determine whether state Class IT programs adequately regulate hydraulic fracturing?

At the time that these programs were approved, the standards against which state Class IT programs were evaluated did not include any minimum, requirements for hydraulic fracturing. EPA reports that on July 15, 2004, EPA released its notice of EPA’s approval of Alabama’s 1425 program, the Agency stated, “When the regulations in 40 CFR parts 144 and 146, including the classification standards for underground injection, the Agency believed that it was not EPA’s intent to regulate hydraulic fracturing of coal beds. Accordingly, the well classification systems found in 40 CFR 144.6 and 146.6 do not expressly include the hydraulic fracturing injection activities. Also, the various permitting; construction and other requirements found in Parts 144 and 146 do not specifically address hydraulic fracturing.” (65 FR No. 12, p. 2892.)

Further, EPA acknowledges that there can be significant differences between hydraulic fracturing and standards prescribed by state Class IT programs. In the January 19, 2000 Federal Register notice, the Agency stated:

since the injection of fracture fluids through these wells is often a one-time exercise of extremely limited duration (fracture injections generally last no more than two hours) ancillary to the well’s principal function of producing methane, it did not seem entirely appropriate to ascribe Class II status to such wells, for all regulatory purposes, unless the well’s fact that, prior to commencing production, they had been fractured.” (65 FR No. 12, p. 2892.)

Although hydraulic fracturing falls under the definition of Class II, the Agency has acknowledged that hydraulic fracturing is different than most of the activities that occur under Class II and that there are no national regulations or standards on how to regulate hydraulic fracturing.

6. In light of the Court decision and the Agency’s July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under state Class II programs?

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class IT programs?
can to continue to protect public health. Thank you again for your response.

Sincerely,

JIM JEFFORDS,
Barbara Boxer,
U.S. ENVIRONMENTAL PROTECTION AGENCY,

Hon. Jim Jeffords,
U.S. Senate,
Washington, DC.

Dear Senator Jeffords: Thank you for your letter to Administrator Michael Leavitt dated October 14, 2004, concerning the report recently released that the Environmental Protection Agency (EPA) has taken in implementing the Underground Injection Control (UIC) program with respect to hydraulic fracturing associated with coalbed methane wells.

The Office of Ground Water and Drinking Water (OGWDW) has prepared specific responses to your technical and policy questions regarding how we conducted the hydraulic fracturing study, the reasons behind our decisions pertaining to the recommendations of the study, and any results or thoughts we may have on the likelihood for future investigation, regulation, or guidance concerning such hydraulic fracturing.

Since inception of the UIC program, EPA has implemented the program to ensure that public health is protected by preventing endogenous, endoluminal contamination of drinking water (USDWs). The Agency has placed a priority on understanding the risks posed by different types of UIC wells, and worked to ensure that appropriate regulatory actions are taken where specific types of wells may pose a significant risk to drinking water sources. In 1999, in response to concerns about issues associated with the practice of hydraulic fracturing of coalbed methane wells in the State of Alabama, EPA initiated a study to better understand the impact of the practice.

EPA worked to ensure that its study, which was focused on evaluating the potential threat posed to USDWs by fluids used to hydraulically fracture coalbed methane wells was carried out in a transparent fashion. The Agency provided many opportunities for all stakeholders and other public to review and comment on the Agency study design and the draft study. The study design was made available for public comment at four public meetings held in August 2000, a public notice of the final study design was provided in the Federal Register in September 2000, and the draft study was noticed in the Federal Register in August 2002. The draft report was also distributed to all interested parties and posted on the internet. The Agency received more than 300 comments from individuals and other entities.

EPA’s final June 2004 study, Evaluation of Impacts of Unintended Occurrences of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, is the most comprehensive review of the subject matter to date. The Agency did not recommend additional study at this time due to the study’s conclusion that the potential threat to USDWs posed by hydraulic fracturing of coalbed methane wells is low. However, the Administrator retains the authority under the Safe Drinking Water Act (SDWA) section 1431 to take appropriate action to address any imminent and substantial endangerment to public health caused by hydraulic fracturing.

During the course of the study, EPA could not identify any confirmed cases where drinking water was contaminated by hydraulic fracturing fluids associated with coalbed methane production. We did uncover a potential threat to USDWs through the use of diesel fuel as a constituent of fracturing fluids where coalbeds are co-located with a USDW. We reduced that risk by signing and implementing the Memorandum of Agreement (MOA) with three major service companies that carry out the bulk of coalbed methane hydraulic fracturing activities throughout the country. In the past summer we confirmed that the companies are carrying out the MOA and we view the completion of this agreement as a success story in protecting USDWs.

In your letter, you asked about the Agency’s actions with respect to hydraulic fracturing in light of LEAF v. EPA. In this case, the Eleventh Circuit held that hydraulic fracturing of coalbed seams in Alabama to produce methane gas was “underground injection” for purposes of the SDWA and EPA’s UIC program. Following that decision, Alabama developed—and EPA approved—a revised UIC program to protect USDWs during the hydraulic fracturing of coalbeds. The Eleventh Circuit ultimately affirmed EPA’s approval of Alabama’s revised UIC program.

In administering the UIC program, the Agency believes it is sound policy to focus on issues we recognize these wells that pose the greatest risk to USDWs. Since 1999, our focus has been on reducing risk from USDW exposure to injection wells that EPA estimates that there are more than 500,000 of these wells throughout the country. The wastes injected into them include, in part, storm water runoff, agricultural effluent, and treated sanitary wastes. The Agency and States are increasing actions to address these wells in order to make the best use of existing resources.

EPA remains committed to ensuring that drinking water is protected. I look forward to working with Congress to respond to any additional questions you or your staff may have. Members of Congress or their constituents may have. If you have further comments or questions, please contact me, or your staff may contact Steven Kinberg of the Office of Congressional and Intergovernmental Relations at (202) 564-5037.

Sincerely,

BENJAMIN H. GRUMBLES,
Acting Assistant Administrator.

- EPA RESPONSE TO SPECIFIC QUESTIONS REGARDING HYDRAULIC FRACTURING
- The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency in the report give the rationale for the decision not to include the chemicals in the CCL?

Although the EPA CBM study found that certain chemical constituents could be found in some hydraulic fracturing fluids, EPA cannot say that these chemicals are contained in all such fluids. Each fracturing procedure may be site specific or basin specific and fluids used may depend on the site geology, type of coal formation, depth of the formation, and of course, the number of coal beds for each fracturing operation. The Agency’s study did not develop new information related to potential health effects from these chemicals; it merely reported those potential health effects indicated on the Material Safety Data Sheet (MSDS) of each fluid. We obtained this information from the service companies. As noted in the final report, “Contaminants on the CCL are known or anticipated to occur at concentrations of concern when present in quantities sufficient to cause any adverse health effect.” The extent to which the contaminants identified in fracturing fluids are part of the next CCL process will depend upon whether they meet this test.
- In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not pose a threat to USDWs in most of the areas studied. This conclusion is based on two items—“conversations with field engineers” and “witnessing three separate fracturing events.”

a. How did the agency select particular field engineers with whom to converse on this subject?

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which the engineers were involved.

c. EPA did not prepare a word-for-word transcript of conversations with engineers. Are there any other field events representative of the different site-specific characteristics referenced in the June 2004 study (p. 4-19) as determining factors in the types of hydraulic fracturing fluids that will be used?

Budget limitations precluded visits to each of the 11 different major coal basins in the U.S. It would have proven to be an expensive and time-consuming process to witness operations in each of these regions. Additionally, even within the same coal basin there are potentially many different types of well configurations, each of which could affect the fracturing plan. EPA believed that witnessing events in 3 very different coal basin settings—Colorado, Kansas, and south western Virginia—would give us an understanding of the practice as conducted in different regions of the country.

d. Which companies were observed?

EPA observed a Schnumbles hydraulic fracturing operation in the San Juan basin of Colorado, and Halliburton hydraulic fracturing operations in southwest Virginia and Kansas.

e. Was prior notice given of the planned witnessing of these events?

As noted in the previous example, because it would have been very difficult to witness the events had they not been planned, to plan the visit, EPA needed to have prior knowledge of the drilling operation, the schedule of the drilling, and the scheduling of the services provided by the hydraulic fracturing service company. Wells, in general, take days to drill (in some cases months) prior to the fracturing of the well, and the fracturing may take place at a later date depending on the availability of the service company and other factors beyond the company’s control.

f. What percentage of the annual number of hydraulic fracturing events that occur in the United States occur in the central region?

Because of a limited project budget, EPA did not attempt to attend a representative

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2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not pose a threat to USDWs in most of the areas studied. This conclusion is based on two items—“conversations with field engineers” and “witnessing three separate events.”

a. How did the agency select particular field engineers with whom to converse on this subject?

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which the engineers were involved.

c. EPA did not prepare a word-for-word transcript of conversations with engineers. Are there any other field events representative of the different site-specific characteristics referenced in the June 2004 study (p. 4-19) as determining factors in the types of hydraulic fracturing fluids that will be used?

Budget limitations precluded visits to each of the 11 different major coal basins in the U.S. It would have proven to be an expensive and time-consuming process to witness operations in each of these regions. Additionally, even within the same coal basin there are potentially many different types of well configurations, each of which could affect the fracturing plan. EPA believed that witnessing events in 3 very different coal basin settings—Colorado, Kansas, and south west-
number of hydraulic fracturing events; that would have been beyond the scope of this Phase I investigation. The primary purpose of the site visits was to provide EPA personnel with an understanding of the hydraulic fracturing process as applied to coalbed methane wells. The visits served to give EPA staff a working-level, field experience on exactly how various operations are conducted and how the process takes place, the logistics in setting up the operation, and the monitoring and verification conducted by the service companies to assure that the fracturing one was accomplished effectively and safely. EPA understands that thousands of fracturing events take place annually, for both conventional and unconventional operations, that are not site specific. We reviewed a number of states in which they did and in most cases they are engaged in conventional oil and gas operations and for hydraulic fracturing.

b. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentially being used in hydraulic fracturing list component chemicals that the EPA do not believe are present. In Table 4–1 of the final study, EPA identified the range of fluids and fluid additives commonly used in hydraulic fracturing. Some of the fluids and fluid additives may contain constituents of potential concern, however, it is important to note that the information in the MSDS does not indicate that any of the products listed in Table 4–1 is significantly diluted prior to injection. The MSDS information we obtained is not consistent with the review a number of the data sheets and we noted that many of them are different, contain different lists of fluids and additives, and thus we concluded in the final report that we could not say whether one specific chemical, or chemicals, are present at every hydraulic fracturing operation.

c. How does the Agency plan to enforce provisions in the MOU in the states that they are operating in and which are signatures in this agreement? The State of Alabama's EPA approved UIC program is more stringent than the federal UIC program. EPA reiterates that the 39 percent figure was developed assuming a worst case scenario while the report's findings did not point to a significant threat from diesel fuel in hydraulic fracturing. In the MOU, EPA did not make any commitment as to what quantity of the hydraulic fracturing fluids injected into wells will remain behind. Dr. Palmer, who conducted the original research on the movement of contaminants into USDWs at the North Carolina site, learned that diesel fuel used in hydraulic fracturing fluids, the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

There are no terms in the MOA that would provide EPA a mechanism to take any enforcement action should the Agency become aware of the unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOA. However, EPA would work closely with the companies to determine whether there is a problem and discuss possible termination procedures. The agreement defines how either party can terminate the agreement. EPA would make every effort to maintain the companies' participation in the agreement. EPA entered the agreement with an assumption that the companies would honor the commitments they have made about diesel use in hydraulic fracturing fluids. EPA learned that diesel fuel used in hydraulic fracturing may enter a USDW and may present an imminent and substantial threat to public health. EPA may issue orders or initiate litigation as necessary pursuant to SDWA section 1411 to protect public health. Otherwise, EPA would take the actions described under the previous question.

d. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

While the report's findings did not point to a significant threat from diesel fuel in hydraulic fracturing, EPA believes that a precautionary approach was appropriate. EPA chose to work collaboratively with the oil service companies because we thought that such an approach would work quicker and be more effective than other approaches the Agency might employ (i.e., rulemaking, enforcement orders, etc.). Furthermore, once the service companies became familiar with the issue, they would willingly address EPA's concerns. After several months of meeting and negotiating, the service companies and high level management in EPA's Office of Water, a Memorandum of Agreement (MOA) was drafted and signed by all parties effective December 24, 2003.

We believe that the MOA mechanism accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months, whereas proposing a rule would take at least a year or more. Which provisions in the MOU, the_sketch_medium(0,119,830,995)
hydraulic fracturing. This approval was signed by the Administrator in December 1999. and published in the Federal Register in January 2000.

In light of the Phase I HF study and our conclusion that hydraulic fracturing did not present a significant public health risk, we see no reason at this time to pursue a national hydraulic fracturing regulation to protect USDWs or the public health. It is also relevant that the three major service companies have entered into an agreement with EPA to voluntarily remove diesel fuel from their fracturing fluids.

7. a. If so, please provide a detailed description of the evolution of these regulations, including the rationale for not pursuing them.

7. b. Do you plan to establish such regulations in the future?

7. c. If not, what standards will be used as the standard for compliance for hydraulic fracturing under state Class II programs?

EPA has not explored any detailed fashion minimum national or state requirements for hydraulic fracturing of CBM wells, except when it evaluated the revised UIC program in Alabama.

Considering and developing national regulations for fracturing would require a significant effort to arrive at regulatory language that could be applied nationally. The study indicates that coalbeds are located in very distinct geologic settings and the manner in which they are produced for methane gas may be very different in each locale. The proximity of USDW to the coal formations, and the regional geology and hydrology all play roles in how hydraulic fracturing operations are conducted.

If EPA receives information of drinking water contamination incidents and follow-up investigations point to a problem, EPA would then re-evaluate its decision to not continue with additional study relating to CBM hydraulic fracturing.

Should additional states submit revised UIC programs for EPA’s review and approval which include hydraulic fracturing regulations, we would evaluate these programs under the existing 'standards of the day' standards of the SDWA section 1425 as we did or the State of Alabama.

OIL AND GAS ACCOUNTABILITY PROJECT
Durango, CO June 14, 2005.

Hon. James M. Jeffords,
U.S. Senate, Washington, DC.


Hydraulic fracturing is the industry practice of injecting fluids and other substances underground in order to increase production of oil and gas. The industry does not regulate or regulate to protect USDWs or the public health. Yet, the EPA and all states except Alabama have refused to regulate the toxics that are used during hydraulic fracturing operations. What this means, in practice, is that it is illegal for hydraulic fracturing companies to inject toxic chemicals into or close to drinking water aquifers. The EPA has even admitted that a number of toxic hydraulic fracturing chemicals can be injected into drinking water sources at concentrations that pose a threat to human health.

With thousands of new oil and gas wells being drilled each year, the impacts of hydraulic fracturing are beginning to show up. In western Colorado, hydraulic fracturing literally blew up one homeowner’s water well and contaminated it with methane. In Alabama, hydraulic fracturing has contaminated water wells black, and citizens have experienced health problems following contact with the affected water. The true scope of the problem is unknown, however, because state agencies do not monitor groundwater for chemicals used in hydraulic fracturing operations.

Despite the fact that unregulated hydraulic fracturing may be poisoning our drinking water, Senator Inhofe has introduced a bill, S.637, on behalf of the oil and gas industry, that would exempt hydraulic fracturing from EPA regulation under the Safe Drinking Water Act.

Thank you to Senators Lantos, Boxer and Lieberman for introducing the Hydraulic Fracturing Safety Act of 2005 (S. 1080), requiring the use of nontoxic products in hydraulic fracturing operations during oil and gas production. This important bill will help to protect our precious underground drinking water sources.

Sincerely,
GWEN LACHELT,
Director.
NATIONAL WILDLIFE FOUNDATION,

Hon. James M. Jeffords,
Ranking Member, Senate Environment and Public Works Committee, U.S. Senate, Washington, DC.

Dear Ranking Member Jeffords: On behalf of the National Wildlife Federation, and millions of hunters, anglers and outdoor enthusiasts we represent, I am writing to thank you for introducing the Hydraulic Fracturing Safety Act of 2005.

I am pleased that your legislation would ban the use of diesel or other priority pollutants listed under the Federal Water Pollution Control Act in hydraulic fracturing for oil or natural gas exploration and production and also require the EPA to regulate hydraulic fracturing.

EPA does not currently regulate hydraulic fracturing, a common technique used to stimulate oil and gas production that can potentially compromise groundwater resources and reserves. An EPA whistle-blower and other experts agree that hydraulic fracturing is a serious threat to drinking water. Hydraulic fracturing has already impacted residential drinking water supplies in at least three states (Colorado, Virginia and Alabama) and incidents have been recorded in other states (New Mexico, West Virginia and Wyoming) where residents have recorded changes in water quality or quantity following hydraulic fracturing operations near their homes.

I am disappointed that the U.S. House of Representatives passed an energy bill that exempts the oil and gas industry from being regulated under the Clean Water Act for hydraulic fracturing. The House passed bill would also exempt all oil and gas construction activities from the Clean Water Act; cut the heart out of environmental reviews by allowing for numerous National Environmental Policy Act exemptions; and require the BLM to rush to judgment on complex energy permitting decisions. These provisions would harm America’s wildlife and America’s’ water resources and recreational opportunities.

I urge you to remain steadfast and opposed to a provision that would provide egregious exemptions to the laws that protect water resources, wildlife and their habitat.

NWF and the millions of hunters, anglers and outdoor enthusiasts we represent commend you for your leadership on safe-guarding our water resources and wildlife habitat. If you have further questions, please do not hesitate to contact me.

Sincerely,
JIM LYON,
Senior Vice President, Conservation.

Mr. JEFFORDS, Mr. President. I thank Senator GRASSLEY, Senator BAUCUS and the other members of the Senate Finance Committee for agreeing to move this important amendment—call the Recycling Investment Saves Energy, RISE, provisions. These provisions were added to the tax title of the energy bill last week and have now been incorporated into the Energy bill section 1545 of H.R. 32."
new economic challenge makes it even harder for recycled products to compete in the marketplace. For example, two Michigan plastic recycling facilities recently closed, affecting 100 jobs, as a result of inconsistent supply of recycled plastic. Similarly 17 percent of the recycling capacity at U.S. paper mills has been shut down, in part due to insufficient quality recyclable materials. One leading glass manufacturer also reports that they are able to obtain only a small fraction of the volume of recycled glass that their facilities can use.

In some cases, recyclers have been forced to shut down their operations in the United States and relocate to other countries due in part to insufficient or poor quality recycled feedstocks. This is particularly unfortunate as, on a per-ton basis, sorting and processing recyclables are estimated to sustain 10 times more jobs than landfilling or incineration.

The provisions aim to reverse the declining recycling rate and resulting energy loss by incentivizing greater collection of quality recyclable materials. The bill would expand collection efforts by making innovative technologies available, such as reusable vending machines that collect and process empty containers. It could also be used to finance equipment at recycling collection centers.

This targeted tax credit would address the barriers hindering investment in optical sorting and other state of the art equipment needed at material recovery facilities. By reducing material loss and improving quality, RISE will increase both the quantity and quality of recycled feedstock available to manufacturers.

Reducing the barriers to recycling also serves a number of environmental goals, including lessening the need for new energy-intensive industries. We must shoulder our moral responsibility to reduce the risks of global warming.

Mr. President, I thank the bill managers, Senator DOMENICI and Senator BINGAMAN, for agreeing to accept my amendment to the managers' package that was agreed to last night by unanimous consent. My amendment directs the Architect of the Capitol to study the feasibility of installing energy and water conservation measures on the rooftop of the Dirksen building, specifically the roof area above the cafeteria in the center of the building.

Today, all that exists is open space in the center of the building. My amendment provides the Architect with the knowledge that will allow this space to be used in a more efficient manner and save taxpayer dollars. During debate on the energy bill, the Senate has heard numerous arguments on the importance of conserving energy. In August of 2003, nearly 50 million people in the Northeast and Midwest were affected by a massive power outage. This event emphasized the vulnerability of the U.S. electricity grid to human error, mechanical failure, and weather-related outages. Failure to maintain a reliable grid had a huge impact on our Nation’s economy, businesses, and individuals’ everyday lives.

It is vital, then, that we here in the Senate do our part and put measures in place to make the Nation’s Capitol a more secure and sustainable user of electricity. The Capitol Complex is largely dependent upon the electrical grid for power. Our daily operations should not be compromised by grid failure.

My amendment moves us forward in the right direction. Technology already exists to ensure that our operating systems can continue to operate despite loss of a main power supply. By creating onsite generating capacity through the installation of cogeneration equipment at the power plant and using solar powered equipment, like photovoltaic panels, we could produce electricity and operate systems during a blackout or significant loss of power. We can start slowly by powering emergency lighting and notification systems in hallways so the occupants know how to exit the building safely or advise inside the electrical grid’s capacity of the complex. Technology is only getting better. My amendment asks the Architect of the Capitol to explore the use of this new technology to ensure that the Nation’s Capitol always has reliable power.

In addition, this new technology also has the potential to provide significant savings in the Capitol’s operating budget. We are all looking for ways to save the taxpayers money and reduce energy consumption. Let us seize this opportunity today to set an example and practice what we preach. As Members of Congress, we can educate ourselves and our staff on the benefits of energy efficiency, and see first hand the savings it can generate. The Nation’s Capitol can join those already utilizing this technology and help encourage others to adopt it as well.

My amendment requires a feasibility study be conducted to look at the Dirkson building rooftop, installing solar equipment, utilizing the building’s open space in the center of the building directly above the cafeteria. The study will focus on more efficient use of the space while providing energy and water savings to the Capitol Complex.

I envision a wonderful park and garden area that Members and staff can actually use. These gardens would not only provide a beautiful environment by utilizing native plants, but they would also reduce energy use, and provide insulation for the building to reduce heat and energy costs.

These gardens would also provide a collection system for rainwater to limit the amount of stormwater runoff in the area. This collected water could be utilized for basic plumbing, watering the vegetation, or even the fire sprinkler systems; thereby reducing the use of water in the Capitol Complex.

Installation of technology, like photovoltaic panels, could collect the rays of the sun and provide power to the building. These can be installed on the rooftops of our buildings in many different areas. These panels are now made to blend into any environment.

There is even technology that exists to funnel natural daylight into the cafeteria in the basement. Imagine enjoying natural daylight as you consume your lunch or hold that quick meeting. Preliminary studies show that exposure to daylight improves worker productivity and reduces in less absenteeism due to illness.

The Architect of the Capitol is currently updating the master plan for the

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Capitol Complex. This small project fits into that plan. The Architect is making great strides to update our operating systems with newer and efficient technology with sustainable features. I appreciate his efforts and encourage him to continue doing so.

Before I conclude, I would like to thank a former staffer who helped me develop this great idea, Mary Katherine Ishee. Mary Katherine was creative enough to look beyond the barren view from the committee offices on the fourth floor of the Dirksen building and realize the opportunity it presented.

It is about time we bring our home, the Capitol Complex, up to date with the rest of the world. This language is a step in that direction. We have the potential to use the latest technology to save energy, address security concerns, conserve our resources, and make more efficient use of this space.

We will all benefit from a wonderful, efficient park in the middle of the Dirksen building, and the taxpayers will benefit from our reduced energy and water use in the form of lower utility bills. I am very pleased that this measure has been added and I hope it will be retained by the conferees.

Mr. President, I want to thank Senators DOMENICI and BINGAMAN for adopting my amendment No. 774, as part of the Senate Energy bill. The amendment authorizes up to $20 million a year for 7 years for the establishment of a new Department of Energy grant program to aid local governments, municipal utilities, rural electric cooperatives, and not-for-profit agencies. The cost of repairing transmission lines is proving particularly difficult for small communities in Vermont and across America.

I became interested in creating such a program due to the challenges that communities in my State are facing with respect to the upgrading and siting of transmission and distribution lines. For example, residents in Lamoille County, VT, have been struggling to find ways to expand the transmission system to accommodate the demands of a growing tourism industry without overly burdening local residents with the cost of such an upgrade. Currently, the transmission system that delivers electricity to this area of my State is at peak capacity, leaving the community in jeopardy. In short, a single event like a fallen power line or damage to a key piece of equipment occurred.

Not only must communities afford the cost of the infrastructure itself, but also the costs of integrating these new technologies into the rural landscape in a way that does not destroy their scenic quality and protects their lifestyle.

These grants will help rural communities meet these needs. They can be used for increasing energy efficiency, siting or upgrading transmission lines, or providing modernizing electric generating facilities to serve rural areas. Under the generation grants portion of the program, preference will be given to rural facilities such as wind, ocean waves, biomass, landfill gas, incremental hydropower, livestock methane, or geothermal energy.

By adopting my legislation as part of this Energy bill, small electric cooperatives and local governments in Lamoille County, VT, will be eligible to apply for funds to construct new facilities and transmission upgrades. This is a good amendment and it should be retained by the conferees.

Mr. President, last night the Senate defeated amendment No. 961 that would have banned the siting of windmills in many areas in the lower 48 States and made them ineligible to receive Federal tax subsidies. Had I been present to vote, I would have opposed this amendment, which is a blend of hydroelectric energy, which is a legitimate fuel option. It reduces nitrogen oxide, NOx, emissions by 95 percent relative to diesel, and makes significant reductions in carbon dioxide.

China is now leading the way in developing hythane-powered vehicles. In preparation for the 2008 Olympics, Beijing, is in the process of replacing 10,000 diesel buses with hythane buses. Additionally, hythane offers a solution to improve waste management in our communities. According to the Environmental Protection Agency, municipal solid waste landfills are the largest source of human-related methane emissions in the United States, accounting for about 34 percent of these emissions. Landfill gas is created as solid waste decomposes in a landfill and consists of about 50 percent methane.

Instead of allowing this gas to escape into the air, it can be captured, converted, and used to make hythane. As
of December 2004, there are approximately 380 operational Landfill Gas energy projects in the United States and more than 600 landfills that are good candidates for projects. Companies ranging from Ford to Honeywell to Nestle are converting landfill gas into energy.

There is similar potential for chemicals plants who also release methane into the atmosphere, contributing to local smog and global climate change. If they sequestered methane to sell to a hythane manufacturer, I believe they could not have affected the outcome of negotiations, such as biodiesel and hythane. This amendment is a win-win situation for our energy dependence, health, economic environment. I thank my colleagues for their support.

Mr. FEINGOLD. Mr. President, I regret that I was unable to take part in yesterday’s cloture vote because I was testifying before the BRAC Commission in St. Louis, MO, along with my 12 years in the Senate, it is clear to me that testifying in St. Louis was the right decision.

If I had been present I would have again voted against the cloture motion on the nomination of John Bolton. Since the motion required 60 votes to pass, my absence did not affect, and could not have affected, the outcome of the vote.

Mr. BYRD. Mr. President, for too long, we as a body, and we as a Nation, have fallen short in our efforts to address some of the most profound and far reaching challenges of our time—global climate change and energy security. For too long, we have skirted the issue of energy with soft ballroom solutions. We have convinced ourselves that we are doing something but, in reality, we continue to take no real action. Rather than lead, we have stood by, paralyzed, undermining any efforts to forge an effective response.

It is time to pull ourselves out of that quicksand and confront the tasks at hand. First, we must establish practical and comprehensive steps to reduce U.S. emissions of greenhouse gases and to reduce our dependence on foreign energy sources. Second, we must work in a partnership with developing nations to deploy clean energy technologies that can meet their urgent development needs while reducing their own contribution to global climate change and their growing energy dependency. Third, we must commit ourselves to the fundamental task of forging an effective and sound international agreement to guide a truly global energy revolution that most want to say “no” that I will work with Senator MCCAIN, Senator LIEBERMAN, and Senator BINGAMAN, and other Republican and Democratic Senators who want to craft a constructive solution.

I have long said that global warming and energy security are major challenges in the U.S. and around the world. Troubling things are happening in our atmosphere, and we should wake up. I am not alone in this belief. The U.S. cannot bury its head in the sand and hope that these problems will simply go away.

I have insisted on a rational and cost-effective approach to dealing with climate change, both domestically and internationally. I have no doubt that the far right and the far left will oppose any move on this issue, but it is time to get the right architecture and solid funding in place to make a first step a reality. I am concerned that the McCain-Lieberman approach, in its present form, will negatively impact my State, but that does not mean that we will not be able to find some common ground in the future. I hope that my friends in the energy industry will decide to work with them as well.

Mr. President, we cannot let that stand still. I know Senator MCCAIN. He is tenacious, and Senators LIEBERMAN and BINGAMAN are equally tenacious. If 14 Senators in the middle can come together to diffuse the Nuclear Option, then I am certain that a solid center of Senators can find a new path forward to address global climate change and our Nation’s energy security needs. I would certainly not support actions that would harm the economy or the people of my State of West Virginia or the United States in general. Yet, I repeat, I believe that there is a middle path forward, and I stand ready to work with those who share that view.

Mr. REID. Mr. President, I rise to speak to a particular section of H.R. 6, the Energy bill that would lead to Nebraska and Washington ratepayers being relieved of $400 million in lesser under fraudulent contracts entered into with Enron, the defunct energy company.

The largest utility in my State, Nevada Power, had a $326 million contract with Enron for power. The contract was terminated once it became impossible for Enron to hide its financial frauds any longer and instead was forced to declare bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under its so-called “termination payments.” Enron has made this claim even though Enron never delivered the power under the
Mr. CRAIG. I ask unanimous consent that the vote on passage of the bill occur at 9:45 a.m. on Tuesday, June 28, with paragraph 4 of rule XII waived.

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

Mr. CRAIG. Mr. President, before I yield the floor, let me extend a very special thanks to all who have participated in the crafting and the final work product that we now have before us, a national energy policy for our country that has contributed and most assuredly the chairman of the committee, PETE DOMENICI, and the ranking member, Senator BINGAMAN, have done an excellent job, in a very bipartisan way, to bring us to where we are now.

Let me also extend a special thanks to the staff of the committee who have expended extraordinary time and hours to get us to this point. I thank my personal staff for a near 5-year effort, as we have worked over a long period of time to winnow out, shape, and bring before us what I think I can say is a very fine work product.

I am anxious to see its final passage, which I CRAIG. Mr. President, I yield the floor. The PRESIDING OFFICER. The Senator from Rhode Island.

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

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

KARL ROVE

Mr. REED. Mr. President, I rise to join many of my colleagues in expressing my dismay concerning the deplorable comments by Karl Rove that suggest that—those that would have not responded to the attack on this country on 9/11, that they did not join in with other Americans who not only recognized the consequences but came together to work to attack those who attacked us and to bring to justice those who had callously attacked and killed thousands of Americans. Such a statement is beyond the pale.

Mr. President, 9/11 is a moment in which the Nation was attacked, and we all came together. The PRESIDING OFFICER.

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Mr. President, 9/11 is a moment in which the Nation was attacked, and we all came together.
the Chinese philosopher whose “Art of War” speaks to us today as it did centuries ago. As Sun Tzu said: If you know the enemy and know yourself, you need not fear the results of 100 battles.

In fact, some might suggest we are learning about our enemy too late in Iraq today.

The point I make is this type of attack has no place, it does not conform to history, it undercuts the spirit of that moment, a moment in which every American came together as one people. Today, the world responded to us. That unanimity may have lessened over the last several months, but it was there. To view September 11 any other way is a gross distortion. Mr. Rove should apologize for it.

He went on to attack my colleague, the Senator from Illinois, Mr. DURBIN. Senator DURBIN has apologized for his comments, and that apology is appropriate. But to continue to attack this individual does nothing to advance any of the ideals or aspirations or policies that are engaged with. What it does is distort a person, someone I have come to know, respect, and admire. Someone who is caring and concerned for people, whose thoughtfulness, whose intense commitment to doing what is appropriate for all Americans, and who is particularly sensitive to the needs of our military forces has impressed me.

Like anyone who has had the privilege of serving and understanding in the U.S. Army or any uniformed service. I had the privilege of commanding paratroopers of the 82nd Airborne Division. We understand the extraordinary courage and bravery and valor of those individuals.

I have been impressed many times with Senator DURBIN’s commitment to help those individuals in meaningful ways by providing the equipment they need, by ensuring that our veterans who have served with distinction are not stigmatized, by our commitment to help the wounded and to spread our message of freedom. Mr. Rove should apologize for it.

I hope Mr. Rove would apologize for the remarks and would refrain in the future from distorting the historical record. I don’t think that is too much to ask of someone who is in such a position of power in the White House.

At this point, it is sufficient to conclude by saying I hope, indeed, that we can avoid this kind of personalized attack. That is, the personal and the political are not intertwined. That attacks on him are without correlation to the person and to the service of this individual. I hope Mr. Rove would apologize for these remarks and would refrain in the future from distorting the historical record. I don’t think that is too much to ask of someone who is in such a position of power in the White House.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent 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

FIRST LIEUTENANT NOAH HARRIS

Mr. ISAJKSON. Mr. President, I rise today to read from an e-mail sent to me in May of this year:

Our presence here is not just about Iraq. It is sending a message to the people of the world that freedom is the greatest gift that we, the U.S., have been granted, and as such, it is our responsibility to spread it. For it to become a permanent fixture in our future and our children’s future, we must give it to all those that desire it.

Mr. President, that is an e-mail to me from Lt. Noah Harris, of Ellijay, GA, from Baghdad, Iraq.

On Saturday of this past week, First Lieutenant Harris died in the service of his country. His e-mail to me expressed democracy and freedom far better than I am capable of doing.

Noah Harris served as an intern in Congressman Deal’s office 2 years ago, which is where I had the occasion to meet him.

When I received his e-mail, I sat down and made a note thanking him for his service to his country and his fellow man.

This morning, I rise to pay tribute to the life that has been given on behalf of the greater good. Noah Harris was the type of young man who serves without desire for credit or acclaim in Iraq today but on behalf of his country and everything we stand for.

At the age of 23, he embodied the hope of the future. His sacrifice, in fact, ensured that the future for others will be brighter.

He captained his high school football team, was never beaten in the State in wrestling, went to the University of Georgia and captained the cheerleaders at that institution.

He came to Washington to serve as an intern. Shortly after September 11, 2001—struck, as all of us were, by the tragedy of that day—Noah Harris volunteered to serve in the U.S. military and, to the greater good, the people of the world.

On Saturday, at noon of this week, in Ellijay, GA, I and hundreds of other Georgians will pause in the northwest Georgia mountains to pay tribute to the life of Noah Harris.

I am privileged and pleased to stand on the floor of the Senate today in advance of that to acknowledge our thanks, on behalf of this Senate, and all who serve in this Congress, and our President, for the life, the times, the service, and the gift of Lt. Noah Harris.

Mr. CHAMBLISS. Mr. President, I stand before this body tonight with a heavy heart. One of Georgia’s best and brightest young soldiers has paid the ultimate sacrifice in the service of his country in the War on Terror. Tonight the people of Ellijay, GA are grieving the loss of one of their bravest sons on the battlefield of freedom.

The battle of freedom is the noble struggle to spread democracy. First Lieutenant Noah Harris gave his life in Baqubah, Iraq.

Noah, a member of the 2nd Battalion, 69th Armor Regiment, 3rd Infantry Division, died of wounds suffered as a result of an explosion in his armored vehicle around midnight, June 17, 2005.

Noah’s death came one week before his birthday. Most young men his age would be making plans for a celebration; however, this young hero chose the battlefield instead.

Nearly 24 years old, this brave patriot was eager to serve his country and to spread our message of freedom and democracy to oppressed nations. His tragic and untimely death is a testimony of his passion and dedication to freedom’s call.

The only child of Rick and Lucy Harris, Noah was a state champion wrestler and the captain of his high school football team. A natural leader and athlete, Noah took these skills to the University of Georgia where he was the captain of the cheerleading squad.

As a 1999 graduate of Gilmer High School, Noah’s gifts were not merely athletic. He was honored as a scholar athlete during the Peach Bowl. These are but a few of the admirable accomplishments and achievements that endeared Noah to all of those with whom he came in contact.

While a student at UGA, Noah was motivated by the attack on our country on September 11th. Noah walked in to the ROTC office immediately after 9/11 asking to serve. Told he was too far away, he came in on September 12th.

When I received his e-mail, I sat down and made a note thanking him for his service to his country and his fellow man.

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While a student at UGA, Noah was motivated by the attack on our country on September 11th. Noah walked in to the ROTC office immediately after 9/11 asking to serve. Told he was too far away in his studies, Noah persisted until he was allowed to join the ROTC. You see, Noah believed passionately that there were no exemptions from serving in the cost of freedom.

A personal longing to promote liberty and help the Iraqi people who had long suffered under Saddam Hussein were a constant theme in Noah’s letters home to his family and friends, but ever humble, Noah shrugged off the gravity of his commitment adopting the simple mantra “I do what I can” in response to being called a hero.

Noah believed that a greater good was worth fighting for and recognized the power of leading by example which exemplifies the qualities in each one of our Nation’s treasured soldiers.

Noah’s vision and passion to achieve a greater good for the people of Iraq is an excellent model for those who come after him to continue the fight against freedom’s foes.

Noah aspired to serve in public office, and he was also interested in real estate as a personal career. A passionate advocate for the mission in Iraq, Noah expressed the urgency of the cause.
when he was home visiting friends and family during his leave in May.

It is clear that Noah had a caring heart, as his friends recount that he was known to give Beanie Babies to the children in Iraq.

In tribute to Noah, members of the Gilmer County community will assemble at Gilmer High School Friday June 24 at 2 p.m. to distribute yellow ribbons across Gilmer County in preparation for the celebration of Noah's life on Saturday June 25, what would be his 24th birthday.

The ribbons will line highway 52 East in Ellijay to Highway 515, which stretches from the county line to the Ellijay First United Methodist Church, the site of the memorial service.

Another soldier in the vehicle was killed, and the driver was injured severely in the explosion. Noah and his fellow soldiers were transporting two captured insurgents during night operations in the Baquba neighborhood of Buhirit.

Noah's fellow soldier, Corporal William A. Long of Lilburn, GA, also died from injuries sustained in the blast. Three years ago, after talking with his stepfather and stepbrother, who are former members of the military, William joined the Army.

After his enlistment expired, he was very aware that his unit would be deployed to Iraq. His desire to serve our country and free the Iraqi people, however, led him to re-enlist.

A resident of Atlanta for most of his life and a Berkmar High School alumnus, William was well-mannered and well-liked by all. His family describes him as a "perfectionist" and "basketball-lover."

Ironically, before going to Iraq, William participated in more than 700 funerals as a member of the prestigious "Old Guard." Many of those funerals were held at Arlington National Cemetery, the cemetery where William will be buried.

President Ronald Reagan once said:

"Putting people first has always been America's secret weapon.

That secret weapon drives the American spirit to dream and dare, and take great risks for a greater good. Noah and William represented the true heart of servant leadership. Their desire was to first, serve others, not themselves.

My wife Julienne and I wish to extend our sympathies and our prayers to both Noah's and William's family, friends, and fellow soldiers. Their sacrifice will not be lost or forgotten. May God bless Noah Harris and William Long.

IRAQ

Mr. KENNEDY. Mr. President, this morning in the Armed Services Committee, Secretary Rumsfeld and Generals Myers, Casey, and Abizaid briefed us on the status of the war effort.

Secretary Rumsfeld said, once again, that it is a tough road ahead but that we must persevere and he sees reasons to be hopeful. Secretary Rumsfeld was describing a different war than most persons are concerned about. The war in Iraq they see is one of mistake after mistake. Whatever our position on the Iraq war, we should all be concerned. The administration has not handled it competently.

Secretary Rumsfeld needs to see what the American people see very clearly: The President does not have a winning strategy in Iraq. Our troops have been asked to do more with less. Our current strategy is working and the Congress and the American people know it.

Secretary Rumsfeld insists today that it is false to say the administration is painting a rosy picture. But that is exactly what he continues to do. It is time for Secretary Rumsfeld to take off his rose-colored glasses and admit to the American people and to our men and women in uniform who are paying the price with their lives for its failure that we had no realistic strategy for success.

It is time to level with the American people instead of continuing to paint an optimistic picture that has no basis in reality because of his failed strategy. And it is time for Secretary Rumsfeld to resign.

Despite the elections last January and the formation of a new transitional Iraqi government, many are increasingly concerned that the administration's plan for Iraq is no effective or realistic plan to stabilize Iraq. It continues to underestimate the strength and the deadly resilience of the Iraqi insurgency and it has failed shamefully to adequately protect our troops. More than 1,700 American service men and women have been killed in Iraq so far and over 13,000 more have been wounded. The families of these courageous soldiers know all too well that the insurgents are not desperate or dead-enders or in their last throes, as administration officials have repeatedly claimed.

Instead, General Casey indicated that the insurgency is around 26,000 strong, an increase over the 5,000 the Pentagon believed were part of the insurgency 1 year ago.

As General Myers said in April, the capacity of the insurgents "is where they were almost a year ago." General Abizaid told the committee today that the overall strength of the insurgency is "about the same as it was" 6 months ago. Looking ahead, as General Vines said this week, "I'm assuming that the insurgency will remain at about its current level."

In the last 2 months, America has lost an average of three soldiers a day in Iraq, and no end is in sight. As General Myers said on May 12, I wouldn't look for results tomorrow . . . One thing we know about insurgencies is that they last from . . . three, four years to nine years.

Because of the war, our military has been stretched to the breaking point.

The Department of Defense has had to activate a stop-loss policy, to prevent service members from leaving the military as soon as they fulfill their commitment.

Nearly 50 percent of the persons serving in the regular Armed Forces have been deployed to Iraq or Afghanistan since December 2001, and nearly 15 percent of them have been deployed more than once.

Thirty six percent of all those serving in the Armed Forces, including in the National Guard and the Reserves, have been deployed to Iraq or Afghanistan since December of 2001.

The alarm bell about the excessive strain on our forces has been ringing for at least a year and a half. In January 2004, LTG John Riggins said it bluntly:

I have been in the Army 39 years, and I've never seen the Army as stretched in that 39 years as I have today.

As LTG James Helmy, head of the Army Reserve, warned at the end of 2004, the Army Reserve "is rapidly degenerating into a 'broken' force" and is "in grave danger of being unable to meet other operational requirements."

These continuing deployments are taking their toll not only on our forces in the field but also on their families here at home. The divorce rate in the active-duty military has increased 40 percent since 2000.

The war in Iraq and the casualties and the strain on families have seriously undermined the Pentagon's ability to attract new recruits and retain members already serving. Both the Regular and Reserve components of the Armed Forces are increasingly unable to meet recruitment goals.

MG Michael Rochelle, head of the Army Recruiting Command, stated the problem succinctly in May when he said that this year is "the toughest recruiting climate ever faced by the all-volunteer Army."

In March, the Pentagon announced it was raising the maximum age for Army National Guard recruits from 34 to 39, and was also offering generous new health benefits for Guard and Reserve members activated after the September 11 terrorist attacks.

Despite these facts, Secretary Rumsfeld insisted today that we will not have a broken Army as a result of the war.

The severe strain the war is placing on our Armed Forces and on our ability to protect our national security interests in other parts of the world concerns us all.

The Army has been forced to go to all-time new lengths to fill its ranks. In May, it began offering a 15-month active duty enlistment, the shortest enlistment tour in the history of the Army.

To recruit and retain more soldiers, the National Guard has increased its retention bonus from $5,000 to $15,000. The first-time signing bonus has gone up from $6,000 to $10,000. GEN Steven Blum, Chief of the Army National Guard, said:

Otherwise, the Guard will be broken and not ready the next time it's needed, either here at home or for war.
We all know that these problems of recruiting and retention cannot be fixed through enlistment bonuses, health benefits, and raising the age of service. These are short-term Band-Aids on the much larger problem of the war. Only progress in bringing the war to an effective conclusion will lead to a long-term solution to the problem which is clearly undermining our ability to respond to crises elsewhere in the world.

Despite claims by the administration of progress, Iraq is far from stable and secure. We have made very little progress on security since sovereignty was transferred to the interim Iraqi Government 1 year ago.

Today, Secretary Rumsfeld insisted we are not stuck in a quagmire in Iraq. He insisted that “the idea that what’s happening over there is a quagmire is so fundamentally inconsistent with the facts.” What planet is he on? Perhaps he is still living in the “Mission Accomplished” bus.

By last June, 852 American service members had been killed in action. Today, the number has doubled to more than 1,700.

By last June, 5,000 American service members had been wounded in action. Today, the number has more than doubled, to over 13,000.

DIA Director Admiral Jacoby told the Armed Services Committee in March that: “The insurgency in Iraq has grown in size and complexity over the past year. Attacks numbered approximately 25 per day one year ago. Just last week, General Pace said: the numbers of attacks country-wide in Iraq each day is about 50 or 60.

A year ago, the United States had 34 coalition partners in Iraq. Nine of those partners have pulled out in the past year. Today, we have just 25. By the end of the year, another five countries that are among the largest contributors of troops are scheduled to pull out.

One year ago, 140,000 American troops were serving in Iraq. Today, we have the same number of troops.

The training of the Iraqi security forces continues to falter. The administration still has not given the American people a straight answer about how many Iraqi security forces are adequately trained and equipped. They continue to overestimate the number of Iraqis actually able to fight. In the words of the General Accounting Office:

U.S. government agencies do not report reliable data on the extent to which Iraqi security forces are trained and equipped.

In February last year, Secretary Rumsfeld preposterously said: “We accelerated the training of Iraqi security forces, now more than 200,000 strong.

In fact, the numbers of Iraqis who are adequately trained is far, far lower. As General Meyers conceded a year later, only 17% of Iraqi security forces “can go anywhere and do anything.”

It is still far from clear how many Iraqi forces are actually capable of fighting without American help and assistance.

Our reconstruction effort has faltered as well over the last year—and faltered badly. The misery index in Iraq continues to rise. As of June 15, only $6 billion, or one-third of the $18 billion appropriated by Congress last summer for Iraq reconstruction had been spent. The Iraqi people desperately need jobs. But we are unable to spend funds quickly, because security situates us so far.

The amount we do spend, it is far from clear how much is actually creating jobs and improving the quality of life. We need greater focus on small projects to create jobs for Iraqis, not huge grants to multinational corporations that create more profits for corporate executives than stability in Iraq.

By the State Department’s own accounting, up to 15 percent of reconstruction funding is not even being spent on security, as opposed to actual reconstruction.

These costs have increased—not decreased—over the past year as insurgent attacks have continued to escalate. We are spending ever-increasing amounts of assistance on security to guard against an insurgency that the Vice President insists is in its last throes.

A joint survey by the United Nations Development Program and the Iraqi government released last month shows Iraq is suffering from high unemployment, widespread poverty, deteriorating infrastructure, and unreliable water, sewage, sanitation, and electricity services despite its immense oil wealth and access to water.

Estimates of the number of unemployed range between 20 and 50 percent of the population. Every unemployed person is ripe for recruiting by the insurgents who offer as little as $50 a day as a reward for those willing to plant explosives on a highway or shoot a policeman.

Iraq still suffers heavily from severe electricity shortages. According to the Department of Energy assessment, the causes are numerous, “including sabotage, looting, lack of security for workers, disruptions in fuel supplies . . .”

A year ago, Iraq’s electricity was 12 hours per day. Today, they have just over 10 hours a day.

Almost all of Baghdad’s households suffer from an unstable supply. In parts of the city, electricity is turned on for 3 hours and then turned off for 3 hours. As a result, 20 percent rely on private generators for electricity. In areas with high incidences of poverty, many families have no alternative supply to turn to.

Water and sanitation are enormous problems as well. Just this week, water was unavailable in many parts of Baghdad because insurgents blew up the water pipes.

According to the United Nations Development Program, only 54 percent of families in Iraq have safe drinking water, and 80 percent of families in rural areas use unsafe drinking water.

What happened to all of the oil that was supposed to pay for Iraq reconstruction and create the recovery of Iraq’s economy? Last year, the Iraqi Oil Minister said that 642 attacks on the oil system had cost the economy $10 billion. In 2005, pipelines are still under attack, and analysts believe it will be 2 to 3 years before the Iraq is able to increase its oil production.

The administration has been consistently wrong about Iraq. They wrongly insisted there was no guerilla war. They repeatedly—and wrongly—called the insurgents dead-enders who are in their last throes. They repeatedly—and wrongly—sent our service men and women on patrol without proper armor, a shortage that continues with the marines even today. When Secretary Rumsfeld spoke about it by a soldier, to huge applause from the troops, on the Secretaries visit to Iraq last December, he responded:

You go to war with the army you have. They’re not the army you might want or wish to have at a later time.

That response from the troops says it all. Surely, no Secretary of War or Secretary of Defense in our history has ever been so humiliated by his troops or received such a resounding vote of no confidence.

The Secretary’s failed strategy has created an impossible situation for our forces. The administration has undermined our national security and undermined our ability to protect our national security interests elsewhere in the world.

Our colleague, Senator Hagel, summed it up brilliantly when he told U.S. News and World Report last week:

“Things aren’t getting better; they’re getting worse. The White House is completely disconnected from reality . . . It’s like they’re just making it up as they go along. The reality is that we’re losing in Iraq.”

Mr. President, next Tuesday marks the 1-year anniversary of the transfer of sovereignty in Iraq, and to mark the occasion, President Bush will address the Nation.

When he does, all of us hope that he will state a new, more realistic and more effective strategy for the United States to succeed in Iraq.

The war has clearly made America less safe in the world. It has strengthened support for al-Qaida and made it harder to win the real war against terrorism—the war against al-Qaida.

The President needs an effective strategy to rescue the faltering reconstruction effort and create jobs and hope for the Iraqi people, and neutralize the temptation to join the insurgents.

The President needs an effective strategy for serious diplomacy to bring
the international community into Iraq, to support the adoption of a constitution that protects all the people of Iraq.

He needs an effective strategy to repair the damage the war has caused to our military and to our military. Our men and women in uniform deserve no less.

We are muddling through day by day, hoping for the best, and fearing the worst. Our men and women in uniform deserve better—and so do the American people.

SARBTES

Mr. SPECTER. Mr. President, I have sought recognition to talk briefly about the contents of S. 852 to provide for asbestos reform. This is a subject which has been before the Senate in one way or another for the better part of two decades. I recall my first contact with the issue when then-Senator Gary Hart of Colorado was soliciting members of the Judiciary Committee because of the deep problems of Johns-Manville.

The Supreme Court of the United States, on a number of occasions, has imprompted the Congress to take over the subject because the asbestos cases are so overwhelming. The courts and because class actions are inappropriate to address the issue.

The result of the avalanche of asbestos litigation has seen some 77 companies in the United States go into bankruptcy and thousands of people suffering from asbestos-related injuries—mesothelioma, deadly diseases—and unable to collect any compensation because of the fact their employers or those who would be liable for their injuries are in a state of bankruptcy.

Senator HATCH took the lead as chairman of the Judiciary Committee in the 108th Congress in structuring a bill which created a trust fund which has been established at $140 billion to pay asbestos victims. This is a sum of money which has been agreed to by the insurance companies and by the manufacturers and had the imprimatur of the leadership of the Senate.

In the fall of last year, 2004, Senator Frist and Senator Daschle came to terms as that being a figure which would take care of the needs. The victims have never been totally satisfied with that figure, but it represents a very substantial sum, obviously, and according to the filings, the Goldman Sachs analysis, should be adequate to compensate the victims.

They made a detailed analysis and came to the conclusion that $125 billion was the figure necessary. Then when we removed the smokers, a figure of $7 billion. It came to a net of $138 billion, leaving a substantial cushion between $138 billion on the projection and $140 billion.

When the bill was passed out of the Judiciary Committee in late July of 2003, virtually all the parties, the aid of a senior Federal judge was enlisted to serve as a mediator. Chief Judge Edward R. Becker had taken senior status the preceding May and was willing to convene the parties, the so-called stakeholders, in his chambers in Philadelphia in August of 2003. He brought together the insurers, the trial lawyers, the AFL-CIO representing claimants, and a group of five of the four interest groups who are very powerful in our community.

From those two meetings, there have been a series of approximately 40 conferences in my chambers, where we have worked through a vast number of problems where I think we have accommodated many of the interests.

In May, the Judiciary Committee voted the bill out of committee on a 13-to-5 vote, with Senator Schlak, void, and during the course of the markup some 70 amendments were agreed to. There are still some outstanding issues, but we have been soliciting cosponsors and have found very substantial interest in the Senate to move this through legislation on this important issue. There is no denial that this is a very major national problem. There is no denial that there are many victims of asbestos who are now destitute because the people responsible for their damages have gone into bankruptcy. There is no denial that there has been a tremendous drain on the U.S. economy and that if we could solve this issue it would be a bigger boost to the economy than a gigantic tax break or most any other remedy which might be found to stimulate our economy.

There are, obviously, risks in any bill. We have worked through the complexities of a startup procedure where the people who have exigent claims—that is, where they may die within a year—we have an elaborate system of offers and inducements to try to settle these cases within a brief period of time, some 9 months. Obviously, we cannot have a stay of judicial proceedings forever, so there has to be some resort to the courts if we are unable to get the program set up.

Without going into detail, we have worked assiduously to try to resolve this issue. We either have it solved or are very close to a solution. We have worked through complex questions on subrogation, complex questions on the federal employers’ liability Act, and there are still ongoing decisions with a controversy as to how the $90 billion will be divided up among the manufacturers. That essentially is the question that only the manufacturers themselves can guarantee.

Similarly, there are issues as to how the $46 billion will be divided up among the insurers. Candidly, the insurance industry is split on the issue, but we are working with respect to meetings in the course of the next week to 10 days with people who have outstanding concerns to try to resolve those issues.

When the vote came out of committee, satisfactorily, with most people in favor of the bill did so with reservations. We have worked through this, and I think those issues are either resolved or resolvable.

The asbestos issue has been before the Senate Judiciary Committee for more than twenty years, since Senator Gary Hart of Colorado sought the assistance of Judiciary Committee members in enacting federal legislation to address Johns-Manville’s asbestos claims.

Since that time, asbestos litigation has overwhelmed both federal and state court systems; 77 companies have gone into bankruptcy, with more on the brink, due to the rising tide of asbestos claims; and thousands of impaired asbestos victims have received pennies on the dollar since many of the companies liable for their exposure have gone into bankruptcy.

Since the 1980s, the number of asbestos deaths has risen from about 3,000 to more than 8,400, spanning approximately 85 percent of the U.S. economy. As a result, some 60,000 workers lost their jobs. Employees’ retirement funds have also been depleted by 25 percent. This is a problem that extends beyond the victims of asbestos disease alone. It has a growing impact on the average American and little question remains that it is a crisis of serious proportions.

CONCLUSION

The courts enlist the help of Congress.

In 1997, the Supreme Court commented for the first time on the growing asbestos problem by stating in the context that asbestos litigation was not susceptible to class action treatment.

The most objectionable aspects of this asbestos litigation can be summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials
are too long; the same issues are litigated over and over; transaction costs exceed the victims’ recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether.

Given the escalating problem, the Supreme Court has repeatedly called upon Congress to act through legislation: “The mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.” The current asbestos cases “cries out for a legislative solution.” “Members of this Court have indicated that Congress should enact legislation to help resolve the asbestos problem.” The Court has repeatedly called upon Congress to ensure fair and adequate compensation to the victims of asbestos exposure: “It is only a matter of time before liability to pay for real illness comes to pass.”

The 2005 RAND Report

On May 10, 2005, the RAND Corporation issued a report highlighting the problems that many asbestos victims face in today’s tort system. In addition to discussing the number of pending asbestos cases, the report noted the alarming economic consequences of asbestos liability, the report summarized the average disbursements on asbestos payments to claimants in the second quarter of year 2002, the most current year available: Asbestos victims filing claims receive an average of forty-two (42) cents for every dollar spent on asbestos claims. Despite the fact that many asbestos victims face in today’s asbestos crisis “cries out for a legislative solution.” In the event of a sunset, the bill now allows claimants to bring their lawsuits only in federal court or in a state court in the state in which the plaintiff resides or where the exposure took place.

Attorneys’ Fees: Before S. 852 was introduced, and after extensive deliberation with Judiciary Committee members, agreement was reached on a 5% attorneys’ fee cap for all monetary awards received by asbestos victims within the Fund. The nature of the claims process justifies the cap. Furthermore, it is reasonable to believe the fund is recovered, recovery is fairly straightforward and there will no longer be a need for substantial and time-consuming attorneys’ fees, which are capped in federal compensation programs are fairly common. We are working on further refinements in the bill to assist claimants in processing the bill through a paralegal program that the Administrator will be authorized to implement.

Level VI Claimants: Members raised concerns about the strong connection between asbestos exposure and the development of cancer in areas other than the lungs (e.g., colon, stomach, esophageal cancers). To assuage these concerns, the bill commissions an Institute of Medicine study to assess this causal connection, which will come out no later than August 2006. The findings will become binding on the Administrator when compensating asbestos victims for each cancer in this disease category.

Silica Claims: We heard concerns that many asbestos claims might be “repack-aged” as silica claims in the tort system. We also, however, heard concerns that liability is currently assigned to silica in cases involving asbestos simply because S. 852 becomes law. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos cases, that workers with genuine silica exposure should be able to pursue their claims in the tort system. A hearing was held on this issue on February 2, 2005, which established that the asbestos and silica are easily distinguishable on x-rays and that markings from asbestos and silica are rarely found in the same sample.

More Effective Start-Up: Perhaps one of the most difficult issues was how pending claims in the tort system will be treated upon S. 852’s enactment. With general agreement that if the fund was not up and running within a reasonable amount of time, some或者 rats and future claimants would have a difficult time resolving their claims. The bill is designed to dispose of all asbestos claims, that workers with genuine silica exposure should be able to pursue their claims in the tort system. A hearing was held on this issue on February 2, 2005, which established that the asbestos and silica are easily distinguishable on x-rays and that markings from asbestos and silica are rarely found in the same sample.
Medical Screening: Some Committee members were concerned about a medical screening program within the Fund. Although earlier versions of the asbestos bill excluded such screening, it was concluded that one was necessary as an offset to the reduced role of a claimant’s attorney. It is reasonable to have routine examinations for a discrete population of workers at a site of occupational exposure. Such a program is necessary to protect the rights and interests of workers without invasion of privacy. The program would be consistent with the statutory standard. This program is vastly different from any screening in the current tort system.

Pending legislation and Settlements: Prior to bill introduction, and as a result of the numerous stakeholder meetings, agreement was reached on how the bill affects pending claims and settlements in the tort system. The bill preserves: (1) cases with a verdict or final order or final judgment entered by a trial court; (2) any civil claim that, on the date of enactment, is in trial before a jury or a trial court; (3) any civil claim that, on the date of enactment, is in trial before a judge at the presentation of evidence phase; and (4) written settlement agreements, executed prior to date of enactment, between a defendant and plaintiff. As long as the agreement expressly obligates the defendant to make a future monetary payment to the plaintiff and plaintiff fulfills all conditions of the settlement agreement within 30 days.

CT Scans: Unlike prior iterations of the asbestos bill, S. 852 permits greater use of CT scans. During markup, the Committee accepted an amendment that provides for a background check to insulate the purchaser from liability, even when their actions contribute to the illegal gun market in our country. It is important that we recognize their role in adding to our Nation’s gun violence problem and work to enact commonsense legislation to keep dangerous firearms out of the hands of violent criminals.

Under current law, when an individual buys a handgun from a licensed dealer, there are Federal requirements for a background check to ensure that the purchaser is not an individual who is prohibited from purchasing or possessing a firearm. “Straw purchasers” serve as middlemen by purchasing firearms with the intent of transferring or selling them to other individuals who may be prohibited by law from purchasing them for themselves or who may wish to hide the total number of firearms in their possession. These “straw purchasers” help to supply the illegal gun market by allowing the true purchaser to obtain firearms, often in large quantities, without having to pass a background check. This practice is a felony under Federal law. As the Buffalo News report points out, individuals using “straw purchasers” are often dealers who are selling handguns that the true buyer selected. Since records of multiple gun purchases are open to public inspection, the use of “straw purchasers” is a common means of evading Federal firearms laws.

One of the gun show dealers mentioned in the report has been linked to more than 600 guns recovered by New York City police, a semi-automatic rifle used in the 1999 shootings at Columbine High School, and is now prohibited from selling guns in the State of California as a result of a lawsuit brought by several communities there. In addition, reportedly nearly 200 handguns that were illegally resold in Buffalo, N.Y., were originally sold by the same dealer. Investigations revealed that the handguns were obtained over a 6-month period by a man and several accomplices who made “straw purchases” on his behalf. Since records of multiple gun sales must be filed with the Government, the “straw purchases” were apparently made to avoid alerting Federal authorities to the illegal reselling of the guns in Buffalo. According to the Buffalo News, the “straw purchasers” in this case said that their role was limited to providing the illegal firearms to the gun dealers that the true buyer selected.

S. 852 has been described as a “solution to a problem” by Senator Coburn requiring service with rigorous standards (such as a provision offered by Senator Coburn requiring service with rigorous standards (such as a provision offered by Senator Coburn) to be paid at Medicare rates). As has been done in this bill, unmeritorious claims can be avoided with the right determination, although difficult to make a case, under the statutory standard. This program makes it clear that the damages awarded are based on a fair and just settlement.

Support for the Floor. Mr. LEVIN. Mr. President, a report published last week in the Buffalo News further exposes how reckless gun dealers and the use of “straw purchasers” contribute to gun violence in our country. It is important that we recognize their role in adding to our Nation’s gun violence problem and work to enact commonsense legislation to keep dangerous firearms out of the hands of violent criminals.

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Occurrences like those detailed by the Buffalo News are apparently not uncommon and continue to help fuel the illegal gun market in our country. Reckless dealers and “straw purchasers” indirectly threaten the security of our communities by facilitating the transfer of dangerous firearms to potential criminals who may use them in violent crimes, instead of strengthening our gun safety laws as they apply to reckless dealers and “straw purchasers,” some of my colleagues are seeking to provide irresponsible gun manufacturers and dealers with immunity from liability, even when their actions contribute to the growth of the illegal gun market. I urge my colleagues to support efforts to help stop guns from falling into the hands of violent criminals.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each day I have come to the floor to highlight a separate hate crime that has occurred in our country.

In Chicago, a bisexual Latina student was threatened by a white male at a local university because of her sexual orientation. Sometime after the incident, the victim was walking outside of her dorm when the same male student followed her into an alley and assaulted her. She was punched and kicked repeatedly in the stomach.

I believe that the Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SUPPORT SPLITTING THE NINTH CIRCUIT COURT OF APPEALS

Mr. CRAIG. Mr. President, I rise today to support legislation splitting the Ninth Circuit Court of Appeals. It is high time Congress took this action. For far too long, the Ninth Circuit has been viewed as a black hole, a place where constitutional questions are swept aside and the law from purchasing firearms them- selves or who may wish to hide the total number of firearms in their pos- session from Federal authorities. These “straw purchasers” help to supply the illegal gun market by allowing the true purchaser to obtain firearms, often in quantities that are beyond reproach, without having to pass a background check. This practice is a felony under Federal law. As the Buffalo News report points out, individuals using “straw purchasers” are often dealers who are selling handguns that the true buyer selected. Since records of multiple gun purchases are open to public inspection, the use of “straw purchasers” is a common means of evading Federal firearms laws.

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courts: the Ninth and the Fifth. Congress compromised in 1978 by expanding the number of judges in both circuits. However, in 1981 the sheer size forced Congress to split the Fifth Circuit in two, forming the Eleventh Circuit and the Fifth Circuit in its current configuration. The report shows that the Ninth Circuit is, today, almost the same size as the Fifth and Eleventh if they were recombined.

Legislation was introduced in 1989 to split the Ninth into two circuits, creating a new Twelfth Circuit Court of Appeals. A 1990 report advised against the split without first attempting management changes to ease the caseload burden. Again in 1995, the Senate attempted to split the Ninth, and again in 1997.

In 1997 the Commission on Structural Alternatives for the Federal Courts of Appeals, commonly referred to as the White Commission, was formed to determine, among other things, whether there was a need to split the Ninth Circuit Court of Appeals. After hearing testimony, taking written statements, and gathering statistical data, the Commission published its final report in December 1998.

The White Commission report based its decision to oppose a split on the fear that population growth would put other circuits in a position similar to the Ninth, and that continuing to split circuits would eventually lead to an unwieldy kaleidoscope of law. The Commission instead proposed restructuring within the circuit.

Today, we can see the result of the repeated failure to address Federal circuit court growth. In 1997 there were nearly 52,000 appeals filed in Federal circuit courts. In 2003, there were approximately 60,500. Of that 8,500 increase, 4,000 are in the Ninth Circuit but contrary to the White Commission’s fear, the remaining 4,500 case increase is spread over the other 10 circuit courts. With this key Commission conclusion challenged, it is neither prudent nor fair to force Idahoans and other citizens of the West to wait an average of 4.5 months longer than citizens of other districts for their cases to be decided.

Although the 4.5 month wait is a critically important number, there are additional numbers that this Senate should consider. I am currently evaluating this issue. For example, the Ninth Circuit has 50 authorized judges, while the average for all other circuits is 20. There are more than 57 million people living within the Ninth Circuit, while the other 10 circuits average a population of just over 21 million. And probably the most telling statistic: the Ninth Circuit has nearly triple the average number of appeals filed by all other circuits. No wonder it takes the Ninth 4.5 months longer to resolve an appeal.

It is worth noting that over the years, the Ninth Circuit has adopted a variety of management reforms aimed at coping with the circuit’s unwieldy size. However, I submit that we have long since reached the point beyond which this crisis can be “managed” away. It is a gross disservice to the talented jurists and staff of the Ninth Circuit, and an injustice to the citizens of the West, that we as Congress stand idly by while caseloads and waiting periods only increase, and increase, and increase.

Two versions of corrective legislation are being introduced by Senators Murkowski and Ensign, and it is my intention to cosponsor both of these proposals. I pledge to do everything within my power to help enact a workable plan for splitting the Ninth Circuit, and I urge all of our colleagues in the strongest possible terms to support us in this effort.

ADDITIONAL STATEMENTS

HONORING BURLIEY TOBACCO GROWERS COOPERATIVE

- Mr. BUNNING. Mr. President, I proudly rise in recognition of the Burley Tobacco Growers Cooperative for their extremely generous contribution of $10 million to Phase II payments for Kentucky tobacco farmers. The people of Kentucky are extremely appreciative of this generous gift.

As you may know, Phase II is the second set of payments from the Master Settlement Agreement. This settlement was made between the major tobacco companies and the elected officials of the tobacco growing States. Phase II money requires $5.15 billion to be contributed by the four companies over a 12 year period. The Phase II money was meant to alleviate some of the financial stress to farmers as quotas were cut.

The Phase II compensations due for 2004, however, were not paid because the tobacco companies requested a refund due to the passage of the tobacco buyout. For Kentucky farmers, this would have been devastating. Fortunately for Kentucky, the Burley Tobacco Growers Cooperative has donated $10 million to be combined with the $114 million raised by the Commonwealth to equal $124 million for payments. This means that 164,000 Kentucky farmers will have Phase II payments checked in their hands by the end of June.

Mr. President, I find the charitable spirit that was so kindly displayed by the Burley Tobacco Growers Cooperative to be exceptional in every way. Kentucky is the only State that has stepped forward to produce Phase II payments, and this is due, in large part, to the generosity of Burley Tobacco Growers Cooperative. I would like to thank President Henry West and all those involved in the cooperative for mak- ing such a positive impact on Kentucky’s tobacco growers. This extraordinary association has helped ensure that the true spirit of the Phase II agreement is upheld.

MAJOR GENERAL JANET E.A. HICKS

- Mr. CHAMBLISS. Mr. President, I rise today to recognize and commend an outstanding patriot and American, Major General Janet Hicks, the Commanding General of the United States Army Signal Center at Fort Gordon, GA, the first female Chief of the Signal Corps in the history of the Army and the first female Commanding General of the U.S. Army Signal Center at Fort Gordon, GA. General Hicks will be retiring from the Army on July 15, 2005, after a 30 year distinguished military career.

Originally from Iowa, General Hicks was commissioned into the Army’s Signal Corps on March 17, 1975, after receiving her bachelor of arts degree in French language and literature from Simpson College in Central Iowa. Her first assignments took her to Korea, then to Hawaii with the 25th “Tropical Lightning” Infantry Division, where she completed her advanced officer courses. General Hicks was then reassigned to Alaska with the Information Systems Command and the 6th Infantry Division in key leadership positions before joining the staff of the U.S. Central Command at McDill Air Force Base in Tampa, FL.

Recognizing her outstanding leadership qualities, General Hicks was designated for Battalion Command and assigned to command the 25th Signal Battalion, 25th Infantry Division at Schofield Barracks, HI, in June 1992. Following her command there, she was selected to attend the Army’s War College before being posted as the Chief of the Army’s Signal Branch at Personnel Command in Alexandria, VA. In June 1997 she was promoted to Colonel and assumed command of the 516th Signal Brigade in Hawaii, with concurrent duties as the Deputy Chief of Staff for Information Management, US Army Pacific. In June 2000, she was promoted to Brigadier General and became the Director of Command, Control, Communications and Computer Systems, the J-6 for the United States Pacific Command, covering the joint communications for all of the Pacific Theatre. Major General Hicks assumed command of the United States Army Signal Center and School and Fort Gordon on August 7, 2002.

Throughout her career General Hicks has been decorated with many military and civilian awards and citations. But, I wish to commend her as the Army’s Chief of Signal is truly an awesome responsibility and honor. Since assuming command General Hicks has
improved the training of soldiers, campaigned for better equipment and upgraded the facilities and quality of life for soldiers and their families on Fort Gordon. She also claims that besides her demanding military life, she credit's her two wonderful people in her life—her husband Ron and her daughter Jennifer.

Throughout her military career General Hicks has always taken the initiative, faced the challenges and resolved problems. Her leadership style has always inspired her superiors. She has always dealt with people—young soldiers, senior military leaders and civilians with equity, candor and resolve. She is highly respected by the soldiers of her command, people of the Central Savannah Regional Area and the citizens of Georgia.

I feel that it is most appropriate to recognize this outstanding American for her 30 years of dedicated and honorable service to this Nation as a military officer. I ask that all of my colleagues join me in thanking and commending Major General Hicks, her husband Ron and their daughter Jennifer on the completion of a distinguished military career. We also wish her and her family well in their well deserved retirement and a happy and prosperous future.

HONORING GRACE SIERS

Mr. JOHNSON. Mr. President, it is with great pleasure that I rise today to honor Mrs. Hazel Hanon and the incredible work that she has done over these past 60 years with the Marshall Post No. 3507 Ladies Auxiliary of Britton, SD.

Hazel gained membership to the auxiliary sponsorship of both her husband, Leon, who served in the U.S. Navy during WWII, and her brother, Dempsey, also a WWII veteran and member of the U.S. Navy. As one of the auxiliary’s charter members, save for a short hiatus in her membership, Hazel has been with Marshall Post No. 3507 since founding in 1945. Despite the auxiliary's declining membership over the past few years, it is clear the organization and Hazel are still whole heartedly committed to supporting America's brave war heroes.

Over the years the auxiliary has hosted Post Suppers, served banquets, sold organized bake sales, compiled and sold cookbooks, and even run an annual Turkey Raffle during Thanksgiving, all to raise money for our Nation’s veterans. Proceeds from these events are then donated to VA Hospitals or used to buy supplies so the women can bake cookies and cakes and then personally deliver the goodies to veterans in hospitals throughout South Dakota.

Since the post's founding, Hazel has been extremely giving of her time, and her generosity will forever be appreciated. I am pleased that her dedication and patriotism are being publicly recognized, and I am certain that Hazel’s achievements and commitment to the auxiliary will serve as inspiration to future generations of passionate and patriotic South Dakotans.

Mr. President, Hazel Hanon is a remarkable woman who richly deserves this distinguished recognition, she has accomplished her years of work and dedication, and it is with great honor that I share her impressive accomplishments with my colleagues.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

LEGISLATION AND SUPPORTING DOCUMENTS TO IMPLEMENT THE UNITED STATES-DOMINICAN REPUBLIC-CENTRAL AMERICAN FREE TRADE AGREEMENT—PM 14

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents to implement the Dominican Republic-Central America-United States Free Trade Agreement (the “Agreement”). The Agreement represents an historic development in our relations with Central America and the Dominican Republic and reflects the commitment of the United States to supporting democratic, regional integration, and economic growth and opportunity in a region that has transitioned to peaceful, democratic societies.

In negotiating this Agreement, my Administration was guided by the objectives set out in the Trade Act of 2002. Central America and the Dominican Republic constitute our second largest export market in Latin America and our tenth largest export market in the world. The Agreement will create significant new opportunities for American workers, farmers, ranchers, and businesses by opening new markets and eliminating barriers. United States agricultural exports will obtain better access to the millions of consumers in Central America and the Dominican Republic.

Under the Agreement, tariffs on approximately 80 percent of U.S. exports will be eliminated immediately. The Agreement will help to level the playing field because about 80 percent of Central America’s imports already enjoy duty-free access to our market. By providing for the effective enforcement of labor and environmental laws,
combined with strong remedies for noncompliance, the Agreement will contribute to improved worker rights and high levels of environmental protection in Central America and the Dominican Republic.

By supporting this Agreement, the United States can stand with those in the region who stand for democracy and freedom, who are fighting corruption and crime, and who support the rule of law. A stable, democratic, and growing Central America and Dominican Republic strengthens the United States economically and provides greater security for our citizens.

The Agreement is in our national interest, and I urge the Congress to approve it expeditiously.

GEORGE W. BUSH.

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–2706. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled “Letter Report: Sole Source Agreements Issued by the Executive Office of the Mayor and Office of the City Administrator Failed to Comply with Procurement Law and Regulations”; to the Committee on Homeland Security and Governmental Affairs.

EC–2707. A communication from the Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the Administration’s calendar year 2004 report on category rating; to the Committee on Homeland Security and Governmental Affairs.

EC–2708. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the Corporation’s Semi-Annual Report and the Corporation’s Report on Final Action; to the Committee on Homeland Security and Governmental Affairs.

EC–2709. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the Administration’s Semiannual Report of the Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–2710. A communication from the Attorney General of the United States, transmitting, pursuant to law, the Attorney General’s Semi-Annual Report for the period of October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2711. A communication from the Chairman and the General Counsel, National Labor Relations Board, transmitting, pursuant to law, the Board’s Semiannual Report of the Inspector General for the period of October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2712. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Long-Term Care Insurance Regulations” (RIN3206–AJ71) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2713. A communication from the Acting Director, Employee and Family Support Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Employees Health Benefits Program Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes” (RIN3206–AJ20) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2714. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Employees Health Benefits Program Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes” (RIN3206–AJ71) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2715. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Federal Employees Health Benefits Program Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes” (RIN3206–AJ20) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2716. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of the President’s appointment reduction plan; to the Committee on Homeland Security and Governmental Affairs.

EC–2717. A communication from the Senior Procurement Executive, Office of the Chief Acquisition Officers, National Aeronautics and Space Administration, General Services Administration, transmitting, pursuant to law, the report of a rule entitled “Federal Acquisition Circular 2005–04” (FAC 2005–04), Interim Rule (Item IV–FAR Case 2004–55), and nine Federal Acquisition Regulations (10 CFR 215.203, 41 CFR 62–101, et al) received on June 14, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2718. A communication from the Secretary of Labor, transmitting, the report of a draft bill entitled “Unemployment Compensation Program Integrity Act of 2005” received on June 14, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–2719. A communication from the Secretary of Labor, transmitting, pursuant to law, the Department of Labor’s annual report on the fiscal year 2002 operations of the Office of Workers’ Compensation Programs; to the Committee on Health, Education, Labor, and Pensions.

EC–2720. A communication from the Railroad Retirement Board, transmitting, pursuant to law, a report on the actuarial status of the railroad retirement system, including any recommendations for financing changes; to the Committee on Health, Education, Labor, and Pensions.

EC–2721. A communication from the Railroad Retirement Board, transmitting, pursuant to law, the Board’s 2005 annual report on the financial status of the railroad unemployment insurance system; to the Committee on Health, Education, Labor, and Pensions.

EC–2722. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of Presidential Determinations and Regulations relative to the suspension of limitations under the Jerusalem Embassy Act; to the Committee on Foreign Relations.

EC–2723. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more with Ghana; to the Committee on Foreign Relations.

EC–2724. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Treasury Department, transmitting, pursuant to law, the report of a rule entitled “Qualification of
REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 1525. A bill to reauthorize the Congressional Award Act (Rept. No. 109–87).

By Mr. SHELBY, from the Committee on Appropriations, with amendment:

H.R. 2862. A bill making appropriations for fiscal year 2006 for the departments of State, Treasury, and related agencies, and for other purposes (Rept. No. 109–88).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STEVENS, for the Committee on Commerce, Science, and Transportation:

S. 1290. A bill to appropriate $1,975,183,000 for medical care for veterans; to the Committee on Appropriations.

By Mr. McCAIN:

S. 1291. A bill to provide for the acquisition of subsurface mineral interests in land owned by the Pascua Yaqui Tribe and land held in trust for the Tribe; to the Committee on Indian Affairs.

By Mr. SANTORUM:

S. 1292. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for expenses incurred in teleworking; to the Committee on Finance.

By Mr. Bunning (for himself, Mr. CONRAD, Mr. LOTT, Mr. SMITH, and Mrs. LINCOLN):

S. 1293. A bill to appropriate $1,975,183,000 for medical care for veterans; to the Committee on Appropriations.

By Mr. BINGAMAN, and Ms. LANDRIEU:

S. 1294. A bill to amend the Telecommunications Act of 1996 to provide additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. McCAIN:

S. 1295. A bill to amend the Indian Gaming Regulatory Act to provide for accountability and funding of the National Indian Gaming Commission; to the Committee on Indian Affairs.

By Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, Mr. KYL, and Mr. SMITH):

S. 1296. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. CORZINE (for himself, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 1297. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BINGAMAN, and Mr. PFRYOR):
S. 1299. A bill to encourage partnerships between community colleges and 4-year institutions of higher education; to the Committee on Finance.

S. 1300. A bill to extend the Social Security Disability Insurance program for qualified persons with severe disabilities; to the Committee on Finance.

S. 1301. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, and for other purposes; to the Committee on the Judiciary.

S. 1302. A bill to amend the Social Security Act and the Internal Revenue Code of 1986 to stop the Congress from spending Social Security surplus funds on other Government programs by dedicating those surplus funds to personal accounts that can only be used to pay Social Security benefits; to the Committee on Finance.

S. 1303. A bill to amend the Internal Revenue Act of 1986 to provide for an assured level of funding for veterans health care.

S. 1304. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986; to the Committee on Health, Education, Labor, and Pensions.

S. 1305. A bill to amend the Internal Revenue Code of 1986 to increase tax benefits for education.

S. 1306. A bill to provide for the recognition of certain Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

S. 1307. A bill to implement the Dominican Republic-Central America-United States Free Trade Agreement and to the Committee on Finance pursuant to section 2103(b)(3) of Public Law 107-210.

S. 1308. A bill to establish an Office of Trade Adjustment Assistance, and for other purposes; to the Committee on Finance.

S. 1309. A bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes; 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. SCHUMER (for himself and Mrs. CLINTON): S. Res. 180. A resolution supporting the goals and ideals of a National Epidermolysis Bullosa Awareness Week to raise public awareness and understanding of the disease and to foster understanding of the impact of the disease on patients and their families; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself, Mr. SALAZAR, Mr. CRAIG, Mr. CRAPO, Mr. BURNS, and Mr. FEINGOLD): S. Res. 181. A resolution recognizing July 1, 2005, as the 19th Anniversary of the Forest Service; considered and agreed to.

ADDITIONAL COSPONSORS

As of the date of this document, the following cosponsors have been added to the list:

S. 258. At the request of Mr. DeWine, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 258, a bill to amend the Public Health Service Act to enhance research, training, and health information dissemination with respect to urologic diseases, and for other purposes.

S. 331. At the request of Mr. Johnson, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 331, a bill to amend title 38, United States Code, to provide for an assured level of funding for veterans health care.

S. 333. At the request of Mr. Santorum, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threat of aggression and to support a transition to democracy in Iran.

S. 333. At the request of Mr. Lugar, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 336, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes.

S. 392. At the request of Mr. Levin, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 392, a bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

S. 721. At the request of Ms. Landrieu, her name was added as a cosponsor of S. 721, a bill to authorize the Secretary of the Army to carry out a program for ecosystem restoration for the Louisiana Coastal Area, Louisiana.

S. 733. At the request of Ms. Landrieu, her name was added as a cosponsor of S. 733, a bill to amend the Outer Continental Shelf Lands Act to provide a domestic offshore energy reinvestment program, and for other purposes.

S. 734. At the request of Ms. Landrieu, her name was added as a cosponsor of S. 734, a bill to provide for agreements between Federal agencies to partner or transfer funds to accomplish erosion goals relating to the coastal area of Louisiana, and for other purposes.

S. 735. At the request of Ms. Landrieu, her name was added as a cosponsor of S. 735, a bill to amend the Submerged Lands Act to make the seaward boundaries of the State of Texas and the Gulf Coast of Florida.

S. 736. At the request of Ms. Snowe, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Montana (Mr. BURNS) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 769, a bill to enhance compliance assistance for small businesses.

S. 842. At the request of Mr. Kennedy, the names of the Senator from California (Mrs. Feinstein), the Senator from Texas (Mr. BENTON), the Senator from California (Mrs. Boxer), the Senator from Arizona (Mr. MCCAIN) and the Senator from Arkansas (Mr. JOHNSON) were added as cosponsors of S. 842, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory arbitration for workplace grievances during organizing efforts, and for other purposes.

S. 852. At the request of Mr. Specter, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 852, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

S. 900. At the request of Mr. McCain, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 900, a bill to reinstate the Federal Communications Commission’s rules for the description of video programming.

S. 935. At the request of Mrs. Feinstein, the name of the Senator from California (Mrs. Boxer) was added as a cosponsor of S. 935, a bill to regulate the use of large-caliber sniper weapons designed for the taking of human life and the destruction of materiel, including armored vehicles.
and components of the Nation’s critical infrastructure.

At the request of Mr. DeWine, the name of the Senator from California (Mrs. Feinstein) was added as a cosponsor of S. 954, a bill to amend title 18, United States Code, to prohibit the sale of a firearm to a person who has been convicted of a felony in a foreign court, and for other purposes.

At the request of Mr. Grassley, the name of the Senator from Wyoming (Mr. Enzi) was added as a cosponsor of S. 962, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

At the request of Mr. Allard, the names of the Senator from Michigan (Mr. Levin) and the Senator from Colorado (Mr. Salazar) were added as cosponsors of S. 974, a bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for the majority of the trails in the System, and for other purposes.

At the request of Mr. Nelson of Nebraska, the name of the Senator from Massachusetts (Mr. Kennedy) was added as a cosponsor of S. 986, a bill to authorize the Secretary of Education to award grants for the support of full-service community schools, and for other purposes.

At the request of Mr. Smith, the name of the Senator from Mississippi (Mr. Cochran) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

At the request of Mr. Sununu, the names of the Senator from Wisconsin (Mr. Kohl), the Senator from Mississippi (Mr. Lott), the Senator from Illinois (Mr. Obama) and the Senator from West Virginia (Mr. Rockefeller) were added as cosponsors of S. 1047, a bill to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation’s past Presidents and their spouses, respectively to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes.

At the request of Mr. Kyl, the name of the Senator from Iowa (Mr. Grassley) was added as a cosponsor of S. 1088, a bill to establish streamlined procedures for collateral review of mixed petitions, amendments, and defaulted claims, and for other purposes.

At the request of Mr. Durbin, the name of the Senator from Maine (Ms. Collins) was added as a cosponsor of S. 1120, a bill to reduce hunger in the United States by half by 2010, and for other purposes.

At the request of Mr. Lugar, the name of the Senator from Alaska (Mr. Stevens) was added as a cosponsor of S. 1129, a bill to provide authorizations of appropriations for certain development banks, and for other purposes.

At the request of Mr. Coleman, the name of the Senator from Massachusetts (Mr. Kennedy) was added as a cosponsor of S. 1132, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child’s congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

At the request of Mr. Smith, the name of the Senator from North Dakota (Mr. Dorgan) was added as a cosponsor of S. 1145, a bill to provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

At the request of Mr. Specter, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of S. 1171, a bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents, and for other purposes.

At the request of Mr. Snowe, the name of the Senator from Delaware (Mr. Biden) was added as a cosponsor of S. 1214, a bill to require equitable coverage of prescription contraceptive drugs and devices and contraceptive services under health plans.

At the request of Ms. Stabenow, the name of the Senator from Michigan (Mr. Levin) was added as a cosponsor of S. 1227, a bill to improve the quality of health care by providing incentives for adoption of modern information technology.

At the request of Mr. Hatch, the names of the Senator from Ohio (Mr. Voinovich) and the Senator from Colorado (Mr. Salazar) were added as cosponsors of S. J. Res. 12, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

At the request of Mr. Kyl, his name was added as a cosponsor of S. Res. 39, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

At the request of Mr. Smith, the name of the Senator from Missouri (Mr. Bond) was added as a cosponsor of S. Res. 134, a resolution expressing the sense of the Senate regarding the massacre at Srebrenica in July 1995.

At the request of Mr. Schumer, the names of the Senator from Arizona (Mr. Kyl) and the Senator from New Jersey (Mr. Lautenberg) were added as cosponsors of amendment No. 810 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Schumer, the name of the Senator from New York (Mrs. Clinton) was added as a cosponsor of amendment No. 813 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Kennedy, the names of the Senator from Arkansas (Mr. Pryor), the Senator from Iowa (Mr. Harkin), the Senator from New York (Mr. Schumer), the Senator from New Jersey (Mr. Lautenberg), the Senator from Massachusetts (Mr. Kennedy) and the Senator from Connecticut (Mr. Lieberman) were added as cosponsors of amendment No. 825 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Smith, the names of the Senator from Oklahoma (Mr. Inslee) and the Senator from New York (Mrs. Clinton) were added as cosponsors of amendment No. 840 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Obama, the name of the Senator from Indiana (Mr. Bayh) was added as a cosponsor of amendment No. 851 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Burr, the name of the Senator from South Carolina (Mr. DeMint) was added as a cosponsor of amendment No. 857 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Feingold, the name of the Senator from Wisconsin (Ms. Cantwell) was added as a cosponsor of amendment No. 865 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Ms. Cantwell, the name of the Senator from Pennsylvania (Mr. Santorum) was added as a cosponsor of amendment No. 885 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. Shelby, his name was added as a cosponsor of
amendment No. 891 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. CORYN, his name was added as a cosponsor of amendment No. 901 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. DURBIN, the names of the Senator from Connecticut (Mr. DODD), the Senator from Washington (Ms. CANTWELL), the Senator from New Jersey (Mr. LUTENBERG), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. REED), the Senator from California (Mrs. BOXER) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 902 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. INHOFE, his name was added as a cosponsor of amendment No. 925 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) and the Senator from Massachusetts (Mr. BUNNING) were added as cosponsors of amendment No. 925 proposed to H.R. 6, supra.

At the request of Mr. MCCAIN, his name was added as a cosponsor of amendment No. 977 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

Mr. MCCAIN. Mr. President, I am pleased to introduce the Pascua Yaqui Mineral Rights Act of 2005 to provide for acquisition of subsurface mineral interests owned by the Pascua Yaqui Tribe and held in trust for the Tribe; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President, I am pleased to introduce the Pascua Yaqui Mineral Rights Act of 2005 to provide for acquisition of subsurface mineral interests owned by the Pascua Yaqui tribe and land held in trust for the Tribe.

The Pascua Yaqui tribe has purchased in fee four parcels of land, totaling approximately 436 acres, from the State of Arizona. These parcels are adjacent to the Tribe's reservation near Tucson, AZ. The Tribe subsequently applied to have these lands taken into trust pursuant to the 25 CFR Part 151 process. The Bureau of Indian Affairs approved the trust application. However, the State of Arizona objected because it still owns the subsurface mineral rights when it conveys its Trust lands. Based on the State of Arizona's objection, the Tribe's trust application was stayed pending resolution of the mineral rights title issue. Arizona law prevents the State from selling these mineral interests and I understand that the only way they can be acquired is through an act of condemnation brought by the United States pursuant to 40 U.S.C. §3113. The State of Arizona has conditionally consented to a condemnation action. It has since been discovered that an additional 140 acres of the reservation was also former State of Arizona trust land that the Tribe put into trust by the Tribe and taken into trust without obtaining the mineral estate. The State of Arizona has also conditionally consented to a condemnation action with regard to these additional 140 acres.

In addition to the mineral interests condemned, this legislation covers another subject. Under 360 acres of the reservation, the United States owns the mineral rights rather than in trust for the tribe. Although acreage was originally purchased in fee, it was previously patented by the U.S. and the U.S. retained the mineral interests to that property for its own benefit, currently administered by the Bureau of Land Management. This legislation would authorize the Bureau of Land Management to transfer those mineral interests to the U.S., to be held in trust for the Pascua Yaqui tribe.

The result of the legislation I introduce today would be to allow the United States to obtain and/or consoliate ownership of the mineral interest only, in its name, in trust for the Pascua Yaqui tribe. These mineral interests are under the surface of land already either owned by the Pascua Yaqui tribe, or held in trust for the Tribe by the United States.

Finally, under the terms of its current gaming compact with the State of Arizona, the Tribe has already constructed the maximum number of casinos it can operate on its reservation at this time. This will not authorize additional reservation casinos. I look forward to working with my colleagues to enact this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

The hearing no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1291

SEC. 1. SHORT TITLE. This Act may be cited as the 'Pascua Yaqui Mineral Rights Act of 2005'.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) STATE.—The term 'State' means the State of Arizona.

(3) TRIBE.—The term 'Tribe' means the Pascua Yaqui Tribe.

SEC. 3. ACQUISITION OF SUBSURFACE MINERAL INTERESTS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, in coordination with the Attorney General of the United States and with the consent of the State, shall acquire through eminent domain the following:

All subsurface rights, title, and interests (including subsurface mineral interests) held by the State in the following tribally-owned parcels:

(A) Lot 2, sec. 13, T. 15 S., R. 12 E., Gila and Salt River Meridan, Pima County, Arizona.

(B) Lot 4, W1/4SE1/4, sec. 13, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(C) NW1/4NW1/4, NE1/4NE1/4, SW1/4SE1/4, sec. 24, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(D) Lot 2 and Lots 46 through 76, sec. 19, T. 15 S., R. 13 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(2) All subsurface rights, title, and interests (including subsurface mineral interests) held by the State in the following parcels held in trust for the benefit of Tribe:

(A) Lots 1 through 8, sec. 14, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(B) NE1/4SE1/4, NW1/4NW1/4, SW1/4SE1/4, NE1/4NE1/4, sec. 14, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(b) CONSIDERATION.—Subject to subsection (c), as consideration for the acquisition of subsurface mineral interests under subsection (a), the Secretary shall pay to the State an amount equal to the market value of the subsurface mineral interests acquired, as determined by:

(1) a mineral assessment that is—

(A) completed by a team of mineral specialists agreed to by the State and the Tribe; and

(B) reviewed and accepted as complete and accurate by a certified review mineral examiner of the Bureau of Land Management;

(2) a negotiation between the State and the Tribe to mutually agree on the price of the subsurface mineral interests; or

(3) if the State and the Tribe cannot mutually agree on a price under paragraph (2), an appraisal report that is—

(A) completed by the State in accordance with subsection (d); and

(B) reviewed by the Tribe; and

(C) on a request of the Tribe to the Bureau of Indian Affairs, reviewed and accepted as complete and accurate by the Office of the Special Trustee for American Indians of the Department of the Interior.

(c) CONDITIONS OF ACQUISITION.—The Secretary shall acquire subsurface mineral interests under subsection (a) only if—

(1) the payment to the State required under subsection (b) is accepted by the State in full consideration for the subsurface mineral interests acquired;

(2) the acquisition terminates all right, title, and interest of any party other than the United States in and to the acquired subsurface mineral interests; and

(3) the Tribe agrees to fully reimburse the Secretary for costs incurred by the Secretary relating to the acquisition, including payment to the State for the acquisition.

(1) DETERMINATION OF MARKER VALUE.—Notwithstanding any other provision of law, unless the State and the Tribe otherwise agree to the market value of the subsurface mineral interests acquired by the Secretary under this section, the market value of those subsurface mineral interests shall be determined in accordance with the Uniform Appraisal Standards for Federal Land Acquisition, as published by the Appraisal Institute in 2000, in cooperation with the Department of the Interior and the Special Trustee for American Indians of the Department of Interior.
A task force on telework initiated by former Virginia Governor James Gilmore recommended the establishment of a tax credit toward the purchase and installation of electronic and computer equipment that allow an employee to telework. For example, the cost of a computer, phone, printer, software, copier, and other expenses necessary to enable telework could count toward a tax credit, provided the person worked at home a minimum number of days per year.

My legislation provides a $500 tax credit “for expenses paid or incurred under a teleworking arrangement for furnishing and electronic information equipment which are used to enable an individual to telework.” An employee must telework a minimum of 75 days per year to qualify for the tax credit. Both the employer and employee are eligible for the tax credit, but the tax credit goes to whomever absorbs the expense for setting up the at-home worksite.

On October 9, 1999, President Clinton signed into law legislation that I introduced in coordination with Representative Frank Wolf from Virginia as part of the annual Department of Transportation Appropriations Bill for Fiscal Year 2000. S. 1521, the National Telecommuting and Air Quality Act, created a pilot program to study the feasibility of providing incentives for companies to allow their employees to telework in metropolitan areas including Philadelphia, Washington, D.C., Los Angeles, Houston and Denver.

President Bush signed legislation on July 14, 2000, that included an additional $2 million to continue telework efforts in the 5 pilot cities, including Philadelphia, to market, implement, and evaluate strategies for awarding telecommuting, emissions reduction, and pollution credits established through the Telecommuting and Air Quality Act. I am excited that Philadelphia continues to use this opportunity to help to get the word out about the benefits of telecommuting for many employees and employers.

Telecommuting improves air quality by reducing pollutants, provides employees and families flexibility, reduces traffic congestion, and increases productivity and retention rates for businesses while reducing their overhead costs and headcount. 

The 1999 Telework America National Telework Survey conducted by Joan H. Pratt Associates, found that today’s 19.6 million teleworkers typically work 9 days per month at home with an average of 3 hours per week during normal business hours. Teleworkers seek a blend of job-related and personal benefits to enable them to better handle their work and life responsibilities; however these research findings demonstrate the important distinct line for employers as well. Employers may save more than $10,000 per telework employee simply from reduced absenteeism and increased employee retention. Thus an organization with 100 employees of whom telework, could potentially realize a savings of $200,000 annually, or more, when productivity gains are added.

When I introduced this legislation in the 107th Congress, it was endorsed by the Secretaries of Agriculture, Commerce, Labor, Transportation, Commerce, and the Interior. It can also be a good opportunity for families—giving people with disabilities greater job opportunities. It can also be a good opportunity for retirees and others who choose to work part-time.
one corporation or as subsidiary corporations with a common parent company, a business entity should generally be taxed as a single entity and be allowed to file its return accordingly.

Corporate groups which include life insurance companies are denied the ability to file a consolidated return until they have been affiliated for at least 5 years. Even after this 5-year period, they are subject to two additional limitations that are not applicable to any other type of group. First, non-life insurance companies must be members of the affiliated group for five years before their losses may be used to offset life insurance company taxable income. Second, non-life insurance affiliated losses, including current year losses and any carryover losses, that may offset life insurance company taxable income are limited to the lesser of 35 percent of life insurance company’s taxable income or 35 percent of the non-life insurance company’s losses.

There are no clear reasons why affiliated groups that include life insurance companies are denied the same unrestricted ability to file consolidated returns that is available to other financial intermediaries, and corporations in general. Allowing members of an affiliated group of corporations to file a consolidated return prevents the business enterprise’s structure from obscuring the fact that the true gain or loss of the business enterprise is the conglomeration of each of the members of the affiliated group. The limitations contained in current law are clearly without policy justification and should be repealed.

Our legislation will repeal the two 5-year limitations for taxable years beginning after this year, and it will phase out the 35 percent limitation over 5 years. Staff of the Joint Committee on Taxation has recommended repeal of two of the three limitations addressed by my bill on the grounds of needless complexity. The third limitation is, in effect, merely a minimum life insurance company income. That limitation should have been repealed when the alternative 10-year minimum tax was enacted, and certainly has no place in the current tax law. I should also note that Congress included in the tax cut vetoed by then-President Clinton in 1999 much of what is contained in this legislation.

I thank Senators CONRAD, LOTT, SMITH and LINCOLN for joining me in sponsorship of this legislation. We hope you will join us as cosponsors of this bipartisan, much-needed legislation.

By Mr. LAUTENBERG (for himself and Mr. MCCAIN):
S. 1294. A bill to amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services; to the Committee on Commerce, Science, and Transportation.

Mr. LAUTENBERG. Mr. President, I rise to introduce the "Community Broadband Act of 2005." I am pleased to be joined in this effort by Senator MCCAIN of Arizona.

This legislation will promote economic development, enhance public safety, increase educational opportunities, and protect the ability of local communities in areas of the country that either do not have access to broadband or live in a location where the cost for broadband is simply not affordable.

A recent study by the Organization for Economic Cooperation and Development shows that the United States has dropped to 12th place worldwide in the percentage of people with broadband connections. Many of the countries ahead of the United States have successfully combined public and private efforts to deploy municipal networks that connect their citizens and businesses with high-speed Internet services.

It is in this context that President Bush and the Congress worked to provide affordable broadband in the United States by the year 2007. If we are going to meet President Bush’s goals, we must not enact barriers to broadband development and access. Unfortunately, fourteen States have passed laws that significantly restrict the ability of local municipalities and communities to offer high-speed Internet to their citizens. More States are considering such legislation. The “Community Broadband Act” is important. Local government employees and officers, knowledge of this all too well. Dianah Neff, Philadelphia’s chief information officer, knows this all too well. "The digital divide is local," Neff has said, commenting that while 90 percent of Pennsylvania’s and other States have broadband, just 25 percent in low-income areas have broadband. When the city of Philadelphia announced plans for wireless access, it immediately faced opposition and the Pennsylvania legislature passed legislation to counter this municipal power.

Community broadband networks have the potential to create jobs, spur economic development, and bring a 21st century utility to everyone. I hope my colleagues will join Senator MCCAIN and me in our effort to enact the Community Broadband Act of 2005.

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. 1294

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Community Broadband Act of 2005”. 
I recognize that our Nation has a long and successful history of private investment in critical communications infrastructure. That history must be respected, protected, and continued. However, when private industry does not answer the call because of market failures or competition obstacles, it is appropriate and even commendable, for the people acting through their local governments to improve their lives by investing in their own future. In many rural towns, the local government’s high-speed Internet offering may be its citizens only option to access the World Wide Web.

Despite this situation, a few incumbent providers of traditional telecommunications services have attempted to stop local government deployment of community high speed Internet services. The bill would do nothing to limit their ability to compete. In fact, the bill would provide them an incentive to enter more rural areas and develop partnerships in areas where their citizens are underserved. This partnership will not only reduce the costs to private firms, but also ensure wider deployment of services.

Several newspapers have endorsed the concept of allowing municipalities to offer high-speed Internet services, USA Today right-

I am pleased to join in sponsoring the Community Broadband Act of 2005. In the simplest of terms, this bill would ensure that any town, city, or county that wishes to offer high-speed Internet services to its citizens can do so. The bill would ensure fairness among requiring municipalities that offer high-speed Internet services so do in compliance with all Federal and State telecommunications laws and in a non-discriminatory manner.

Mr. MCCAIN. Mr. President, I am pleased to join in sponsoring the Community Broadband Act of 2005. In the simplest of terms, this bill would ensure that any town, city, or county that wishes to offer high-speed Internet services to its citizens can do so. The bill would ensure fairness among requiring municipalities that offer high-speed Internet services so do in compliance with all Federal and State telecommunications laws and in a non-discriminatory manner.

Many of the countries outpacing the United States in the deployment of high-speed Internet services, including Canada, Japan, and South Korea, have successfully combined municipal systems with privately deployed networks to wire their countries. As a country, we cannot afford to cut off any successful strategy if we want to remain internationally competitive.
(1) in the matter preceding the table, by striking "thirteen" and inserting "fourteen"; and
(2) in the table—
(A) by striking the item relating to the ninth circuit and inserting the following:
   "Ninth ........................ California, Guam, Hawa-
   ii, Northern Mari-
   anas Islands."; and
(B) by inserting after the item relating to the eleventh circuit the following:
   "Twelfth ....................... Alaska, Arizona, Idaho,
   Montana, Nevada, Or-
   egon, Washington.".

SEC. 4. JUDGESHIPS.
   (a) New Judgeships.—The President shall appoint, act and consent of the Senate, 5 additional circuit judges for the new ninth circuit court of appeals, whose official duty station shall be in California. The judges authorized by this paragraph shall not be appointed before January 21, 2006.
   (b) Temporary Judgeships.—The President shall appoint, act and consent of the Senate, 2 additional circuit judges for the former ninth circuit court of appeals 10 years or more after judges authorized by paragraphs (1) and (2) are appointed.

SEC. 5. NUMBER OF CIRCUIT JUDGES.
   The table contained in section 48(a) of title 28, United States Code, is amended—
   (1) by striking the item relating to the ninth circuit and inserting the following:
   "Ninth .............................. 19"; and
   (2) by inserting after the item relating to the eleventh circuit the following:
   "Twelfth ............................. 14".

SEC. 6. PLACES OF CIRCUIT COURT.
   The table contained in section 48(a) of title 28, United States Code, is amended—
   (1) by striking the item relating to the ninth circuit and inserting the following:
   "Ninth .............................. Honolulu, San Fran-
   cisco,"; and
   (2) by inserting after the item relating to the eleventh circuit the following:
   "Twelfth ............................. Phoenix, Portland, Mis-
   sissippi,".

SEC. 7. LOCATION OF TWELFTH CIRCUIT HEAD-
   QUARTERS.
   The offices of the Circuit Executive of the Twelfth Circuit and the Court of the Twelfth Circuit shall be located in Phoenix, Arizona.

SEC. 8. ASSIGNMENT OF CIRCUIT JUDGES.
   Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station shall be a circuit judge of the new ninth circuit as of such effective date; and
   (2) in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

SEC. 9. ELECTION OF ASSIGNMENT BY SENIOR CIRCUIT JUDGE.
   Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this Act may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 10. SENIORITY OF JUDGES.
   (1) who is assigned under section 8, or
   (2) who elects to be assigned under section 9,
   shall run from the date of commission of such judge as a judge of the former ninth cir-
   cuit.

SEC. 11. APPLICATION TO CASES.
   The following apply to any case in which, on the day before the effective date of this Act, a petition for rehearing en banc has been filed with the former ninth circuit:
   (1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this Act had not been enacted.
   (2) If the matter has not been submitted for decision, the appeal or proceeding, to-gether with the original papers, printed records, and record entries duly certified, shall be transferred to the chief judge of the court to which the matter would have been submitted had this Act been in full force and effect at the time such appeal was taken or other proceeding instituted, and all further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed with the court of ap-

SEC. 12. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.
   Section 291 of title 28, United States Code, is amended by adding at the end the fol-
   lowing:
   "(c) The chief judge of the Ninth Circuit may, in the public interest and upon request of the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.
   (d) The chief judge of the Twelfth Circuit may, in the public interest and upon request of the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.".

SEC. 13. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.
   Section 292 of title 28, United States Code, is amended by adding at the end the fol-
   lowing:
   "(a) The chief judge of the United States Court of Appeals for the Ninth Circuit may in the public interest—
   (1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, when ever the business of that court so requires; and
   (2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.
   (b) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—
   (1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more
district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

(2) design temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

(3) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.

SEC. 14. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this Act may take such administrative action as may be required to carry out this Act and the amendments made by this Act. Such court shall cease to exist for administrative purposes 2 years after the date of enactment of this Act.

SEC. 15. EFFECTIVE DATE.

Except as provided in section 4(c), this Act and the amendments made by this Act shall take effect 12 months after the date of enactment of this Act.

By Mr. CORZINE (for himself, Mr. BENGAMAN, and Ms. LANDRIEU):

S. 1297. A bill to amend title XVIII of the Social Security Act to reduce the work week of resident physicians and to establish the supervision of resident physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to reintroduce my legislation, the Patient and Physician Safety and Protection Act of 2005, to limit medical resident work hours to 80 hours a week and to provide real protections for patients and resident physicians who are negatively affected by excessive work hours. I feel strongly that as Congress begins to consider proposals to reduce medical malpractice premiums and improve quality of care, we must consider the role that excessive work hours play in exacerbating medical liability problems and reducing quality of care.

It is very troubling that hospitals across the Nation are requiring young doctors to work 36 hour shifts and as many as 120 hours a week in order to complete their residency programs. These long hours lead to a deterioration of cognitive function similar to the effects of blood alcohol levels of 0.1 percent. This is a level of cognitive impairment that would make these doctors unsafe to drive — yet these physicians are not only allowed but in fact are required to care for patients and perform procedures on patients under these conditions. In fact, a study by Harvard Medical School researchers published in the New England Journal of Medicine found that medical residents made 35.9 percent more serious medical errors when they worked extended shifts of more than 24 hours.

The Patient and Physician Safety and Protection Act of 2005 will limit medical resident work hours to 80 hours a week. Not 40 hours or 60 hours—80 hours a week. It is hard to argue that this standard is excessively strict. In fact, it is unconscionable that we now have resident physicians, or any physicians for that matter, caring for very sick patients 120 hours a week and 36 hours straight with fewer than 10 hours between shifts. This is an outrageous violation of a patient's right to quality care.

In addition to limiting work hours to 80 hours a week, my bill limits the length of any one shift to 24 consecutive hours, while allowing for up to three hours of patient transition time, and limits the length of an emergency room shift to 12 hours. The bill also ensures that residents have at least one out of seven days off and 'on-call' shifts no more often than every third night.

Since I first introduced the Patient and Physician Safety and Protection Act in the 107th Congress, the medical community and the Accreditation Council for Graduate Medical Education, the body that sets the rules, have taken critical steps to address the problem of excessive work hours. On July 1, 2003, the ACGME issued resident work-hour guidelines to address this important issue. While I commend ACGME leadership for taking the initiative, I am concerned that the ACGME's policy lacks the enforcement mechanisms that are essential to ensure compliance with the new work hour rules. The ACGME's only sanction against hospitals that overwork residents or provide inadequate supervision is the threat of lost accreditation of residency programs. Medical residents who have already 'matched' into a program and invested years there are understandably reluctant to report violations that might result in the closure of their residency. Furthermore, the ACGME usually gives hospital administrators 90 to 100 days notice before inspecting a residency program. While the ACGME policy establishes the requirement for work hour regulations, it fails to create effective enforcement and oversight tools. These rules are meaningless without enforcement mechanisms.

That is why Federal legislation is necessary. The Patient and Physician Safety and Protection Act of 2005 not only recognizes the problem of excessive work hours, but also creates strong enforcement mechanisms. The bill also provides funding support to teach residents how to meet new work hour standards. Without enforcement and financial support, efforts to reduce work hours are not likely to be successful.

Finally, my legislation provides meaningful enrollment mechanisms that will protect the identity of resident physicians who file complaints about work hour violations. The ACGME's guidelines do not contain any whistleblower protections for residents that wish to report program violations. Without this important protection, residents will be reluctant to report these violations, which in turn will weaken enforcement.

My legislation also makes compliance with these work hour requirements a condition of Medicare participation. Each year, Congress provides $38 billion to teaching hospitals to train new physicians. While Congress must continue to support adequate funding so that teaching hospitals are able to carry out this important public service, these hospitals also must make a commitment to ensuring safe work conditions for these physicians and providing the highest quality of care to the patients they treat.

In closing I would like to read a quote from an Orthopedic Surgery Resident from Northern California, which I think illustrates why we need this legislation.

I quote, "I was operating post-call after being up for over 36 hours and was holding retractors. I literally fell asleep standing up and nearly faceplanted into the wound. My upper arm hit the side of the gurney, and I caught myself before I fell to the floor. I nearly put my face in the open wound, which would have contaminated the entire field and could have resulted in an infection for the patient."

This is a very serious problem that must be addressed before medical errors like this occur. I hope every member of the Senate will consider this legislation and the potential it has to reduce medical errors, improve patient care, and create a safer working environment for the backbone of our Nation's healthcare system.

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. 1297

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 "Patient and Physician Safety and Protection Act of 2005".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Federal Government, through the Medicare program, pays approximately $85,000,000,000 per year solely to train resident-physicians in the United States, and as a result, has an interest in assuring the safety of patients treated by resident-physicians and the safety of resident-physicians themselves.

(2) Resident-physicians spend as much as 30 to 40 percent of their time performing activities not related to the educational mission of training competent physicians.

(3) The excessive numbers of hours worked by resident-physicians is inherently dangerous for patient care and for the lives of resident-physicians.

(4) The scientific literature has consistently demonstrated that the sleep deprivation of the magnitude seen in residency training programs leads to cognitive impairment.

(5) A substantial body of research indicates that excessive hours worked by resident-physicians lead to higher rates of medical error, motor vehicle accidents, depression, and pregnancy complications.
(6) The medical community has not adequately addressed the issue of excessive resident-physician work hours.

(7) The Federal Government has regulated the work hours of industries when the safety of employees or the public is at risk.

(8) The Institute of Medicine has found that as many as 98,000 deaths occur annually due to medical errors, a preventable, avoidable, and necessary approach to reducing errors in hospitals is reducing the fatigue of resident-physicians.

SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION REGARDING WORKING HOURS OF MEDICAL RESIDENTS, INTERNS, AND FELLOWS.

(a) In general.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) by striking “and” at the end of subparagraph (U);

(B) by striking the period at the end of subparagraph (V) and inserting “; and”;

and

(C) by inserting after subparagraph (V) the following new subparagraph:

“(W) in the case of a hospital that uses the services of postgraduate trainees (as defined in subsection (k)(4)), to meet the requirements of subsection (k)(4);”;

and

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

“(k)(4)(A) In order that the working conditions and hours of postgraduate trainees promote the quality of medical care in hospitals, as a condition of participation under this title, each hospital shall establish the following limits on working hours for postgraduate trainees:

“(i) Subject to subparagraphs (B) and (C), postgraduate trainees may work no more than a total of 40 hours per week;

“(ii) Subject to subparagraph (C), postgraduate trainees may work no more than a total of 20 hours per shift;

“(iii) Subject to subparagraph (B), postgraduate trainees—

“(A) shall have at least 10 hours between scheduled shifts;

“(B) shall have at least 1 full day off every 7 days off and 1 full weekend off per month;

“(C) subject to subparagraph (B), who are assigned to patient care responsibilities in an emergency department shall work no more than 12 continuous hours in that department;

“(D) shall not be scheduled to be on call in the hospital more often than every third night; and

“(E) shall not engage in work outside of the educational program that interferes with the ability of the postgraduate trainee to achieve the goals and objectives of the program or that, in combination with the program working hours, exceeds 80 hours per week.

“(B) Subject to clause (ii), the Secretary shall promulgate such regulations as may be necessary to ensure quality of care is maintained during the transfer of direct patient care from 1 postgraduate trainee to another at the end of each shift.

“(ii) Such regulations shall ensure that, except in the case of individual patient emergencies, in the period in which a postgraduate trainee is providing for the transfer of direct patient care (as referred to in clause (i)) does not extend such trainee’s shift in excess of 24 hours beyond the 24-hour period referred to in subparagraph (A)(i) or the 12-hour period referred to in subparagraph (A)(iii), as the case may be.

“(C) In addition, regulations under subparagraph (A) and requirements of subparagraph (B) shall not apply to a hospital during a state of emergency declared by the Secretary that applies with respect to that hospital.

“(2) The Secretary shall promulgate such regulations as may be necessary to monitor and supervise postgraduate trainees assigned patient care responsibilities as part of an approved residency training program, as well as to assure quality patient care.

“(3) Each hospital shall inform postgraduate trainees—

“(A) of their rights under this subsection, including methods to enforce such rights (including so-called whistle-blower protections); and

“(B) of the effects of their acute and chronic sleep deprivation both on themselves and on their patients.

“(4) For purposes of this subsection, the term ‘postgraduate trainee’ means a postgraduate medical resident, intern, or fellow.”.

(b) Designation.—

(1) In general.—The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’), shall designate an individual within the Department of Health and Human Services to handle all complaints of violations that arise from a postgraduate trainee (as defined in paragraph (4) of section 1886(k) of the Social Security Act, as added by subsection (a), who reports that the hospital operating the medical residency training program for which the trainee is enrolled is in violation of the requirements of such section.

(2) Grievance rights.—A postgraduate trainee may bring a complaint with the Secretary concerning a violation of the requirements under section 1886(k). Such a complaint may be filed anonymously. The Secretary may conduct any investigation and take corrective action with respect to such a violation.

(3) Enforcement.—

(A) Civil money penalty enforcement.—Subject to subparagraph (B), any hospital that violates the requirements under section 1886(k) is subject to a civil money penalty not to exceed $100,000 for each medical residency training program operated by the hospital in any 6-month period. The provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply to civil money penalties under this paragraph in the same manner as they apply to a penalty or proceeding under section 1128A(a) or (b) of the Social Security Act.

(B) Corrective action plan.—The Secretary shall establish procedures for providing a hospital with a corrective action plan with respect to a civil monetary penalty under subparagraph (A) with an opportunity to avoid such penalty by submitting an appropriate corrective action plan to the Secretary.

(4) Disclosure of Violations and Annual Reports.—The individual designated under paragraph (1) shall—

(A) provide for annual anonymous surveys of postgraduate trainees to determine compliance with the requirements under such section 1886(k) and for the disclosure of the results of such surveys to the public on a medical residency training program specific basis;

(B) based on such surveys, conduct appropriate on-site investigations;

(C) provide for disclosure to the public of violations of and compliance with, on a hospital and medical residency training program specific basis;

(D) make an annual report to Congress on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

(c) Whistleblower Protections.—

(1) In general.—A hospital covered by the regulations prescribed under section 1886(k) of the Social Security Act, as added by subsection (a), shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensation, terms, conditions, or privileges of employment, who in good faith (as defined in paragraph (2)), individually or in conjunction with another person or persons—

(A) reports a violation or suspected violation of such requirements to a public regulatory agency, a private accreditation body, or management personnel of the hospital;

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by such requirements;

(C) informs or discusses with other employees, representatives of employees, with patients or patient representatives, or with the public, violations or suspected violations of such requirements; or

(D) otherwise avails himself or herself of the rights set forth in such section or any subsection.

(2) Good faith defined.—For purposes of this subsection, an employee is deemed to act “in good faith” if the employee reasonably believes—

(A) that the information reported or disclosed is true; and

(B) that a violation has occurred or may occur.

(3) Effective date.—The amendments made by subsection (a) shall take effect on the first July 1 that begins at least 1 year after the date of enactment of this Act.

SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.

There are hereby appropriated to the Secretary of Health and Human Services such amounts as may be required to provide for additional payments to hospitals for their reasonable additional, incremental costs incurred in order to comply with the requirements imposed by this Act (and the amendments made by this Act).

Mr. ENSIGN. Mr. President, I come before the Senate today about a very serious issue that is threatening the disbursement of justice in the western United States.

My home State of Nevada, along with eight other States, has been part of an unbelievable population boom over the last several decades. As a result, we face a frustrating problem of increased traffic congestion, crowded schools, and a shortage of many services. However, there is one consequence of that growth that has reached a critical level because it is delaying and denying justice for too many Americans.

That is the situation with the Court of Appeals for the Ninth Circuit. The largest circuit in the country, it encompasses 20 percent of the entire Nation’s population. The Ninth Circuit has higher than the national average, and the trend is not changing. The Circuit is just too large. Each of the States covered by the Ninth Circuit saw population growths over the last decade, and three of the States—Nevada, Idaho, and Arizona—are in the top five in the country for population growth. Something must be done, or the Ninth Circuit will continue to bust at the seams.

That is why I am introducing legislation that would reorganize the current Ninth Circuit into 3 new circuits. The new Ninth Circuit would include California, Hawaii, Guam, and the Northern Marianas Islands. The new
Twelfth Circuit would be comprised of Arizona, Nevada, Idaho, and Montana. And the new Thirteenth Circuit would contain Oregon, Washington, and Alaska.

This splitting of the Ninth Circuit is absolutely necessary if the residents of Nevada and those other western states are to have equal access to justice. Right now, citizens living under the Ninth Circuit face incomparable delays and judicial inconsistencies. Recently, the Ninth Circuit had more cases pending for more than one year than all other circuits combined.

And because of the sheer magnitude of the number of judges in the Ninth Circuit, it has become increasingly difficult for judges to track the opinions of the other judges in the circuit. In fact, it happened that on the same day, 2 different 3-judge panels in the Ninth Circuit issued different legal standards to resolve the same issue. Can you imagine the headache this causes for district judges who are supposed to follow the standard set by the Ninth Circuit? It compromises the system of justice that is the cornerstone of our democracy.

As a Nevadan, I am also angered by some of the decisions made by the Ninth Circuit Court. I know how Nevadans feel about issues such as the Pledge of Allegiance. Like me, they were outraged that the phrase “under God” was ruled unconstitutional by the Ninth Circuit. That wasn’t the only case (the Ninth Circuit misinterpreting the Constitution and our laws. In 1997 alone, the United States Supreme Court overruled 27 out of 28 Ninth Circuit decisions. I wish I could say that was just an “off” year for the court, but their track record wasn’t much better in the 6 years before that.

Rather than continue down this path of judicial destruction, it is time to use a forward-looking approach to the access of justice in the western United States. I urge my colleagues to join me in our Constitutional duty to establish courts for the sake of justice in this country. Failure to act will cost the citizens of my state, and many other western states, dearly.

By Mr. DE MINT (for himself, Mr. SANTORUM, Mr. GRAHAM, Mr. CRAPO, Mr. Coburn, Mr. SUNUNU, Mr. ISAACSON, Mr. ENZI, Mr. LOTT, Mr. BROWNBACK, and Mr. CRAIG).

S. 1302. A bill to amend the Social Security Act to promote the false notion that Social Security actually saves the money workers pay in, and it is time to end this abusive practice. It is time we start saving these resources in personal accounts that politicians cannot touch.

Money cannot have 2 masters—it either belongs to the government or to individual Americans. The only way to prevent Congress from spending Social Security surpluses is to rebate these funds back to a worker in a personal account with their name on it. The only true lock-box is a personal account.

President Bush has done a good job helping Americans understand the problem. Now it is up to Congress to build consensus around some solutions. Every American and nearly everyone in Congress agree on at least one core principle: Social Security money should only be spent on Social Security. Before we proceed, we have an honest debate on long-term solutions, we must restore trust with Americans.

Stopping the raid will strengthen Social Security and is the first step toward long-term reform.

I ask unanimous consent that the bill be ordered to be printed in the RECORD.

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

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Stop the Raid on Social Security Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

S. 1302

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

TITLE I—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM


“TITLE I—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM


PART B—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

“PART B—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

SEC. 252. Definitions.

SEC. 253. Establishment of Program.

SEC. 254. Participation in Program.

SEC. 255. Investment accounts.

SEC. 256. Distributions of account balance and position of account assets.

SEC. 257. Additional rules relating to disposition of account assets.

SEC. 258. Administration of the program.

SEC. 259. Social security personal retirement accounts.

SEC. 260. Tax treatment of social security personal retirement accounts.


SEC. 263. Insurance benefits.

SEC. 264. Administration.

TITLE II—TAX TREATMENT

SEC. 201. Tax treatment of social security personal retirement accounts.


SEC. 203. Tax treatment of social security personal retirement accounts.

SEC. 204. Administration.


SEC. 206. Insurance benefits.

SEC. 207. Administration.

TITLE III—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

SEC. 301. Establishment of the Social Security Personal Retirement Accounts Program.

SEC. 302. Participation in Program.

SEC. 303. Administration of the program.


SEC. 305. Insurance benefits.

SEC. 306. Administration.

TITLE IV—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM


SEC. 402. Participation in Program.

SEC. 403. Administration of the program.


SEC. 405. Insurance benefits.

SEC. 406. Administration.

TITLE V—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM


SEC. 502. Participation in Program.

SEC. 503. Administration of the program.


SEC. 505. Insurance benefits.

SEC. 506. Administration.

SEC. 2. FINDINGS.

Congress makes the following findings:

1. President Franklin Roosevelt’s January 17, 1955, message on Social Security declared that, “First, the system adopted, except for the money necessary to initiate it, should be self-sustaining in the sense that funds for the payment of insurance benefits should not come from the proceeds of general taxation.

2. Social Security’s financial integrity is maintained by requiring that benefit payments do not exceed the program’s dedicated revenues and the interest earned on the balances in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund over the long term.

3. The separation of Social Security from other budget accounts also serves to protect Social Security benefits from being combined with other Federal programs for its funding resources.

4. Comprehensive reforms should be enacted to:

(A) fix Social Security permanently;

(B) ensure that any use of general revenues for the program is temporary; and

(C) provide for the eventual repayment of any transfers from the general fund to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

TITLE I—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM


(a) In General.—Title II of the Social Security Act is amended—

(1) by inserting before section 201 the following:

“PART A—INSURANCE BENEFITS,”

and

(2) by adding at the end of such title the following new part:

“PART B—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

SEC. 251. For purposes of this part—

“(1) PARTICIPATING INDIVIDUAL.—The term ‘participating individual’ has the meaning provided in section 253(a).

“(2) ACCOUNT ASSETS.—The term ‘account assets’ means, with respect to a social security personal retirement account, the total amount transferred to such account, increased by earnings credited under this part and reduced by losses and administrative expenses under this part.

“(3) CERTIFIED ACCOUNT MANAGER.—The term ‘certified account manager’ means a person who is certified under section 258(b).

“(4) BOARD.—The term ‘Board’ means the Social Security Personal Savings Board established under section 258(a).

“(5) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(6) PROGRAM.—The term ‘Program’ means the Social Security Personal Retirement Accounts Program established under this part.

“ESTABLISHMENT OF PROGRAM

SEC. 252. There is hereby established a Social Security Personal Retirement Accounts Program. The Program shall be governed by regulations which shall be prescribed by the Social Security Personal Savings Board. The Board shall consist of five members appointed by the Board, the Commissioner, and the Secretary of the Treasury. The Board shall establish the Fund and shall institute each other in the regulations relating to their respective duties under this part. Such regulations shall provide for appropriate exchange of information to assist them in performing their duties under this part.

“(a) PARTICIPATING INDIVIDUAL.—For purposes of this part, the term ‘participating individual’ means any individual—
“(1) who is credited under part A with wages paid after December 31, 2005, or self-
employment income derived in any taxable year ending after such date,
“(2) who is born on or after January 1, 1950, and
“(3) who has not filed an election to re-
nounce such individual’s status as a partici-
pating individual for purposes of this part.
Upon completion of the procedures pro-
vided for under paragraph (2), any such indi-
vidual who has made such an election shall
not be treated as a participating individual
under this part, effective as if such indi-
vidual had never been a participating indi-
vidual.
The Board shall provide for imme-
diate notification of such election to the
individual. The Board shall provide for im-
mediate notification of such election to the
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individual.

SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS
"SEC. 254. (a) ESTABLISHMENT OF AC-
COUNTS.—Under regulations which shall be
prescribed by the Board in consultation with the Secretary—
“(1) the Board shall establish a social se-
curity personal retirement account for each
participating individual (for whom a social security personal retirement account
otherwise has been established under this part)
upon initial receipt of a transfer under sub-
paragraph (B),
“(2) in accordance with section 255, the ac-
count assets are held for purposes of invest-
ment as the Board determines for purposes of this part—
“(A) the Secretary of the Treasury also shall
administer the account assets held for purposes of this part—
“(B) in accordance with section 255, the ac-
count assets are held for purposes of investment as the Board determines for purposes of this part—
“(C) NET TRUST FUND SURPLUS.—For pur-
poses of subparagraph (B), the term ‘net sur-
plus’ in connection with the Federal Old-Age
and Survivors Insurance Trust Fund for a calendar year means the excess, if any, of—
“(i) the sum of—
“(II) the total amount of self-employment
income derived during taxable years ending
during such calendar year by participating
individuals under section 1401(a) of such
Code,
“(C) IN GENERAL.—An electing
individual who has made such an election shall
be treated as a participating individual for
purposes of this part.

INVESTMENT OF ACCOUNTS
"SEC. 255. (a) DESIGNATION OF CERTIFIED
ACCOUNT MANAGERS.—Under the Program, a
participating individual is the product de-
by multiplying—
“(i) the sum of—
“(I) the total amount of wages paid to the
participating individual during such cal-
endar year on which there was imposed a tax
under section 3101(a) of the Internal Revenue
Code of 1986, and
“(II) the total amount of self-employment
income derived by the participating indi-
dividual during the taxable year ending
during such calendar year on which there was
imposed a tax under section 3101(a) of the In-
ternal Revenue Code of 1986, by
“(ii) the surplus percentage for such cal-
endar year determined under subparagraph
(B),

ACCOUNTING OF RECEIPTS AND DIS-
BURSEMENTS UNDER THE PROGRAM.—The
Board shall provide by regulation for an ac-
counting system for the Program that—
“(1) shall be maintained by or under the
Executive Director,

INVESTMENT OF ACCOUNTS
"SEC. 255. (a) DESIGNATION OF CERTIFIED
ACCOUNT MANAGERS.—Under the Program, a
certified account manager shall be des-
ignated on or before establishment of an in-
vesting individual to hold for investment under this
section such individual’s social security per-
sonal retirement account.

ACCOUNTING OF RECEIPTS AND DIS-
BURSEMENTS UNDER THE PROGRAM.—The
Board shall provide by regulation for an ac-
counting system for the Program that—
“(1) shall be maintained by or under the
Executive Director,
be made in such form and manner as shall be prescribed in regulations prescribed by the Board. Such regulations shall provide for annual selection periods during which participating individuals may make designations pursuant to subsection (a). Designations made pursuant to subsection (a) during any such annual period shall be irrevocable for the one-year period following such period, except that such regulations shall provide for such interim designations as may be necessitated by the discretion of a certifying account manager. Such regulations shall provide for such designations made by the Board on behalf of a participating individual in any case in which a timely designation is not made by the participating individual.

"(c) INVESTMENT.—Any balance held in a participating individual's social security personal retirement account under this part which is not necessary for immediate withdrawal shall be invested on behalf of such participating individual by the certifying account manager as follows:

"(1) INVESTMENT IN MARKETABLE GOVERNMENT SECURITIES.—In a representative mix of fixed marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the date of investment.

"(2) ADDITIONAL AND ALTERNATIVE INVESTMENTS.—Beginning with 2008, in such additional and alternative investment options in broadly diversified index fund investment options available within the Thrift Savings Fund established under section 457 of title 5, United States Code, as the Board determines would be prudent sources of retirement income that could yield greater amounts of income than the investment described in paragraph (1) and a participating individual may elect.

"DISTRIBUTIONS OF ACCOUNT BALANCE AT RETIREMENT

"SEC. 256. (a) PART A AND SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNT BENEFITS COMBINED.—Upon the date on which a participating individual becomes entitled to old-age insurance benefits under section 202(a), the Executive Director shall determine the total amount which would (but for this section) be payable as benefits under subsection (a), (b), (c), or (h) of section 202, subsections (e) and (f) of section 202 other than on the basis of disability, or any combination thereof, to any individual who is a participating individual.

"(b) MARGINAL AMOUNT DEFINED.—For purposes of this subsection, the term 'marginal amount' means an amount that meets the following requirements:

"(1) The amount starting date (as defined in section 72(e)(4) of the Internal Revenue Code of 1986) commences on the first day of the month beginning after the date of the purchase of the annuity.

"(2) The terms of the annuity provide for a series of equal annual payments, subject to adjustment as provided in subsection (d), payable monthly to the participating individual during the life of the participating individual which are, on an annual basis, equal to at least the minimum amount amount.

"(c) MARGINAL ANNUITY AMOUNT.—For purposes of this subsection, the term 'marginal annuity amount' means the amount equal to 10 percent of the Social Security Line for the individual (determined as of the date the participating individual becomes entitled to old-age insurance benefits under subsection (a)).

"(d) COST OF LIVING ADJUSTMENT.—The terms of any annuity described in subsection (b)(2) shall include an increase in the monthly annuity amount thereunder determined in the same manner and at the same rate as primary insurance amounts are increased under section 215(i).

"(e) ASSUMPTIONS.—The assumptions under subsection (b) include the probability of survival of the participating individual (and the spouse, in the case of a joint annuity), future projection of investment earnings based on investment of the account assets, and expected price inflation. Determinations under this subsection shall be made in accordance with regulations which shall be prescribed by the Board of Trustees using generally accepted actuarial assumptions, except that no differentation shall be made in such assumptions on the basis of sex, race, health status, or other characteristics other than age. Such assumptions may include, for determinations made prior to 2009, an assumed interest rate reflecting investment earnings of the Federal Old-Age and Survivors Insurance Trust Fund.

"(f) OFFSET OF PART A BENEFITS.—Notwithstanding any other provision of this title, in the case of a participating individual to which subsection (a)(1) applies, the total amount of monthly old-age insurance benefits payable from社会化 personal retirement account of the participating individual, is equal to the minimum amount that a participating individual shall elect to have the Executive Director distribute the balance in the participating individual's social security personal retirement account in the form of a lump-sum payment; or

"(B) if such balance is sufficient to purchase an annuity which meets the requirements of subsection (b) (other than the requirement that the annuity provides for payments which, on an annual basis, are equal to at least the minimum amount amount), purchase such an annuity on behalf of the individual.

"(B) MINIMUM ANNUITY DEFINED.—For purposes of this subsection, the term 'minimum annuity' means an annuity that meets the following requirements:

"(1) the divorced spouse shall be deemed a participating individual for purposes of this part, and
shall transfer from such account an amount upon receipt of such certification from the security personal retirement account. In closing out the participating individual's social security personal retirement account and, upon receipt of such certification, the certified account manager shall transfer from such account an amount equal to such certified amount to the Secretary of the Treasury for subsequent transfer to—

"(A) the social security personal retirement account of the surviving spouse of such participating individual;

"(B) if there is no such surviving spouse, to such other person as may be designated by the participating individual in accordance with regulations which shall be prescribed by the Board, or

"(C) if there is no such designated person, to the estate of such participating individual.

"2. Treatment of surviving spouse who is not a participating individual.—In the case of a surviving spouse referred to in paragraph (1), in the case of the death of the participating individual, is not a participating individual and for whom a social security personal retirement account has not been established—

"(A) the surviving spouse shall be deemed a participating individual for purposes of this part, and

"(B) the Board shall establish a social security personal retirement account for the surviving spouse and shall direct the appropriate certified account manager to perform such transfer.

"(c) Closing of account of participating individuals who are ineligible for benefits upon attaining retirement age.—In any case in which the date on which the participating individual attains retirement age (as defined in section 216(b)), such individual is eligible for such benefit under section 202(a), the Commissioner shall so certify to the Executive Director and, upon receipt of such certification, the Executive Director shall close out the participating individual's social security personal retirement account. In closing out the account, the Executive Director shall certify to the certified account manager the amount of the account assets, and, upon receipt of such certification, the certified account manager shall transfer from such account an amount equal to such certified amount to the Secretary of the Treasury for subsequent transfer to—

"(1) in general.—Each member shall be appointed for a term of 4 years, except as provided in clauses (i) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this section.

"(2) terms.—

"(I) in general.—Each member shall be appointed for a term of 4 years, except as provided in clauses (i) and (iii).

"(III) Vacancies.—Any member appointed to fill a vacancy occurring before the expiration of the term of the member's predecessor shall be appointed only for the remainder of that term. A vacancy may be filled with the consent of the President of the Senate, in consultation with the ranking member of the Senate, and the Senate, if required by the terms of the appointment. A member shall continue in office for the remainder of the term for which the member was appointed, and the member's successor shall be appointed for a term of 4 years.

"(d) Administrative expenses.—

"(I) in general.—Under regulations which shall be prescribed by the Board, account assets are invested with the advice and consent of the Senate and shall be included as a separate item in the financial and operating condition of the Board.

"(2) temporary authorization of appropriations for startup administrative costs.—For any such administrative costs that remain after applying paragraph (1) for each of the first five fiscal years that end after the date of the enactment of this part, there are authorized to be appropriated such amounts as may be necessary for each of such fiscal years.

"Administration of the program

"Sec. 258. (a) General provisions.—

"(I) establishment and duties of the social security personal retirement account

"(II) establishment.—There is established within the Social Security Administration a Social Security Personal Savings Board.

"(B) Nomenclature.—The Board shall be composed of 6 members as follows:

"(i) two members appointed by the President who may not be of the same political party;

"(ii) one member appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

"(iii) one member appointed by the majority leader of the Senate, in consultation with the Majority Leader of the Senate;

"(iv) one member appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate;

"(C) advice and consent.—Appointments under this paragraph shall be made by and with the advice and consent of the Senate.

"(D) membership requirements.—Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

"(E) terms.—

"(I) in general.—Each member shall be appointed for a term of 4 years, except as provided in clauses (i) and (iii).

"(ii) initial members appointed under each clause of subparagraph (B), one of the members appointed under subparagraph (B)(i) as described in section 202(a)(i) of title 42 of the United States Code, while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

"(iii) compensation;—The Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. No members of the Board shall constitute a quorum for the transaction of business.

"(iv) compensation;—The Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. Four members of the Board shall constitute a quorum for the transaction of business.

"(v) compensation;—The Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. Any member who is such an officer or employee shall not suffer any loss of pay or deduction from annual leave on the basis of any time used by such member in performing such a function.

"(vi) compensation;—The Board shall discharge the responsibilities in the interest of participating individuals and the Program.

"(vii) standard for board's discharge of responsibilities.—The members of the Board shall discharge their responsibilities in the interest of participating individuals and the Program.

"(viii) annual report.—The Board shall submit an annual report to the President, to each House of Congress, and to the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund regarding the financial and operating condition of the Program.

"(ix) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(x) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xi) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xiii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xiv) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xv) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xvi) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xvii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

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"(xxv) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xxvi) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xxvii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

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"(xxxi) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xxxii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xxxiii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

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"(xli) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xliii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xliv) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlv) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlvi) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlvii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlviii) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(xlix) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.

"(l) public accountant.—The Board shall be responsible for the financial and operating condition of the Program.
who shall conduct an examination of all records maintained in the administration of this part that the public accountant considers necessary.

(3) EXCURSION. The public accountant conducting an examination under clause (ii) shall determine whether the records referred to in such clause have been maintained in conformance with generally accepted accounting principles. The public accountant shall transmit to the Board a report on his examination.

(IV) RELIANCE ON CERTIFIED ACTUARIAL MATTERS.—In making a determination under clause (iii), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant in conducting reliance in this part transmitted to the Board under such clause.

(2) EXECUTIVE DIRECTOR.—

(A) APPOINTMENT AND REMOVAL.—The Board shall appoint, with regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board. The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans. The Executive Director may, with the concurrence of 4 members of the Board, remove the Executive Director from office for good cause shown.

(B) POWERS AND DUTIES OF EXECUTIVE DIRECTOR.—The Executive Director shall—

(i) carry out the policies established by the Board,

(ii) administer the provisions of this part in accordance with the policies of the Board,

(iii) in consultation with the Board, prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this part, and

(iv) meet from time to time with the Board upon request of the Board.

(C) ADMINISTRATIVE AUTHORITIES OF EXECUTIVE DIRECTOR.—The Executive Director may—

(i) appoint such personnel as may be necessary to carry out the provisions of this part,

(ii) subject to approval by the Board, procure the services of experts and consultants under section 3109 of title 5, United States Code,

(iii) secure directly from any agency or instrumentality of the Federal Government any information which, in the judgment of the Executive Director, is necessary to carry out the provisions of this part and the policies of the Board, and which shall be provided by such agency or instrumentality upon the request of the Executive Director,

(iv) pay the compensation, per diem, and travel expenses of individuals appointed under clauses (i), (ii), and (v) of this subparagraph, subject to such limits as may be established by such individuals,

(v) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses and indemnify such individuals for attorneys' fees and expenses incurred in any action or proceeding in which such individuals are compelled by law to submit to the testimony of their official duties.

(D) APPOINTMENT OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner shall—

(A) prescribe such regulations (supplementary to and consistent with the regulations prescribed by the Board and the Executive Director) as may be necessary for carrying out the duties of the Commissioner under this part,

(B) meet from time to time with, and provide information to, the Board upon request of the Board concerning functioning of the Social Security Personal Retirement Accounts Program, and

(C) in consultation with the Board and utilizing available Federal agencies and resources, develop a campaign to educate workers about the Program.

(b) CERTIFICATION AND OVERSIGHT OF ACCOUNT MANAGERS.—

(1) CERTIFICATION BY THE BOARD.—

(A) IN GENERAL.—Any person that is a qualified professional asset manager (as defined in section 831(a) of title 5, United States Code) may apply to the Board (in such form and manner as shall be provided by the Board by regulation) for certification under this subsection as a certified account manager. In making certification decisions, the Board shall consider the applicant’s general character and fitness, financial history and future earnings prospects, and ability to serve participating individuals under the Program. Certification by the Board deems necessary to carry out this part. Certification of any person under this subsection shall be contingent upon entry into a contractual arrangement between the Board and such person.

(B) NONDELEGATION REQUIREMENT.—The authority of the Board to make any determination to deny any application under this subsection may not be delegated by the Board.

(2) OVERSIGHT OF CERTIFIED ACCOUNT MANAGERS.—

(A) ROLE OF REGULATORY AGENCIES.—The Board may enter into cooperative arrangements with Federal and State regulatory agencies identified by the Board as having jurisdiction over persons eligible for certification under this subsection so as to ensure that the provisions of this part are enforced in a manner consistent with and supportive of the requirements of other provisions of Federal law applicable to them. Such Federal and State regulatory agencies cooperating with the Board to the extent that the Board determines that such cooperation is necessary and appropriate to ensure that the provisions of this part are effectively implemented.

(B) ACCESS TO RECORDS.—The Board may from time to time require any certified account manager to file such reports as the Board may specify as necessary for the administration of this part. In prescribing such regulations, the Board shall impose the regulatory burden imposed upon certified account managers while taking into account the benefit of the information to the Board in carrying out its functions under this part.

(3) REVOCATION OF CERTIFICATION.—The Board shall provide, in the contractual arrangements entered into under this subsection with each certified account manager, for revocation of such person’s status as a certified account manager upon determination by the Board of such person’s failure to comply with the requirements of such contractual arrangements. Such arrangements shall include provision for notice and opportunity for review of any such revocation.

(c) PREEMPTION OF INCONSISTENT STATE LAW.—A provision of this part shall not be construed to preemption any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of this part, except to the extent that such provision of State law is inconsistent with this part and is pre-empted only to the extent of such inconsistency.

(b) CONFORMING AMENDMENT TO PART A.—Section 202 of such Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

“Adjustments Under Part B

(2) The amount of benefits under subsection (a), (b), (c), or (d), subsection (e) or (f) other than those of the Social Security Act, shall include information determined by the Social Security Personal Savings Board as necessary to fully inform such eligible individual of the balance, investment performance, and administrative expenses of such account.”

(a) Special Rules Relating to Distribution of Closed Account Under Section 257(d) of the Social Security Act.—Section 86(a) of such Code (as amended by paragraph (2) is amended by adding at the end the following new paragraph:

"(4) Distribution of Paragraph (2)(b) to Distri- butions of Closed Account Under Section 257(d) of Social Security Act.—Notwithstanding any other provision of this subsection, any amount received pursuant to the closing of an account under section 257(d) of the Social Security Act, paragraph (2)(B) shall apply to such amounts, and for such purposes the amount allocated to the investment in the contract shall be zero."

(b) Effective Date.—The amendments made by this subsection shall apply to taxable years beginning after the end of the calendar year in which this Act is enacted.

(c) Repeal of Tax to Apply to Amounts of Social Security Personal Retirement Accounts.—

(1) In General.—Part IV of subchapter A of chapter 11 of such Code (relating to taxable amounts, and for such purposes the amount allocated to the investment in the contract shall be zero."

(2) Clerical Amendment.—The table of sections for part IV of subchapter A of chapter 11 of such Code is amended by adding at the end the following new section:

"SEC. 2509. Social Security personal retirement accounts. —"For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of the assets of a social security personal retirement account transferred from such account by the Secretary under section 2503 of the Social Security Act.

(2) Clerical Amendment.—The table of sections for part IV of subchapter A of chapter 11 of such Code is amended by adding at the end the following new item:

"SEC. 2509. Social security personal retirement accounts. —"For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of the assets of a social security personal retirement account transferred from such account by the Secretary under section 2503 of the Social Security Act.

(3) Effective Date.—The amendments made by this subsection shall apply to decrements in an estate on or after the calendar year in which this Act is enacted.

By Mr. ROCKEFELLER (for himself, Mr. REED, Mr. LAUTENBERG, Mr. CORZINE, Mr. SAR- BANES, and Mr. KERRY):

S. 1303. A bill to amend the Social Security Act to guarantee comprehensive health care coverage for all children born after 2006; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today with my friends and colleagues—Senators REED, LAUTENBERG, CORZINE, and KERRY—to introduce an important piece of legislation, the MediKids Health Insurance Act of 2005. This legislation will provide health insurance for every child in the United States by 2012, regardless of family income. My long-time friend from California, Congressman Stark, is introducing a companion bill in the House. He has worked tirelessly to improve access to health care for all Americans, and I am pleased to be joining him once again to advocate on behalf of America’s children.

We have introduced this legislation in each of the last three Congresses because we know how vital health insur-

ance is to a child. Children with untreated illnesses are less likely to learn and therefore less likely to move out of poverty. Such children have an inherent disadvantage when it comes to being productive members of society. We can have a positive impact on our children’s lives today and tomorrow by guaranteeing health insurance coverage for all. Children are inexpensive to insure, but the rewards for providing them with health care during their early education and development years are enormous.

Despite the well-documented benefits of providing health insurance coverage for children, there are still over 8 million uninsured children in America. We can and must do better. Our children are our future. No child in this country should ever be without access to health care. This is why I am proud to reintroduce the MediKids Health Insurance Act of 2005.

This legislation is a clear investment in our future—our children. Every child would be automatically enrolled at birth into a new, comprehensive Federal safety net health insurance program beginning in 2007. The benefits would be tailored to meet the needs of children in the United States, similar to those currently available to children through the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Families below 150 percent of poverty would have no premiums or co-payments, and there would be no cost sharing for preventive care or well-child visits for any child.

MediKids children would remain enrolled in the program throughout childhood. When families move to another state, Medikids would be available until parents can enroll their children in a new insurance program. Between jobs or during family crises, Medikids would offer extra security and ensure continuous health coverage to our Nation’s children. During that critical period when a family is just climbing out of poverty and out of the eligibility range for means-tested assistance programs, MediKids would fill in the gaps until the parents can move into jobs that provide reliable health insurance coverage. The key to our program is that whenever other sources of health insurance fail, MediKids would stand ready to cover the health needs of our next generation. Without MediKids, every child in America would be able to grow up with consistent, continuous health insurance coverage.

Like Medicare, MediKids would be independently financed, would cover benefits tailored to the needs of its target population, and would have the goal of achieving nearly 100 percent health insurance coverage for the children of this country—just as Medicare has done for our Nation’s seniors and disabled population over its 40-year history. As created Medicare, seniors were more likely to be living in poverty than any other age group. Most were unable to afford need-

ed medical services and unable to find health insurance in the market even if they could afford it. Today, it is our Nation’s children who shoulder the burden of poverty. Children in America are nearly twice as vulnerable to poverty as adults. It’s time we make a significant national investment in the future of America by guaranteeing all children the health coverage they need to make a healthy start in life.

Congress cannot rest on the success we achieved by expanding Medicaid and passing the State Children’s Health Insurance Program (CHIP). Although each was a remarkable step toward reducing the ranks of the uninsured, particularly uninsured children, we still have a long way to go. Even with perfect enrollment in CHIP and Medicaid, there would still be a great number of children without health insurance. What’s more troubling is the fact that both Medicaid and CHIP are in serious jeopardy because of the budget cuts being proposed by the current Administration.

It’s long past time to rekindle the discussion about how we are going to provide health insurance for all Americans. The bill we are introducing today—the MediKids Health Insurance Act of 2005—is a step toward eliminating the irrational and tragic lack of health insurance for so many children and adults in our country. I urge my colleagues to move beyond partisan politics and to support this critical step toward universal coverage.

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. 1303

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; FINDINGS.

(a) Short Title.—This Act may be cited as the “MediKids Health Insurance Act of 2005”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents; findings
Sec. 2. Benefits for all children born after 2006

"TITLE XXII—MEDIKIDS PROGRAM" • Sec. 2201. Eligibility
• Sec. 2202. Benefits
• Sec. 2203. Premiums
• Sec. 2204. Medikids Trust Fund
• Sec. 2205. Oversight and accountability
• Sec. 2206. Inclusion of care coordination services

"Sec. 2207. Administration and miscellaneous provisions"

Sec. 3. MediKids premium

Sec. 4. Refundable credit for cost-sharing expenses under MediKids program

Sec. 5. Report on long-term revenues

(c) Findings.—Congress finds the following:

(1) More than 9 million American children are uninsured.

(2) Children who are uninsured receive less medical care and less preventive care and have a poorer level of health, which result in
lifetime costs to themselves and to the entire American economy.

(3) Although SCHIP and Medicaid are successfully extending a health coverage safety net to a growing portion of the vulnerable low-income population of uninsured children, they alone cannot achieve 100 percent health insurance coverage for our nation’s children. Inadequate gaps during outreach and enrollment, fluctuations in eligibility, variations in access to private insurance at all income levels, and variations in States’ ability to provide required matching funds.

(4) As all segments of society continue to become more transient, with many changes in employment, income, or marital status, or other changes affecting a child’s access to affordable insurance, farmworkers, will become a major concern for all families in the United States.

(5) The Medicare program has successfully evolved over the years to provide a stable, universal source of health insurance for the nation’s disabled and those over age 65, and provides a tested model for designing a program modeled after Medicare for America’s children.

(6) The program of insuring 100 percent of all American children could be gradually solved by automatically enrolling all children under age 6 under Medicare by December 31, 2006, in a program modeled after Medicare (and to be known as “MediKids”), and allowing those children to be transferred into other equivalent or better insurance programs, including either private insurance, SCHIP, or MediKid, if they are eligible to do so, but maintaining the child’s default enrollment in MediKids as long as the child’s access to other sources of insurance is lost.

(7) A family’s freedom of choice to use other insurers to cover children would not be interfered with in any way, and children eligible for SCHIP and Medicaid would continue to be enrolled in those programs, but the underlying safety net of MediKids would always be available to cover any gaps in insurance due to changes in medical condition, employment, income, or marital status, or other changes affecting a child’s access to alternative sources of insurance.

(8) The MediKids program can be administered without impacting the finances or status of Medicare programs, and

(9) The MediKids benefit package can be tailored to the special needs of children and updated over time.

(10) The financing of the program can be administered so as to avoid difficulty by a yearly payment of affordable premiums through a family’s tax filing (or adjustment of a family’s earned income tax credit).

(11) The cost of the program will gradually be as high as the number of children using MediciKids as the insurer of last resort increases, and a future Congress always can accelerate or slow down the enrollment process as desired, while the societal costs for emergency room usage, lost productivity and employment, income, or marital status, or other changes affecting a child’s access to affordable health insurance for the next generation of Americans will decline.

(12) Over time 100 percent of American children will always have basic health insurance, therefore enabling a healthier society.

SEC. 2. BENEFITS FOR ALL CHILDREN BORN AFTER DECEMBER 31, 2006.

(a) In General.—The Social Security Act is amended by adding at the end the following new title:

PUBLIC LAW 109-440—NOV. 21, 2006

TITLES XXII—MEDIKIDS PROGRAM

SEC. 2201. ELIGIBILITY.

(a) Eligibility of Individuals Born After December 31, 2006: All children under 23 years of age in fifth year.—An individual who meets the following requirements with respect to a month is eligible to enroll under this title with respect to such month:

(1) Age.

(A) First Year.—As of the first day of the first year in which this title is effective, the individual has not attained 11 years of age.

(B) Second Year.—As of the first day of the second year in which this title is effective, the individual has not attained 11 years of age.

(C) Third Year.—As of the first day of the third year in which this title is effective, the individual has not attained 16 years of age.

(D) Fourth Year.—As of the first day of the fourth year in which this title is effective, the individual has not attained 21 years of age.

(E) Fifth and Subsequent Years.—As of the first day of the fifth year in which this title is effective and each subsequent year, the individual has not attained 23 years of age.

(2) Citizenship.—The individual is a citizen or national of the United States or is permanently residing in the United States under a legal domicile.

(3) Enrollment Process.—An individual may enroll in the program established under this title only in such manner and form as may be determined by the Secretary, and only during an enrollment period prescribed by the Secretary consistent with the provisions of this section. Such regulations shall provide for a process under which—

(A) individuals who are born in the United States after December 31, 2006, are deemed to be enrolled at the time of birth and a parent or custodian of the individual is permitted to pre-enroll in the month prior to the expected month of birth;

(B) individuals who are born outside the United States after such date and who become eligible to enroll by virtue of immigration into (or an adjustment of immigration status in) the United States are deemed enrolled at the time of entry or adjustment of status;

(C) eligible individuals may otherwise be enrolled at such other times and manner as the Secretary determines, including the use of outstation eligibility sites as described in section 1906(a)(5)(A) and the use of presumptive eligibility provisions like those described in section 1906(a)(2); and

(D) at the time of automatic enrollment of a child, the Secretary provides for issuance to a parent or custodian of the individual a card evidencing enrollment under this title and for a description of such coverage.

The provisions of section 1837(b) apply with respect to enrollment under this title in the same manner as they apply to enrollment under part B of title XVIII. An individual who is enrolled under this title is not eligible to be enrolled under an MA or MA-PD plan under part C of title XVIII.

(5) Date Coverage Begins.—

(1) In General.—The period during which an individual is entitled to benefits under this title shall begin as follows, but in no case earlier than January 1, 2007:

(A) In the case of an individual who is enrolled under paragraph (1) or (2) of subsection (b), the date of birth or date of obtaining appropriate citizenship or immigration status, as the case may be.

(B) In the case of another individual who enrolls in a program before the month in which the individual satisfies eligibility for enrollment under subsection (a), the first day of such month of eligibility.

(C) In the case of an individual who enrolls during or after the month in which the individual first satisfies eligibility for enrollment under such subsection, the first day of the following month.

(2) Authority to provide for partial months of coverage.—Under regulations, the Secretary may, in the interest of the enrollee, provide for coverage periods that include portions of a month in order to avoid lapses of coverage.

(3) Payment of Payments.—No payments may be made under this title with respect to the expenses of an individual enrolled under this title unless such expenses were incurred by such individual during a period which, with respect to the individual, is a coverage period under this section.

(4) Expiration of Eligibility.—An individual’s coverage period under this section shall continue until the individual’s enrollment has been terminated because the individual no longer meets the requirements of eligibility (because of age or change in immigration status).

(5) Entitlement to MediKids Benefits for Enrolled Individuals.—An individual enrolled under this title is entitled to the benefits described in section 2202.

(6) Low-Income Information.—

(1) Inquiry of Income.—At the time of enrollment of a child under this title, the Secretary shall make an inquiry of whether the family income (as determined for purposes of section 1906(b)), which includes the child is within any of the following income ranges:

(A) Up to 150 percent of poverty. —The income of the family does not exceed 150 percent of the poverty line for a family of the size involved.

(B) Between 150 and 200 percent of poverty. —The income of the family exceeds 150 percent, but does not exceed 200 percent, of such poverty line.

(C) Between 200 and 300 percent of poverty. —The income of the family exceeds 200 percent, but does not exceed 300 percent, of such poverty line.

(2) Coding.—If the family income is within a range described in paragraph (1), the Secretary shall encode in the identification card issued in connection with eligibility under this title a code indicating the range applicable to the family of the child involved.

(3) Letter to Provider Verification through Electronic System.—The Secretary also shall provide for an electronic system through which providers may verify which income range described in paragraph (1) is applicable to the family of the child involved.

(g) Construction.—Nothing in this title shall be construed as requiring (or preventing) an individual who is enrolled under this title from seeking medical assistance under a State medicaid plan under title XIX or child health assistance under a State child health plan under title XXI.

SEC. 2202. BENEFITS.

(a) Securitasal, Specification of Benefits Package.—

(1) In General.—The Secretary shall specify the benefits to be made available under this title consistent with the provisions of this section and in a manner designed to meet the health needs of enrollees.

(b) Annual Updating.—The Secretary shall establish procedures for the annual review and updating of such benefits to account for changes in medical practice, new information from medical research, and other relevant developments in health science.
``(4) INPUT.—The Secretary shall seek the input of the pediatric community in specifying and updating such benefits.

``(5) LIMITATION ON UPDATING.—In no case shall such costs (other than costs under this subsection) result in a failure to provide benefits required under subsection (b).

``(b) INCLUSION OF CERTAIN BENEFITS.—(1) MEDICARE BENEFITS.—Such benefits shall include (to the extent consistent with other provisions of this section) at least the same benefits (including coverage, access, cost-sharing, and beneficiary rights) that are available under parts A and B of title XVIII.

``(2) ALL REQUIRED MEDICAID BENEFITS.—Such benefits also include all items and services for which medical assistance is required to be provided under section 1902(a)(10)(A) to individuals described in such section, including early and periodic screening, diagnostic services, and treatment services.

``(3) INCLUSION OF PRESCRIPTION DRUGS.—Such benefits also shall include (as specified by the Secretary) benefits for prescription drugs and biologicals which are not less than the benefits for such drugs and biologicals under such plan.

``(d) ENROLLMENT (IN THE FORM OF DEDUCTIBLES, COINSURANCE, AND COPAYMENTS) OFFERED UNDER CHAPTER 89 OF TITLE 42—Such benefits shall be reduced by 50 percent for children in families the income of which is within the range described in section 2201(f)(1)(A); except that—

``(i) the cost-sharing otherwise applicable to the health benefits coverage in any of the four largest health benefits plans (determined by enrollment) offered under chapter 89 of title 5, United States Code, and including an out-of-pocket limit for catastrophic expenditures for care, except that no cost-sharing shall be imposed with respect to early and periodic screening and diagnostic services included under paragraph (2).

``(B) REDUCED COST-SHARING FOR LOW INCOME CHILDREN.—Such benefits shall provide that—

``(i) there shall be no cost-sharing for children in families the income of which is within the range described in section 2201(f)(1)(A); or

``(ii) the cost-sharing otherwise applicable shall be reduced by 75 percent for children in families the income of which is within the range described in section 2201(f)(1)(B); or

``(iii) the cost-sharing otherwise applicable shall be reduced by 50 percent for children in families the income of which is within the range described in section 2201(f)(1)(C).

``(C) CATASTROPHIC LIMIT ON COST-SHARING.—For a refundable credit for cost-sharing in the case of cost-sharing in excess of a percent of the individual’s adjusted gross income, see section 36 of the Internal Revenue Code of 1986.

``(d) PAYMENT SCHEDULE.—The Secretary, with the assistance of the Medicare Payment Advisory Commission, shall develop and implement a payment schedule for benefits covered under this section based on the extent feasible, such payment schedule shall be consistent with comparable payment schedules and reimbursement methodologies applied under parts A and B of title XVIII.

``(d) INPUT.—The Secretary shall specify such benefits and payment schedules after a determination by appropriate child health providers and experts.

``(e) ENROLLMENT IN HEALTH PLANS.—The Secretary shall provide for the offering of benefits under this title through enrollment in a health benefit plan that meets the same (or similar) requirements as the requirements for Medicare and Medicaid advantage plans under part C of title XVIII (other than any such requirements that relate to part D of such title). In the case of individuals enrolled under this title in such a plan, the payment rate shall be based on payment rates provided for under section 1833(c) in effect at the time of the enactment of the Medicare Prescription Drug, Modernization, and Improvement Act of 2003 (Public Law 108-173), except that such payment rates shall be modified in an appropriate manner to reflect differences between the population served under this title and the population under title XVIII.

``SEC. 2203. PREMIUMS.

``(a) AMOUNT OF MONTHLY PREMIUM.—

``(1) IN GENERAL.—The Secretary shall, during September of each year (beginning with the year 2006), establish a monthly MediKids premium for the following fiscal year: paragraph (2), the monthly MediKids premium for a year is equal to 1/12 of the annual premium rate computed under subsection (b).

``(2) ELIMINATION OF MONTHLY PREMIUM FOR DEMONSTRATION OF EQUIVALENT COVERAGE (INCLUDING COVERAGE UNDER LOW INCOME PROGRAMS).—The amount of the monthly premium imposed under this section for an individual with respect to a month shall be zero in the case of an individual who demonstrates to the satisfaction of the Secretary that the individual has basic health insurance coverage for that month.

``(b) ANNUAL PREMIUM.—

``(1) NATIONAL PER CAPITA AVERAGE.—The Secretary shall estimate the average, annual per capita amount that would be payable under this title with respect to individuals residing in the United States who meet the requirement of section 2201(a)(1) as if all such individuals were (and were enrolled) under this title during the entire year (and assuming that section 162(b)(2)(A)(1) did not apply).

``(2) ANNUAL PREMIUM.—Subject to subsection (d), the annual premium under this subsection for months in a year is equal to 25 percent of the average, annual per capita amount estimated under paragraph (1) for the year.

``(c) PAYMENT OF MONTHLY PREMIUM.—

``(1) PERIOD OF PAYMENT.—In the case of an individual who is enrolled in the program established by this title, subject to paragraph (d), the monthly premium shall be payable for the period commencing with the first month of such individual’s coverage period and ending with the month in which the individual’s coverage under this title terminates.

``(2) COLLECTION THROUGH TAX RETURN.—For provisions providing for the payment of monthly premiums under this subsection, see section 59B of the Internal Revenue Code of 1986.

``(3) PROTECTIONS AGAINST FRAUD AND ABUSE.—The Secretary shall develop, in coordination with States and other health insurance issuers, administrative systems to ensure that claims which are submitted to the program for payment are accurately submitted and are eligible for payment.

``(4) ELIMINATION IN PREMIUM FOR CERTAIN LOW-INCOME FAMILIES.—For provisions reducing the premium under this section for certain low-income families, see section 59B(d) of the Internal Revenue Code of 1986.

``SEC. 2204. MEDIKIDS TRUST FUND.

``(a) ESTABLISHMENT OF TRUST FUND.—

``(1) IN GENERAL.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ‘MEDIKIDS Trust Fund’ (in this section referred to as the ‘Trust Fund’). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and such amounts as may be deposited in the Trust Fund from the fund in advance of receipt of premiums under section 2203, and shall be subject to the provisions of title XIX.

``(2) PREMIUMS.—Premiums collected under section 59B of the Internal Revenue Code of 1986 shall be periodically transferred to the Trust Fund.

``(3) TRANSITIONAL FUNDING BEFORE RECEIPT OF PREMIUMS.—In order to provide for funds in the Trust Fund to cover such premiums from the fund in advance of receipt of premiums under section 2203, there are transferred to the Trust Fund to the general fund of the United States Treasury such amounts as may be necessary.

``(b) INCORPORATION OF PROVISIONS.—

``(1) IN GENERAL.—Subject to paragraph (2), subsection (b) (other than the last sentence) and subsections (c) through (I) of section 1841 shall apply with respect to the Trust Fund and this title in the same manner as they apply with respect to the Federal Supplemental Medical Insurance Trust Fund and part B, respectively.

``(c) MISCELLANEOUS REFERENCES.—In applying provisions of section 1841 under paragraph (1) —

``(A) any reference in such section to ‘this part’ is construed to refer to section XX;

``(B) any reference in section 1841(b) to section 1840(d) and in section 1841(i) to sections 1840(b)(1) and 1842(g) are deemed references to the comparable authority exercised under this title;

``(C) payments may be made under section 1841(g) to the Trust Funds under sections 1841 and 1841B to cover such funds for payments they made for benefits provided under this title; and

``(D) the Board of Trustees of the MEDIKIDS Trust Fund shall be the Board of Trustees of the Federal Supplemental Medical Insurance Trust Fund.

``SEC. 2205. OVERSIGHT AND ACCOUNTABILITY.

``(a) PERIODIC GAO REPORTS.—The Comptroller General of the United States shall periodically submit to Congress reports on the operation of the program under this title, including on the financing of coverage provided under this title.

``(b) PERIODIC MEMORANDUM REPORTS.—The Medicare Payment Advisory Commission shall periodically report to Congress concerning the program under this title.

``SEC. 2206. INCLUSION OF CARE COORDINATION SERVICES.

``(a) IN GENERAL.—

``(1) PROGRAM AUTHORITY.—The Secretary, beginning in 2007, may implement a care coordination services program in accordance with the provisions of this section under which, in appropriate circumstances, eligible individuals under section 2201 may elect to have health care services covered under this title managed and coordinated by a designated care coordinator.

``(2) ADMINISTRATION BY CONTRACT.—The Secretary may administer the program under this section through a contract with an appropriate program administrator.

``(3) COVERAGE—Care coordination services furnished in accordance with this section shall be treated under this title as if they were included in the definition of medical assistance for purposes under section 1861(s) and benefits shall be available under this title with respect to such services without the application of any deductible or coinsurance.

``(b) ELIGIBILITY CRITERIA; IDENTIFICATION AND NOTIFICATION OF ELIGIBLE INDIVIDUALS.—

``(1) INDIVIDUAL ELIGIBILITY CRITERIA.—The Secretary shall specify criteria to be used in making a determination as to whether an individual may appropriately be enrolled in
(A) EFFECTIVE DATE AND DURATION.—Enrollment of an individual in the program under this section shall be effective as of the first day of the month following the month in which the Secretary approves the individual’s application under paragraph (1), shall remain in effect for one month (or such longer period as the Secretary may specify), and shall be automatically renewed for additional periods, unless terminated in accordance with such procedures as the Secretary shall establish by regulation. Such procedures shall permit an individual to discontinue coverage at any time and without cause at re-enrollment intervals.

(B) LIMITATION ON REENROLLMENT.—The Secretary may establish limits on an individual’s eligibility to reenroll in the program under this section if the individual has disenrolled from the program more than once during a specified time period.

(d) PROGRAM.—The care coordination services program under this section shall include the following elements:

(1) BASIC CARE COORDINATION SERVICES.—

(A) IN GENERAL.—Subject to the cost-effectiveness criteria specified in subsection (b)(1), except as otherwise provided in this section, enrolled individuals shall receive services described in section 1905(c)(1) and may also receive additional items and services as described in subparagraph (B).

(B) ADDITIONAL BENEFITS.—The Secretary may specify additional benefits for which payment would not otherwise be made under this title that may be available to individuals enrolled in the program under this section (subject to an assessment by the care coordinator of an individual’s circumstance and need for such benefits) in order to encourage enrollment in, or to improve the effectiveness of, the program.

(2) CARE COORDINATION REQUIREMENT.—Notwithstanding any other provision of this title, the Secretary may provide that an individual enrolled in the program under this section may be entitled to payment under this title for any specified health care items or services only if the items or services have been furnished by the care coordinator, or coordinated through the care coordination services program. Under such provision, the Secretary shall prescribe exceptions for emergency medical services as described in section 1925(d)(3), and other exceptions determined by the Secretary for the delivery of timely and needed care.

(e) CARE COORDINATORS.—

(1) CONDITIONS OF PARTICIPATION.—In order to be qualified to furnish care coordination services under this section, an individual shall—

(A) be a health care professional or entity (which may include physicians, physician group practices, or other health care professionals or entities the Secretary may find appropriate) meeting such conditions as the Secretary may specify; (B) have entered into a care coordination agreement; and

(C) meet such criteria as the Secretary may specify (which may include experience with the provision of care coordination or primary care physician’s services).

(2) AGREEMENT TERM; PAYMENT.—

(A) DURATION AND RENEWAL.—A care coordination agreement under this subsection shall be for one year and may be renewed if the Secretary is satisfied that the care coordinator continues to meet the conditions of participation specified in paragraph (1).

(B) PAYMENT FOR SERVICES.—The Secretary may negotiate or otherwise establish payment terms and rates for services described in subsection (d)(1).

(C) LIABILITY.—Care coordinators shall be subject to liability for actual health damages which may be suffered by recipients as a result of the care coordinator’s decisions, failure or delay in making decisions, or other actions as a care coordinator.

(D) TERMS.—In addition to other terms and conditions, a care coordination agreement under this section shall include the terms specified in subparagraphs (A) through (C) of section 1905(c)(3).

SEC. 2207. ADMINISTRATION AND MISCELLANEOUS.

(a) IN GENERAL.—Except as otherwise provided in this title—

(1) the Secretary shall enter into appropriate contracts with providers of services, other health care providers, carriers, and fiscal intermediaries, taking into account the types of Medicare payments under title XVIII, with respect to such entities, to administer the program under this title; (2) beneficiary protections for individuals enrolled under this title shall not be less than the beneficiary protections (including limits on balance billing) provided medicare beneficiaries under title XVIII; (3) benefits described in section 1902 that are payable under this title to such individuals shall be paid in a manner specified by the Secretary (taking into account, and based upon, the manner in which they are provided under title XVIII); and (4) provider participation agreements under title XVIII shall be for one year and may be renewed if the Secretary shall determine that the care coordinator continues to meet the conditions of participation specified in paragraph (1).

(b) COORDINATION WITH MEDICAID AND SCHIP.—Notwithstanding any other provision of law, individuals entitled to benefits for items and services under this title who also qualify for benefits under title XIX or XXI or any other Federally funded health care program that provides basic health insurance coverage described in section 1902(b)(2) of such Act shall be used in a manner that improves services to beneficiaries under title XIX of such Act, such as through expansion of eligibility, improved nurse and nurse aide staffing and improved inspections of nursing facilities, and coverage of additional services. (c) MEDIKIDS AS PRIMARY PAYOR.—In applying the definitions of the Social Security Act, the Medikids program under title XXII of such Act shall be treated as a primary payor in cases in which the election described in section 2207(b)(2) of such Act, as added by subsection (a), has been made.

(d) EXPANSION OF MEDPAC MEMBERSHIP TO INCLUSIONS.—

(1) IN GENERAL.—Section 1850(c)(3) of the Social Security Act (42 U.S.C. 1395c–2(c)(3)) is amended—

(A) in paragraph (1), by striking “17” and inserting “19”;

(B) in subparagraph (B) inserting “19”;

(C) in paragraph (2), by inserting “children’s health,” after “other health professionals.”;

(2) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(A) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1850(c)(3) of the Social Security Act (42 U.S.C. 1395c–2(c)(3)), the initial terms of the 2 additional members of the Commission provided for by the amendment under subsection (a)(1) are as follows: (i) One member shall be appointed for 1 year by the President; (ii) One member shall be appointed for 2 years.

(B) COMMENCEMENT OF TERMS.—Such terms shall begin on January 1, 2006.

(3) DUTIES.—Section 1850(d)(1)(A) of such Act (42 U.S.C. 1395c–2(d)(1)(A)) is amended by inserting before the semicolon at the end of the following: “and payment policies under title XXII.”

SEC. 3. MEDIKIDS PREMIUM.

(a) GENERAL RULE.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (repealed by the amendments determining the Medicare Priority Determination) is amended by adding at the end the following new part:
"PART VIII.—MEDIKIDS PREMIUM"

"Sec. 59B. MediKids premium"

"(a) IMPOSITION OF TAX.—In the case of a taxpayer to whom this section applies, there is hereby imposed in addition to any other tax imposed by this subtitle a MediKids premium for the taxable year.

"(b) INDIVIDUALS SUBJECT TO PREMIUM.—"(1) This section shall apply to a taxpayer if a MediKid is a dependent of the taxpayer for the taxable year.

"(2) MediKids.—For purposes of this section, the term 'MediKid' means any individual enrolled in the MediKids program under title XXII of the Social Security Act.

"(c) PHASEOUT OF EXEMPTION.—For purposes of this section, the MediKids premium for a taxable year is the sum of the monthly premiums (for months in the taxable year) determined under section 2203 of the Social Security Act with respect to each MediKid who is a dependent of the taxpayer for the taxable year.

"(d) EXCEPTIONS BASED ON ADJUSTED GROSS INCOME.—"(1) EXEMPTION FOR VERY LOW-INCOME TAXPAYERS.—"(A) IN GENERAL.—No premium shall be imposed by this section on any taxpayer having an adjusted gross income not in excess of the exemption amount.

"(B) EXEMPTION AMOUNT.—For purposes of this paragraph, the exemption amount is—

"(i) $11,245 in the case of a taxpayer having 1 MediKid;

"(ii) $24,135 in the case of a taxpayer having 2 MediKids;

"(iii) $29,025 in the case of a taxpayer having 3 MediKids, and

"(iv) $33,915 in the case of a taxpayer having 4 or more MediKids.

"(2) PREMIUM.—In the case of a taxpayer having an adjusted gross income which exceeds the exemption amount but does not exceed twice the exemption amount, the premium shall be the amount which bears the same ratio to the premium which would (but for this subparagraph) apply to the taxpayer as such excess bears to the exemption amount.

"(D) INFLATION ADJUSTMENT OF EXEMPTION AMOUNTS.—In the case of any taxable year beginning in a calendar year after 2005, each dollar amount prescribed in subparagraph (c) shall be increased by an amount equal to the product of—

"(i) such dollar amount, and

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

"(2) PREMIUM LIMITED TO 5 PERCENT OF ADJUSTED GROSS INCOME.—In no event shall any premium paid under this section shall be treated as a tax imposed by this chapter for purposes of determining—

"(A) the amount of any credit allowable under this chapter.

"(B) the amount of the minimum tax imposed by section 55.

"(C) TREATMENT UNDER SUBTITLE F.—For purposes of subtitle F, the premium paid under this section shall be treated as if it were a tax imposed by section 1.

"(B) TECHNICAL AMENDMENTS.—"(1) Subsection (a) of section 6012 of such Code is amended by inserting after paragraph (9) the following new paragraph:

"(10) Every liable for a premium under section 59B.

"(2) The table of parts for subchapter A of chapter 1 of such Code is amended by inserting after section 36 the following new section:

"SEC. 36. CATASTROPHIC LIMIT ON COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM.

"(a) IN GENERAL.—Subpart C of part IV of chapter 1 of such Code is amended by redesignating section 36 as section 37 and by inserting after section 36 the following new section:

"SEC. 36. CATASTROPHIC LIMIT ON COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM."

"(a) IN GENERAL.—"(1) The amount paid by the taxpayer during the taxable year as cost-sharing under subchapter B of chapter 1 of such Code is increased by the lesser of—

"(A) the amount of the catastrophic limit for 2004, as increased by the cost-of-living adjustment determined for calendar year 2005, or

"(B) $5,000.

"(B) COORDINATION WITH OTHER PROVISIONS.—The amendments made by this section shall apply to taxable years ending after December 31, 2006.

"(c) TECHNICAL AMENDMENTS.—"(1) The table of sections for part IV of such Code is amended by adding after section 1324 the following new section:

"SEC. 1324A. CATASTROPHIC LIMIT ON COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM.

"SEC. 1. REFUNDABLE CREDIT FOR CERTAIN COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM."

"(a) TECHNICAL AMENDMENTS.—"(1) The amount of the catastrophic limit as determined under section 1324(b)(4) of title 26 is increased by the amount paid by the taxpayer during the taxable year as cost-sharing under subchapter B of chapter 1 of such Code, or

"(2) The table of parts for subchapter A of title 26 is amended by adding after part IV the following new part:

"PART VIII. MEDIKIDS PREMIUM."

"(a) IN GENERAL.—"(1) The amount paid by the taxpayer during the taxable year as cost-sharing under subchapter B of chapter 1 of such Code is increased by the lesser of—

"(A) the amount of the catastrophic limit for 2004, as increased by the cost-of-living adjustment determined for calendar year 2005, or

"(B) $5,000.

"(B) COORDINATION WITH OTHER PROVISIONS.—The amendments made by this section shall apply to taxable years ending after December 31, 2006.

"SEC. 5. REPORT ON LONG-TERM REVENUES."

Within one year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the long-term revenues of the Federal Government arising from the provisions of this Act. The report shall include—

"(a) a projection of the revenues arising from the provisions of this Act for the fiscal years 2004 through 2014;

"(b) an analysis of the revenue projections made under paragraph (a); and

"(c) a detailed description of any modifications to the provisions of this Act that would reduce the financial impact of the provisions of this Act on the Federal Government.

"SEC. 6. TREATMENT OF MEDIKIDS PROGRAM AS A FEDERAL PROGRAM.

"SEC. 7. TREATMENT OF MEDIKIDS PROGRAM AS A FEDERAL PROGRAM.

"SEC. 8. TREATMENT OF MEDIKIDS PROGRAM AS A FEDERAL PROGRAM.

"SEC. 9. TREATMENT OF MEDIKIDS PROGRAM AS A FEDERAL PROGRAM.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. FRANKEN, Mrs. BOXER, and Mr. DAYTON):

S. 1304. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide for certain defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I rise today to introduce a piece of legislation to fix a huge oversight in pension policy.

In the early 1990s, a large number of U.S. companies began a process of switching their traditional defined benefit pension plans to what’s referred to as “cash balance” pension plans. A cash balance pension is insured, like a traditional plan, through the PBGC. However, it looks more like a defined contribution plan to participants because the benefit is expressed as a percentage of pay plus some guaranteed interest rate. This isn’t necessarily a bad idea, in and of itself. However, in practice, many of the employees working for these companies were not told what these changes would mean for them. Some companies had their employees work for years without earning any more benefits. Many of those employees didn’t figure that out for a very long time. Unfortunately, their lack of understanding in this situation was a key benefit to management. However, once they figured out what was happening, the retirees were furious.

As two consultants who helped put these plans together said at an Actuaries conference in 1998: “I’ve been involved in cash balance plans five or six years down the road and what I have discovered is that while employees understand it, it is not until they are actually ready to retire that they understand how little they are actually getting.” “Right, but they’re happy while they’re employed.”

One of the most abusive practices in cash balance conversions is known as “wear away.” The company freezes the value of the benefits employees already earned, which by law cannot be taken away. Employees often don’t realize that contributions to their account every day. This is especially true of older workers during conversions to cash balance plans. I offered my bill as an amendment. Forty-eight Senators, including 3 Republicans, voted to waive the budget point of order so we could consider this amendment. We did not have enough votes then, but I believe the tide is turning.

After that vote, more and more stories came out about how many workers were losing their pensions. In September of 1999, the Treasury put a moratorium on conversions from defined benefit plans to cash balance plans. That moratorium has
been in effect now for over three years. In April of 2000, I offered a Sense-of-the-Senate resolution to stop this practice, and it passed the Senate unanimously.

There are hundreds of age discrimination suits currently pending before the EEOC based on these abusive cash balance pension conversions. Clearly, something must be done to address this issue that's been floating around now unresolved for over five years.

Before I said that wear-away is the least fair practice during conversion. And I have to say that now, public sentiment is really coming around to acknowledge that unfairness. However, aside from wear-away, there's another problem in shifting from a traditional pension to cash balance. In a traditional plan, you accrue most of the benefits toward the end of your career, because there's usually some kind of formula that multiplies top pay times years of service. People tend to earn even more salary toward the end of their careers, and if that is multiplied times more years served, the pension grows quickly in later years. But in a cash balance plan, younger workers do better because they get a flat percent of pay plus some guaranteed interest credit. Interest is good for young people, they have many years to accrue and compound it. So if you get caught in mid-life, mid-career in one of these transitions, you get the downside of both plans.

Before I go any further, I want to be clear on one point—cash balance pensions can be a great deal for workers. Some. And they may help fill a needed niche in the pension world to cover the half of the workforce that currently has no pension. But I will continue my long battle to oppose the unilateral decision of a company to cut off a promise for an older worker, give that money to a younger worker, and not view it as discrimination.

That is what this issue is all about. It is fairness. It is equity. I know discussion of pension law can become very convoluted. But this can be boiled down pretty simply. It is about what we think a promise from an employer ought to mean.

There is one thing that has distinguished the American workplace from others around the world. We have valued hard work. At least we used to. That is one of the reasons pension plans exist—the longer you work somewhere, the more you earn in your pension program. Obviously, the longer you work somewhere, the better you do your job, the more you learn about it, the more productive you are. We should value that loyalty.

But here, companies are able to take away the benefits of the longest serving workers. What kind of a signal does that send to the workers? It tells them they are fools if they are loyal because if you put in 20 or 25 years, the boss can just change the rules of the game, and break their promise. It tells younger workers that it would be crazy to work for a company for a long time, that it's best to hedge your bets and move on as soon as it is convenient. It's crazy to trade current pay for the promise of future benefits. So why even take into account the fact that you're being offered something? This is a very dangerous road to go down.

This destroys the kind of work ethic we have come to value and that we know built this country. But some of these cash balance conversions counter all of that. Here is an analogy. Imagine I hire someone for 5 years with a promise of a $50,000 bonus at the end of 5 years of service. At the end of 3 years, however, I renege on the $50,000 bonus. But the employee has 3 years invested. Had they known that the deal was going to be off, perhaps they would not have gone to work for me. They could have gone to work someplace else for a total higher compensation package. Now imagine that they hire a new guy to join the team, and they're giving him part of that $50,000 bonus they promised me. Is that the way we want to treat workers in this country, where the employer has all the cards and employees have none, and employers can make whatever deals they want, but can change the rules at any time?

That is why I am introducing this legislation. It is simple. It says that you have to give older, longer serving employees a choice, at retirement, then convert to a cash balance plan to get the benefits earned in the old plan instead. It also says that employers must start counting the new cash balance benefits where the old defined benefit plan left off. Instead of starting the cash balance plan at a lower level than an employee had already earned.

This isn't a radical idea. I was very pleased that in February of 2004, the Administration came out with a cash balance plan. I'm encouraged that these transitions are hard on workers. It not only prohibits wear-away but provides for 5 year transition credits for workers caught in the middle of a conversion. Treasury reaffirmed its commitment to this approach in this year's budget request.

I was excited when Treasury first came to the table with a proposal to do more to protect workers here. I was so encouraged by this that I convened a series of meetings over the course of last summer to get all interested parties to the table—everyone from participant rights advocates to industry groups to consultants. I heard some really great ideas, and some that I didn't agree with. But I think there is still room to find answers to this problem. So I'm putting my plan back on the table today. And I really hope that we can continue a meaningful dialog on this issue.

If we do that, this year, we can enact meaningful participant protections moving forward so that there is another pension option out there to cover the roughly half of Americans with no pension at all. But I also want to make it clear that this Senator will never sit idly by as older workers get the rug pulled out from under them just as they thought they were on solid ground for their retirement. I won't stand idly by and watch their money distributed in an age-discriminatory way. We can have this dialog and we can find a way to fix what's broken here, but not by blessing some of these blatant abuses.

By Mr. BROWNBACK:

S. 1305. A bill to amend the Internal Revenue Code of 1986 to increase tax benefits for parents with children, and for other purposes; to the Committee on Finance.

Mr. BROWNBACK. Mr. President, I rise today to introduce the Parents Tax Relief Act.

Parents Tax Relief Act would help restore to families the pride-of-place, which they enjoyed during the early days of the income tax.

This important legislation would reduce the growing tax burden on families with children; provide a realistic option for one parent to stay at home and care for the children; and acknowledge the indispensable social value of the time and effort that parents put into rearing and forming their children.

Letting parents keep more of their hard-earned money for family-related expenses leaves the childcare decision up to parents. Given this opportunity to make their own choices about childcare, many will choose to stay at home and care for their children themselves.

This legislation is necessary because parents have been hit especially hard by increasing taxes over the past half-century. In 1948, the average family with children paid 3 percent of its income in Federal taxes; today, that same average family with children pays almost 25 percent of its income in Federal taxes.

It is time for the Federal Government to step back and recognize the contributions of the American family. As a matter of policy, I believe we should work to further reduce taxes on families with children in order to make it easier for parents to be parents and care for their own children at home.

Outside of abusive situations, nothing is better for our children than spending time with their parents. The Parents Tax Relief Act takes a modest step towards empowering and strengthening the family. It builds on Marriage Penalty Tax Relief and the Child Tax Credit, making both permanent. While the Child Tax Credit was significant in leveling a three-decade trend of an increasing percentage of married mothers with preschool children who work outside the home full-time, more needs to be done to give parents the chance to decrease this pressure.

To accomplish this end, the Parents Tax Relief Act would increase deductions for young and elderly dependents.
It would equalize existing Federal preferences between parents who choose to stay at home with their children and parents who choose to work outside of the home and place their children in paid day care.

The legislation would make it easier for a parent to spend more time with their children through provisions that encourage telecommuting and home businesses. And it recognizes the societal contributions of parents by granting 10 years worth of Social Security credits to a parent who leaves the workforce during their prime-earning years to care for a young child.

The Parents Tax Relief Act is about investing in human capital. The hard-working American family, instilling traditional values to children, has been the bedrock of American society. As the family goes, so goes the Nation.

In recent years, the Federal Government has engaged in a massive experiment with paid, out-of-home daycare. As a result, through Federal subsidies, we have encouraged parents to place their children in daycare, and further, we have increasingly become a Nation where it is necessary for both husband and wife to be in the workforce to meet the family’s basic needs. The end result is that children are getting less of their parents’ time when they need their parents the most.

Make no mistake, both men and women have made valuable contributions to our national workforce. Our Nation’s productivity is strong, and we have enjoyed a great period of national prosperity. But how long will it last when our children are spending less time with mom and dad? Sociological data confirms time and again that children do best when raised by a mother and a father, where one spouse works and the other spouse stays at home with the children.

Unfortunately—and I believe that most parents, especially, would tend to agree—we have reached a point where a family has to make a truly great sacrifice for one parent to stay at home to raise the children. I have heard so many stories of mothers wanting to stay home with their children, but between paying a mortgage and taxes, they feel helpless. They feel that they must work in order that their family can enjoy and maintain a middle-class lifestyle.

It is time for us to acknowledge, through Federal policy, the sacrifices that parents make to invest in the upbringing of their children when they stay at home. That is goal of the Parents Tax Relief Act, and it is the reason why I am introducing this important legislation.

It costs a great sum to raise children these days, and it is essential to our Nation’s social and economic welfare that we ensure Federal tax policy does not infringe on a parent’s ability to afford that great sum.

The Parents Tax Relief Act would establish a new national tax policy that would allow parents to invest more time and effort in the formation of their children. In the end, this type of investment in human capital may be the most effective way for the Federal Government to ensure our future economic growth and competitiveness.

The legislation that I am introducing today would enable the Native peoples of the five “landless communities” to organize five “urban corporations,” one for each unrecognized community. The newly formed corporations would be offered and could accept the surface estate to approximately 23,000 acres of land. Sealaska Corporation, the regional Alaska Native Corporation for Southeast Alaska, would receive title to the subsurface estate to the designated lands. The urban corporations would each receive a lump sum payment to be used as start-up funds for the newly established corporations.

I am convinced that this cause is just, and it is right, and it is about time that the Native peoples of the five landless communities receive what has been denied them for more than 30 years.

The legislation that I am introducing today would enable the Native peoples of the five “landless communities” to organize five “urban corporations,” one for each unrecognized community. The newly formed corporations would be offered and could accept the surface estate to approximately 23,000 acres of land. Sealaska Corporation, the regional Alaska Native Corporation for Southeast Alaska, would receive title to the subsurface estate to the designated lands. The urban corporations would each receive a lump sum payment to be used as start-up funds for the newly established corporations.

I ask unanimous consent that the text of the legislation be printed in the Record.

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

S. 1306

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 “Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) In 1971, Congress enacted the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) (referred to in this section as the “Act”) to recognize and settle the aboriginal claims of Alaska Natives to the lands Alaska Natives had used for traditional purposes.

(2) The Act awarded approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives and provided for the establishment of Native Corporations to receive and manage such funds and lands.

Pursuant to the Act, Alaska Natives have been enrolled in one of 13 Regional Corporations.
(4) Most Alaska Natives reside in communities that are eligible under the Act to form a Village or Urban Corporation within the geographical area of a Regional Corporation.

(5) Villages or Urban Corporations established under the Act received cash and surface rights to the settlement land described in paragraph (2) and the corresponding Regional Corporation received cash and land which includes the subsurface rights to the land of the Village or Urban Corporation.

(6) The southeastern Alaska communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell are not listed under the Act as communities eligible to form Village or Urban Corporations, even though the population of such villages comprises greater than 20 percent of the shareholders of the Regional Corporation for Southeast Alaska and display historic, cultural, and traditional qualities of Alaska Natives.

(7) The communities described in paragraph (6) have sought full eligibility for land and benefits under the Act for more than three decades.

(8) In 1993, Congress directed the Secretary of the Interior to prepare a report examining the reasons communities listed in paragraph (6) had been denied eligibility to form Village or Urban Corporations and receive land and benefits pursuant to the Act.

(9) The report published in February, 1994, indicates that—

(A) the communities listed in paragraph (6) do not differ significantly from the southeast Alaska communities that were permitted to form Village or Urban Corporations under the Act;

(B) such communities are similar to other communities that are eligible to form Village or Urban Corporations under the Act and receive lands and benefits under the Act;

(i) in actual number and percentage of Native Alaskan population; and

(ii) with respect to the historic use and occupation of land;

(C) such community was involved in advocating the settlement of the aboriginal claims of the community; and

(D) some of the communities appeared on early versions of lists of Native Villages prepared before the date of the enactment of the Act, but were not included as Native Villages in the Act.

(10) Such omissions described in paragraph (9) are not clearly explained in any provision of the Act or the legislative history of the Act.

(11) On the basis of the findings described in paragraphs (1) through (10), Alaska Natives who were enrolled in the five unlisted communities and their heirs have been inadvertently and wrongly denied the cultural and financial benefits of enrollment in Village or Urban Corporations established pursuant to the Act.

(b) Purpose. The purpose of this Act is to redress the omission of the communities described in subsection (a)(6) from eligibility by authorizing the Secretary to enroll the Native people enrolled in the communities—

(1) to form Urban Corporations for the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell under the Act; and

(2) to receive certain settlement lands and other compensation pursuant to the Act.

SEC. 3. ESTABLISHMENT OF ADDITIONAL NATIVE CORPORATIONS.

Section 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1615) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Native residents of each of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, Alaska, may organize as Urban Corporations.

(2) Nothing in this subsection shall affect any entitlement to land of any Native Corporation previously established pursuant to this Act or any other provision of law."

SEC. 4. SHAREHOLDER ELIGIBILITY.

Section 8 of the Alaska Native Claims Settlement Act (43 U.S.C. 1697) is amended by adding at the end thereof the following new subsection:

"(d) The Secretary of the Interior shall enroll to the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell pursuant to paragraph (1) and who were enrolled as shareholders of the Regional Corporation for Southeast Alaska on or before March 30, 1973, shall receive 100 shares of Settlement Common Stock in such Urban Corporation.

(3) A Native who has received shares of stock in the Regional Corporation for Southeast Alaska through inheritance from a decedent who was not enrolled to the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, and who decedent Native who would have been eligible to be enrolled to such Urban Corporation.

(4) Nothing in this subsection shall affect entitlement to land of any Regional Corporation pursuant to section 12(b) or section 14(h)."

SEC. 5. DISTRIBUTION RIGHTS.

Section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606) is amended—

(1) in subsection (j), by adding at the end thereof the following new sentence: "Native members of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell who become shareholders in an Urban Corporation for such a community shall continue to be eligible to receive distributions under this subsection as at-large shareholders of the Regional Corporation for Southeast Alaska and the Urban Corporation for such community; and

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

"(b) No provision of or amendment made by the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell shall affect the ratio for determination of revenue distribution among Native Corporation under this section or the '1982 Section 7(l) Settlement Agreement' among the Regional Corporations or among Village Corporations under subsection (j)."

SEC. 6. CORPORATION INCORPORATION AND STARTUP.

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new section:

"'URBAN CORPORATIONS FOR HAINES, KETCHIKAN, PETERSBURG, TENAAKEE, AND WRANGELL.'

"SEC. 43. (a) Upon incorporation of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, the Secretary, in consultation with corporate organization and development, including grants and loan guarantees to be used for planning, development and other purposes for which Native Corporations are authorized under the Act, and any additional financial compensation, which shall be allocated among the five Urban Corporations on a pro rata basis based on the number of shareholders in each Urban Corporation.

(b) The Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, shall have one year from the date of the offer of compensation from the Secretary to each such Urban Corporation provided for in this section within which to accept or reject the offer. In order to accept or reject the offer, each such Urban Corporation shall provide to the Secretary a properly executed and certified corporate resolution that the shareholders of the Urban Corporation voted on, and either approved or rejected, by a majority of the shareholders of the Urban Corporation. In the event that the offer is rejected, the Secretary, in consultation with representatives of the Urban Corporation that rejected the offer and the Regional Corporation for Southeast Alaska, shall revise the offer and the Urban Corporation shall have an additional six months within which to accept or reject the revised offer.

(c) No later than 180 days after receipt of a corporate resolution approving an offer of the Secretary as required in subsection (b), the Secretary shall provide to the Urban Corporations transfer facilities, leases, and appurtenances on or related to the land conveyed to the Urban Corporations pursuant to subsection (c)."

(4) The Secretary shall, without consideration of compensation, sell to the Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, by quitclaim deed or patent, all right, title, and interest of the United States in all roads, trails, log transfer facilities, leases, and appurtenances on or related to the land conveyed to the Urban Corporations pursuant to subsection (c).

The Executive Office of the President, in consultation with the Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell may establish a settlement trust in..."
in accordance with the provisions of section 39 for the purposes of promoting the health, education, and welfare of the trust beneficiaries and preserving the Native heritage and culture of the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, respectively.

"(2) The income from the principal of a trust established under paragraph (1) shall first be applied to the support of those enrollees and their descendants who are eligible minor children and then to the support of all other enrollees.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.
There is authorized to be appropriated such sums as necessary to carry out this Act and the amendments made by this Act.

By Mr. BAUCUS:
S. 1308. A bill to establish an Office of Trade Adjustment Assistance, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I introduce the Trade Adjustment Assistance for Firms Reorganization Act.
The Trade Adjustment Assistance for Firms program assists hundreds of mostly small and medium-sized manufacturing and cultural companies in Montana and nationwide when they face layoffs and lost sales due to import competition. Qualifying companies develop adjustment plans and receive technical assistance to become more competitive, so that they can retain and expand employment. The program is very cost effective. It requires the firms being helped to match the Federal assistance with their own money, and it pays the government back in federal and State tax revenues when the firms succeed.

For example, TAA for Firms is helping Montola Growers from Culbertson, Montana, to develop cosmetic applications for its safflower oil. And it is helping Porterbilt Company of Hamilton to expand its product line.

Currently, TAA for Firms clients receive assistance preparing petitions and adjusting plans from twelve Trade Adjustment Assistance Centers, which are Commerce Department contractors. Program and policy decisions are made by a small headquarters staff in the Commerce Department's Economic Development Administration.

In the Trade Act of 2002, Congress voted to reauthorize this important program for seven years and to increase its authorized funding level. The program seemed headed toward some years of smooth sailing. But it turns out that is not the case.

For reasons unrelated to TAA for Firms, EDA began more than a year ago to move all its headquarters programs to its six regional offices. For TAA for Firms, that means clients will still get the same local services from the TAACs, but decisions will be made in six regional offices plus a national policy office. The likely result is more personnel needed to run the program, more layers of government, less centralized and consistent decision-making, and less accountability—all without any likely improvement in customer service.

In preparation for this reorganization, EDA transferred or otherwise eliminated most of its experienced TAA staff in the Washington office. But to date it has not completed the transfer and hired or trained the necessary regional staff. So the program is in limbo.

Meanwhile, the President recently announced a multi-agency consolidation of economic development programs that will eliminate EDA and its regional offices. Not surprisingly, the latest aid from EDA is that plans to complete the move of TAA for Firms to the regional offices are now on indefinite hold. The President's fiscal year 2006 budget zeroes out TAA for Firms, even though Congress has authorized the program through fiscal year 2007. With funding in doubt and the Washington-based management structure for TAA for Firms already largely dismantled, this program is on the verge of a crisis.

TAA for Firms was not broken until someone decided to fix it. Now it is doomed to stay in limbo unless Congress acts to clean up the mess.

The bill I am introducing today solves these problems by moving the administration of the TAA for Firms program from EDA into a different part of the Commerce Department—the International Trade Administration. I introduced this same bill last year with 15 co-sponsors.

Relocating the program to ITA makes sense. ITA has experience running this program, which was located there prior to 1990. Relocating TAA for Firms to ITA will result in fewer layers of government and more centralized and accountable program management than running it through EDA's regional offices or some new economic development agency.

Relocating the program also creates synergies by allowing better coordination of TAA for Firms with other trade and trade remedy programs administered by ITA. And it enhances the ability of the Finance Committee to carry out its oversight responsibilities for this program and for trade policy in general.

I do not want to see this important TAA program die of neglect. This legislation is a simple matter of good, sensible government. I encourage my colleagues to lend it their support.

I do not seek unanimous consent that the text of this bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1308
"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 "Trade Adjustment Assistance for Firms Reorganization Act."

SEC. 2. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.
(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

"SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

"(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

"(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

"(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.

"(d) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

"Sec. 255A. Office of Trade Adjustment Assistance."

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.
Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2166(b)) is amended by striking "2007" and inserting "2012."

By Mr. BAUCUS (for himself, Mr. COLEMAN, and Mr. WYDEN):
S. 1309. A bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I introduce the Trade Adjustment Assistance Equities for Service Workers Act.

Frankly, I am disappointed to be here introducing this bill yet again. Just last week, the substance of the bill was adopted by a majority of members of the Finance Committee as an amendment to the implementing legislation for the United States-Central America-Dominican Republic Free Trade Agreement. But today, the administration sent us the final implementation bill stripped out.

President Bush likes to say that trade is for everyone. That we all share the benefits, including workers. And he claims to care a lot about having a skilled workforce that can keep American businesses competitive in global markets.

This amendment presented the President with the perfect opportunity to put his money where his words are. He could have said to the American people—as President Clinton did when Congress considered the NAFTA—that just as all Americans share in the benefits of trade, we all bear a responsibility for its costs. Trade liberalization and trade adjustment go hand in hand. And then he could have provided America's service sector workers with access to the one program designed to make that happen—Trade Adjustment Assistance.

But by submitting the CAFTA implementing bill stripped of the Trade Adjustment Assistance amendment passed by the Finance Committee, he chose not to.
Since 1962, Trade Adjustment Assistance—what we call “TAA”—has provided retraining, income support, and other benefits so that workers who lose their jobs due to trade can make a new start.

The rationale for TAA is simple. When our government pursues trade liberalization, we create benefits for the economy as a whole. But there is also some dislocation from trade.

When he created the TAA program, President Kennedy explained that the Federal Government has an obligation “to render assistance to those who suffer as a result of national trade policy.”

For more than 40 years, we have met that obligation through TAA, which is principally a retraining program designed to update worker skills.

The TAA program has not been static over time. Congress periodically revises the program to meet new economic realities. Most recently, in the Trade Adjustment Assistance Reform Act of 2002, Congress completed the most comprehensive overhaul and expansion of the TAA program since its inception.

I am proud to have played a leading role in passing this landmark legislation. But I am also the first to admit that our work is not done. Economic realities continue to change, and TAA must continue to change with them.

One fundamental aspect of TAA that has remained unchanged since 1962 is its focus on manufacturing. We only give TAA benefits to workers who make “articles.”

Excluding service workers from TAA may have made sense in 1962, when most non-farm jobs were in manufacturing and most services were not traded across national borders. But today, most American jobs are in the service sector. And the market for many services is becoming just as global as the market for manufactured goods.

In 2002, the service sector accounted for three quarters of U.S. private sector gross domestic product and nearly 80 percent of non-farm private employment.

Trade in services is a net plus for the U.S. economy. Although trade in goods continues to dominate, services accounted for 29 percent of the value of total U.S. exports in 2002 and the service sector generated a trade surplus of $74 billion.

Just as we have seen with trade in manufactured goods, however, there are winners and losers from trade. Trade in services will inevitably cost some workers their jobs.

Indeed, there have been some well-publicized examples in the papers. Software gain. Technical support. Accounting and tax preparation services. Not long ago, a group of call center workers in Kalispell, MT saw their jobs move to Canada and India.

Examples also abound of service sector jobs—even high tech jobs—relocating overseas. A series of studies estimate that between a half million and over 3 million U.S. service sector jobs would be moved offshore in the next 5 to 10 years.

That doesn’t mean the total number of jobs in the U.S. economy is shrinking. But the fact that jobs may be available in a different field is cold comfort to a worker whose own skills are no longer in demand.

That is why this legislation is so important. It is a simple matter of equity.

When a factory relocates to another country, those workers are eligible for TAA. But if the worker moves to another country, those workers are not eligible for TAA. They should be.

The benefits service workers will receive under this legislation would be exactly the same as those that trade-impacted manufacturing workers now receive. They include retraining, income support, job search and relocation allowance, and a health coverage tax credit.

Hard working American service workers deserve this safety net. These benefits will always be second best to a job. But they can really make a difference in helping workers make a new start.

Truthfully, I am mystified by why the President so cavalierly dropped the TAA for Services amendment and let this opportunity pass him by. His actions are entirely inconsistent with his stated desire to make trade benefit all Americans. But, sadly, this has become a pattern.

Despite the obvious benefits of the TAA program, the Bush Administration fought tooth and nail against every penny, and against every provision in what became the Trade Adjustment Assistance Reform Act of 2002. Extending TAA to service workers was one of many needed improvements that was struck in the final version of the bill.

Again in the last Congress, the extension of TAA to service workers was offered as an amendment to the JOBS Act and opposed by the Administration. It garnered 54 votes from both sides of the aisle—falling only on a technicality.

The world is changing and TAA must keep up with the times. Last year’s Senate vote and this year’s Finance Committee vote make clear that there is wide support for extending TAA to service workers. I truly believe this bill’s time has come. I will work hard to move this legislation this year.

I want to thank Senators COLEMAN and WYDEN for co-sponsoring this legislation. They have been stalwart supporters in the fight to bring equity to service workers. I look forward to working with them to make TAA for service workers a reality.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1309

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 “Trade Adjustment Assistance Equity for Service Workers Act of 2005”.

SEC. 2. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2217(a)(1)(A)) is amended by striking “(or firm)” and inserting “firm, and service workers in a service sector firm or subdivision of a service sector firm or public agency”.

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a),

(A) in the matter preceding paragraph (1), by striking “(or firm)” and inserting “firm, and workers in a service sector firm or subdivision of a service sector firm or public agency’’; and

(B) in paragraph (1), by inserting “or public agency” after “of the firm’’; and

(C) in paragraph (2)—

(i) in subparagraph (A)(iii), by striking “or directly competitive with articles produced” and inserting “or services like or directly competitive with articles produced or services provided”;

(ii) by striking paragraph (B) and inserting the following:

‘‘(B)(i) there has been a shift, by such workers’’ firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced or services which are provided, by such firm, subdivision, or public agency; or

‘‘(ii) such workers’ firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country’’;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “(or firm)” and inserting “(or subdivision)” after “related to the article’’; and

(B) in paragraph (3)(A), by inserting “or services” after “component parts’’;

(3) in subsection (c)—

(A) in paragraph (3)—

(i) by inserting “or services” after “value-added production processes’’;

(ii) by striking “(or finishing) and inserting “(or finishing or testing’’;

(iii) by inserting “or services” after “for articles’’; and

(iv) by inserting “(or subdivision)” after “such other firm’’; and

(B) in paragraph (4)—

(i) by striking “for articles” and inserting “for services, used in the production of articles or in the provision of services’’; and

(ii) by inserting “(or subdivision)” after “such other firm’’; and

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

‘‘(d) BASIS FOR SECRETARY’S DETERMINATIONS.—

(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers’ firm or subdivision, or customers of the workers’ firm or subdivision accounting for not less than 20 percent of the sales of the workers’ firm or subdivision specify to the Secretary that they are obtaining such articles or services from a foreign country.

This Act may be cited as the “Trade Adjustment Assistance Equity for Service Workers Act of 2005.”

SEC. 2. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2217(a)(1)(A)) is amended by striking “(or firm)” and inserting “firm, and service workers in a service sector firm or subdivision of a service sector firm or public agency’’.

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(1) in subsection (a),

(A) in the matter preceding paragraph (1), by striking “(or firm)” and inserting “firm, and workers in a service sector firm or subdivision of a service sector firm or public agency’’; and

(B) in paragraph (1), by inserting “or public agency” after “of the firm’’; and

(C) in paragraph (2)—

(i) in subparagraph (A)(iii), by striking “or directly competitive with articles produced” and inserting “or services like or directly competitive with articles produced or services provided”;

(ii) by striking paragraph (B) and inserting the following:

‘‘(B)(i) there has been a shift, by such workers’’ firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced or services which are provided, by such firm, subdivision, or public agency; or

‘‘(ii) such workers’ firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country’’;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “(or firm)” and inserting “(or subdivision)” after “related to the article’’; and

(B) in paragraph (3)(A), by inserting “or services” after “component parts’’;

(3) in subsection (c)—

(A) in paragraph (3)—

(i) by inserting “or services” after “value-added production processes’’;

(ii) by striking “(or finishing) and inserting “(or finishing or testing’’;

(iii) by inserting “or services” after “for articles’’; and

(iv) by inserting “(or subdivision)” after “such other firm’’; and

(B) in paragraph (4)—

(i) by striking “for articles” and inserting “for services, used in the production of articles or in the provision of services’’; and

(ii) by inserting “(or subdivision)” after “such other firm’’; and

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

‘‘(d) BASIS FOR SECRETARY’S DETERMINATIONS.—

(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers’ firm or subdivision, or customers of the workers’ firm or subdivision accounting for not less than 20 percent of the sales of the workers’ firm or subdivision specify to the Secretary that they are obtaining such articles or services from a foreign country.

This Act may be cited as the “Trade Adjustment Assistance Equity for Service Workers Act of 2005.”
(2) Obtaining services abroad.—For purposes of subsection (a)(2)(B)(ii), the Secretary may determine that the workers’ firm, subdivision, or public agency has obtained like or directly competitive services from a foreign country based on a certification thereof from the workers’ firm, subdivision, or public agency.

(3) Authority of the Secretary.—The Secretary may obtain the certifications under paragraphs (1) and (2) through questionnaires or in such other manner as the Secretary determines is appropriate. The Secretary may exercise the authority under section 291 in carrying out this subsection.

(2) Authorization of appropriations.—Section 223(a) of the Trade Act of 1974 (19 U.S.C. 2296(a)) is amended by striking "$220,000,000" and inserting "$400,000,000".

(3) Definition.—Section 221 of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by adding paragraphs (17) as paragraphs (18), respectively:

(a) Firms and industries.—

(1) Assistance.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking "$220,000,000" and inserting "$32,000,000".

(2) Definitions.—Section 249 of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by inserting "or public agency" after "of a firm";

(b) Industries.—Section 263(a) of the Trade Act of 1974 (19 U.S.C. 2353(a)) is amended by inserting "service sector firm" after "real estate firm";

(c) Technical amendments.—(1) In general.—Section 249 of the Trade Act of 1974 (19 U.S.C. 2353(a)) is amended by striking "subpoena" and inserting "subpoena" each place it appears in the heading and the text.

(2) Table of contents.—The table of contents for the Trade Act of 1974 is amended by striking "Subpoena" in the item relating to section 263(a) and inserting "Subpoena".

SEC. 4. MONITORING AND REPORTING.

Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

(1) in the first sentence—

(A) by adding "by the Secretary" and inserting "(a) MONITORING PROGRAMS—

The Secretary:

(b) by inserting "and services" after "imported articles";

(c) by inserting "and domestic provision of services" after "domestic production";

(d) by inserting "or providing services" after "producing articles";

(e) by inserting "or provision of services," after "changes in production"; and

(2) by adding at the end the following:

(b) Collection of data and reports on services sector. —

(1) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Labor shall implement a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation of each worker.

(2) SECRETARY OF COMMERCE.—Not later than 6 months after such date of enactment, the Secretary shall carry out a study and report to the Congress on the impact of services, in disfiguring scars, disabling musculoskeletal deformities, and internal blistering; Whereas approximately 12,500 individuals in the United States are affected by the disease; Whereas data from the National Epidermolysis Bullosa Registry indicates that of every 1,000,000 live births, 20 infants are born with the disease; Whereas there currently is no cure for the disease; Whereas children with the disease require almost around-the-clock care; Whereas approximately 90 percent of individuals with epidermolysis bullosa report experiencing pain on an average day; Whereas the skin is so fragile for individuals with the disease that even minor rubbing and day-to-day activity may cause blistering, including from activities such as writing, eating, walking, and from the seams on their clothes; Whereas most individuals with the disease have inherited the mutated gene that causes the disease; Whereas epidermolysis bullosa is so rare that many health care practitioners have never heard of it or seen a patient with it; Whereas individuals with epidermolysis bullosa often feel isolated because of the lack of knowledge in the Nation about the disease and the impact that it has on the body; Whereas more funds should be dedicated toward research to develop treatments and eventually a cure for the disease; and Whereas the last week of October would be an appropriate time to recognize National Epidermolysis Bullosa Week in order to raise public awareness about the prevalence of epidermolysis bullosa, the impact it has on families, and the need for additional research into a cure for the disease: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of a National Epidermolysis Bullosa Awareness Week to raise public awareness and understanding of epidermolysis bullosa; and

(2) recognizes the need for a cure for the disease; and

Whereas the people of the United States and interested groups to support the week through appropriate ceremonies and activities to promote public awareness of the disease:

Whereas Epidermolysis Bullosa is a rare disease characterized by the presence of extremely fragile skin that results in the development of recurrent, painful blisters, and ulcers, and the chronic forms of the disease, in disfiguring scars, disabling musculoskeletal deformities, and internal blistering; Where
Wheras Congress established the Forest Service in 1905 to provide quality water and timber for the benefit of the United States; Whereas the mission of the Forest Service has expanded to include management of national forests for multiple uses and benefits, including the sustained yield of renewable resources such as water, forage, wildlife, wood, and recreation; Whereas the National Forest System encompasses 192,000,000 acres in 44 States, Puerto Rico, and the Virgin Islands, including 155 national forests and 20 national grasslands; Whereas the Forest Service significantly contributes to the scientific and technical knowledge necessary to protect and sustain natural resources on all land in the United States; Whereas the Forest Service cooperates with State, Tribal, and local governments, forest industries, other private landowners, and forest users in the management, protection, and development of forest land the Federal Government does not own; Whereas the Forest Service participates in work, training, and education programs such as AmeriCorps, Job Corps, and the Senior Community Service Employment Program; Whereas the Forest Service plays a key role internationally in developing sustainable management and biodiversity conservation for the protection and sound management of the forest resources of the world; Whereas, from rangers to researchers and from foresters to fire crews, the Forest Service has maintained a dedicated professional workforce that began in 1905 with 500 employees and in 2005 includes more than 30,000; and Whereas Gifford Pinchot, the first Chief of the Forest Service, fostered the idea of managing for the greatest good of the greatest number: Now, therefore, be it Resolved, That the Senate—
(1) recognizes July 1, 2005 as the 100th Anniversary of the Forest Service; (2) commends the Forest Service of the Department of Agriculture for 100 years of dedicated service managing the forests of the United States; (3) acknowledges the promise of the Forest Service to continue to preserve the natural legacy of the United States for an additional 100 years and beyond; and (4) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 990. Mr. KYL (for himself, Mr. Lugar, Mr. Inhofe, and Mr. Schumer) submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 991. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 992. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 993. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 994. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 995. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 996. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 997. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 998. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 999. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 1000. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 1001. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.
SA 1002. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.
SA 1003. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.
SA 1004. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 889. Ms. SNOWE (for herself and Mr. STEVENS) submitted an amendment intended to be proposed by her to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows: (Submitted on Wednesday, June 22, 2005.)

On page 323, beginning with line 7, strike through line 12 on page 325 and insert the following:

SEC. 387. COORDINATION WITH FEDERAL ENERGY REGULATORY COMMISSION.

Within 180 days after the date of enactment of this Act, the Secretary of Commerce shall submit a report to the Congress on the development of a memorandum of understanding with the Commissioner of the Federal Energy Regulatory Commission for a coordinated process for the development of coastal energy activities that provides for—
(1) improved coordination among Federal, regional, State, and local agencies concerned with conducting reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and
(2) coordinated schedules for such reviews that ensures that, where appropriate the reviews are performed concurrently.

SEC. 387A. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This section and section 387T of this Act may be cited as the "Coastal Zone Enhancement Reauthorization Act of 2005".

(b) TABLE OF CONTENTS.—The table of contents for the Coastal Zone Enhancement Reauthorization Act of 2005 is as follows:

Sec. 387A. Short title; table of contents.
Sec. 387B. Amendment of Coastal Zone Management Act of 1972.
Sec. 387C. Findings.
Sec. 387D. Policy.
Sec. 387E. Changes in definitions.
Sec. 387F. Reauthorization of management program; authorized grants.
Sec. 387G. Administrative grants.
Sec. 387H. Coastal resource improvement program.
Sec. 387I. Certain Federal agency activities.
Sec. 387J. Coastal zone management fund.
Sec. 387K. Coastal zone enhancement grants.
Sec. 387L. Coastal community program.
Sec. 387M. Technical assistance; resources assessments; information systems.
Sec. 387N. Performance review.
Sec. 387O. Walter B. Jones awards.
Sec. 387P. National Estuarine Research Reserve System.
Sec. 387Q. Coastal zone management reports.
Sec. 387R. Authorization of appropriations.
Sec. 387S. Deadline for decision on appeals of consistency determination.
Sec. 387T. Sense of Congress.

SEC. 387B. AMENDMENT OF COASTAL ZONE MANAGEMENT ACT OF 1972.

Except as otherwise expressly provided, whenever in sections 387C through 387T of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

SEC. 387C. FINDINGS.

Section 302 (16 U.S.C. 1451) is amended—
(1) by redesignating paragraphs (a) through (m) as paragraphs (1) through (13); (2) by inserting "ports," in paragraph (3) (as so redesignated) after "fossil fuels;";
(3) by inserting "including coastal waters and wetlands," in paragraph (4) (as so redesignated) after "zone;"
(4) by striking "therein," in paragraph (4) (as so redesignated) and inserting "depend- ent on that habitat;"
(5) by striking "being well" in paragraph (5) (as so redesignated) and inserting "qual- ity of life;"
(6) by inserting "integrated plans and strategies," after "including" in paragraph (9) (as so redesignated);
(7) by striking paragraph (11) (as so redesignated) and inserting the following: "(11) Land and water uses in the coastal zone and coastal watersheds may signifi- cantly affect the quality of coastal waters and wetlands, and control coastal water pollution from activities in these areas must be improved.; and
(b) EQUITABLE ALLOCATION OF FUNDING.—Section 306(c) (16 U.S.C. 1455(c)) is amended by adding at the end thereof “in promoting equity, the Secretary shall consider the comparative amount of funds, property, and services provided by any coastal state under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state’s approved management program.”

(c) SOURCE OF FEDERAL GRANTS.—Grants provided under this section may be used to pay a coastal state’s share of costs required under any other Federal program that is consistent with the purposes of this section.

(d) ALLOCATION OF GRANTS TO QUALIFIED ENTITY.—With the approval of the Secretary, the eligible coastal state may allocate to a qualified entity the portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state’s approved management program.

(e) ASSISTANCE.—The Secretary shall assist eligible coastal states in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (b).
with respect to a Federal agency activity in land of the coastal zone of the State of Alaska apply only if the activity directly and significantly affects a land or water use or a natural resource of the Alaskan coastal zone.”.

SEC. 387K. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 (16 U.S.C. 1456b) is amended—
(1) by striking subsection (a)(1) and inserting the following:
“(1) Protection, restoration, enhancement, or creation of coastal habitats, including wetlands, coral reefs, marshes, and barrier islands.”;
(2) by inserting “and removal” after “entry” in subsection (a)(4);
(3) by striking “on various individual uses or activities on resources, such as coastal wetlands, resources.” in subsection (a)(5) and inserting “of various individual uses or activities on coastal waters, habitats, and resources, including sources of polluted runoff.”;
(4) by adding at the end of subsection (a) the following:
“(10) Development and enhancement of coastal zone management, pollution control program components, strategies, and measures, including the satisfaction of conditions placed on such programs as part of the Secretary’s approval of the programs.”;
(11) Significant emerging coastal issues as identified by coastal states, in consultation with the Secretary and qualified local entities;
(12) by striking “changes” and inserting “changes, or for projects that demonstrate significant potential for improving ocean resource management or integrated coastal and watershed management at the local, state or regional level.”;
(6) by striking “proposals, taking into account the criteria established by the Secretary under subsection (d).” in subsection (c) and inserting “proposals;”;
(7) by striking subsection (d) and redesignating subsection (e) as subsection (d);
(8) by striking “in implementing this section, up to a maximum of $10,000,000 annually” in subsection (f) and inserting “for grants. Grant applications for grant programs shall be submitted to the Secretary under section 309A.”;
(9) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 387L. COASTAL COMMUNITY PROGRAM.

The Act is amended by inserting after section 309 the following:

**SEC. 309A. COASTAL COMMUNITY PROGRAM.**

“(a) COASTAL COMMUNITY GRANTS.—The Secretary may make grants to any coastal state that is eligible under subsection (b)—

(1) to assist states in assessing and managing growth, public infrastructure, and open space needs in order to provide for sustainable growth, resource protection and community revitalization;

(2) to provide management-oriented research and technical assistance in developing and implementing community-based growth management strategies to protect coastal habitats in qualified local entities;

(3) to fund demonstration projects which have high potential for improving coastal zone and watershed management;

(4) to assist in the adoption of plans, strategies, policies, or procedures to support local community-based environmentally-protective solutions to the impacts and pressures on coastal uses and resources caused by development and sprawl that will—

(A) revitalize previously developed areas;

(B) undertake conservation activities on undeveloped and environmentally sensitive areas;

(C) emphasize water-dependent uses; and

(D) protect coastal waters and habitats; and

(5) to assist coastal communities to coordinate and implement approved coastal nonpoint pollution control strategies, policies, or procedures to support the protection and management of coastal waters and habitats.”.

(b) ELIGIBILITY.—To be eligible for a grant under this section for a fiscal year, a coastal state shall—

(1) have a management program approved under section 306; and

(2) in the judgment of the Secretary, be making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(b)(2)(A) through (K).

(c) ALLOCATIONS; SOURCE OF FEDERAL FUNDS; MATCHING CONTRIBUTIONS.—

(1) ALLOCATION.—Grants under this section shall be awarded to coastal states as provided in section 306(c).

(2) APPLICATION; MATCHING.—If a coastal state chooses to fund a project under this section, then—

(A) it shall submit to the Secretary a combined application for grants under this section and section 306; and

(B) it shall match the amount of the grant under this section on the basis of a total contribution of section 306, 306A, and this section so that, in aggregate, the match is 1:1.

(d) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY.—

(1) IN GENERAL.—With the approval of the Secretary, the coastal state may allocate to a qualified local entity amounts received by the state under this section.

(2) ASSURANCES.—A coastal state shall ensure that amounts allocated by the state under paragraph (1) are used by the qualified local entity in furtherance of the state’s approved management program, specifically furtherance of coastal management objectives specified in section 303(2).

(e) ASSISTANCE.—The Secretary shall assist coastal states and qualified local entities in identifying and obtaining financial and technical assistance from other Federal and State agencies and private organizations to carry out the purposes of this section and to provide ongoing support for state resource assessment and information programs.”.

[(Constituent)']
SEC. 387N. PERFORMANCE REVIEW.
Section 312(a) (16 U.S.C. 1458(a) is amended—
(1) by striking “continuing review of the performance” and inserting “periodic review, no less frequently than every 5 years, of the administration, implementation, and performance of reserves”;
(2) by striking “management,” and inserting “management programs;”;
(3) by striking “has implemented and enforced” and inserting “has established, implemented, and enforced;”;
(4) by striking “addressed the coastal management needs identified” and inserting “fulfilled coastal management objectives and strategies set forth” after “Secretary;”;
and
(5) by inserting “and resource stewardship programs’’; and
paragraph (2) and inserting “research, education, and resource stewardship purposes’’ in paragraph (2);
(10) by striking “research efforts” in paragraph (4) and inserting “research, education, and resource stewardship efforts;”;
(11) by striking “research” in paragraph (5) and inserting “research, education, and resource stewardship”;
(12) by striking “research” in the last sentence;
and
(13) by inserting “in paragraph (1) and inserting the following:
"(1) giving reasonable priority to research, education, and stewardship activities that use the System in conducting or supporting activities relating to estuaries; and;
(2) by striking “and constructing appropriate reserve facilities, or’’ in paragraph (1)(A)(v) and inserting “including resource stewardship activities and constructing reserve facilities; and’’;
(3) by striking paragraph (1)(A)(ii) and inserting paragraph (1)(A)(iv) and inserting the following:
"(iv) for costs associated with administration of reserves or the System and
which are consistent with the purposes and policies of this section; and
‘‘(B) accept donations of funds and services for use in carrying out the purposes and policies of this section, the Federal administration of reserves or the System and
which are consistent with the purposes and policies of this section.

Donations accepted under this section shall be treated as a contribution to or for the use of the United States for the purpose of carrying out this section.

Section 315(a) (16 U.S.C. 1461(f)(1)) is amended by inserting “coordination with other state programs established under sections 306 and 390A,” after “including’’.

SEC. 387Q. COASTAL ZONE MANAGEMENT REPORTS.
Section 316 (16 U.S.C. 1462) is amended—
(1) by striking “to the President for transmittal” in subsection (a);
(2) by striking “and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences,” and inserting “zone;” in the provision designated as (10) in subsection (a);
(3) by inserting “education,” after the “studies,” in the provision designated as (12) in subsection (a);
(4) by striking “Secretary” in the first sentence of subsection (c)(1) and inserting “Secretary, in consultation with coastal states, and with the participation of affected Federal agencies,”;
(5) by striking the second sentence of subsection (c)(1) and inserting the following: “The Secretary, in conducting such a review, shall coordinate with, and obtain the views of, appropriate Federal agencies;”;
(6) by striking “shall promptly” in subsection (c)(2) and inserting “shall, within 4 years after the date of enactment of the Coastal Zone Management Reauthorization Act of 2005,”; and
(7) by adding at the end of subsection (c)(2) the following: “If sufficient funds and resources are not available to conduct such a review, the Secretary shall so notify the Congress.”

SEC. 387R. AUTHORIZATION OF APPROPRIATIONS.
Section 312 (16 U.S.C. 1464) is amended—
(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:
“(1) for grants under sections 306, 306A, and 309—
‘‘(A) $90,500,000 for fiscal year 2006,
‘‘(B) $94,000,000 for fiscal year 2007,
‘‘(C) $98,000,000 for fiscal year 2008,
‘‘(D) $102,000,000 for fiscal year 2009, and
‘‘(E) $106,000,000 for fiscal year 2010;’’
‘‘(2) for grants under section 309A—
‘‘(A) $29,000,000 for fiscal year 2006,
‘‘(B) $30,000,000 for fiscal year 2007,
‘‘(C) $31,000,000 for fiscal year 2008,
‘‘(D) $32,000,000 for fiscal year 2009, and
‘‘(E) $32,000,000 for fiscal year 2010, of which $10,000,000, or 35 percent, whichever is less, shall be for purposes set forth in section 390A(a)(5);’’
‘‘(3) for grants under section 315—
‘‘(A) $73,000,000 for fiscal year 2006,
‘‘(B) $38,000,000 for fiscal year 2007,
‘‘(C) $39,000,000 for fiscal year 2008,
‘‘(D) $40,000,000 for fiscal year 2009, and
‘‘(E) $41,000,000 for fiscal year 2010, of which up to $15,000,000 may be used by the Secretary in each of fiscal years 2006 through 2010 for grants to fund construction and acquisition projects at estuarine reserves designated under section 315;’’
‘‘(4) for costs associated with administering this title, $7,500,000 for fiscal year 2006 and such sums as are necessary for fiscal years 2007 through 2010;’’ and
‘‘(5) for grants under section 310 to support State pilot projects to implement resource
assistance and information programs, $5,000,000 for each of fiscal years 2006 and 2007;''
(ii) by striking paragraph (2) and inserting in its place the following:
``(2) by striking ‘‘Sec. 309.’’ in subsection (b) and inserting in its place ‘‘Sec. 319.’’;''
(iii) by striking ‘‘during the fiscal year, or during the second fiscal year after the fiscal year, for which’’ in paragraph (b) and inserting ‘‘when’’;
(iv) by striking ‘‘under the section for which such reverted amount was originally made available’’ in paragraph (b) and inserting ‘‘in the case described in subsection (a)’’;
(v) by striking ‘‘the amount made available under subsection (b)’’ and inserting ‘‘the amount made available under subsection (a)’’.

(b) APPLICABILITY.—The Secretary may stay the closing of the decision record—
(i) in the case of a consistency determination under section (a), except as provided in paragraph (1), the Secretary may stay the closing of the decision record—
(ii) during the 270-day period described in subsection (c)(1), the Secretary may stay the closing of the decision record—
(iii) for an expedited appeal, on an expedited basis—
(iv) for a nonexpedited appeal, on a nonexpedited basis.

(c) Restrictions on Use of Amounts.—
``(1) USE OF AMOUNTS FOR PROGRAM—ADMINISTRATIVE, OR OVERHEAD COSTS.—Except for funds appropriated under subsection (a)(4), funds allocated under this title may be used for grants, contracts, cooperative agreements, or other assistance to States, or for the administration of this title.
``(2) FEDERAL FUNDING.—Funds appropriated pursuant to sections (a)(1) and (a)(2) shall be made available only for grants to States.''

SEC. 387T. DEADLINE FOR DECISION ON APPEALS OF CONSISTENCY DETERMINATION.
(a) IN GENERAL.—Section 319 (16 U.S.C. 1465) is amended to read as follows:
``SEC. 319. APPEALS TO THE SECRETARY.
``(a) IN GENERAL.—Not later than the end of the 270-day period described in 5 sub-
section (a), except as provided in paragraph (1), the Secretary shall immediately close the decision record and receive no more filings on the appeal.
``(1) NOTICE.—Not later than 30 days after the date of the filing of an appeal to the Secretary of a consistency determination under section (a), the Secretary shall publish an initial notice in the Federal Register.
``(2) CLOSURE OF RECORD.—
``(A) IN GENERAL.—Not later than the end of the 270-day period described in paragraph (1), the Secretary may stay the closing of the decision record—
``(i) for a specific period mutually agreed to in writing by the appellant and the Secretary; or
``(ii) as the Secretary determines necessary to receive, on an expedited basis—
``(I) any supplemental information specifically requested by the Secretary to complete a consistency review under this Act; or
``(II) any clarifying information submitted by a party to the proceeding related to information already existing in the record.
``(B) APPLICABILITY.—The Secretary may only stay the 270-day period described in paragraph (1) for a period not to exceed 60 days.
``(c) DEADLINE FOR DECISION.—
``(1) IN GENERAL.—Not later than 90 days after the date of publication of a Federal Register notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the Federal Register explaining why a decision cannot be issued at that time.
``(2) SUBSEQUENT DECISION.—Not later than 45 days after the date of publication of a Federal Register notice explaining why a decision cannot be issued within the 90-day period, the Secretary shall issue a decision.''

SEC. 287T. SENSE OF CONGRESS.
It is the sense of Congress that the Under-secretary for Oceans and Atmosphere should re-evaluate the calculation of shoreline mileage used in the distribution of funding under the Coastal Zone Management Program to ensure equitable treatment of all regions of the coastal zone including the Southeastern States and the Great Lakes States.

SA 990. Mr. KYL submitted a Senate amendment to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

SEC. 321. MEDICAL ISOTOPE PRODUCTION: NON-PROLIFERATION, ANTI-TERRORISM, AND RESOURCE REVIEW.
(a) Definitions.—In this section:
``(1) HIGHLY ENRICHED URANIUM FOR MEDICAL ISOTOPE PRODUCTION.—The term ‘‘highly enriched uranium for medical isotope production’’ means highly enriched uranium contained in, or used for uses in, targets to be irradiated for the sole purpose of producing medical isotopes.
``(2) MEDICAL ISOTOPES.—The term ‘‘medical isotopes’’ means radioactive isotopes, including molybdenum-99, that are used to produce radiopharmaceuticals for diagnostic or therapeutic procedures on patients.

(b) Study.—
``(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue a decision or publish a Federal Register notice stating when the decision record shall include—

SEC. 387. SENSE OF CONGRESS.
It is the sense of Congress that the Under-secretary for Oceans and Atmosphere should re-evaluate the calculation of shoreline mileage used in the distribution of funding under the Coastal Zone Management Program to ensure equitable treatment of all regions of the coastal zone including the Southeastern States and the Great Lakes States.

SA 990. Mr. KYL for himself, Mr. LUGAR, Mr. LORBERG, and Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

SA 991. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

SA 992. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to encourage foreign medical isotope producers to diversify their production capability so that in the event of an interruption in the production and supply of medical isotopes in needed quantities; (G) whether the United States supply of medical isotopes is sufficiently diversified to withstand an interruption of production from any 1 supplier, and, if not, what steps should be taken to diversify United States supply; and (H) any other aspects of implementation of section 134 of of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) that have a bearing on Federal nonproliferation and antiterrorism laws (including regulations) and policies.

(b) Study.—
``(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall publish a notice in the Federal Register explaining why a decision cannot be issued at that time.
``(2) SUBSEQUENT DECISION.—Not later than 45 days after the date of publication of a Federal Register notice explaining why a decision cannot be issued within the 90-day period, the Secretary shall issue a decision.''

(b) Study.—
``(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the conduct of a study of issues associated with section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d), including issues associated with the implementation of that section.
``(2) CONTENTS.—The study shall include an analysis of—
``(A) the effectiveness to date of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) in facilitating the conversion of foreign reactor fuel and targets to low-enriched uranium, which reduces the risk that highly enriched uranium will be diverted and stolen;
``(B) the degree to which isotope producers that rely on United States highly enriched uranium support with the intent of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to expeditiously convert targets to low-enriched uranium;
``(C) the national protection and material control and accounting measures at foreign facilities that receive United States highly enriched uranium for medical isotope production, in comparison to Nuclear Regulatory Commission regulations and Department administrative requirements;
``(D) the likely consequences of an exemption of highly enriched uranium from section 134(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2160d(a)) for—
``(i) United States efforts to eliminate highly enriched uranium commerce worldwide through the support of the Reduced Enrichment in Research and Test Reactors program; and
``(ii) other United States nonproliferation and antiterrorism initiatives;
``(E) incentives that could supplement the incentives provided under section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to further the goal of reducing the use of highly enriched uranium worldwide; and
``(F) any other aspects of implementation of section 134 of of the Atomic Energy Act of 1954 (42 U.S.C.

SA 993. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:
SA 994. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 3, line 18–20, strike “the consent of the Governor of the State adjacent to the lease area, as determined under section 18(1)(2)(B)(i),” and replace with “the consent of the Governors and State Legislatures of all other States in the Union.”

2. On page 4, after “and” insert “the” the “Governors of all other States in the Union.”

5. On page 5, line 17, after “any” insert “time and with the consent of all other States in the Union.”

8. On page 10, Line 25, strike “20 miles” and replace with “4,000 miles.”

10. On page 4, after “and” insert “the” “Governors of all other States in the Union.”

11. On page 7, line 25, strike “20 miles” and replace with “4,000 miles.”

SA 995. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 3, line 18–20, strike “the consent of the Governor of the State adjacent to the lease area, as determined under section 18(1)(2)(B)(i),” and replace with “the consent of the Governors and State Legislatures of all other States in the Union.”

2. On page 4, after “and” insert “the” “Governors of all other States in the Union.”

5. On page 5, line 17, after “any” insert “time and with the consent of all other States in the Union.”

8. On page 10, Line 25, strike “20 miles” and replace with “4,000 miles.”

10. On page 7, line 25, strike “20 miles” and replace with “4,000 miles.”

SA 997. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, line 18–20, strike “the consent of the Governor of the State adjacent to the lease area, as determined under section 18(1)(2)(B)(i),” and replace with “the consent of the Governors and State Legislatures of all other States in the Union.”

2. On page 4, after “and” insert “the” “Governors of all other States in the Union.”

5. On page 7, line 18, replace “State,” with “State.”

SA 999. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

8. On page 10, line 25, strike “20 miles” and replace with “4,000 miles.”

10. On page 12, line 18, strike “20 miles” and replace with “4,000 miles.”

SA 1000. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 12, strike line 16 and insert the following:

“(B) MORATORIA OPT OUT REQUIREMENTS.— Any State with a legislative outer Continental Shelf moratorium on leasing, pre-leasing, and relinquishment of Federal waters adjoining the coastline of the State through the congressional appropriations process as of January 1, 2002, may opt out of the moratorium after the date of enactment of the Energy Policy Act of 2005 with respect to any portion of the coastal waters of the State only with—

(A) the explicit concurrence of the Governor of the State and the State legislature and the Governors and State legislatures of the 2 coastal States adjoining the State; and

(B) the explicit concurrence of the Regional Fishery Management Council with jurisdiction over the living marine resources in Federal waters adjoining the affected State.”

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any
amount derived from lease bonuses or royalty payments under this subsection conveyed to States and political subdivisions of any producing State or any other State, shall only be used for mitigation measures and environmental restoration projects that—

(i) have been subject to comprehensive review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) specifically repair and restore the adverse physical and pollution impacts of offshore oil and gas facilities, transportation facilities, and related operations associated with Federal offshore oil and gas leasing, exploration, and development activities.

SEC. 13. LIABILITY.

(a) IN GENERAL.—The State subject to an approved petition under this subsection shall be liable for any damages to coastal natural resources and ecosystems of adjoining or nearby States resulting from offshore oil and gas leasing, exploration, development, or transportation activities conducted in any Federal or State portion of the area of the outer Continental Shelf made available for leasing under this subsection.

(b) INDEMNIFICATION.—The United States may not indemnify a State from liability under this subsection.

(c) APPLICATION.—This subsection shall not

SA 1001. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

SEC. 21. WASTE-DERIVED ETHANOL AND BIO-DIESEL.


(1) by striking ‘‘biofuel’’ and inserting ‘‘biofuels’’; and

(2) by striking ‘‘and’’ at the end and inserting the following:

‘‘(B) includes ethanol and biodiesel derived from—

(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

(ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and’’.

SA 1002. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 6, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 21. WASTE-DERIVED ETHANOL AND BIO-DIESEL.


(1) by striking ‘‘biofuel’’ and inserting ‘‘biofuels’’;

(2) by inserting at the end the following:

‘‘(B) includes ethanol and biodiesel derived from—

(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

(ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and’’.

SA 1003. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

Beginning on page 328, strike line 13 and all that follows through page 337, line 6, and insert the following:

Subtitle B—Clean Coal Power Initiative

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—There is authorized to be appropriated to the Secretary to carry out the activities authorized by this subtitle $200,000,000 for each of fiscal years 2006 through 2012, to remain available until expended.

(b) REPORT.—Not later than March 31, 2006, the Secretary shall submit to Congress a report that includes a 10-year plan containing—

(1) a detailed assessment of whether the aggregate assistance levels provided under subsection (a) are the appropriate assistance levels for the clean coal power initiative;

(2) a detailed description of how proposals for assistance under the clean coal power initiative will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued under the clean coal power initiative; and

(4) a detailed description of how the clean coal power initiative will avoid problems enumerated in Government Accountability Office reports on the Clean Coal Technology Program of the Department, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

SEC. 402. PROJECT CRITERIA.

(a) IN GENERAL.—To be eligible to receive assistance under this subtitle, a project shall—

(i) advance efficiency, environmental performance, and cost compared to the level beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of the date of enactment of this Act;

(ii) be pursued under the clean coal power initiative; and

(iii) be in compliance with Government Accountability Office reports on the Clean Coal Technology Program of the Department.

(b) TECHNICAL CRITERIA FOR CLEAN COAL POWER INITIATIVE.

(1) GASIFICATION PROJECTS.—

(A) IN GENERAL.—In allocating the funds made available under section 401(a), the Secretary shall ensure that at least 30 percent of the funds are used only to fund projects on gas-based gasification technologies, including—

(i) gasification combined cycle;

(ii) gasification fuel cells and turbine combined cycle;

(iii) gasification coproduction; and

(iv) hybrid gasification and combustion.

(B) TECHNICAL MILESTONES.—

(i) PERIODIC DETERMINATION.—

(I) IN GENERAL.—The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this subtitle shall be designed, and reasonably expected, to achieve.

(ii) 2020 GOALS.—The Secretary shall establish the periodic milestones so as to achieve by the year 2020 coal gasification projects that—

(I) to remove at least 99 percent of sulfur dioxide;

(II) to emit not more than .06 lbs of NOx per million Btu;

(III) to achieve at least 95 percent reductions in mercury emissions; and
(IV) to achieve a thermal efficiency of at least—
   (aa) 50 percent for coal of more than 9,000 Btu;
   (bb) 48 percent for coal of 7,000 to 9,000 Btu; and
   (cc) 46 percent for coal of less than 7,000 Btu.

(2) OTHER PROJECTS.—
   (A) ALLOCATION OF FUNDS.—The Secretary shall ensure that up to 20 percent of the funds made available under section 49(a) are used to fund projects other than those described in paragraph (1).
   (B) TECHNICAL MILESTONES.—
      (i) PERIODIC DETERMINATION.—The Secretary shall periodically establish technical milestones specifying the emission and thermal efficiency levels that projects funded under this paragraph shall be designed to achieve, and reasonably expected to achieve.
      (ii) PREScriptive MILESTONES.—The technical milestones shall become more prescriptive during the period of the clean coal power initiative.
         (I) I N GENERAL.—The Secretary shall periodically establish technical milestones, and reasonably expected to achieve,.
         (II) 2020 VALUES.—The Secretary shall set the technical milestones so as to be achievable by the year 2020 projects able—
            (I) to reduce at least 97 percent of sulfur dioxide;
            (II) to emit no more than 0.8 lbs of NOx per million Btu; and
            (III) to achieve at least 90 percent reductions in mercury emissions; and
            (IV) to achieve a thermal efficiency of at least—
               (aa) 43 percent for coal of more than 9,000 Btu;
               (bb) 41 percent for coal of 7,000 to 9,000 Btu; and
               (cc) 39 percent for coal of less than 7,000 Btu.
      (C) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B)(ii)(IV), the Secretary shall consult with—
         (i) the Administrator of the Environmental Protection Agency; and
         (ii) interested entities, including—
            (A) coal producers;
            (B) industries using coal;
            (C) organizations that promote coal or advanced coal technologies;
            (D) environmental organizations;
            (E) organizations representing workers; and
            (F) organizations representing consumers.
      (D) APPLICATION OF CRITERIA.—In the case of projects at units in existence on the date of enactment of this Act, in lieu of the thermal efficiency requirements described in paragraphs (1)(B)(ii)(IV), the mile-
      stones shall be designed to achieve an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—
         (A) 7 percent for coal of more than 9,000 Btu;
         (B) 6 percent for coal of 7,000 to 9,000 Btu; or
         (C) 4 percent for coal of less than 7,000 Btu.
      (E) ADMINISTRATION.—
         (A) ELEVATION OF SITE.—In evaluating project proposals to achieve thermal efficiency levels established under paragraphs (1)(B)(ii)(IV), the Secretary shall take into account and make adjustments for the elevation of the site at which a project is proposed to be constructed.
         (B) APPLICABILITY OF MILESTONES.—The thermal efficiency milestones under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4) shall apply to projects that separate and capture at least 50 percent of the potential emissions of carbon dioxide by a facility.

(C) PERMITTED USES.—In carrying out this section, the Secretary shall give high priority to projects that include, as part of the project—
   (i) the separation or capture of carbon dioxide;
   (ii) the reduction of the demand for natural gas if deployed.
   (D) FINANCIAL CRITERIA.—The Secretary shall provide financial assistance under this subtitle for a project unless the recipient documents to the satisfaction of the Secretary that—
      (1) the recipient is financially responsible;
      (2) the recipient will provide sufficient in-
         formation to the Secretary to enable the Secretary to ensure that the funds are spent efficiently and effectively; and
      (3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from po-
         tential purchasers of the technology.

(D) Administration.—The Secretary shall provide financial assistance to projects that, as determined by the Secretary—
   (1) meet the requirements of subsections (a), (b), and (c); and
   (2) are likely—
      (A) to achieve overall cost reductions in the use of coal to generate useful forms of energy or chemical feedstocks;
      (B) to improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States and meet electricity generation requirements; and
      (C) to demonstrate methods and equipment that are applicable to 25 percent of the electric power generated using various types of coal, that use coal as the primary feedstock as of the date of enactment of this Act.
   (E) COST-SHARING.—In carrying out this subtitle, the Secretary shall require cost sharing in accordance with section 1902.
   (F) SCHEDULED COMPLETION OF SELECTED PROJECTS.—
      (1) IN GENERAL.—In selecting a project for financial assistance under this section, the Secretary shall establish a reasonable period of time during which the owner or operator of the project shall complete the construction or demonstration phase of the project, as the Secretary determines to be appropriate.
      (2) CONDITION OF FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance only if the recipient of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.
      (3) EXTENSION OF TIME PERIOD.—In general, the Secretary may extend the time period established for the project by the Secretary under paragraph (1).
   (G) FEE TITLE.—The Secretary may vest fee title or other property interests acquired under cost-share clean coal power initiative agreements under this subtitle in any entity, including the United States.
   (H) DATA PROTECTION.—For a period not exceeding 10 years from the completion of the operations phase of a cooperative agreement, the Secretary may provide appropriate protections (including exemptions from subsection (a) of title 18, United States Code) against the dissemination of information that—
      (1) results from demonstration activities carried out under the clean coal power initiative program; and
      (2) would be a trade secret or commercial or financial information obtained from and provided to a non-Federal party participating in a clean coal power initiative project.
      (I) APPLICABILITY.—No technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, for the United States and meet electricity generation requirements; and
      (J) COST-SHARING.—In carrying out this subtitle, the Secretary shall require cost sharing in accordance with section 1902.

SA 1008. Mr. CRAIG (for Ms. CANTWELL) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

On page 636, lines 24 and 25, strike “unlawful” and substitute “not reasonable” and insert “not permitted under a rate schedule (or contract under such a rate schedule) or is otherwise unlawful on the basis that the contract or rate schedule is not reasonable or contrary to the public interest.”

SA 1009. Mr. CRAIG (for Mr. GRASSLEY) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

On page 12 of title XV as agreed to, after line 23, add the following:

SEC. 6. APPLICATION OF SECTION 45 CREDIT TO AGRICULTURAL COOPERATIVES.

(a) In General.—Section 45(e) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following:

(1) ALLOCATION OF CREDIT TO PATRONS OF AGRICULTURAL COOPERATIVE.—

"(A) ELECTION TO ALLOCATE.—
   (i) IN GENERAL.—In the case of a cooperative organization, the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.
   (ii) FORM AND EFFECT OF ELECTION.—In case of a cooperative organization, the election shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.
   (b) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any patrons under subparagraph (A)—
      (i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and
      (ii) shall be included in the amount determined under subsection (a) for the taxable year of the patrons with or within which the taxable year of the organization ends.
   (C) SPECIAL RULES FOR DECREASE IN CREDIT.—For the taxable year—
      (1) if the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of such cooperative organization for such year, an amount equal to the excess of—

"(C) SPECIAL RULES FOR DECREASE IN CREDIT.—For the taxable year—

"(1) if the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of such cooperative organization for such year, an amount equal to the excess of—

"(2) with respect to the organization for the taxable year, and
      (2) with respect to the organization for the taxable year, and
      (ii) shall be included in the amount determined under subsection (a) for the taxable year of the patrons with or within which the taxable year of the organization ends.
"(C) SPECIAL RULES FOR DECREASE IN CREDIT.—For the taxable year—

"(1) if the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of such cooperative organization for such year, an amount equal to the excess of—

"(2) with respect to the organization for the taxable year, and
      (ii) shall be included in the amount determined under subsection (a) for the taxable year of the patrons with or within which the taxable year of the organization ends.
"(C) SPECIAL RULES FOR DECREASE IN CREDIT.—For the taxable year—

"(1) if the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of such cooperative organization for such year, an amount equal to the excess of—
“(i) such reduction, over
“(ii) the amount not apportioned to such
patrons under subparagraph (A) for the
taxable year, shall be treated as an increase in
tax imposed on such patrons under such
paragraph (B) as is allocated to patrons under
subparagraph (A) for the taxable year. Such
increase shall not be treated as tax imposed by this chapter for purposes of
determining the amount of any credit under this
chapter, subsection (c), or section 170.

“(D) ELIGIBLE COOPERATIVE DEFINED.—For
purposes of this section the term ‘eligible
cooperative’ means a cooperative organization
defined in section 1381(a) which is owned
more than 50 percent by agricultural pro-
ducers or by entities owned by agricultural
producers. For this purpose an entity owned by
such agricultural producers is one in which
more than 50 percent is owned by agricultural
producers.

“(E) WRITTEN NOTICE TO PATRONS.—If any
patron receives an allocation written notice of
the amount of the allocation. Such notice
shall be provided before the date on which the
return described in subparagraph (B)(ii) is due.

SEC. 6. EXPANSION OF RESOURCES TO WAVE,
CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.

(a) In General.—Section 45(c)(1) (defining
qualified energy resources), as amended by
this Act, is amended by striking ‘‘and’’ at the
end of subparagraph (I), and before January 1, 2009, but such term
shall no longer be valid.’’.

(b) Definition of Resources.—Section
45(c), as amended by this Act, is amended
by adding the following after the
subparagraph:

‘‘(J) wave, current, tidal, and ocean thermal
energy.—The term ‘wave, current, tidal, and ocean thermal
energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.

(c) In General.—Section 45(d), as amended
by this Act, is amended by adding at the
end the following new paragraph:

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means any facility owned by the taxpayer
which is primarily operated on a long-term basis; and

(b) Operation of State.—The amendments
made by this section shall apply to taxable
years ending after the date of the enactment of this Act.

On page 35 (of title XV as agreed to), strike
lines 10 through 16, and insert the following:

‘‘(A) APPLICATION PERIOD.—Each applicant
for certification under this paragraph shall
be entitled to a certification for the project, except that
such contract may be contingent upon receipt of a
credibility at subsection (c)(2)(B),’’.

(c) Requirements for Certification.—For
the purposes of subsection (c)(2)(D), a project shall be entitled to certification only if the
Secretary determines that—

(A) the applicant for certification has
received all Federal and State environmental
authorizations or reviews necessary to com-
mence construction of the project; and

(B) the applicant for certification, except
in the case of a retrofit or repower of an
existing electric generation unit, has pur-
duced the following—

‘‘(1) QUALIFIED RECYCLING EQUIPMENT.—
The term ‘qualified recycling equipment’ means equipment,
including connecting piping—

(i) employed in sorting or processing resid-
ual and commercial qualified recyclable
materials described in paragraph (2)(A) for
the purpose of converting such materials
for use in manufacturing tangible consumer
products, including packaging.

(ii) the primary purpose of which is the
shredding and processing of qualified recyclable
materials described in paragraph (2)(B).

‘‘(2) REQUIREMENTS FOR CERTIFICATION.—For
the purposes of subsection (c)(2)(B), a project shall be entitled to certification only if the
Secretary determines that—

(A) the applicant for certification has
received all Federal and State environmental
authorizations or reviews necessary to com-
mence construction of the project; and

(B) in the case of a facility utilizing resources described in subparagraph
(A), (B), or (C) of subsection (c)(9) to produce
electricity, the term ‘qualified facility’ means any facility owned by the taxpayer
which is primarily operated on a long-term basis; and

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.

(c) In General.—Section 45(d), as amended
by this Act, is amended by adding at the
end the following new paragraph:

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.

(d) In General.—Section 45(d), as amended
by this Act, is amended by adding the following after the
subparagraph:

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.

(d) In General.—Section 45(d), as amended
by this Act, is amended by adding the following after the
subparagraph:

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.

(d) In General.—Section 45(d), as amended
by this Act, is amended by adding the following after the
subparagraph:

‘‘(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL
ENERGY.—The term ‘wave, current, tidal, and ocean
thermal energy’ means electricity produced from any of the following:

(A) Free flowing ocean water derived from
tidal currents, ocean currents, waves, or
estuaries.

(B) Ocean thermal energy.

(C) Free flowing water in rivers, lakes,
man made channels, or streams.
“(A) any packaging or printed material which is glass, paper, plastic, steel, or aluminum, and

(B) any electronic waste (including any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or a central processing unit),

(2) which are placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or the provider of electric energy services,

(2) the original use of which commences with the taxpayer, and

(3) the purchase of which is subject to a binding contract entered into after June 23, 2005, but before there was a written binding contract entered into on or before such date.

(2) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term ‘energy management device’ means any energy management device which is designed to access deep water resources, including any fuel used to transport or remove such fuel.

SEC. 23. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ‘‘and’’ at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ‘‘and’’, and by adding at the end the following new clause:

(iv) any qualified energy management device.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following:

‘‘(A) IN GENERAL.—Section 146 (relating to project credit for qualified facilities) shall not include any exempt facility bond financed under this section.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to projects placed in service after the date of enactment of this Act and before July 1, 2008.

On page 6 of (of section 923 as modified and agreed to), line 23, strike ‘‘for any’’ and insert ‘‘during any’’.

On page 230 of (of title X as agreed to), between lines 2 and 3, insert the following:

SEC. 23. TIRE EXCISE TAX MODIFICATION.

(a) IN GENERAL.—Section 4071(a) (relating to imposition and rate of tax) is amended by striking ‘‘12.5 inches’’ and inserting ‘‘17.5 inches’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of any tire entered, removed, or sold after September 30, 2005.

SEC. 22. REPEAL OF EXEMPTIONS FROM TAX EXCEPT FOR EXPORTS.

(a) IN GENERAL.—Section 4082(a) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ‘‘other than such tax’’ at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels destined for export.’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales for export under paragraph (3) thereof, (b), and (l).’’

(c) NO REFUND.—Section 4041(d) is amended by adding at the end the following new subsection:

‘‘(1) the purchase of which is subject to a binding contract entered into after June 23, 2005, but before there was a written binding contract entered into on or before such date.

(2) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term ‘energy management device’ means any energy management device which is designed to access deep water resources, including any fuel used to transport or remove such fuel.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to projects placed in service after the date of enactment of this Act and before July 1, 2008.

On page 6 of (of section 923 as modified and agreed to), line 18, strike the last period and insert ‘‘and’’.

On page 230 of (of title X as agreed to), line 22, strike ‘‘(iii)’’ and insert ‘‘(iv)’’.

On page 256 of (of title X as agreed to), line 6, strike ‘‘2007’’ and insert ‘‘2006’’.

On page 266 of (of title X as agreed to), strike lines 3 through 15, and insert the following:

(b) NO EXEMPTIONS FROM TAX EXCEPT FOR EXPORTS.—

(1) IN GENERAL.—Section 4082(a) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ‘‘other than such tax’’ at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels destined for export.’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales for export under paragraph (3) thereof, (b), and (l).’’

(c) NO REFUND.—Section 4041(d) is amended by adding at the end the following new subsection:

‘‘(1) the purchase of which is subject to a binding contract entered into after June 23, 2005, but before there was a written binding contract entered into on or before such date.

(2) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term ‘energy management device’ means any energy management device which is designed to access deep water resources, including any fuel used to transport or remove such fuel.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to projects placed in service after the date of enactment of this Act and before July 1, 2008.

On page 6 of (of section 923 as modified and agreed to), line 23, strike ‘‘for any’’ and insert ‘‘during any’’.

On page 230 of (of title X as agreed to), between lines 2 and 3, insert the following:

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(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of any tire entered, removed, or sold after September 30, 2005.

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(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of any tire entered, removed, or sold after September 30, 2005.

SEC. 22. REPEAL OF EXEMPTIONS FROM TAX EXCEPT FOR EXPORTS.

(a) IN GENERAL.—Section 4082(a) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ‘‘other than such tax’’ at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels destined for export.’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of any tire entered, removed, or sold after September 30, 2005.
Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Veterans’ Affairs be authorized to meet during the session of the Senate on Thursday, June 23, 2005, for a committee hearing to receive testimony on various benefits-related bills pending before the Committee. The hearing will take place in Room 418 of the Russell Senate Office Building at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on June 23, 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. FRIST. 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 “The Consequences of Roe v. Wade and Doe v. Bolton” on Thursday, June 23, 2005, at 2 p.m. in SD226.

Witness List

Panel I: Sandra Cano, Atlanta, GA; Norma McCorvey, Dallas, TX; and Ken Edelin, M.D., Boston, MA.

Panel II: Patricia Collett, Esq., Professor of Law, University of St. Thomas Law School, Minneapolis, MN; M. Edward Whelan, Esq., President, Ethics and Public Policy Center, Washington, DC; R. Alta Charo, Esq., Professor of Law and Bioethics, Associate Dean for Research and Faculty Development, University of Wisconsin Law School, Madison, WI; and Karen O’Connor, Professor of Government, American University, Washington, DC.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Thursday, June 23, 2005, at 2:30 p.m. for a hearing regarding ‘Addressing Disparities in Federal Benefits’.

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

UNANIMOUS CONSENT—H.R. 2361

Mr. FRIST. I ask unanimous consent on Friday June 24th, at a time determined by the majority leader, after consultation with the Democratic leader, that following the prayer and pledge, the Senate begins the bill, the committee substitute be agreed to and considered as original text for the purpose of further amendments, with no points of order waived; provided further that all first-degree amendments be offered on Friday, June 24th, and Monday, June 27th.

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

100TH ANNIVERSARY OF THE FOREST SERVICE

Mr. FRIST. I ask unanimous consent that the Senate proceed to consider the Senate Resolution 181, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows: A bill (S. Res. 181) recognizing July 1, 2005, as the 100th anniversary of the Forest Service.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider by laid upon the table.

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

The resolution (S. Res. 181) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. Res. 181

Whereas Congress established the Forest Service in 1905 to provide quality water and timber for the benefit of the United States; Whereas the mission of the Forest Service has expanded to include management of national forests for multiple uses and benefits, including the sustained yield of renewable resources such as water, forage, wildlife, wood, and recreation; Whereas the National Forest System encompasses 192,000,000 acres in 44 States, Puerto Rico, and the Virgin Islands, including 155 national forests and 20 national grasslands; Whereas the Forest Service significantly contributes to the scientific and technical knowledge necessary to protect and sustain natural resources on all land in the United States; Whereas the Forest Service cooperates with State, Tribal, and local governments, forest industries, other private landowners, and forest users in the management, protection, and development of forest land and the Federal Government does not own; Whereas the Forest Service participates in work, training, and education programs, such as AmeriCorps, Job Corps, and the Senior Community Service Employment Program; Whereas the Forest Service plays a key role internationally in developing sustainable forest management and biodiversity conservation for the protection and sound management of the forest resources of the world; Whereas, from rangers to researchers and from foresters to fire crews, the Forest Service has maintained a dedicated professional workforce that in 1905 with 500 employees and in 2005 includes more than 30,000; and Whereas Gifford Pinchot, the first Chief of the Forest Service, fostered the idea of managing for the greatest good of the greatest number: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes July 1, 2005 as the 100th Anniversary of the Forest Service;
(2) commends the Forest Service of the Department of Agriculture for its 100 years of dedicated service managing the forests of the United States;
(3) acknowledges the promise of the Forest Service to continue to preserve the natural legacy of the United States for an additional 100 years and beyond; and
(4) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

OVERSIGHT OVER THE CAPITOL VISITORS CENTER

Mr. FRIST. I ask unanimous consent that the Rules Committee be discharged from further consideration of S. Res. 179 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 179) to provide for oversight over the Capitol Visitors Center by the Architect of the Capitol.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and any statement be printed in the RECORD.

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

The resolution (S. Res. 179) was agreed to, as follows:

S. Res. 179

Resolved.

SECTION 1. CAPITOL VISITOR CENTER.

(a) IN GENERAL.—The Architect of the Capitol shall have the responsibility for the facilities management and operations of the Capitol Visitor Center.

(b) EXECUTIVE DIRECTOR.—The Architect of the Capitol may appoint an Executive Director of the Capitol Visitor Center who shall be the Architect’s personal representative.

(c) CONGRESSIONAL OVERSIGHT.—The responsibilities of the Architect of the Capitol under this section shall be subject to congressional oversight by the Committee on Rules and Administration of the Senate and as determined separately by the House of Representatives.

(d) CAPITOL PRESERVATION COMMISSION JURISDICTION.—Nothing in this section shall be construed to remove the jurisdiction of the Capitol Preservation Commission.

ORDERS FOR FRIDAY, JUNE 24, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, June 24. I further ask consent 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 proceed to the consideration of H.R. 2361, the Interior appropriations bill, as provided under the previous order.
Mr. FRIST. Mr. President, tomorrow, the Senate will begin consideration of the Interior appropriations bill. Under a previous agreement, we will consider amendments to the bill tomorrow and Monday, and we will begin votes in relation to amendments to the bill on Tuesday of next week. Therefore, there will be no rollover votes during tomorrow’s session. Senators who have amendments to the Interior appropriations bill, however, should make themselves available to come to the floor tomorrow and Monday to offer their first-degree amendments.

Mr. President, we had a great success today in the completion of the Energy bill, although we will not have the final vote on that bill until Tuesday morning. I congratulate the chairman and ranking member of the Energy Committee for their tremendous work—tremendous work—in getting the Energy bill to the finish line. Through their hard work and with the cooperation and hard work of our colleagues, we were able to dispose of all amendments and take the bill to third reading in 2 weeks, just as we had planned. We had said that was our goal about a month ago. And, indeed, that goal has been accomplished.

We will have the vote on passage on Tuesday morning of next week. The vote on passage will occur between 9:45 a.m. and 10 a.m. on Tuesday, and that will be our next vote. Both the chairman and ranking member of the Energy Committee will be there for that vote on Tuesday morning.

Tomorrow, Mr. President, I will update everyone with respect to next week’s schedule. It will be the last week of our session prior to the Fourth of July holiday, and thus we can expect a very busy week.

At the beginning of this 4-week block, we said we would spend the last week on appropriations bills. And, indeed, with the completion of the Energy bill, we will do just that—in fact, starting a day early by beginning the Interior appropriations bill tomorrow. Also during the week, we will have other legislative or executive matters we will deal with once they have been cleared.

NOMINATIONS

Executive nominations received by the Senate June 23, 2005:

ENVIRONMENTAL PROTECTION AGENCY

GRANTA Y. NAKAYAMA, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JOHN PETER SUAREZ, RESIGNED.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

KENT R. BILL, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE E. ANN PETERSON, RESIGNED.

FEDERAL LABOR RELATIONS AUTHORITY

COLLEEN DUFFY KIKO, OF VIRGINIA, TO BE GENERAL COUNCIL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS, VICE PETER RIDE.

MERIT SYSTEMS PROTECTION BOARD

MARY M. ROSE, OF NORTH CAROLINA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2011, VICE SUSANNE T. MARSHALL, TERM EXPIRED.

DEPARTMENT OF EDUCATION

STEPHANIE JOHNSON MONROE, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, VICE GERALD REYNOLDS.

DEPARTMENT OF JUSTICE

STEVEN G. BRADBURY, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE JACK LANDMAN GOLDSMITH III, RESIGNED.

PETER MANSON SWAM, OF INDIANA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF INDIANA FOR THE TERM OF FOUR YEARS, VICE JAMES LORNE KENNEDY, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

KENNETH D. DUBOGA, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CHARLES H. EDWARDS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

SLOBODAN JAZARINIC, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DAVID M. BARTOSZEK, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

RONALD D. Tomlin, 0000

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

RONNIE E. ARGILLANDER, 0000

JOHN C. BLACKBURN, 0000

GREGORY D. BLYDEN, 0000

KURT P. BORNSCH, 0000

PATRICK B. CLARK, 0000

DIANNE K. COODELL, 0000

JAMES E. DOLING, 0000

RYAN J. GREEN, 0000

JEREMY J. HAWES, 0000

DAVID KAISER, 0000

PAUL LEE, 0000

KARRICK MCDERMOTT, 0000

GRANTA Y. NAKAYAMA, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JOHN PETER SUAREZ, RESIGNED.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

KENT R. BILL, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE E. ANN PETERSON, RESIGNED.

FEDERAL LABOR RELATIONS AUTHORITY

COLLEEN DUFFY KIKO, OF VIRGINIA, TO BE GENERAL COUNCIL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS, VICE PETER RIDE.

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