to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1209. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1210. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1211. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1212. The Ms. STABENOW submitted an amendment intended to be proposed by her to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1213. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1214. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill H.R. 2360, supra; which was ordered to lie on the table.

SA 1215. Mrs. FEINSTEIN (for herself, Mr. CORNYN, Mr. LAUTENBERG, Mrs. BOXER, Mrs. HUTCHISON, Mr. KERRY, Mr. MARTINEZ, Mr. SCHUMER of Florida, Mrs. CLINTON, Mr. CORZINE, and Mr. KENNEDY) proposed an amendment to amendment SA 1142 proposed by Ms. Collins (for herself, Mr. LIEBERMAN, Mr. COBURN, Mr. AKAKA, Mr. CARPER, Mr. SALAZAR, Mr. COLEMAN, Mr. VOINOVICH, Mr. REED, Mr. BINGHAM, and Mr. HARKIN) to the bill H.R. 2360, supra.

TEXT OF AMENDMENTS

SA 1105. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

SIRC. 519. (a) Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall assess and report in writing to the Committee on Appropriations, the Committees on Homeland Security and Government Affairs, and the Committee on Commerce, Science, and Transportation of the Senate on the following:

(1) The vulnerability posed to high risk areas and facilities from general aviation aircraft that could be stolen or used as a weapon or armament.

(2) The security vulnerabilities existing at general aviation airports that would permit general aviation aircraft to be stolen.

(3) Low-cost, high-performance technology that could be used to easily track general aviation aircraft that could otherwise fly undetected.

(4) The feasibility of implementing security measures that would disable general aviation aircraft while on the ground and parked to prevent theft.

(5) The feasibility of performing requisite background checks on individuals working at general aviation airports that have access to aircraft or flight line activities.

(6) An assessment of the threat posed to high population areas, nuclear facilities, key infrastructure, military bases, and transportation infrastructure that stolen or hijacked general aviation aircraft pose especially armed with weapons or explosives.

(7) An assessment of existing security prescriptions in place at general aviation airports to prevent breaches of the flight line and perimeter.

(8) An assessment of whether unmanmed air traffic control systems provide a security or alert weakness to the security of general aviation aircraft.

(9) An assessment of the additional measures that should be adopted to ensure the security of general aviation aircraft.

(b) The report required by subsection (a) shall include cost estimates associated with implementing these measures recommended in the report.

SA 1107. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

SIRC. 519. (a) Not later than 90 days after the date of receipt of a request from the Subcommittee on Homeland Security of the Committee on Appropriations of the Senate for any information in addition to information described in subsection (a), the Secretary, and such staff located in a regional office of the Department of Homeland Security or the Federal Emergency Management Agency as the Secretary determines to be appropriate, shall provide the information to the Subcommittee.

SA 1106. Mrs. CLINTON (for herself, Mr. DURBIN, Mr. LAUTENBERG, Mr. CORZINE, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SIRC. 519. (a) Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall assess and report in writing to the Committee on Appropriations, the Committees on Homeland Security and Government Affairs, and the Committee on Commerce, Science, and Transportation of the Senate on the following:

(1) The vulnerability posed to high risk areas and facilities from general aviation aircraft that could be stolen or used as a weapon or armament.

(2) The security vulnerabilities existing at general aviation airports that would permit general aviation aircraft to be stolen.

(3) Low-cost, high-performance technology that could be used to easily track general aviation aircraft that could otherwise fly undetected.

(4) The feasibility of implementing security measures that would disable general aviation aircraft while on the ground and parked to prevent theft.

(5) The feasibility of performing requisite background checks on individuals working at general aviation airports that have access to aircraft or flight line activities.

(6) An assessment of the threat posed to high population areas, nuclear facilities, key infrastructure, military bases, and transportation infrastructure that stolen or hijacked general aviation aircraft pose especially armed with weapons or explosives.

(7) An assessment of existing security prescriptions in place at general aviation airports to prevent breaches of the flight line and perimeter.

(8) An assessment of whether unmanned air traffic control systems provide a security or alert weakness to the security of general aviation aircraft.

(9) An assessment of the additional measures that should be adopted to ensure the security of general aviation aircraft.

(b) The report required by subsection (a) shall include cost estimates associated with implementing these measures recommended in the report.

SA 1108. Mr. LOTT submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SIRC. 519. (a) Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall assess and report in writing to the Committee on Appropriations, the Committees on Homeland Security and Government Affairs, and the Committee on Commerce, Science, and Transportation of the Senate on the following:

(1) The vulnerability posed to high risk areas and facilities from general aviation aircraft that could be stolen or used as a weapon or armament.

(2) The security vulnerabilities existing at general aviation airports that would permit general aviation aircraft to be stolen.

(3) Low-cost, high-performance technology that could be used to easily track general aviation aircraft that could otherwise fly undetected.

(4) The feasibility of implementing security measures that would disable general aviation aircraft while on the ground and parked to prevent theft.

(5) The feasibility of performing requisite background checks on individuals working at general aviation airports that have access to aircraft or flight line activities.

(6) An assessment of the threat posed to high population areas, nuclear facilities, key infrastructure, military bases, and transportation infrastructure that stolen or hijacked general aviation aircraft pose especially armed with weapons or explosives.

(7) An assessment of existing security prescriptions in place at general aviation airports to prevent breaches of the flight line and perimeter.

(8) An assessment of whether unmanned air traffic control systems provide a security or alert weakness to the security of general aviation aircraft.

(9) An assessment of the additional measures that should be adopted to ensure the security of general aviation aircraft.

(b) The report required by subsection (a) shall include cost estimates associated with implementing these measures recommended in the report.

SA 1109. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, line 20, insert before the period a comma and the following:

...Provided further, That each State or territorial government that receives amounts under paragraph (1) or (2) shall provide a detailed report to the Office of State and Local Government Coordination and Preparedness on the identification of recipients which made expenditures that are available by the State or territory and the date of receipt, date of expenditure or obligation, and purpose of such expenditure or obligation by that recipient: Provided further, That each State or territory described under the preceding proviso shall provide access to Congress of all records of that State or territory relating to such amounts: Provided further, That each recipient described under the proviso before the preceding proviso shall provide a written explanation to the State or territory from which a grant is received of the reasons that the expenditure or obligation of any such amount is consistent with the Interim National Preparedness Goal as established by the Department of Homeland Security and the National Priorities as set forth in Homeland Security Presidential Directive 8...
On page 78, line 19, insert “or the proximity of existing or planned high impact targets, including liquefied natural gas facilities and liquefied petroleum vessels,” after “threat.”

SA 1111. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

Sgr. . None of the funds appropriated under this Act may be used to promulgate regulations to implement the plan developed pursuant to section 7209(b) of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1185 note) to require United States citizens to present a passport or other documents upon entry into the United States from Canada.

SA 1112. Mr. AKAKA (for himself, Mr. LIEBERMAN, Mr. HARKIN, Ms. LANDRIEU, Mr. OBAMA, Mrs. MURRAY, Mr. CORZINE, Mr. LAUTENBERG, Mr. BINGMAN, Mr. DURBIN, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 18, strike “$2,694,300,000” and insert “$1,261,000,000”.

On page 77, line 20, strike “$1,518,000,000” and insert “$1,985,000,000”.

On page 79, line 21, strike “$231,300,000” and insert “$431,300,000”.

SA 1113. Mr. AKAKA (for himself, Mr. LIEBERMAN, Mr. HARKIN, Ms. LANDRIEU, Mr. OBAMA, Mrs. MURRAY, Mr. CORZINE, Mr. LAUTENBERG, Mr. BINGMAN, Mr. DURBIN, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 18, strike “$2,694,300,000” and insert “$3,281,300,000”.

On page 77, line 20, strike “$1,518,000,000” and insert “$1,985,000,000”.

On page 79, line 21, strike “$231,300,000” and insert “$431,300,000”.

On page 81, line 24, strike “$615,000,000” and insert “$715,000,000” and strike “$550,000,000” and insert “$600,000,000” and line 26, strike “$65,000,000” and insert “$115,000,000”.

SA 1116. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 5. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed accounting of public assistance reimbursements provided to the States affected during 2004.

(1) Hurricane Charley;
(2) Hurricane Frances;
(3) Hurricane Ivan; or
(4) Hurricane Jeanne.

(b) The accounting under subsection (a) shall include a description of—

(1) the status of any pending public assistance reimbursement relating to a State described in subsection (a);

(2) any entity the application for public assistance reimbursement of which was denied by the Under Secretary and the reasons why the application was denied;

(3) each public assistance reimbursement application that is under appeal as of the date on which the accounting is prepared; and

(4) the amount, and each recipient, of public assistance reimbursements described in subsection (a) as of the date on which the accounting is prepared, expressed in a chart.

SA 1117. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 5. In light of concerns regarding inconsistent policy memoranda and guidelines issued to counties and communities affected by the 2004 hurricane season, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall provide, in a clear, concise, and uniform guidelines for the reimbursement to any county or governmental entity affected by a hurricane of the costs of hurricane debris removal.

SA 1118. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 5. . Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing any changes to Federal emergency preparedness and response policies and practices as made as a result of the report of the Inspector General of the Department of Homeland Security, dated May 20, 2005, relating to the limited, ad hoc, lead agencies program of the Federal Emergency Management Agency in Miami-Dade County, Florida, in response to Hurricane Frances.

SA 1119. Mr. REED (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 5. (a) Beginning in fiscal year 2006 and thereafter, the Commandant of the Coast Guard shall require an applicant for an order to site, construct, expand, or operate a liquefied natural gas import facility, in cooperation with the Commandant and State and local agencies that provide for the safety and security of the liquefied natural gas import facility and any vessels that serve the facility, to develop a cost-sharing plan before the date on which the Federal Energy Regulatory Commission authorizes the applicant to site the facility.

(b) A cost-sharing plan developed under subsection (a) shall include a description of any direct cost reimbursements to the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(1) at the liquefied natural gas import facility; and

(2) in proximity to vessels that serve the facility.

SA 1120. Mr. FEINGOLD (for himself, Mr. SUNUNU, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

Sgr. . (a) Definitions.—In this section—

(1) DATA-MINING.—The term “data-mining” means a query or search or other analysis of information derived from or remains under the control of a non-
Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement.

(b) A department or agency of the Federal Government or a non-Federal entity acting on behalf of the Federal Government is conducting a query or search or other analysis to find a predictive pattern indicating terrorist or criminal activity; and

(c) The research does not use a specific individual's personal identifiers to acquire information concerning that individual.

(2) DATABASE.—The term ‘‘database’’ does not include directories, newsgroups, information publicly available via the Internet or available by any other means to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

(b) REPORTS ON DATA-MINING ACTIVITIES BY THE DEPARTMENT OF HOMELAND SECURITY.—

(1) REQUIREMENT FOR REPORT.—The head of each department or agency in the Department of Homeland Security that is engaged in any activity to use or develop data-mining technology shall submit a report to Congress on all such activities of the agency under the jurisdiction of that official. The report shall be made available to the public.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the reporting information:

(A) A thorough description of the data-mining technology and the data that is being or will be used;

(B) A thorough description of the goals and plans for the use or development of such technology and, where appropriate, the target dates for the deployment of the data-mining technology;

(C) An assessment of the efficacy or likely efficacy of the data-mining technology in providing accurate information consistent with and valuable to the stated goals and plans for the use or development of the technology;

(D) An assessment of the impact or likely impact of the implementation of the data-mining technology on the privacy and civil liberties of individuals;

(E) A list and analysis of the laws and regulations that govern the information being or to be collected, reviewed, gathered, analyzed, or used with the data-mining technology;

(F) A thorough discussion of the policies, procedures, and guidelines that are in place or that are to be developed and applied in the use of such technology for data-mining in order to:

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected, reviewed, gathered, analyzed, or used.

(G) Any necessary classified information in an annex that shall be available to the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

SA 1121. Mr. BAYH submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 20, strike ‘‘$1,518,000,000’’ and insert ‘‘$1,985,000,000’’.

On page 79, line 21, strike ‘‘$321,300,000’’ and insert ‘‘$411,300,000’’.

On page 81, line 22, insert before the colon ‘‘, of which $30,000,000 shall be made available for the metropolitan medical response system’’.

On page 81, line 24, strike ‘‘$651,000,000’’ and insert ‘‘$715,000,000’’.

On page 81, line 24, strike ‘‘$550,000,000’’ and insert ‘‘$650,000,000’’.

SA 1122. Mr. BAYH submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. (a) The amount appropriated under the heading ‘‘AVIATION SECURITY’’ for screening operations is hereby increased by $354,971, of which $354,971 shall be available for passenger compensation, compensation, and benefits. Such amount shall be in addition to any other amounts appropriated for such pay, compensation, and benefits.

(b) None of the funds appropriated to the Transportation Security Administration in this Act may be used to enter into contracts with nongovernmental entities to provide passenger and baggage screening functions.

SA 1123. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 73, line 13, strike ‘‘$988,600,000’’ and insert ‘‘$1,082,900,000’’.

On page 73, line 15, strike ‘‘program:’’ and insert ‘‘program, of which $94,300,000 shall be used for accelerating the fast response cutter acquisition:’’.

On page 77, line 18, strike ‘‘$2,694,300,000,’’ and insert ‘‘$2,600,000,000.’’.

SA 1124. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 20, insert ‘‘of which $367,552,000 shall be transferred to Customs and Border Protection for hiring an additional 1,000 border agents and for necessary support activities for such agency; and’’ after ‘‘local grants,’’.

SA 1125. Mr. PRYOR submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 83, line 26, before the period, insert the following: ‘‘: Provided further, That of the total amount appropriated under this heading for the support and acquisition of mobile medical units to be used by the Federal Emergency Management Agency, Director of Emergency Preparedness and Response, in response to domestic disasters, the Secretary of Homeland Security is authorized to acquire an integrated mobile medical system for testing and evaluation in accordance with subchapter V of chapter 35 of title 31, United States Code (commonly known as the ‘‘Competition in Contracting Act’’).’’

SA 1126. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

TITLE VI—SEAPORTS

SEC. 601. SHORT TITLE.

This title may be cited as the ‘‘Reducing Crime and Terrorism at America’s Seaports Act of 2005’’.

SEC. 602. ENTRY BY FALSE PRETENCES TO ANY SEAPORT.

(a) IN GENERAL.—Section 1936 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ‘‘or’’ at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

‘‘(3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70103 of title 46, United States Code, and the rules and regulations promulgated under that section; or

(2) in subsection (b)(1), by striking ‘‘5’’ and inserting ‘‘10’’;

(3) in subsection (c)(1), by inserting ‘‘, captain of the seaport,’’ after ‘‘airport authority’’; and

(4) by striking the section heading and inserting the following:

‘‘1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport’’.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 47 of title 18, United States Code, is amended by striking the matter relating to section 1036 and inserting the following:

‘‘1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.’’

(c) DEFINITIONS.—In section 1036 of title 18, United States Code, is amended by adding at the end the following:
"§ 2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information."

(a) OFFENSE.—Chapter 109 of title 18, United States Code, is amended by adding at the end the following:

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 109, title 18, United States Code, is amended by inserting after the item related to section 2236 the following:

(c) TECHNICAL AND CONFORMING AMENDMENT.—The provisions of this section shall be fined in section 2(1) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 109, title 18, United States Code, is amended by adding at the end the following:

(e) TECHNICAL AND CONFORMING AMENDMENT.—The provisions of this section shall be fined in section 2101(14) of title 46, United States Code.

(f) TECHNICAL AND CONFORMING AMENDMENT.—The provisions of this section shall be fined in section 2(1) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).

(g) TECHNICAL AND CONFORMING AMENDMENT.—The provisions of this section shall be fined in section 2101(15) of title 46, United States Code.
§ 2292B. Violence against aids to maritime navigation

“Whoever intentionally destroys, seriously damages, alters, moves, or tampers with any aid to navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is likely to endanger the safe navigation of a ship, shall be fined under this title, imprisoned for not more than 20 years, or both.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by subsections (b) and (d) is further amended by adding after the item related to section 2292A the following:

“2292B. Violence against aids to maritime navigation.”

SEC. 606. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.

(a) TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.—Chapter 111 of title 18, as amended by section 605, is further amended by adding at the end the following:

“§ 2293. Transportation of explosives, biological, chemical, or radioactive materials

“(a) IN GENERAL.—Any person who knowingly and willfully transports aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality, an explosive or incendiary device, biological weapon, chemical weapon, or radioactive or nuclear material, knowing that any such item is intended to be used to cause the death of any person by engaging or both.

“(b) DEFINED TERM.—In this section, the term ‘terrorist’ means any person who intends to commit, or is avoiding apprehension after having committed, an offense listed under section 111 of title 18.

“(c) JURISDICTION.—There is jurisdiction over an offense under this chapter if the prohibited activity takes place

“(1) within the United States and within waters subject to the jurisdiction of the United States; or

“(2) outside the United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under title 19(c)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

“(C) the activity involves a vessel of the United States (as that term is defined under section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1905).

“(d) Bar to prosecution.

§ 2290. Jurisdiction and scope

“(a) JURISDICTION.—There is jurisdiction over an offense under this chapter if the prohibited activity takes place

“(1) within the United States and within waters subject to the jurisdiction of the United States; or

“(2) outside United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under title 19(c)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

“(C) the activity involves a vessel of the United States (as that term is defined under section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1905).

“(b) SCOPE.—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

§ 2291. Destruction of vessel or maritime facility

“(a) OFFENSE.—Whoever willfully—

“(1) sets fire to, damages, destroys, disables, or wrecks any vessel;

“(2) places or causes to be placed a destructive device, as defined in section 921(a)(4), or destructive substance, as defined in section 31(a)(3), in, upon, or near, or otherwise makes or has in his possession to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

“(3) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or near, any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment; or

“(4) interferes by force or violence with the operation of any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment, if such interference results in the death of any person.

“(b) T ECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by section 605, is further amended by adding at the end the following:

“2293. Transportation of explosive, chemical, biological, or radioactive or nuclear materials.

“2294. Transportation of terrorists.

“(a) IN GENERAL.—Any person who knowingly and intentionally transports any terrorist aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality, knowing that any such item is intended to be used to cause the death of any person by engaging or both.

“(b) DEFINED TERM.—In this section, the term ‘terrorist’ means any person who intends to commit, or is avoiding apprehension after having committed, an offense listed under section 111 of title 18.

“(c) JURISDICTION.—There is jurisdiction over an offense under this chapter if the prohibited activity takes place

“(1) within the United States and within waters subject to the jurisdiction of the United States; or

“(2) outside the United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under title 19(c)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

“(C) the activity involves a vessel of the United States (as that term is defined under section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1905).

§ 2290. Bar to prosecution.

“Whoever intentionally destroys, seriously damages, alters, moves, or tampers with an explosive or incendiary device’ has the meaning given that term in section 11(aa) of the ‘special nuclear material’ has the meaning given that term in section 101 of the Atomic Energy Act of 1954 (42 U.S.C. 10101(23)), shall be fined under this title, imprisoned not more than 20 years, or both.

“(d) T ECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by section 605, is further amended by adding at the end the following:

“2293. Transportation of explosive, chemical, biological, or radioactive or nuclear materials.

“2294. Transportation of terrorists.”

SEC. 607. DESTRUCTION OF, OR INTERFERENCE WITH VESSELS OR MARITIME FACILITIES.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 111 the following:

“CHAPTER 111A—DESTRUCTION OF, OR INTERFERENCE WITH VESSELS OR MARITIME FACILITIES

“Sec.

“2290. Jurisdiction and scope

“2291. Destruction of vessel or maritime facility.

“2292. Imparting or conveying false information.

“2293. Bar to prosecution.

“(a) JURISDICTION.—There is jurisdiction over an offense under this chapter if the prohibited activity takes place

“(1) within the United States and within waters subject to the jurisdiction of the United States; or

“(2) outside United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under title 19(c)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

“(C) the activity involves a vessel of the United States (as that term is defined under section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1905).

“(b) SCOPE.—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

“(c) PENALTY.—Whoever is fined or imprisoned under subsection (a) as a result of an act involving a vessel that, at the time of the violation, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)) or spent nuclear fuel (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under this title, imprisoned for a term up to life, or both.

“(d) PENALTY WHEN PERSON IS CONVICTED OF ANY CRIME—Whoever is convicted of any crime prohibited by subsection (a) and intended to cause death by the prohibited conduct, if the conduct resulted in the death of any person, shall be subject also to the death penalty or to a term of imprisonment for a period up to life.

“(e) THREATS.—Whoever willfully imports or conveys any threat which would violate this chapter, with an apparent determination and will to carry the threat into execution, shall be fined under this title, imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.

“(f) 2292B. Imparting or conveying false information.

“(a) IN GENERAL.—Whoever imports or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or intended to do any act that would be a crime prohibited by this chapter or by chapter 111 of this title, shall be subject to a civil penalty of not more than $5,000, which shall be recoverable in a civil action brought in the name of the United States.
"(b) MALICIOUS CONDUCT.—Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information to any law enforcement agency or the United States Government, knowing the information to be false, concerning an attempt or alleged attempt to do any act which would be a crime prohibited by this chapter or by chapter 24, Title 18, United States Code, shall, if the act is not otherwise a violation of this section, be fined for any number of years or for life, or both.

SEC. 611. BRIBERY AFFECTING PORT SECURITY.

(a) In General.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"§ 226. Bribery affecting port security.

"(a) In General.—Whoever knowingly—

"(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public or private person, with intent to commit or to influence the decision of any governmental or nongovernmental person, or to induce any public or private person to do or omit to do any act in violation of the lawful duty of such official or person that affects any secure or restricted area or seaport; or

"(2) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value person, or to influence the decision of any governmental or nongovernmental person, or to induce any public or private person to do or omit to do any act in violation of the lawful duty of such official or person that affects any secure or restricted area or seaport; or

"(b) Definition.—In this section, the term "secure or restricted area means an area of a vessel or facility designated as secure in an approved security plan, as required under section 70102 of title 46, United States Code, and the rules and regulations promulgated under that section.

(b) Technical and Conforming Amendments.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

"226. Bribery affecting port security."

SA 1128. Mr. BIDEN submitted an amendment intended to be proposed by the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. The amount appropriated by title III under the heading "OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS" is increased by $490,000,000, of which $90,000,000 shall be made available for discretionary transportation and infrastructure grants for intercity passenger rail transportation, freight rail, and transit security.

SA 1129. Mr. REID (for Ms. MURRAY (for herself, Mr. BYRD, Mr. AKAKA, and Mr. KERRY)) proposed an amendment to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. 519. The amount appropriated by title III under the heading "OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS" is increased by $490,000,000, of which $90,000,000 shall be made available for discretionary transportation and infrastructure grants for intercity passenger rail transportation, freight rail, and transit security.
(a) In General.—From any money in the Treasury not otherwise obligated or appropriated, there are appropriated to the Department of Veterans Affairs $1,500,000,000 for the fiscal year ending September 30, 2005, for medical care and assistance furnished by the Veterans Health Administration, which shall remain available until expended. 

(b) Emergency Designation.—The amount appropriated by subsection (a) is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress). 

(c) Emergency. —This section shall take effect on the date of enactment of this Act.

SA 1130. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 519. HOMELAND SECURITY ASSISTANCE. 

It is the sense of the Senate that the Senate appropriates the following: “Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. . . . If Federal homeland security assistance should be based on a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerabilities that merit additional support.”

SA 1131. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 519. RISK-BASED HOMELAND SECURITY FUNDING. 

(a) Short Title.—This section may be cited as the “Risk-Based Homeland Security Funding Act”. 

(b) Findings.—Congress agrees with the recommendations of the Final Report of the National Commission on Terrorist Attacks Upon the United States (commonly known as the “9/11 Report”), which includes the following: “Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. . . . If Federal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerabilities that merit additional support.”

(c) Risk-Based Homeland Security Grant Funding.—

(1) Criteria for awarding homeland security grants.—Except for grants awarded under subsection (d)(2), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based strictly on an assessment of risks, threats, and vulnerabilities, as determined by the Secretary of Homeland Security.

SEC. 519. RISK-BASED HOMELAND SECURITY FUNDING. 

Notwithstanding any other provision of law (including any provision of title III of this Act), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based on an assessment of risks, threats, and vulnerabilities, as determined by the Secretary of Homeland Security.

SEC. 519. RISK-BASED HOMELAND SECURITY FUNDING. 

Notwithstanding any other provision of law (including any provision of title III of this Act), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based on an assessment of risks, threats, and vulnerabilities, as determined by the Secretary of Homeland Security.

SEC. 519. RISK-BASED HOMELAND SECURITY FUNDING. 

Notwithstanding any other provision of law (including any provision of title III of this Act), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based on an assessment of risks, threats, and vulnerabilities, as determined by the Secretary of Homeland Security.

SEC. 519. RISK-BASED HOMELAND SECURITY FUNDING. 

Notwithstanding any other provision of law (including any provision of title III of this Act), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based on an assessment of risks, threats, and vulnerabilities, as determined by the Secretary of Homeland Security.
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. 1136. (a) Availability of amount for Grand Forks Air Wing Base, North Dakota. of Homeland Security shall submit to Congress a report on the establishment of Grand Forks Air Wing Base as part of the Northern border airwing system. The report shall set forth and justify the establishment of the Grand Forks Air Wing Base, together with a proposed schedule for completion of the Grand Forks Air Wing Base.

SA 1137. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 78, line 12, strike the period at the end and insert the following: "Provided further, That the funds made available under this paragraph may be used for overtime costs associated with providing enhanced law enforcement operations in support of Federal agencies for increased border security and border crossing enforcement."

SA 1138. Mr. COLEMAN (for himself, Mr. LEVIN, Mr. WATERS, and Mr. AKAKA) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. PAYMENTS TO FEDERAL CONTRACTORS WITH FEDERAL TAX DEBT. The General Services Administration, in conjunction with the Internal Revenue Service and the Financial Management Service, shall develop procedures to subject purchase card payments to Federal contractors to the Federal Payment Levy program.

SEC. 520. REPORTING OF AIR TRAVEL BY FEDERAL GOVERNMENT EMPLOYEES. (a) ANNUAL REPORTS REQUIRED. The Administrator of the General Services shall submit annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on all first class and business class travel by employees of each executive agency under the Government Reimbursement Act of the House of Representatives. The report shall set forth and justify the establishment of Grand Forks Air Wing Base as part of the Northern border airwing system. The report shall set forth and justify the establishment of the Grand Forks Air Wing Base, together with a proposed schedule for completion of the Grand Forks Air Wing Base.

SA 1139. Mr. SESSIONS (for himself and Mr. HATCH) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 56, line 19, strike "$124,620,000" and insert "$123,620,000".

At the appropriate place, insert the following:

SEC. ______. TRAINING STATE AND LOCAL PERSONNEL TO PERFORM IMMIGRATION FUNCTIONS. (a) IN GENERAL.—There are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Homeland Security for the fiscal year ending September 30, 2006, $40,000,000, of which $20,000,000 may be used to reimburse States and political subdivisions of any State for expenses described in subsection (c); and

(b) ELIGIBLE RECIPIENTS.—Reimbursement under subsection (a)(2) is limited to States and political subdivisions of any State that—

(1) have entered into a written agreement under section 287(g) of such Act under which certain officers or employees are authorized to perform certain functions of an immigration officer; and

(2) desire that such officers or employees receive training from the Department of Homeland Security in relation to such functions.

(c) EXPENSE.—The expenses described in this subsection are the actual and necessary expenses incurred by the State or political subdivision in support of the training described in subsection (b)(2), including—

(1) expenses incurred by the State or political subdivision in support of the training described in subsection (b)(2), including—

(2) travel and transportation to locations where training is provided, including mileage and related allowances for the use of a privately owned automobile; and

(3) subsistence payments, including lodging, meals, and other necessary expenses for
the personal sustenance and comfort of a person required to travel away from the person’s regular post of duty in order to participate in the training; 
(2) a per diem allowance paid instead of actual expenses for subsistence and fees or tips to porters and stewards; and  
(3) costs of securing temporary replacement employees to be away from the training, including overtime expenses.

SA 1141. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

TITLE

—PROTECTION OF RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS

SEC. 01. SHORT TITLE.

This title may be referred to as the “Railroad and Mass Transportation Protection Act of 2005”.

SEC. 02. ATTACKS AGAINST RAILROAD CARRIERS, PASSENGER VESSELS, AND MASS TRANSPORTATION SYSTEMS.

(a) In General.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 and 1993 and inserting the following:

“§11992. Terrorist attacks and other violence against railroad carriers, passenger vessels, and against mass transportation systems

“(a) General Prohibitions.—Whoever, in a circumstance described in subsection (c), knowingly—

“(1) places, derails, sets fire to, or disables railroad on-track equipment, a passenger vessel, or a mass transportation vehicle;

“(2) with intent to endanger the safety of any person or employee of a railroad carrier, owner of a passenger vessel, or mass transportation provider or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatchers, operators, engineers, captains, railroad conductor, or other person while the person is engaged in dispatching, operating, or maintaining railroad on-track equipment, passenger vessel, or a mass transportation vehicle;

“(3) engages in, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider that is used for railroad or mass transportation purposes;

“(4) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

“(5) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (4), shall be fined under this title, imprisonment not more than 20 years, or both.

“(b) Aggravated offense.—(1) Whoever commits an offense under subsection (a) in a circumstance in which—

“(A) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying hazardous material or a biological agent or toxin on or near the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider;

“(B) the offense results in death or in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a railroad carrier, owner of a passenger vessel, or railroad carrier engaged in or affecting interstate or foreign commerce.

“(2) Any person who travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

“(d) Nonapplicability.—Subsection (a) does not apply to the conduct with respect to a destructive substance or destructive device that is also classified under chapter 51 of title 49 as a hazardous material in commerce if the conduct—

“(1) complies with chapter 51 of title 49 and regulations, exemptions, approvals, and orders issued under that chapter; or

“(2) constitutes a violation, other than a criminal violation, of chapter 51 of title 49 or regulation or order issued under that chapter.

“(e) Definitions.—In this section—

“(1) the term ‘biological agent’ means the material given the meaning under the term ‘biological agent’ in section 2101(35) of title 49;

“(2) the term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is being used or is readily capable of causing death or serious bodily injury, including a pocket knife with a blade of less than 2 1/2 inches in length and a box cutter;

“(3) the term ‘destructive device’ has the meaning given the term in section 921(a)(11);

“(4) the term ‘destructive substance’ means an explosive substance, flammable liquid, incendiary device, chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term ‘radioactive device’ does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

“(5) the term ‘hazardous material’ has the meaning given the term in section 5102(2) of title 49;

“(6) the term ‘high-level radioactive waste’ has the meaning given the term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

“(7) the term ‘mass transportation’ has the meaning given the term in section 2101(35) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

“(8) the term ‘on-track equipment’ means a baggage or other contrivance that runs on rails or electromagnetic guideways;

“(9) the term ‘passenger vessel’ has the meaning given the term in section 2301(2) of title 46, United States Code, and includes a small passenger vessel (as defined under section 2101(35) of that title);

“(10) the term ‘railroad on-track equipment’ means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

“(11) the term ‘railroad’ has the meaning given in the term in section 20102(1) of title 49;

“(12) the term ‘railroad carrier’ has the meaning given in the term in section 20102(2) of title 49;

“(13) the term ‘serious bodily injury’ has the meaning given in the term in section 11183(2) of title 18;

“(14) the term ‘spent nuclear fuel’ has the meaning given in the term in section 2(23) of
the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

(15) the term ‘State’ has the meaning given the term in section 2526(b);

(16) the term ‘vehicle’ has the meaning given the term in section 178(2); and

(17) the term ‘vessel’ means any conveyance, or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.”;

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections relating to chapter 901 of title 18, United States Code, is amended—

(A) by striking “RAILROADS” in the chapter heading and inserting “RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR”;

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

“1992. Terrorist attacks and other violence against railroad carriers, passenger vessels, and against mass transportation systems on land, on water, or through the air .......... 1991.”;

(2) TABLE OF CHAPTERS.—The table of chapters at the beginning of part 1 of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

“97. Railroad carriers and mass transportation systems on land, on water, or through the air ............... 1991.”;

(3) CONFORMING AMENDMENTS.—Title 18, United States Code, is amended—

(A) in section 2332(c)(5)(B)(i), by striking “1992 (relating to wrecking trains),” and inserting “1992 (relating to terrorist attacks and other acts of violence against mass transportation systems),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”;

(B) in section 233A, by striking “1993,” and

(C) in section 2516(c)(1) by striking “1992 (relating to wrecking trains),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”.

SA 1142. Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. DEWINE, Mr. COBURN, Mr. AKAKA, Mr. CARPER, Mr. SALAZAR, Mr. COLEMAN, Mr. VON INküCH, Mr. REED, Mr. BINGMAN, and Mr. HARKIN) proposed an amendment to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE VI—HOMELAND SECURITY GRANT ENHANCEMENT

SEC. 601. SHORT TITLE.

This title may be cited as the “Homeland Security Grant Enhancement Act of 2005”.

SEC. 602. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS.

(a) In General.—Section VIII of the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by inserting after section 801 the following:

“SEC. 801. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—Consistent with section 871, the Secretary, in coordination with the Attorney General, the Secretary of Health and Human Services, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and other agencies providing emergency response provider preparedness, as identified by the President, shall establish the Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs (referred to in this subtitle as the ‘Interagency Committee’).

“(2) COMPOSITION.—The Interagency Committee shall be composed of—

“(A) at least 2 representatives of the Department, including a representative of the United States Fire Administration;

“(B) a representative of the Department of Health and Human Services;

“(C) a representative of the Department of Transportation;

“(D) a representative of the Department of Justice;

“(E) a representative of the Environmental Protection Agency;

“(F) at least 2 State Governors, or their designees, or other local or tribal officials; and

“(G) a representative of any other department or agency determined to be necessary by the President.

“(3) RESPONSIBILITIES.—The Interagency Committee shall—

“(A) provide any findings to the Information Clearinghouse established under section 801(c);

“(B) consult with State and local governments and emergency response providers regarding their homeland security needs and capabilities;

“(C) advise the Secretary on the development of performance measures for homeland security and other first responder assistance programs;

“(D) compile a list of homeland security and other first responder assistance programs;

“(E) not later than 1 year after the date of enactment of the Homeland Security Grant Enhancement Act of 2005—

“(i) develop a proposal to coordinate, to the maximum extent practicable, the planning, reporting, application, and other guidance documents contained in homeland security and other first responder assistance programs;

“(ii) ensure the compatibility of the programs to the intended purposes of such programs;

“(iii) coordinate expenditures of grant funds to avoid duplicative or inconsistent purchases; and

“(iv) make the programs as user friendly as possible for applicants, including reducing lapsed time between grant applications, decisions and payments and funding match requirements, and improving application guidance;

“(ii) submit the proposal developed under clause (i) to—

“(I) the President;

“(II) the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(III) the Committee on Homeland Security of the House of Representatives; and

“(F) otherwise promote the coordination of homeland security grant programs throughout the Federal Government.

“(b) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee, which shall include—

“(1) scheduling meetings;

“(2) preparing the agenda;

“(3) maintaining minutes and records; and

“(4) producing reports.

“(c) CHAIRPERSON.—The Secretary shall designate a chairperson of the Interagency Committee.

“(d) MEETINGS.—The Interagency Committee shall meet—

“(1) at the call of the Secretary; or

“(2) not less frequently than once every month.

“(e) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) is amended by inserting after the item relating to section 801 the following:

“Sec. 802. Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs.”

SEC. 603. STREAMLINING FEDERAL HOMELAND SECURITY GRANT ADMINISTRATION.

(a) DIRECTOR OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS.—

Section 801(a) of the Homeland Security Act of 2002 (6 U.S.C. 361(a)) is amended to read as follows:

“(a) Establishment.—

“(1) IN GENERAL.—There is established within the Office of the Secretary the Office for State and Local Government Coordination and Preparedness, which shall oversee and coordinate departmental programs for, and relationships with, State and local governments.

“(2) EXECUTIVE DIRECTOR.—The Office established under paragraph (1) shall be headed by the Executive Director of State and Local Government Coordination and Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) OFFICE FOR DOMESTIC PREPAREDNESS.—


(1) by redesigning section 430 as section 803 and transferring that section to the end of subtitle A of title VIII, as amended by section 602; and

(2) in section 803, as redesignated by paragraph (1) —

(A) in subsection (a), by striking “the Director of Border and Transportation Security” and inserting “the Office for State and Local Government Coordination and Preparedness”; and

(B) in subsection (b), by striking “who shall be appointed by the President” and all that follows and inserting “who shall report directly to the Executive Director of State and Local Government Coordination and Preparedness.”;

(3) in subsection (c)—

(i) in paragraph (9) —

(I) by striking “other” and inserting “the”; and

(II) by striking “consistent with the mission and functions of the Directorate”; and

(ii) in paragraph (8)—

(I) by inserting “carrying out” before “those elements”; and

(II) by striking “and” at the end;

(iii) in paragraph (9), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following:

“(B) managing the Homeland Security Information Clearinghouse established under section 801(c).”;

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—The table of contents for the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended—

(A) by striking the item relating to section 430; and

(B) by amending the item relating to section 801 to read as follows:

“Sec. 801. Office of State and Local Government Coordination and Preparedness.”;
(C) by inserting after the item relating to section 802, as added by this title, the following:—

"(Sec. 803. Office for Domestic Preparedness.)

(2) SECTION HEADING.—Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361) is amended by striking the section heading and inserting the following:

"SEC. 801. OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS.

(d) ESTABLISHMENT OF HOMELAND SECURITY INFORMATION CLEARINGHOUSE.—Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361), as amended by subsection (a), is further amended by adding at the end the following:

"(c) HOMELAND SECURITY INFORMATION CLEARINGHOUSE.—

"(1) Establishment.—There is established within the Office for State and Local Government Coordination and Preparedness a Homeland Security Information Clearinghouse (referred to in this section as the 'Clearinghouse'), which shall assist States, local governments, and emergency response providers in accordance with paragraphs (2) through (6).

"(2) HOMELAND SECURITY GRANT INFORMATION.—The Clearinghouse shall create a new website or enhance an existing website, establish a toll-free number, and produce a single public publication that each contain information regarding the homeland security grant programs administered by the Department.

"(3) Other Assistance.—The Clearinghouse, in consultation with the Interagency Committee established under section 802, shall provide information regarding technical assistance provided by any Federal agency to States and local governments relating to homeland security matters, including the assistance for conducting threat analyses and vulnerability assessments.

"(4) BEST PRACTICES.—The Clearinghouse shall work with States, local governments, emergency response providers, the National Domestic Preparedness Consortium, the National Memorial Institute for the Prevention of Terrorism, and private organizations to gather, validate, and disseminate information regarding successful State and local homeland security programs and practices.

"(5) USE OF FEDERAL FUNDS.—The Clearinghouse shall make information, including templates for conducting threat analyses and vulnerability assessments, regarding voluntary standards of training, equipment, and exercises, available to States, local governments, and emergency response providers.

"(6) OTHER INFORMATION.—The Clearinghouse shall work with States, local governments, and emergency response providers with any other information that the Secretary determines necessary.

SEC. 604. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS AND THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.

(a) In General.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following:

"TITLE XVIII—ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS AND THREAT-BASED HOMELAND SECURITY GRANT PROGRAM

"SEC. 1801. DEFINITIONS.

Bearing in mind the following definitions shall apply:

"(1) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means—

"(A) any Indian tribe, as that term is defined by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) or—

"(B) an Indian tribe which—

"(i) is located in the continental United States;

"(ii) operates a law enforcement or emergency response agency with the capacity to respond to or deal with law enforcement or emergency services;

"(iii) is located—

"(I) on, or within 10 miles of, an international border, or a coastline bordering an ocean or international waters;

"(II) within 5 miles of critical infrastructure or having critical infrastructure within its territory;

"(IV) within or contiguous to 1 of the 50 largest metropolitan statistical areas in the United States;

"(iv) certifies to the Secretary that a State or eligible geographic region is not making funds distributed under this title available to the Indian tribe or consortium of Indian tribes for the purpose for which the Indian tribe or consortium of Indian tribes is seeking grant funds; and

"(B) a consortium of Indian tribes if each tribe satisfies the requirements of subparagraph (A).

"(2) ELIGIBLE METROPOLITAN REGION.—The term 'eligible metropolitan region' means the following:

"(A) IN GENERAL.—A combination of 2 or more incorporated municipalities, counties, cities, or other local governments within a metropolitan region that includes the city in that metropolitan region with the largest population. Such eligible metropolitan region may be any ETLA eligible entity or any ETLA entity outside the metropolitan region that are likely to be affected by, or be called upon to respond to, a terrorist attack or other catastrophic event within the metropolitan region.

"(B) OTHER COMBINATIONS.—Any other combination of local governments that are formally certified by the Secretary as an eligible metropolitan region for purposes of this title with the consent of the State or States in which such local governments are located.

"(3) ESSENTIAL CAPABILITIES.—The term 'essential capabilities' means the levels, availability, and competence of emergency personnel, planning, training, and equipment and personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, respond to, and recover from domestic and international terrorist attacks and other catastrophic events.

"(4) INDIAN TRIBE.—The term 'Indian tribe' means an entity described under section 2(10)(B).

"(5) METROPOLITAN REGION.—The term 'metropolitan region' means—

"(A) any of the 100 largest metropolitan statistical areas in the United States, as defined by the Office of Management and Budget or—

"(B) any combined statistical area, as defined by the Office of Management and Budget, of which any metropolitan statistical area covered by subparagraph (A) is a part.

"(6) POPULATION.—The term 'population' means population according to the most recent United States census population estimates available at the start of the relevant fiscal year.

"(7) POPULATION DENSITY.—The term 'population density' means population density divided by land area in square miles.

"(8) SLIDING SCALE BASELINE ALLOCATION.—The term 'sliding scale baseline allocation' means 0.003 multiplied by the sum of—

"(A) the value of a State's population relative to that of the most populous of the 50 States of the United States, where the population of such States has been normalized to a maximum value of 100; and

"(B) the Under Secretaries for Emergency Preparedness and Response (including representatives of the United States Fire Administration, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Executive Director of the Office of State and Local Government Coordination and Preparedness); and

"(C) the Secretary of Health and Human Services; and

"(D) other appropriate Federal agencies;

"(E) State and local emergency response providers;

"(F) State and local officials; and

"(G) consensus-based standard making organizations responsible for setting standards relevant to the first responder community.

"(9) THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.—The term 'Threat-Based Homeland Security Grant Program' means the program established under section 1804.

"SEC. 1802. PRESERVATION OF PRE-9/11 GRANT FUNDS FOR FIRST RESPONDERS.''

"(a) IN GENERAL.—This title shall not be construed to affect any authority to award grants under any Federal grant program listed under subsection (b), which existed on September 10, 2001, to enhance traditional missions of State and local law enforcement, firefighters, ports, waterways, or public health.

"(b) PROGRAMS NOT AFFECTED.—The programs referred to in subsection (a) are the following:


"(2) All grant programs authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (commonly known as the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program).


"SEC. 1803. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

(a) ESTABLISHMENT OF ESSENTIAL CAPABILITIES.—

"(A) In General.—Building upon the national preparedness guidance issued by the Secretary, the Secretary shall establish clearly defined essential capabilities for States and local governments, in consultation with—

"(A) the Task Force on Essential Capabilities for First Responders established under subsection (d); and

"(B) the Under Secretaries for Emergency Preparedness and Response (including representatives of the United States Fire Administration, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Executive Director of the Office of State and Local Government Coordination and Preparedness); and

"(C) the Secretary of Health and Human Services; and

"(D) other appropriate Federal agencies; and

"(E) State and local emergency response providers;

"(F) State and local officials; and

"(G) consensus-based standard making organizations responsible for setting standards relevant to the first responder community.

"(2) DEADLINES.—The Secretary shall—

"(A) establish essential capabilities under paragraph (1) within 30 days after receipt of the first report under subsection (d); and

most densely populated of the 50 States of the United States, where the population density of such States has been normalized to a maximum value of 100; and

"(C) the Secretary of Health and Human Services; and

"(D) other appropriate Federal agencies; and

"(E) State and local emergency response providers; and

"(F) State and local officials; and

"(G) consensus-based standard making organizations responsible for setting standards relevant to the first responder community.
“(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

“(3) PROVISION OF ESSENTIAL CAPABILITIES.—The Secretary shall ensure that a detailed description of the essential capabilities established under paragraph (1) is provided promptly to the States and to Congress, in accordance with subsection (b), and that it is made available to any local governments having similar needs or to which the State has similar needs.

“(2) Purposes.—Not later than 90 days after the date of enactment of this section, the Task Force shall solicit comment on the establishment of essential capabilities for State and local government preparedness.

“(3) REPORT.—

“(A) IN GENERAL.—Not later than 9 months after the establishment of the Task Force by the Secretary, and every 3 years thereafter, the Task Force shall submit to the Secretary a report on recommendations for essential capabilities for preparedness for terrorism.

“(B) CONTENTS.—Each report shall—

“(i) provide a thorough assessment of the national preparedness guidance and target capabilities list and recommendations for revisions;

“(ii) include a priority ranking of essential capabilities in order to provide guidance to the Secretary and to Congress on determining the appropriate allocation of, and funding levels for, such capabilities; and

“(iii) describe the availability of national voluntary consensus standards, with respect to first responder training and equipment.

“(4) COMPREHENSIVENESS.—The Task Force shall ensure that, when recommending essential capabilities for terrorism preparedness, such recommendations are consistent with the context of a comprehensive State emergency management system.

“(5) MEMBERSHIP.—

“(A) IN GENERAL.—The Task Force shall consist of 25 members appointed by the Secretary, and, to the extent practicable, represent a geographic and substantive cross section of first responder disciplines from the State and local government levels, including as appropriate—

“(i) local emergency management personnel;

“(ii) experts from Federal, State, and local government, and the private sector, representing standards-setting organizations, including representatives from the voluntary consensus standards development community, particularly those with expertise in first responder disciplines; and

“(iii) State and local officials with expertise in terrorism preparedness and other emergency preparedness.

“(B) COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—In the selection of members of the Task Force who are health professionals, including emergency medical professionals, the Secretary shall coordinate the selection with the Secretary of Health and Human Services.

“(C) EX OFFICIO MEMBERS.—The Secretary shall designate 1 or more officers of the Department as ex officio members of the Task Force. One of the ex officio members from the Department shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act (5 U.S.C. App.).

“SEC. 1804. THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established the Threat-Based Homeland Security Grant Program, which includes—

“(A) formula-based grants for State and local programs administered by the Office of State and Local Government Coordination and Preparedness, including the State Homeland Security Grant Program, and the Law Enforcement Terrorism Prevention Program under section 1014 of the USA PATRIOT Act (42 U.S.C. 3714);

“(B) discretionary grants for State and local programs administered by the Office of State and Local Government Coordination and Preparedness for use in high-threat, high-density urban areas, including the Urban Area Security Initiative Program; and

“(C) any successor program to any program described in subparagraphs (A) or (B).

“(2) GRANTS AUTHORIZED.—The Secretary may award grants to States and eligible metropolitan regions under the Threat-Based Homeland Security Grant Program to enhance homeland security.

“(3) RELATIONSHIP TO OTHER LAWS.—The Threat-Based Homeland Security Grant Program shall be deemed to satisfy the requirements of section 1014 of the USA PATRIOT ACT (42 U.S.C. 3714). The allocation of grants awarded under this section shall be governed by the terms of this section and not by any other provision of law.

“(b) USE OF FUNDS.—

“(1) IN GENERAL.—Grants awarded under this section—

“(A) shall be used to address homeland security matters related to acts of terrorism or acts that threaten the public health; and

“(B) shall be used to supplant ongoing emergency response expenses or general protective measures.

“(2) ALLOWABLE USES.—Grants awarded under this section may be used to achieve essential capabilities through—

“(A) developing State or regional plans or risk assessments (including the development of the homeland security plan under subsection (e) to respond to terrorist attacks or other catastrophic events and community wide plans for responding to terrorist or catastrophic events that are coordinated with the national or State and local governments, and the authorities to provide response providers, and State and local government health agencies;

“(B) developing State, regional, or local mutual aid agreements;

“(C) purchasing, upgrading, storing, or maintaining equipment based on State and local needs as identified under a State homeland security plan; and

“(D) conducting exercises to strengthen emergency preparedness of State and local first responders including law enforcement, firefighting personnel, and emergency medical service workers, and other emergency and law enforcement personnel identified in a State homeland security plan;

“(E) paying for expenses relating to—

“(F) other necessary activities related to homeland security that the Secretary determines to be consistent with the requirements of this section.
“(i) overtime regarding training activities consistent with the goals outlined in a State homeland security plan; and

(ii) as determined by the Secretary, overtime time afforded to local governments in the threat level under the Homeland Security Advisory System;

(F) promoting training relating to homeland security including—

(i) emergency preparedness responses to a use or threatened use of a weapon of mass destruction; and

(ii) training in the use of equipment, including detection, monitoring, and decontamination equipment, and personal protective gear;

(G) conducting any activity permitted under the Law Enforcement Terrorism Prevention Grant Program under section 1014 of the USA PATRIOT Act (42 U.S.C. 3714); and

(H) any other activity relating to achieving essential capabilities approved by the Secretary.

(3) PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities, except those described in section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196) and approved by the Secretary in the homeland security plan certified under subsection (e), or to acquire land.

(c) EQUIPMENT STANDARDS.—If an applicant for a grant under this section proposes to upgrade or purchase, with assistance provided under this paragraph, equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Secretary under section 180(f)(1), the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant's jurisdiction and why equipment or systems that meet or exceed such standards.

(d) APPLICATION.—

(A) SUBMISSION.—A State may apply for a grant under this section by submitting to the Secretary an application detailing how requested funds would be used to achieve essential capabilities and containing such other information the Secretary may reasonably require.

(B) ELIGIBILITY.—

(A) SUBMISSION.—A State may apply for a grant under this section by submitting to the Secretary an application detailing how requested funds would be used to achieve essential capabilities and containing such other information the Secretary may reasonably require.

(C) APPROVAL.—The Secretary shall not award a grant under this section unless—

(i) the State submitting the application has previously submitted a homeland security plan meeting the requirements of subsection (e); and

(ii) the Secretary finds that the report submitted by the recipient under subsection (g) demonstrates significant progress toward achieving essential capabilities and meeting the goals in the homeland security plan of the State.

(D) RELEASE OF FUNDS.—The Secretary shall release grant funds to States with approved plans after the approval of an application submitted under this paragraph.

(2) ELIGIBLE METROPOLITAN REGIONS.—

(A) SUBMISSION.—An eligible metropolitan region may apply for a grant under this section through the Governor of each State within which any part of the relevant metropolitan region is located.

(B) ELIGIBILITY.—An application under this paragraph shall include—

(i) a description of how requested funds would be used to achieve essential capabilities;

(ii) an explanation of how the proposed use of funds would be consistent with the homeland security plans of all relevant States;

(iii) a geographic description of the eligible metropolitan region, including a list of all local governments participating in the application;

(iv) an explanation of how the applicant intends to expend funds under the grant, to include a description of how to allocate such funds among the participating local governments;

(v) if not all of the incorporated municipalities, counties, parishes, or Indian tribes in a metropolitan region are participating in the application, or if additional local governments outside the metropolitan region are participating, an explanation of why the eligible metropolitan region, as constituted, is an appropriate unit to receive grants to prevent, prepare for, and respond to acts of terrorism and other catastrophic events; and

(vi) such other information the Secretary may reasonably require.

(C) STATE REVIEW AND SUBMISSION.—

(i) IN GENERAL.—To ensure consistency with State homeland security plans, an eligible metropolitan region or a directly eligible tribe shall submit an application to the Secretary for approval from the Secretary.

(ii) DEADLINE.—Not later than 30 days after receiving an application that the Secretary determines or directly eligible tribe that is an eligible metropolitan region or directly eligible tribe, the Secretary shall transmit the application to the Governor or directly eligible tribe.

(iii) DEADLINE.—Not later than 30 days after receiving an application that the Governor or directly eligible tribe, the Secretary shall transmit the application to the Governor of each State within which any part of the eligible metropolitan region or directly eligible tribe is located for submission of such application to the Secretary.

(iv) DEADLINE.—Not later than 30 days after receiving the application, the Governor shall—

(A) notify the Secretary, in writing, of that fact, and

(B) provide an explanation of the reasons for not supporting the application at the time of transmission of the application.

(B) CONTENTS.—The plan shall contain—

(A) a 3-year strategy to—

(i) ensure that the funds allocated to local governments are used exclusively to meet the needs and capabilities described under paragraph (3)(C);

(ii) provide for interoperable communications;

(iii) provide for local coordination of response and recovery efforts, including procedures for effective incident command in conjunction with the local stakeholders;

(iv) ensure that first responders and other emergency personnel have adequate training and appropriate equipment for the threats that may occur;

(v) provide for improved coordination and collaboration among law enforcement, fire, and public health authorities at Federal, State, local, and tribal government levels;

(vi) coordinate emergency response and public health plans;

(vii) mitigate risks to critical infrastructure that may be vulnerable to terrorist attacks;

(viii) promote regional coordination among contiguous local governments;

(ix) identify and prioritize protective measures by private owners of critical infrastructure; and

(x) promote orderly evacuation procedures when necessary;

(xi) ensure support from the public health community for measures needed to prevent, detect, and respond to bioterrorism, and radiological and chemical incidents;

(xii) increase the number of local jurisdictional capabilities participating in local and state-wide exercises and

(xiii) meet preparedness goals as determined by the Secretary;

(x) objective measures for assessing the extent to which the goals and objectives set forth in paragraph (A) have been achieved;

(xi) priorities for the allocation of funding to local governments based on the risk, capabilities, and needs described under paragraph (3)(C); and

(xii) a report from the relevant advisory committee established under paragraph (3)(D) that documents the areas of support, disagreement, or recommended changes to the plan before its submission to the Secretary.

(3) DEVELOPMENT PROCESS.—

(A) IN GENERAL.—In preparing the plan under this section, a State shall—

(i) the consideration of all homeland security needs;

(ii) follow a process that is continuing, inclusive, cooperative, and comprehensive, as appropriate; and

(iii) coordinate the development of the plan with the homeland security planning activities of local governments.

(B) COORDINATION WITH LOCAL PLANNING ACTIVITIES.—The coordination under sub-paragraph (A)(ii) shall contain input from local stakeholders, including—

(i) local officials, including representatives of rural, high-population, and high-threat jurisdictions and of Indian tribes;

(ii) emergency response providers; and

(iii) private sector companies that own or operate critical infrastructure.

(C) SCOPE OF PLANNING.—Each State preparing a plan under this section shall, in conjunction with the local stakeholders under subparagraph (B), address all the information requested by the Secretary, and complete a comprehensive assessment of—

(i) risk, including—

(a) vulnerability and consequence assessments;

(ii) threat assessment; and

(iii) public health assessment, in coordination with the State bioterrorism plan; and

(iv) the capabilities, needs, consistent with the essential capabilities established by the Secretary, including—

(A) an evaluation of current preparedness, mitigation, and response capabilities based on such assessment mechanisms as shall be determined by the Secretary;

(B) an evaluation of capabilities needed to address the risks described under clause (i); and

(C) an assessment of the shortfall between the capabilities described under subclause (i) and the required capabilities described under subclause (II).

(D) ADVISORY COMMITTEE.—

(i) IN GENERAL.—Each State preparing a plan under this section shall establish an advisory committee to receive comments from the public and the local stakeholders identified under subparagraph (B).

(ii) CONSTRUCTION.—The members of the Advisory Committee shall include—

(a) local officials; and

(b) emergency response providers, which shall include representatives of the fire service, law enforcement, emergency medical response, and emergency managers.

(E) GEOGRAPHIC REPRESENTATION.—Each State preparing a plan under this section shall establish an advisory committee to receive comments from the public and the local stakeholders identified under subparagraph (B).
the counties, cities, towns, and Indian tribes within the State, including representatives of rural, high-population, and high-threat jurisdictions.

(4) APPRAISAL.—The Secretary shall approve a plan upon finding that the plan meets the requirements of—

(A) paragraphs (2) and (3); and

(B) the extent to which the application by an eligible metropolitan region or directly eligible tribe to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(ii) Prioritization.—In prioritizing among State applications for such funds, the Secretary shall consider the relative threat, vulnerability, and consequence related to critical infrastructure or key assets identified by the Secretary or State homeland security plan of the State, local, regional, and private officials concerning terrorism preparedness;

(iii) Threat-Based Distribution to States.—The Secretary shall review the recommendations of the advisory committee report, including the need to respond to terrorist attacks arising in those jurisdictions; and

(ix) such other factors as are specified in writing by the Secretary.

(b) DISTRIBUTION OF AWARDS TO METROPOLITAN REGIONS.—

(1) IN GENERAL.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(i) DIRECTLY ELIGIBLE TRIBES.—

(1) IN GENERAL.—Notwithstanding subsection (a)(2), the Secretary may award grants under the Threat-Based Homeland Security Grant Program as part of the Urban Area Security Initiative Distribution.

(2) CRITERIA.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(f) ALLOCATION.—

(i) GENERAL.—The Secretary, in consultation with State, local, regional, and private officials, shall—

(1) review the recommendation of the advisory committee report, including the need to respond to terrorist attacks arising in those jurisdictions;

(2) develop a process for receiving input from Federal, State, local, regional, and private officials concerning the application of such funds and to improve the tribe’s access to grants; and

(3) prioritize among, and, where appropriate, distribute the remaining funds to, any application for funds under subsection (a) from a tribe within the boundaries of any part of such tribe is located, concerning the tribe’s access to grants; and

(4) allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism and other catastrophic events.

(g) PRIORITIZATION.—In prioritizing among State applications for such funds, the Secretary shall—

(i) consider the relative threat, vulnerability, and consequence faced by a State from a terrorist attack, including consideration of—

(1) whether the Secretary approves the application of an eligible metropolitan region for a grant under this section, the Secretary shall distribute the regional grant funds to the State or States in the eligible metropolitan region is located.

(2) whether the Secretary approves the application of an eligible metropolitan region for a grant under this section, the Secretary shall distribute the regional grant funds to the State or States in the eligible metropolitan region is located.

(3) whether the Secretary approves the application of an eligible metropolitan region for a grant under this section, the Secretary shall distribute the regional grant funds to the State or States in the eligible metropolitan region is located.

(4) the extent to which the application of an eligible metropolitan region for a grant under this section, the Secretary shall distribute the regional grant funds to the State or States in the eligible metropolitan region is located.

(5) the extent to which the Secretary approves an application by an eligible metropolitan region or directly eligible tribe to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(h) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(i) THE DISTRICT OF COLUMBIA.—The Secretary shall review the recommendation of the advisory committee report, including the need to respond to terrorist attacks arising in those jurisdictions; and

(j) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(k) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(l) PRIORITIZATION.—In prioritizing among State applications for such funds, the Secretary shall—

(m) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(n) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(o) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(p) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(q) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(r) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(s) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(t) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(u) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(v) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(w) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(x) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(y) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(z) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(aa) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(bb) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(cc) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(dd) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(ee) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(ff) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(gg) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(hh) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(ii) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(jj) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.

(kk) SPEED OF DISTRIBUTION.—The Secretary shall, from the remaining funds for the Threat-Based Homeland Security Grant Program, distribute amounts among State and directly eligible tribe applications for the Threat-Based Homeland Security Grant Program; or

(ll) ADMINISTRATION.—The Secretary shall, in consultation with State, local, regional, and private officials, concerning the application of such funds and to improve the tribe’s access to grants; and

(mm) ALLOCATION.—The Secretary shall allocate the grants under this paragraph to asist eligible metropolitan regions and directly eligible tribes to achieve essential capabilities to effectively prevent, prepare for, and respond to acts of terrorism or other catastrophic events.
State efforts to prevent, prepare for, or respond to acts of terrorism or other catastrophic events.

(ii) GRANTEEES.—Multi-State grants may be awarded to a group of States as a consortium or partnership:

(I) an individual State acting on behalf of a consortium or partnership of States with the consent of all member States; or

(II) a group of States applying as a consortium or partnership.

(iii) ADMINISTRATION OF GRANT.—If a group of States apply as a consortium or partnership, whenever any member State shall submit to the Secretary at the time of application a plan describing—

(I) the division of responsibilities for administering the grant; and

(II) the distribution of funding among the various States and entities that are party to the application.

(4) FUNDING FOR LOCAL GOVERNMENTS AND FIRST RESPONDERS.—

(A) IN GENERAL.—The Secretary shall require recipients of the sliding scale baseline distribution and the threat-based distribution to States to make available to local governments and emergency response providers, consistent with the applicable State homeland security plan, not less than 80 percent of the grant funds, the resources purchased with such grant funds, or a combination thereof, not more than 90 days after receiving grant funding.

(B) INDIAN TRIBES.—States shall be responsible for allocating Federal resources to tribal communities in order to help those tribal communities achieve essential capabilities. Indian tribes shall be eligible for funding directly from the States, and shall not be required to seek funding from any local government.

(C) EXCEPTION.—Subparagraph (A) shall not apply to the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(5) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this subsection shall be used to supplement and not supplant other State and local government public funds obligated for the purposes provided under this title.

(6) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—

(A) IN GENERAL.—The Secretary shall designate 25 percent of the amounts appropriated for the Threat-Based Homeland Security Grant Program to be used for grants to law enforcement agencies to enhance capabilities for terrorism prevention.

(B) USE OF FUNDS.—Notwithstanding subsection (b), grants awarded under this paragraph may be used for—

(i) information sharing to preempt terrorist attacks;

(ii) target hardening to reduce the vulnerability of selected high value targets;

(iii) threat recognition to recognize the potential or development of a threat;

(iv) intervention activities to interdict terrorists before they can execute a threat; and

(v) interoperable communication systems;

(vi) overtime expenses related to the homeland security plan approved by the Secretary, including overtime costs associated with providing enhanced law enforcement operations in support of Federal agencies for increased border security and border crossing enforcement; and

(vii) any other terrorism prevention activity approved by the Secretary.

(g) REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a grant under this section shall annually submit a report to the Secretary that contains—

(1) an accounting of the amount of State and local government funds spent on homeland security activities under the applicable State homeland security plan;

(2) information regarding the use of grant funds by the State and by units of local government or the Secretary; and

(3) progress of the recipient and subgrantees in achieving essential capabilities.

(b) ACCOUNTABILITY.—(1) The Government Accountability Office shall provide access to information—

(A) to recipient of a grant under this section and the Department shall provide the Government Accountability Office with access to information regarding the activities carried out under this section.

(B) AUDIT.—Grants recipients that expend $500,000 or more in Federal funds during any fiscal year shall submit to the Secretary an organization wide financial and compliance audit report in conformance with the requirements of chapter 75 of title 31, United States Code.

(c) REMEDIES FOR NON-COMPLIANCE.—

(1) IN GENERAL.—If the Secretary finds, after reasonable opportunity for a hearing, that a recipient of a grant under this section has failed to substantially comply with any provision of this section, or any applicable guidelines of the Department regarding eligible expenditures, the Secretary shall—

(A) terminate any payment of grant funds to be made to the recipient under this section;

(B) reduce the amount of payment of grant funds to the recipient by an amount equal to the amount of grant funds that were not expended by the recipient in accordance with this section; or

(C) limit the use of grant funds received under this section for projects or activities not affected by the failure to comply.

(2) DURATION OF PENALTY.—The Secretary shall apply an appropriate penalty under paragraph (1) until such time as the Secretary determines that the grant recipient is in full compliance with this section or with applicable guidelines or regulations of the Department.

(3) DIRECT FUNDING.—If a State fails to substantially comply with any provision of this section or with any applicable guidelines or regulations of the Department, including failing to provide local governments with grant funds or resources purchased with such grant funds, the Federal government or local government entitled to receive such grant funds or resources may petition the Secretary, at such time and in such manner as determined by the Secretary, to request that grant funds or resources be provided directly to the local government.

(4) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to Congress that provides—

(A) the status of preparedness goals and objectives;

(B) an evaluation of how States and local governments are making progress in achieving essential capabilities;

(C) the total amount of resources provided to the States;

(D) the total amount of resources provided to local governments and metropolitan regions; and

(E) an accounting of how these resources were expended.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $2,925,000,000 for fiscal year 2006;

(2) $2,925,000,000 for fiscal year 2007; and

(3) such sums as are necessary for each fiscal year thereafter.

SEC. 1805. ELIMINATING HOMELAND SECURITY FRAUD, WASTE, AND ABUSE.

(a) ANNUAL GOVERNMENT ACCOUNTABILITY OFFICE AUDIT AND REPORT.—

(1) AUDIT.—The Comptroller General of the United States shall conduct an annual audit of the Threat-Based Homeland Security Grant Program.

(2) REPORT.—The Comptroller General of the United States shall provide a report to Congress on the results of the audit conducted under paragraph (1), which includes—

(A) an analysis of whether the grant recipients allocated funding consistent with the grant section, the threat-based homeland policy, and the guidelines established by the Department; and

(B) the amount of funding devoted to overtime and administrative expenses.

(b) REVIEWS OF THREAT-BASED HOMELAND SECURITY FUNDING.—The Secretary shall conduct periodic reviews of grants made through the Threat Based Homeland Security Grant Program to ensure that recipients allocate funds consistent with the guidelines established by the Department.

SEC. 1806. EXHIBITING UNSPENT HOMELAND SECURITY FUNDS.

(a) REALLOCATION OF FUNDS.—The Director of the Office for Domestic Preparedness shall approve reallocation of funds received pursuant to appropriations for the State Homeland Security Grant Program under Public Laws 109-277 (112 Stat. 2681 et seq.), 19969113 (113 Stat. 1501A-995 et seq.), 1609593 (114 Stat. 2762A-993 et seq.), 1070977 (115 Stat. 78 et seq.), or the Consolidated Appropriations Resolution of the United States Code (116 Stat. 10897), among the 4 categories of equipment, training, exercises, and planning.

(b) APPROVAL OF REALLOCATION REQUEST.—The Director shall approve re-allocation requests under subsection (a) in accordance with the State homeland security plan and any other relevant factors that the Secretary determines to be necessary.

(c) LIMITATION.—A waiver under this section shall not affect the obligation of a State to make available 80 percent of the amount appropriated for equipment to units of local government.

SEC. 1807. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

(a) EQUIPMENT STANDARDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Science and Technology and the Director of the Office for Domestic Preparedness, shall develop and publish, through the Under Secretary for Science and Technology (including a representative of the United States Fire Administration) and the Executive Director of the Office for State and Local Government Coordination and Preparedness, national standards for the performance, use, and validation of first responder equipment for purposes of section 1805(c).

(2) STANDARDS.—Standards under this subsection shall—

(A) be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

(B) take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed;

(C) be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, capability, safety, and value.

(d) COVER ALL APPROPRIATE USES OF THE EQUIPMENT.
“(1) IN GENERAL.—The Secretary, in consultation with the Under Secretary for Emergency Preparedness and Response and Science and Technology (including a representative from the United States Fire Administration) and the Director of the Office for Domestic Preparedness, shall support the development of, promulgate, and regularly update national voluntary consensus standards for first responder training that will enable State and local government first responders to achieve optimal levels of terrorism preparedness as quickly as practicable.

“(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

“(1) the National Institute of Standards and Technology;
“(2) the National Fire Protection Association;
“(3) the American National Standards Institute;
“(4) the National Institute of Justice;
“(5) the National Institute for Occupational Safety and Health; and
“(6) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

“(d) WITHIN SECRETARY OF HHS.—In establishing any national voluntary consensus standards under this section for first responder equipment or training that is related to health professionals, including emergency medical professionals, the Secretary shall coordinate activities under this section with the Secretary of Health and Human Services.

“SEC. 1808. CERTIFICATION RELATIVE TO THE SCREENING OF MUNICIPAL SOLID WASTE TRANSPORTED INTO THE UNITED STATES.

“(a) DEFINITION.—In this section, the term ‘municipal solid waste’ includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

“(b) REPORTS TO CONGRESS.—Not later than 90 days after the date of enactment of this section, the Customs and Border Protection shall submit a report to Congress that—

“(1) indicates whether the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in such waste are as effective as the methodologies and technologies used by the Bureau to screen for such materials in other items of commerce entering into the United States by commercial motor vehicle transport.

“(c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If the Bureau of Customs and Border Protection fails to fully implement the actions described in subsection (b)(2) before the earlier of 6 months after the date on which the report is due under subsection (b) or 6 months after the date on which such report is submitted, the Secretary shall deny entry into the United States of any commercial motor vehicle (as defined in section 3101(t) of title 49, United States Code) carrying municipal solid waste until the Secretary certifies to Congress that the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in such waste are as effective as the methodologies and technologies used by the Bureau to screen for such materials in other items of commerce entering into the United States by commercial motor vehicle transport.

“(b) THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.

“(1) FISCAL YEAR 2006 ADMINISTRATION.—Notwithstanding any provision of title III of this Act, section 1804 of the Homeland Security Act of 2002 (as added by this section) shall apply in the administration of the Threat-Based Homeland Security Grant Program established under section 1804 of that Act.

“(2) FUNDING.—All funds appropriated under paragraphs (1) and (2) under the subheading ‘STATE AND LOCAL PROGRAMS’ under title III of this Act are appropriated for the Threat-Based Homeland Security Grant Program established under section 1804 of the Homeland Security Act of 2002 (as added by this Act).

“(c) FIRE SERVICES.—Section 26(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(d)) is amended by inserting ‘(including fire services)’ after ‘local emergency public safety’.

“(d) CONSTRUCTION AND CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 note) is amended by adding at the end the following:

‘‘TITLE XVIII—ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS AND THREAT-BASED HOMELAND SECURITY GRANT PROGRAM”.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary in each of fiscal years 2006, 2007, and 2008 to carry out this section.

SA 1143. Mr. GREGG submitted an amendment intended to be proposed by him to the bill H.R. 2380, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 15, strike ‘‘For grants,’’ down through and including ‘‘protection plan grants.’’ on page 79, line 6, and insert the following:

‘‘For grants, contracts, cooperative agreements, and other activities, including grants to State and local governments for terrorism prevention activities, notwithstanding any other provision of this Act, $5,000,000,000, which shall be allocated as follows:

(1) $1,418,000,000 for State and local grants, of which $1,250,000,000 shall be allocated such that the Secretary shall distribute the same dollar amount for the State minimum as was distributed in fiscal year 2005 for formula-based grants; Provided, That the balance shall be allocated by the Secretary of Homeland Security to States, urban areas, or regions based on risks; threats; vulnerabilities; and other factors relevant to State and local capabilities pursuant to Homeland Security Presidential Directive 8 (HSPD-8).”
SA 1144. Mr. MARTINEZ submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. (a) Notwithstanding any other provision of law (including any provision of title III), any grant from funds under the subheading "STATE AND LOCAL PROGRAMS " (title III), any grant from funds under the following:

(d) $20,000,000 shall be for port security grants pursuant to the purposes of 46 United States Code 70107(a) through (h), which shall be awarded based on threats, vulnerabilities; and unmet essential capabilities pursuant to HSPD–8.

SEC. 519. (a) Notwithstanding any other provision of law (including any provision of title III), any grant from funds under the following:

(d) $20,000,000 shall be for port security grants pursuant to the purposes of 46 United States Code 70107(a) through (h), which shall be awarded based on threats, vulnerabilities; and unmet essential capabilities pursuant to HSPD–8.

SEC. 519. (a) Notwithstanding any other provision of law (including any provision of title III), any grant from funds under the following:

(d) $20,000,000 shall be for port security grants pursuant to the purposes of 46 United States Code 70107(a) through (h), which shall be awarded based on threats, vulnerabilities; and unmet essential capabilities pursuant to HSPD–8.

SEC. 519. (a) Notwithstanding any other provision of law (including any provision of title III), any grant from funds under the following:

(d) $20,000,000 shall be for port security grants pursuant to the purposes of 46 United States Code 70107(a) through (h), which shall be awarded based on threats, vulnerabilities; and unmet essential capabilities pursuant to HSPD–8.
SA 1147. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 12, after “presence,” insert the following: “Provided further, That of the amount made available under this heading, $200,000,000 shall be available for the Transportation Security Administration to develop a plan to research, test, and potentially implement multi compartment bins to screen passenger belongings at security checkpoints.”

SA 1148. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

TITLE—RAIL SECURITY

SECTION 01. SHORT TITLE.

This title may be cited as the “Rail Security Act of 2005”.

SEC. 02. RAIL TRANSPORTATION SECURITY

(A) IN GENERAL.

(1) VULNERABILITY ASSESSMENT.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Secretary of Transportation, shall conduct an assessment of the vulnerabilities of intercity rail systems in Japan, member nations of the European Union, and other foreign countries.

(2) PIBILITIES AND HAZARDOUS MATERIALS INITIATIVES.—The Under Secretary of Homeland Security for Border and Transportation Security, shall develop a plan to research, test, and potentially implement multi compartment bins to screen passenger belongings at security checkpoints.

(3) TRAINING OF RAIL POLICE.—The Secretary of Transportation, shall—

(A) conduct training for rail police officers on passenger evacuation, and response activities;

(B) deploying surveillance equipment; and

(C) deploy surveillance and electronic equipment to detect explosives, and other dangerous materials, public safety officials (including those within other agencies and offices within the Department of Homeland Security), and other relevant parties.

(4) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment required by subsection (a), the Under Secretary of Homeland Security for Border and Transportation Security shall consult with—

(A) the rail industry, including Amtrak, the freight and intercity passenger railroads, first responders, shippers of hazardous materials, first responders, shippers of hazardous materials, public safety officials (including those within other agencies and offices within the Department of Homeland Security), and other relevant parties.

(B) existing private and public sector initiatives undertaken by the public and private sectors.

(5) REPORT.—The Under Secretary of Homeland Security for Border and Transportation Security shall—

(A) submit the report in both classified and redacted formats if the Under Secretary determines that such action is appropriate or necessary;

(B) transmit a report, which may be submitted in classified formats, to the Senate Committee on Transportation and Infrastructure, the House of Representatives Committee on Transportation and Infrastructure, and the Committees named in subsection (c)(1), containing the updated assessment and recommendations of this Act.

(C) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $5,000,000 for fiscal year 2006 for the purpose of carrying out this section.

SEC. 03. RAIL SECURITY.

(A) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended by striking “the Federal Government” and inserting “the Federal Government or the rail carrier”.

(B) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, shall—

(A) review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised or improved;

(B) submit a report containing the updated assessment and recommendations of this Act.

SEC. 04. STUDY OF FOREIGN RAIL TRANSPORT SECURITY PROGRAMS.

(A) REQUIREMENT FOR STUDY.—Within 1 year after the date of enactment of the Rail Transportation Security Act of 2005, the Comptroller General shall complete a study of the rail passenger transportation security programs that are in place in rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(B) REPORT.—The Comptroller General shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General’s assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

SEC. 05. PASSENGER, BAGGAGE, AND CARGO SCREENING.

(A) REQUIREMENT FOR STUDY AND REPORT.—The Secretary of Homeland Security for Border and Transportation Security, in cooperation with the Secretary of Transportation, shall—

(1) analyze the cost and feasibility of requiring security screening for passengers, baggage, and [mail] cargo on passenger trains;

(2) report the results of the study, together with any recommendations that the Under Secretary may have for implementing a rail passenger screening security program; and

SEC. 06. CERTAIN PERSONNEL LIMITATIONS NOT TO APPLY.

Any statutory limitation on the number of employees in the Transportation Security Administration of the Department of Transportation, before or after its transfer to the Department of Homeland Security, does not apply to the extent that any such employees are responsible for implementing the provisions of this Act.

SEC. 07. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(A) LIFE-SAFETY NEEDS.—The Secretary of Transportation is authorized to—

(1) in consultation with the Secretary of Homeland Security, to require railroads to perform the following activities for the purpose of ensuring effective rail transportation security measures that are in use in foreign rail transportation systems, including—

(2) providing for the use of new security technologies, techniques, and equipment; and

(3) making grants to railroads to carry out any one or more of the activities described in subparagraphs (A) and (B) of section 40101 of title 49, United States Code.
the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York tunnels to provide ventilation, lighting, and passenger egress up-graded:
   - $10,000,000 for fiscal year 2006;
   - $10,000,000 for fiscal year 2007;
   - $10,000,000 for fiscal year 2008; and
   - $17,000,000 for fiscal year 2009.

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades:
   - $10,000,000 for fiscal year 2006;
   - $10,000,000 for fiscal year 2007; and
   - $10,000,000 for fiscal year 2009; and
   - $17,000,000 for fiscal year 2010.

(3) For the Washington, DC Union Station tunnel upgrades to improve ventilation, communication, lighting, and passenger egress upgrades:
   - $5,000,000 for fiscal year 2006;
   - $1,000,000 for fiscal year 2007;
   - $5,000,000 for fiscal year 2008;
   - $8,000,000 for fiscal year 2009; and
   - $5,000,000 for fiscal year 2010.

(c) PLANS REQUIRED.—There are authorized to be appropriated pursuant to the Secretary of Transportation for fiscal year 2006, $3,000,000 for preliminary design of operations for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) ELIGIBILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a) until after Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such project.

(f) REVIEW OF PLANS.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing the Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the portions of the plan that remain incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(g) MEMORANDUM OF AGREEMENT.—Within 90 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters. The memorandum of agreement shall promote communications, efficiency, and nonduplication of effort.

The Secretary of Transportation is authorized to establish, maintain, and ensure tunnel integrity in New York, New Jersey, Maryland, Delaware, Pennsylvania, Ohio, West Virginia, Virginia, North Carolina, South Carolina, and Georgia.

SEC. 9. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS

(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement regarding the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters. The memorandum of agreement shall promote communications, efficiency, and nonduplication of effort.

(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

(1) A process for providing the National Transportation Safety Board and the Secretary of Transportation with information concerning a train accident or any criminal investigation resulting in a loss of life.

(2) A system for reporting information as required by subsection (b)(1) but may provide information on a list about the passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

(3) A process for providing the notice described in subsection (b)(1) but may provide information on a list about the passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated pursuant to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2006 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

(d) CONFORMING AMENDMENT.—The chapter amendment for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

* 24316. Plan to assist families of passengers involved in rail passenger accidents.

(1) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Safety Act of 2005, Amtrak shall submit to the Chairman of the National Transportation Safety Board and the Secretary of Transportation a plan for addressing the needs of the families of passengers involved in any railroad passenger accident involving an Amtrak intercity train and resulting in a loss of life.

(2) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

(1) A process by which Amtrak will maintain and provide the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unresolved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

(3) A process for notifying the families of the passengers including any public notice of the names of the passengers, by suitably trained individuals.

(4) A process for providing the notice described in paragraph (1) and the list described in paragraph (2) to the families of the passengers, and Amtrak, in accordance with such paragraph, shall provide a copy of the list to the families of the passengers involved in the accident, and, where appropriate, to the families of the passengers not involved in the accident.

(5) The plan shall include a procedure by which Amtrak will provide to the families of the passengers, including canine units; and

(6) To expand emergency preparedness efforts.

(7) The plan shall include a procedure by which Amtrak will provide to the families of the passengers, including canine units; and

(8) To expand emergency preparedness efforts.

SEC. 10. SYSTEMWIDE AMTRAK SECURITY UP-GRADES

(a) IN GENERAL.—Subject to subsection (c), the Secretary of Homeland Security for Border and Transportation Security is authorized to make grants, through the Secretary of Transportation, to Amtrak—

(1) to secure major tunnel access points and ensure tunnel integrity in New York, Milwaukee, and Washington, DC;

(2) to secure Amtrak trains;

(3) to secure Amtrak stations;

(4) to obtain a watch list identification system approved by the Secretary of the Treasury;

(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible; and

(6) for hire additional security officers, including canine units; and

(7) to expand emergency preparedness efforts.

(b) CONDITIONS.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless the projects are contained in a systemic security plan approved by the Under Secretary, in consultation with the Secretary of Transportation,
and, for capital projects, meet the requirements of section 07(e)(2). The plan shall include appropriate measures to address security awareness, emergency response, and passenger focus on safety.

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Under Secretary shall ensure that, subject to the conditions set forth in section 01(b), appropriate funds are distributed to eligible recipients to accomplish the purposes of this section.

(d) AVAILABILITY OF FUNDS.—There are authorized to be appropriated to the Under Secretary for Security and Transportation Security $63,500,000 for fiscal year 2006 for the purposes of carrying out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 11. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES

(a) SECURITY IMPROVEMENT GRANTS.—The Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants to freight railroads, public and private shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, and, for capital projects, meet the requirements of this section.

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of cargo or passenger rail security that may include replication or reprogramming of data to improve the security and redundancy of the information systems; and

(3) the security of hazardous material transport by rail.

(b) ACCOUNTABILITY.—The Secretary shall adopt necessary procedures, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of cargo or passenger rail security that may include replication or reprogramming of data to improve the security and redundancy of the information systems; and

(3) the security of hazardous material transport by rail.

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall ensure that the procedures include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures within 90 days after the date of enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for Border and Transportation Security $350,000,000 for fiscal year 2006 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 12. OVERSIGHT AND GRANT PROCEDURES.

(a) SECURITARIAL OVERSIGHT.—The Secretary of Homeland Security for Border and Transportation Security may use any of the funds made available under section 02 to make grants for the purpose of improving freight and intercity rail transportation security needs related to the requirements of this section.

(b) USE OF FUNDS.—The Secretary may use amounts appropriated under section 02 to make grants for the purpose of improving freight and intercity rail transportation security needs related to the requirements of this section.

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures within 90 days after the date of enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for Border and Transportation Security $50,000,000 in each of fiscal years 2006 and 2007 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 13. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The Under Secretary of Homeland Security for Border and Transportation Security, in conjunction with the Secretary of Transportation, shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security that may include research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique and relevant project that would be useful in carrying out the project.

(b) ACCOUNTABILITY.—The Under Secretary shall ensure that audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities established by the Congress, are coordinated with other research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique and relevant project that would be useful in carrying out the project.

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures within 90 days after the date of enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for Border and Transportation Security $50,000,000 in each of fiscal years 2006 and 2007 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

SEC. 14. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) TRACK STANDARDS.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) require each rail owner using continuous welded rail track to include procedures for conducting continuous welded rail track inspections in their inspection programs.

(b) ACCOUNTABILITY.—The Secretary shall prescribe requirements for the inspection of continuous welded rail track and the frequency of such inspection.

(c) PROCEDURES FOR GRANT AWARD.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this section, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall ensure that the procedures include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures within 90 days after the date of enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for Border and Transportation Security $50,000,000 in each of fiscal years 2006 and 2007 to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.

(e) TRACK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) within 1 year after the date of enactment of this Act, validate the predictive model it is developing to quantify the reliable dynamic factors for continuous welded rail car under accident conditions; and

(2) within 18 months after the date of enactment of this Act, develop and implement guide standard designs for continuous welded rail car under accident conditions; and

(3) develop a program to periodically review the continuous welded rail joint bar inspection data from railroads and Administration track inspectors and, whenever the Administration determines that it is necessary or appropriate, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

(f) TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) within 1 year after the date of enactment of this Act, validate the predictive model it is developing to quantify the reliable dynamic factors for pressurized tank car under accident conditions; and

(2) within 18 months after the date of enactment of this Act, develop and implement guide standard designs for pressurized tank car.
(1) conduct a comprehensive analysis to determine the impact resistance of the steel in the shells of pressure tank cars constructed before 1989; and
(2) submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure with recommendations for measures to eliminate or mitigate the risk of catastrophic failure.

SEC. 15. NORTHERN BORDER RAIL PASSENGER SERVICE

Within 180 days after the date of enactment of this Act, the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the heads of other appropriate Federal departments and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;
(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in the Agreement on Air Transport Preclearance between the Government of the United States and the Government of Canada, dated January 18, 2001;
(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada and the Canadian Pacific Railway from Canada to the United States; and
(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(b) CONFORMING AMENDMENT.—The chapter title is amended by inserting after title II under the heading "ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS" is reduced by $179,221,000.

SA 1151. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 1151. Whistleblower protection for rail security matters.
him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 64, line 24, insert after “agencies” the following:

On page 65, line 2, insert after “agencies” the following:

On page 77, lines 18 and 17, strike “governments” and insert “governments and Indian tribes”:

On page 78, line 10, insert after “States” the following:

On page 100, between lines 11 and 12, insert the following:

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SEC. 519. ESTABLISHMENT.—There is established a commission to be known as the Commission on a Strategy for Success in the Global War on Terrorism. The United States Customs and Border Protection should give consideration to extending the length of time for other than full-time permanent officers to complete the training, allowing officers to complete the training over several sessions, giving officers credit for training already completed, or providing for other appropriate arrangements.

SEC. 519. E STABLISHMENT.—There is established a commission to be known as the Commission on a Strategy for Success in the Global War on Terrorism. (In this section referred to as the “Commission”).

SEC. 519. OF THE COMMISSION.—

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members who are appointed not later than one month after the date of enactment of this Act, as follows:

The Commission shall be composed of 12 members who are appointed not later than one month after the date of enactment of this Act, as follows:

SEC. 519. COMMISSION ON A STRATEGY FOR SUCCESS IN THE GLOBAL WAR ON TERRORISM

SEC. 519. PFthe Minority Members.—The minority member of each of the appropriate congressional committees shall serve as the minority member of each of the appropriate congressional committees.
Ten members appointed by the chairman and ranking minority members of the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, the Select Committee on Intelligence, and the Committee on Armed Services of the Senate.

Ten members appointed by the chairman and ranking minority members of the Committee on Foreign Relations, the Committee on Homeland Security, and the Committee on Armed Services of the House of Representatives.

Individuals appointed to the Commission should have proven experience or expertise in the prosecution of the Global War on Terrorism or in the study and analysis of the United States military strategy, intelligence operations, or other relevant subject matter.

Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

Members of the Commission shall serve without pay.

Each member of the Commission may travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

The Commission shall meet at the call of the chairpersons. The initial meeting of the Commission shall occur not later than two weeks after the date on which not less than six members are appointed.

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the chairpersons of the Commission, the head of that department or agency shall furnish temporary and interim information to the Commission in a timely manner.

The Commission may use the United States postal services in the same manner and under the same conditions as other departments and agencies of the United States.

The Commission may accept, use, and dispose of gifts or donations of services or property.

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

The Commission shall serve without pay.

The Members of the Commission and the Administrator of General Services shall cooperate with the Commission in expeditiously providing to the Commission members and staff an adequate and clear understanding of the manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

The appropriate congressional committees, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Armed Services of the Senate and the Committee on International Relations, the Committee on Homeland Security, and the Committee on Armed Services of the House of Representatives.

The Commission shall meet once a week following the submission of the report described in section (b)(2).

Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to the Subcommittee on Appropriations, the Committee on Homeland Security and Governmental Affairs, and in some cases, the Committee on Armed Services of the Senate, the Committee on Homeland Security and Governmental Affairs, and the Committee on Armed Services of the House of Representatives.

The signing of the Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the daily equivalent of the maximum annual rate of basic pay payable for level V of the Executive Schedule.

The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of section 5335, except that members of title 3, United States Code, and title 5, United States Code, and as rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for level V of the Executive Schedule.

The Commission may accept, use, and dispose of gifts or donations of services or property.

The Commission shall serve without pay.

The appropriate congressional committees, means the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Armed Services of the Senate.

An intelligence-based assessment of the threat to United States territory, citizens, and interests from the proliferation of weapons of mass destruction and the threat of terrorist acquisition and use of weapons of mass destruction.

The nature of the weapons of mass destruction threats to the United States has evolved significantly.

The understanding of likely future weapons of mass destruction threats has also progressed;

United States capabilities for detecting, preventing, and responding to weapons of mass destruction threats have also evolved.

President George W. Bush enumerated in a speech on February 11, 2004, a number of new initiatives to address weaknesses in efforts to combat the proliferation of weapons of mass destruction. Some of the most in July 11, 2005 important of these actions have not yet been undertaken or have met international resistance.

The National Counter Proliferation Center.—A description of the roles, missions,
and concepts of operations for the National Counter Proliferation Center, including a plan and schedule for establishing the Center and developing it to full working capacity.

(B) INTERNATIONAL NONPROLIFERATION REGIMES.—A review of how the United States will seek to strengthen the international nonproliferation regimes, including, but not limited to, the Comprehensive Nuclear Test Ban Treaty and associated entities (such as the Nuclear Suppliers Group) in the wake of the 2005 Nuclear Nonproliferation Treaty review conference; the Missile Technology Control Regime, the Biological Weapons Convention, and the Chemical Weapons Convention and associated entities (such as the Australia Group).

(C) SECURITY OF NUCLEAR MATERIALS.—A review of how the United States will enhance programs to secure weapons-grade nuclear materials globally.

(D) DETECTION AND CHARACTERIZATION CAPABILITIES.—A review of how the United States will improve the array of weapons of mass destruction detection devices to ensure the homeland is protected from any means by which weapons of mass destruction could be delivered against the United States.

(E) INTERDICT CAPABILITIES.—An assessment of the ability of the United States and the international community to interdict in transit, in transit and in place, and related to weapons of mass destruction, including—

(i) an assessment of the number and impact of interdictions undertaken by the Proliferation Security Initiative; and

(ii) an assessment of how the Initiative can be strengthened to achieve more concrete results.

(F) NUCLEAR INSPECTIONS AND SAFEGUARDS.—A review of how the United States will strengthen the ability of the International Atomic Energy Agency (IAEA) to monitor peaceful nuclear energy programs to ensure that such programs are not used as a cover for nuclear weapons development, including, but not limited to—

(i) how the United States will encourage and ratification by each non-nuclear weapons state of the Model Additional Protocol with the Agency; and

(ii) how the Executive Branch will implement the United States Additional Protocol with the Agency.

(G) INTELLIGENCE CAPABILITIES.—A plan for the implementation of intelligence reforms intended to improve intelligence capabilities relating to weapons of mass destruction.

(H) NORTH KOREA AND IRAN.—A plan for each of the following:

(i) Preventing further processing of nuclear weapons material in North Korea and ultimately verifiably eliminating the nuclear weapons program in North Korea.

(ii) Preventing Iran from developing nuclear weapons.

(iii) Deterring other nations from pursuing nuclear weapons.

The update required by paragraph (1) shall be submitted to Congress in unclassified form but may include a classified annex.

SA 1160. Mr. REID submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. (a) Congress makes the following findings:

(1) The Homeland Security Advisory System had been at Code Orange, a level which indicates a high risk of terrorist attack, on six occasions since the Advisory System was created in March 2002, prior to the raising of the threat level to Code Orange following the bombings that occurred in London on July 7, 2005.

(2) The Code Orange threat level remained in place for 22 days on each of the first five occasions that it was raised to that level.

(3) The sixth elevation of the threat level to Code Orange occurred August 2005 and ended 98 days later, making it four times longer than any other such alert and constituting half of the days that the United States has been under a high risk of terrorist attack.

(4) The Conference of Mayors estimates that cities in the United States spend some $3 billion per year to provide funding for homeland defense, for the protection of cities that may be the targets of weapons of mass destruction.

(b) The report required by subsection (b) shall be submitted to Congress in unclassified form but may include a classified annex, if necessary.

SA 1161. Mr. REID (for himself, Mr. DION, Mr. GALLUCCI, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 251. (a) FINDINGS.—The Senate makes the following findings:


(2) The report requires performance standards and goals for security, economic, and security force training objectives in Iraq together with a notional timetable for achieving these goals.

(3) In specific, the report required, at a minimum, the following:

(i) With respect to stability and security in Iraq, the following:

(A) measures that could be carried out to build greater public awareness and confidence in the work of the Council; and

(B) whether the Council and the Secretary of Homeland Security could benefit from greater transparency and the development of more clearly articulated performance standards in the threat level decision-making process.

(4) The report required by subsection (b) shall be submitted in an unclassified form and may include a classified annex, if necessary.

(5) There remains considerable confusion regarding—

(A) measures that could be carried out to enhance the international community’s ability to interdict in the international community to interdict in transit, in transit and in place, and related to weapons of mass destruction, including—

(i) Key measures of political stability, including the important political milestones that must be achieved over the next several years.

(ii) The primary indicators of a stable security environment in Iraq, such as number of successful attacks per year, number of trained Iraqi forces, and trends relating to numbers and types of ethnic and religious-based hostile encounters.

(iii) The assessment of the estimated strength of the insurgency in Iraq and the extent to which it is composed of non-Iraqi fighters.

(iv) The assessment of all militias operating in Iraq, including the number, size, equipment strength, military effectiveness, sources of support, legal status, and efforts to disarm or reintegrate each militia.

(v) Key indicators of economic activity that should be considered the most important for determining the prospects of stability in Iraq, including—

(A) unemployment levels; and

(B) electricity, water, and oil production rates; and

(C) hunger and poverty levels.

(6) The criteria the Administration will use to determine when it is safe to begin withdrawing United States forces from Iraq, including—

(A) measures that could be carried out to build greater public awareness and confidence in the work of the Council; and

(B) whether the Council and the Secretary of Homeland Security could benefit from greater transparency and the development of more clearly articulated performance standards in the threat level decision-making process.

(C) DETERMINATION AND CHARACTERIZATION CAPABILITIES.—A review of how the United States will improve the array of weapons of mass destruction detection devices to ensure the homeland is protected from any means by which weapons of mass destruction could be delivered against the United States.

(D) the measures that could be carried out to enhance the international community’s ability to interdict in transit, in transit and in place, and related to weapons of mass destruction, including—

(i) Key measures of political stability, including the important political milestones that must be achieved over the next several years.

(ii) The primary indicators of a stable security environment in Iraq, such as number of successful attacks per year, number of trained Iraqi forces, and trends relating to numbers and types of ethnic and religious-based hostile encounters.

(iii) The assessment of the estimated strength of the insurgency in Iraq and the extent to which it is composed of non-Iraqi fighters.

(iv) The assessment of all militias operating in Iraq, including the number, size, equipment strength, military effectiveness, sources of support, legal status, and efforts to disarm or reintegrate each militia.

(v) Key indicators of economic activity that should be considered the most important for determining the prospects of stability in Iraq, including—

(A) unemployment levels; and

(B) electricity, water, and oil production rates; and

(C) hunger and poverty levels.

(6) The criteria the Administration will use to determine when it is safe to begin withdrawing United States forces from Iraq, including—

(A) measures that could be carried out to build greater public awareness and confidence in the work of the Council;
(i) The training provided Iraqi military and other Ministry of Defense forces and the equipment used by such forces.

(ii) Key criteria for assessing the capabilities and readiness of the Iraqi military and other Ministry of Defense forces, goals for achieving certain capability and readiness levels (as well as for recruiting, training, and equipping), and the milestones and notional timetable for achieving these goals.

(iii) The operational readiness status of the Iraqi military forces, including the type, number, size, and organizational structure of Iraqi battalions that are—

(1) capable of conducting counterinsurgency operations independently;

(2) capable of conducting counterinsurgency operations with the support of combat and support elements of coalition forces;

(3) not ready to conduct counterinsurgency operations.

(iv) The rates of absenteeism in the Iraqi military forces and the extent to which insurgents have infiltrated such forces.

(v) The training provided Iraqi police and other Ministry of Interior forces and the equipment used by such forces.

(vi) Key criteria for assessing the capabilities and readiness of the Iraqi police and other Ministry of Interior forces, goals for achieving certain capability and readiness levels (as well as for recruiting, training, and equipping), and the milestones and notional timetable for achieving these goals, including—

(1) the number of police recruits that have received classroom training and the duration of such instruction;

(2) the number of veteran police officers who have received classroom instruction and the duration of such instruction;

(3) the number of candidates screened by the Iraqi Police Screening Service, the number of candidates derived from other entry procedures, and the success rates of those groups of candidates;

(4) the number of Iraqi police forces who have received field training by international police trainers and the duration of such instruction;

(5) attrition rates and measures of absenteeism and infiltration by insurgents.

(vii) The estimated total number of Iraqi battalions that, for the Iraqi security forces to perform duties now being undertaken by coalition forces, including defending the borders of Iraq and providing adequate levels of law and order throughout Iraq.

(viii) The effectiveness of the Iraqi military and police officer cadres and the chain of command.

(ix) The number of United States and coalition advisors needed to support the Iraqi security forces and associated ministries.

(x) An assessment, in a classified annex if necessary, of United States military requirements, including planned force rotations, throughout the calendar year 2006.

(3) The deadline for submittal of the report to Congress was 60 days after the date of the enactment of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, that is July 11, 2005, and every 90 days thereafter at the end of fiscal year 2006.

(4) The report has not yet been received by Congress.

(5) The availability of accurate data on key performance indicators is critical to understanding whether the United States strategy in Iraq is succeeding, and the substantial resources provided by Congress, which total more than $200,000,000,000, and an approximate $5,000,000,000 with substantial resource expenditures still to come, are being utilized effectively.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the information requested in the report described by subsection (a) is critical—

(A) to fulfilling the oversight obligations of Congress;

(B) to ensuring the success of United States strategy in Iraq;

(C) to measuring the effectiveness of the substantial resources provided by Congress and the American people for United States efforts in Iraq;

(D) to identifying when the Iraqi security forces will be able to assume responsibility for security in Iraq; and

(E) to obtaining an estimate of the level of United States troops that will be necessary in Iraq during 2005 and 2006, and in any years thereafter;

(2) the report should be provided by the Department of Defense, as required by the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 as soon as possible; and

(3) the Secretary of Defense should communicate to Congress and the American people why the report was not submitted to Congress by the original deadline for its submittal.

SA 1162. Mr. KERRY (for himself and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 18, strike "$2,694,300,000" and insert "$1,552,000,000".

On page 81, line 24, strike "$615,000,000" and insert "$4,000,000,000".

On page 81, line 24, strike "$550,000,000" and insert "$3,000,000,000".

On page 82, line 12, strike "$180,000,000" and insert "$600,000,000".

On page 89, line 3, strike "$194,000,000" and insert "$699,994,000".

On page 100, between lines 11 and 12, insert the following:

SEC. 519. Within 90 days after the date of enactment of this Act, the Department of Homeland Security's Office of Inspector General shall issue a report to the House and Senate Committees on Appropriations, the House and Senate Committees on Homeland Security, and the Senate Committee on Commerce, Science, and Transportation regarding the steps the Department has taken to comply with the recommendations of the Inspector General's Report on the Port Security Grant Program (OIG-05-10).

SA 1163. Mrs. FEINSTEIN (for herself and Mr. SESSIONS) submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 518. The Secretaries of the Treasury shall take such action as is necessary to reduce benefits provided by the Economic Growth and Tax Relief Reconciliation Act of 2001 to individuals with an adjusted gross income of $1,000,000,000 or more that will result in an increase in revenue sufficient to offset the increased funding provided for the first responder and other programs made by this title; this section, and any related increases in funding.

SA 1165. Ms. STABENOW submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 56, line 19, strike "$124,620,000" and insert "$115,160,000".

On page 57, line 1, strike "$146,322,000" and insert "$135,572,000".

On page 57, line 17, strike "$18,325,000" and insert "$17,005,000".

On page 57, line 22, strike "$286,540,000" and insert "$285,040,000".
On page 77, line 18, strike "$2,694,300,000" and insert "$2,757,300,000".

On page 79, line 22, strike the colon and insert a period.

On page 79, between lines 22 and 23, insert the following:

(7) $44,000,000 for interoperable communications equipment grants.

SA 1166. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

SA 1167. Mr. GRASSLEY (for himself and Mr. HATCH) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 20, strike "purposes." and insert the following: "purposes: Provided further, That MidAmerica St. Louis Airport in Mascoutah, Illinois, shall be designated as a port of entry."

SA 1168. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 1A39. Violation of Washington, D.C. airspace.

"Whoever negligently flies an aircraft in a manner that violates the Washington, D.C. Metropolitan Area Flight Restricted Zone (as defined by the Federal Aviation Administration) and causes the evacuation a Federal building or any other public property shall be subject to a fine of $100,000, confiscation of the aircraft, and loss of the right to fly in United States airspace for 5 years."

SA 1169. Mr. HAGEL submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 2, strike "$4,452,318,000" and insert "$4,440,318,000".

On page 70, line 24, strike "$56,000,000" and insert "$48,000,000".

SA 1170. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

SEC. 519. The amount appropriated for salaries and expenses by title II under the heading "Department of Homeland Security" is increased by $61,666,500, all of which shall be made available to hire and train an additional 500 full-time active duty Immigration and Customs Enforcement investigators.

SA 1171. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, between lines 11 and 12, insert the following:

SEC. 519. (a) The amount appropriated for salaries and expenses by title II under the heading "Department of Homeland Security" is increased by $198,000,000, all of which shall be made available to add an additional 5,760 detention beds in the United States.

(b) The amount appropriated by title II for the United States Coast Guard for the Integrated Deepwater Systems program under the heading "Acquisition, Construction, and Improvements" is reduced by $198,000,000.

SA 1172. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 115. Appropriations for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(b) C HAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) CHAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) CHAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) CHAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) CHAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

(b) CHAPTER ANALYSIS.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

(1) arrive in the United States from a foreign country and have a final destination in the United States at a port of entry designated as a port of entry by the Secretary of Homeland Security. Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).
SEC. 01. DOCUMENT AND VISA REQUIREMENTS.

(a) In General.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1321(a)) is amended by adding at the end the following:

"(3) VISA AND IMMIGRATION RELATED DOCUMENT REQUIREMENTS.—

"(A) Visas issued by the Secretary of State and immigration related documents issued by the Secretary of State or the Secretary of Homeland Security shall comply with authentication and biometric standards recognized by domestic and international standards organizations.

"(B) Such visas and documents shall—

"(i) be machine-readable and tamper-resistant;

"(ii) use biometric identifiers that are consistent with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section;

"(iii) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

"(iv) be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under section 274E.

"(C) The information contained on the visas or immigration related documents described in subparagraph (B) shall include—

"(i) the alien’s name, date and place of birth, alien registration or visa number, and, if applicable, social security number;

"(ii) the alien’s citizenship and immigration status in the United States; and

"(iii) the date that such alien’s authorization to remain in the United States expires, if applicable.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 26, 2007.

SEC. 02. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) In General.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

"SEC. 274E. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.—

"(1) In General.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish an Employment Eligibility Confirmation System (referred to in this section as the ‘System’ through which the Commissioner responds to inquiries made by employers who have hired individuals concerning each individual’s identity and employment authorization.

"(2) MAINTENANCE OF RECORDS.—The Commissioner shall electronically maintain records by which compliance under the System may be verified.

"(3) OBJECTIVES OF THE SYSTEM.—The System shall—

"(A) facilitate the eventual transition for all businesses, from the employment verification system established in section 274A with the System;

"(B) utilize, as a central feature of the System, machine-readable documents that contain encrypted electronic information to verify employment eligibility; and

"(C) provide for the evidence of employment eligibility described in section 274A.

"(4) INITIAL RESPONSE.—The System shall provide—

"(A) confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility not later than 3 working days after the initial inquiry; and

"(B) an appropriate code indicating such confirmation or tentative nonconfirmation.

"(5) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—

"(A) Establishment.—In cases of tentative nonconfirmation, the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish a secondary verification process. The employer shall make the secondary verification inquiry not later than 10 days after receiving a tentative nonconfirmation.

"(B) DISCREPANCIES.—If an employee chooses to contest a secondary nonconfirmation, the employee shall provide the employee with a referral letter and instruct the employee to visit an office of the Department of Homeland Security or the Social Security Administration to resolve the discrepancy not later than 10 working days after the receipt of such referral letter in order to obtain confirmation.

"(C) FAILURE TO CONTEST.—An individual’s failure to contest a confirmation shall not constitute knowledge (as defined in section 274a.1(1) of title 8, Code of Federal Regulations).

"(6) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed, implemented, and operated—

"(A) to minimize its reliability and ease of use consistent with protecting the privacy and security of the underlying information through technical and physical safeguards;

"(B) to verify that a newly hired individual is authorized to be employed;

"(C) to permit individuals to—

"(i) view their own records in order to ensure the accuracy of such records; and

"(ii) contact the appropriate agency to correct any records that are not maintained in accordance with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section—

"(D) to prevent discrimination based on national origin or citizenship status under section 274a.

"(7) UNLAWFUL USES OF SYSTEM.—It shall be an unlawful immigration-related employment practice—

"(A) for employers or other third parties to use the System selectively or without authorization;

"(B) to use the System prior to an offer of employment; or

"(C) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

"(D) to use the System to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice;

"(E) to make threats or otherwise interfere with the labor relations of employees, or any other unlawful employment practice;

"(F) to take adverse action against any person for terminating or suspending an employee who has received a tentative nonconfirmation.

"(G) EMPLOYMENT ELIGIBILITY DATABASE.—

"(1) REQUIREMENT.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security and other appropriate agencies, shall design, implement, and maintain an Employment Eligibility Database (referred to in this section as the ‘Database’) as described in this subsection.

"(2) DATABASE.—The Database shall include, for each individual who is not a citizen or national of the United States, but is authorized or seeking authorization to be employed in the United States, the individual’s—

"(A) country of origin;

"(B) immigration status;

"(C) employment eligibility;

"(D) occupation;

"(E) metropolitan statistical area of employment;

"(F) annual compensation paid;

"(G) period of employment eligibility;

"(H) employment commencement date; and

"(I) employment termination date.

"(3) REVERIFICATION OF EMPLOYMENT ELIGIBILITY.—The Commissioner of Social Security shall prescribe, by regulation, a system to periodically reverify the employment eligibility of each individual described in this section—

"(A) by utilizing the machine-readable documents described in subsection (a)(3); or

"(B) if machine-readable documents are not available, by telephonic or electronic communication.

"(4) CONFIDENTIALITY.—

"(A) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than individuals responsible for the verification of employment eligibility or for the evaluation of the employment verification program at the Social Security Administration, the Department of Homeland Security, or the Department of Labor, may have access to any information contained in the Database.

"(B) PROTECTION FROM UNAUTHORIZED DISCLOSURE.—Information contained in the Database shall be adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor.

"(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to design, implement, and maintain the Database.

"(6) GRADUAL IMPLEMENTATION.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor shall develop a plan to phase all workers into the Database and phase out the employer verification system established in section 274A over a period of time that the Commissioner determines to be appropriate.

"(7) EMPLOYER RESPONSIBILITIES.—Each employer shall—

"(1) notify employees and prospective employees of the use of the System and that the System may be used for immigration enforcement purposes;

"(2) verify the identification and employment authorization status for newly hired individuals not later than 3 days after the date of hire;

"(3) use—

"(A) a machine-readable document described in subsection (a)(3); or

"(B) the telephonic or electronic system to access the Database;

"(4) provide, for each employee hired, the occupation, metropolitan statistical area of employment, and annual compensation paid;

"(5) retain the code received indicating confirmation or nonconfirmation, for use in investigations; and

"(6) provide a copy of the employment verification receipt to such employees.

"(8) GOOD-FAITH COMPLIANCE.—

"(1) AFFIRMATIVE DEFENSE.—A person or entity that establishes good faith compliance with the requirements of this section with respect to the employment of an individual in the United States has established an affirmative defense that the person or entity has not violated this section.

"(2) LIMITATION.—Paragraph (1) shall not apply to a person or entity that engages in an unlawful immigration-related employment practice described in subsection (a)(7)."
(b) INTERIM DIRECTIVE.—Before the implementation of the Employment Eligibility Confirmation System (referred to in this section as the "System") established under section 203 of the Immigration and Nationality Act, as added by subsection (a), the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, shall, to the maximum extent practicable, implement an interim system to confirm employment eligibility that is consistent with the provisions of this section.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 3 months after the last day of the second year and of the third year the System is in effect, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the System.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the impact of the System on the employment of unauthorized workers;
(B) an assessment of the accuracy of the Employment Eligibility Database maintained by the Department of Homeland Security and Social Security Administration databases, and timeliness and accuracy of responses from the Department of Homeland Security and the Social Security Administration to employers;
(C) an assessment of the privacy, confidentiality, and security of the System;
(D) assess whether the System is being implemented in a nondiscriminatory manner; and
(E) include recommendations on whether or not the System should be modified.

SEC. 03. IMPROVED ENTRY AND EXIT DATA SYSTEMS.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1361a) is amended—

(1) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";
(2) in subsection (b), by striking "Justice" and inserting "Homeland Security";
(3) in paragraph (4), by striking "and" at the end;
(4) in paragraph (5), by striking the period at the end and inserting "; and";
(5) by adding at the end the following:

"(6) collects the biometric machine-readable data available from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1210(a)(3)) at the time an alien arrives in the United States and at the time an alien departs from the United States to determine if such alien is entering, or is present in, the United States unlawfully; and"

(3) in subsection (f)(1), by striking "Departments of Justice and State" and inserting "Department of Homeland Security and the Department of State".

SEC. 04. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—The Secretary of Homeland Security shall provide all customs and border protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the Forensic Document Laboratory of the Immigration and Customs Enforcement.

(b) ACCESS TO FORENSIC DOCUMENT LABORATORY.—The Secretary of Homeland Security shall provide all customs and border protection officers with access to the Forensic Document Laboratory.

SEC. 05. CANCELLATION OF VISAS.

Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1222(g)) is amended—

(1) in paragraph (1), by inserting "and any other nonimmigrant visa issued by the United States that is in the possession of the alien after such visa;" and
(2) in paragraph (2), by striking "other than a visa described in paragraph (1) issued in a consular office located in the country of the alien's nationality" and inserting "(other than a visa issued in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence.

SEC. 06. INSTITUTIONAL REMOVAL PROGRAM.

(a) CONTINUATION AND EXPANSION.—

(1) IN GENERAL.—The Attorney General and the Secretary of Homeland Security shall continue to operate the Institutional Removal Program, which identifies removable criminal aliens in Federal and State correctional facilities, ensures such aliens are not released into the community, and removes such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The Institutional Removal Program shall be made available to all States.

(b) COOPERATION, IDENTIFICATION, AND NOTIFICATION.—Any State that receives Federal funds for the incarceration of criminal aliens shall—

(A) cooperate with Federal Institutional Removal Programs;
(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and
(C) promptly convey such information to authorities of the Institutional Removal Program as a condition for receiving such funds.

(c) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable in order to facilitate the Institutional Removal Program available to facilities in remote locations.

TITLE—AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITY ACT OF 2005

SEC. 01. SHORT TITLE.

This title may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2005" or the "AgJOBS Act of 2005".

SEC. 02. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term "agricultural employment" means any subsistence or gainful employment, activity that is considered to be agricultural under section 3(h) of the Agricultural Adjustment Act of 1938 (29 U.S.C. 203(h)) or agriculture under section 312(g)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 312(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) EMPLOYER.—The term "employer" means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(3) JOB OPPORTUNITY.—The term "job opportunity" means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

(4) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(5) TEMPORARY.—A worker is employed on a "temporary basis" where the employment is intended not to exceed 10 months.

(6) UNITED STATES WORKER.—The term "United States worker" means any worker, regardless of citizenship or national origin, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(7) WORK DAY.—The term "work day" means any day in which the individual is employed for more than one hour for agricultural employment consistent with the definition of "man-day" under section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

Subtitle A—Adjustment to Lawful Status

SEC. 11. AGRICULTURAL WORKERS.

(a) TEMPORARY RESIDENT STATUS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, an alien shall confer upon an alien who qualifies under this subsection the status of an alien lawfully admitted for temporary residence if the Secretary determines that the alien—

(A) has performed agricultural employment in the United States for at least 575 hours or 100 work days, whichever is less, during any 12 consecutive months during the 18-month period ending on December 31, 2004;
(B) applied for such status during the 18-month application period beginning on the first day of the second month that begins after the date of enactment of this Act; and
(C) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under subsection (e)(2).

(2) AUTHORIZED TRAVEL.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) in the same manner as an alien lawfully admitted for permanent residence.

(3) AUTHORIZED EMPLOYMENT.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(4) TERMINATION OF TEMPORARY RESIDENT STATUS.—

(A) IN GENERAL.—During the period of temporary resident status granted an alien under this subsection, the Secretary may terminate such status only upon a determination by the Secretary that the alien is deportable.

(B) GROUNDS FOR TERMINATION OF TEMPORARY RESIDENT STATUS.—Before any alien lawfully admitted for temporary status under subsection (c), the Secretary may deny adjustment to permanent resident status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Secretary finds, by a preponderance of the evidence, that the adjustment to temporary resident status was fraudulently obtained or willful misrepresentation (as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i))); or
(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (e); or

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(III) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(5) RECORD OF EMPLOYMENT.—Each employer of a worker granted status under this subsection shall annually—
(i) provide a written record of employment to the alien; and
(ii) provide a copy of such record to the Secretary.

(b) Rights of the Employer.—The obligation under subparagraph (A) shall terminate on the date that is 6 years after the date of enactment of this Act.

(3) Rights of Aliens Admitted Temporarily for Employment Purposes.—An alien who applies for such purpose.

(3) SELECTION OF AN ARBITRATOR.—(A) IN GENERAL.—The Secretary shall have the power or jurisdiction to review any such finding.

(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted temporary resident status under subsection (a) without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of the requirement of subsection (c)(1).

(vi) TREATMENT OF ATTORNEY’S FEES.—The parties shall bear the cost of their own attorney’s fees involved in the litigation of the complaint.

(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in a proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding involving the same employee and the employer's current or former employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States; regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator’s specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

(B) TREATMENT OF COMPLAINTS.—(1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this subparagraph of complaints by aliens granted temporary resident status under subsection (a) who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(ii) QUALIFYING YEARS.—The alien has performed at least 240 work days or 1,380 hours, of agricultural employment during the 6-year period beginning after the date of enactment of this Act.

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 360 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(iv) QUALIFYING YEARS.—The alien has performed at least 75 work days or 430 hours, but in no case less than 430 hours, of agricultural employment in the United States; or

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 360 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(iv) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of enactment of this Act.

(v) PROOF.—In meeting the requirements of clauses (i), (ii), and (iii), an alien may submit evidence of employment generally applicable to private arbitration proceedings. The Secretary shall have the power or jurisdiction to review any such findings.

(vi) DISABILITY.—In determining whether an alien meets the requirements of clauses (i), (ii), and (iii), the Secretary shall credit the alien with any work days lost because the alien was unable to work in agricultural employment due to injury or disease arising out of and in the course of the alien’s agricultural employment, if the alien can establish such disabling injury or disease through medical records.

(B) TREATMENT OF COMPLAINTS.—(1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this subparagraph of complaints by aliens granted temporary resident status under subsection (a) who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(ii) QUALIFYING YEARS.—The alien has performed at least 240 work days or 1,380 hours, of agricultural employment during the 6-year period beginning after the date of enactment of this Act.

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 360 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(iv) QUALIFYING YEARS.—The alien has performed at least 75 work days or 430 hours, but in no case less than 430 hours, of agricultural employment in the United States; or

(iii) QUALIFYING WORK IN FIRST 3 YEARS.—The alien has performed at least 360 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.
(i) removed while such alien maintains such status, except as provided in subparagraph (C); and
(ii) granted authorization to engage in employment in the United States or be provided an "employment authorized" endorsement or other work permit, unless such employment authorization is granted under another provision of law.

(C) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under subsection (a) if the alien—

(i) is not a lawfully admitted permanent resident, or

(ii) is deported, removed, or expelled from the United States for any violation of this Act.

(D) T RAVEL DOCUMENTATION.—The Secretary, in cooperation with the Secretary of Homeland Security, shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(E) ACTION WITHIN THE UNITED STATES.—The Secretary, in cooperation with the Secretary of Homeland Security, shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(F) DOCUMENTATION OF WORK HISTORY.—If an employer or farm labor contractor employing such an alien has kept proper and adequate employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide, the Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(G) CONSTRUCTION.—(A) CRIMINAL PENALTY.—Any person who—

(i) files an application for status under subsection (a) or (c) and knowingly and willfully provided false statements or representations, or makes or uses any false writing or document knowing or having substantial reason to believe that such writing or document is false, shall be fined not more than $10,000.

(ii) files an application for status under subsection (a) or (c) and knowingly and willfully provides false statements or representations, or makes or uses any false writing or document knowing or having substantial reason to believe that such writing or document is false, shall be fined not more than $10,000.

(iii) files an application for status under subsection (a) or (c) and knowingly and willfully provides false statements or representations, or makes or uses any false writing or document knowing or having substantial reason to believe that such writing or document is false, shall be fined not more than $10,000.

(B) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this section, or any other information derived from such furnished information, to—

(i) a duly recognized law enforcement entity in connection with a criminal investigation, or prosecution, if such information is requested in writing by such entity; or

(ii) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(C) CONSTRUCTION.—(1) IN GENERAL.—Nothing in this section shall be construed to require, for release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Department of Homeland Security pertaining to an alien, information other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(2) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to a fine in an amount not to exceed $10,000.

(E) E LIGIBILITY FOR LEGAL SERVICES.—Securities and Exchange Commission, and the Federal Trade Commission, and the Attorney General, and the Secretary of Homeland Security, and any other entity, shall provide the following information concerning the performance of qualifying employment in the United States, together with the pay- ment, and information and documentation which the appropriate Federal or State entity, shall be available to such entity, or any other entity, for any purpose other than to make a determination on the application, or for enforcement of paragraph (7); or

(F) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(i) of Public Law 104-134 (110 Stat. 1320-852 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2966 et seq.) from providing legal assistance directly related to an application for adjustment of status under this section.

(G) APPLICATION FEES.—(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees, or charges, for any application for status under subsection (a) and
(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEE BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided by such entities.

(C) DISPOSITION OF FEES.—

(1) IN GENERAL.—There shall be deposited as provided in paragraphs (5), (6)(A), and (6)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) not apply.

(ii) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), and (6)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(B) WAIVER OF OTHER GROUNDS .—

(1) IN GENERAL.—Except as provided in clause (i), the Secretary may waive any other provision of this section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—

Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) shall not be waived by the Secretary under clause (i).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary or any other agency to authorize the Secretary to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHANGE.—An alien is not ineligible for status under this section by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public assistance.

(D) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period prescribed in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for temporary resident status under subsection (a) (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the first step of application for temporary resident status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ‘‘employment authorized’’ endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who files an application for temporary resident status under subsection (a) during the application period described in subsection (a)(1)(B), including an alien who is detained for removal within 30 days of the alien’s apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ‘‘employment authorized’’ endorsement or other appropriate work permit for such purpose.

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(A) IN GENERAL.—There shall be no administrative or judicial review of a determination made under subsection (a) or (c) except in accordance with this subsection.

(B) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the determination and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(d) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM .—Not later than the first day of the seventh month that begins after the date of enactment of this Act, the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the first day of the seventh month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $40,000,000 for each of fiscal years 2006 through 2009.

SEC. 12. CORRECTION OF SOCIAL SECURITY RECORDS

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(i), by striking ‘‘or’’ at the end;

(2) in subparagraph (C), by inserting ‘‘or’’ at the end;

(3) by striking subparagraph (B) and inserting after subparagraph (C) the following:

‘‘(D) who is granted status as a lawful temporary resident under the Agricultural Job Opportunities, Benefits, and Security Act of 2005,’’; and

(4) by striking ‘‘1990,’’ and inserting ‘‘1990, or in the case of an alien described in subparagraph (D), if such construction is applicable to have occurred before the date on which the alien was granted lawful temporary resident status.’’

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of enactment of this Act.

Subtitle B—Reform of H–2A Worker Program

SEC. 21. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) by striking ‘‘1990.’’ and inserting ‘‘1990, or in the case of an alien described in subparagraph (C), (D), or (E) of section 218 (8 U.S.C. 1188) and inserting the following:

‘‘H–2A EMPLOYER APPLICATIONS

‘‘SEC. 216. (a) APPLICATIONS TO THE SECRETARY OF LABOR.

‘‘(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer files an application with the Secretary of Labor an application containing—

(A) the assurances described in subsection (b);

(B) a description of the nature and location of the work to be performed;

(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

(D) the number of job opportunities in which the employer seeks to employ the workers.

‘‘(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the job opportunity for which the employer is seeking to employ the workers.

‘‘(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

‘‘(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm’s length between a bona fide union and the employer.

(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because former employees have been locked out or are being locked out in the course of a labor dispute.

(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer’s employees in the occupational classification at the place or places of employment for which aliens are sought.

(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or
the nonimmigrants are, sought and who will be available at the time and place of need.

(‘F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(‘G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(‘H) EMPLOYMENT OF UNITED STATES WORKERS.—The employer did not displace an H–2A worker employed by the other employer has displaced or intends to displace or who could not reasonably have been foreseen.

(‘I) Contacting Former Workers.—The employer did not displace an H–2A worker employed by the other employer has displaced or intends to displace or who could not reasonably have been foreseen.

(‘J) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(‘K) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

(‘L) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

(‘M) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer did not displace an H–2A worker employed by the other employer has displaced or intends to displace or who could not reasonably have been foreseen.

(‘N) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace an H–2A worker employed by the other employer has displaced or intends to displace or who could not reasonably have been foreseen.

(‘O) REQUIREMENTS FOR PLACEMENT OF NON-IMMIGRANT WITH OTHER EMPLOYERS.—The employer did not displace an H–2A worker employed by the other employer has displaced or intends to displace or who could not reasonably have been foreseen.

(‘P) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

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(‘EEE) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.
list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of workers sought, period of intended employment, and date of filing. The Secretary of Labor shall make such list available for examination in the District of Columbia.

"(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed a temporary labor certification application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.

"H-2A EMPLOYMENT REQUIREMENTS

"SEC. 218A. (a) PREFERENCE. TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on United States workers and obligations which shall not be imposed on the employer’s H-2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to similarly treat United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.

(A) IN GENERAL.—An employer applying under section 218(a) for H-2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer’s election, provide housing that meets Federal standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

(C) FAMILY HOUSING.—When it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

(2) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers for their use, the employer shall employ directly to the appropriate individual or entity affiliated with the housing’s management.

(3) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incalculable related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitability to reimburse the employer for the reasonable cost of repair or replacement of such damage.

(4) HOUSING ALLOWANCE AS ALTERNATIVE.

(A) IN GENERAL.—If the requirement under clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. If the employer who offers a housing allowance to a worker, or assists a worker in locating housing which satisfies this requirement, the employer shall not be deemed providing housing under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1972) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

(B) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H-2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

(3) AMOUNT OF ALLOWANCE.

(A) NONMETROPOLITAN COUNTIES.—If the applicable wage for workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(B) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(2) REIMBURSEMENT OF TRANSPORTATION.

(A) TO PLACE OF EMPLOYMENT.—A worker who is laid off or permanently recalled from the occupation for which the employer has applied under that section and to whom the adverse effect of the intervening employment came to work to provide transportation and subsistence to such subsequent employer’s place of employment.

(3) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed—

(1) the actual cost to the worker or alien of the transportation and subsistence involved; or

(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

(B) DISTANCE TRAVELED.—No reimbursement shall be paid to a worker or alien unless the employer provides the transportation and subsistence required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated before the anticipated ending date of employment, the employer shall provide transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORK SITE.—The employer shall provide transportation between the worker’s living quarters and the employer’s work site without cost to the worker, and such transportation shall be in accordance with applicable law and regulations.

(3) REQUIRED WAGES.

(A) IN GENERAL.—An employer applying for workers under section 218(a) for H-2A workers shall offer to pay more than the adverse effect wage rate for that worker or alien.

(B) LIMITATION.—Effective on the date of enactment of the Agricultural Job Opportunity, Benefits, and Security Act of 2005 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the prevailing market wage rate for the State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

(4) REQUIRED HOUSING AFTER 3-YEAR FREEZE.

(1) FIRST AMENDMENT.—If Congress does not set a new wage standard applicable to the provision of housing before that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually
adjusted, beginning on March 1, 2006, by the lesser of—

(i) the 12 month percentage change in the Consumer Price Index for All Urban Consumers in the United States for the preceding year; and

(ii) 4 percent.

(II) 4 percent.

(III) PAYMENT FOR UNDOCUMENTED ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the amount specified in subparagraph (A) shall be adjusted by the lesser of—

(i) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

(ii) 4 percent.

(IV) DEDUCTIONS.—The employer shall make only those deductions from the worker’s wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker’s wages.

(V) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

(§) REPORT ON WAGE PROTECTIONS.—Not later than June 1, 2007, the Comptroller General of the United States shall prepare and submit to the Committee on the Judiciary of the Senate, and the Committee on Agriculture of the House of Representatives, a report that addresses—

(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural work force has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

(ii) whether the adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would prevail in the absence of the employment of H-2A workers in those occupations;

(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the levels that would have prevailed in the absence of H-2A employment;

(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

(v) recommendations for future wage protection under this section.

(IX) FINAL REPORT.—Not later than June 1, 2007, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

(X) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

(Y) GUARANTER OF EMPLOYMENT.—

(A) OFFER TO EMPLOY.—The employer shall guarantee to offer the worker employment for the work days that have elapsed from the expiration date specified in the job offer.

(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer for a work day, on the worker’s Sabbath, or on Federal holidays) may be counted by the employer in calculating the period of guaranteed employment that has been met.

(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the period of employment guaranteed in the contract period, or is terminated for cause, the worker is not entitled to the ‘three-fourths guarantee’ described in subparagraph (A).

(1) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment guaranteed in the contract period, the worker is no longer required for reasons beyond the control of the employer due to any form of natural disaster, including but not limited to volcanic eruptions, hurricanes, floods, hail, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is met, the employer may terminate the worker’s employment. In the event of such termination, the employer shall fulfill the employment guarantee for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer is permitted to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

(2) MOTOR VEHICLE SAFETY.—

(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iv), this subsection applies to any H-2A employer that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

(ii) DEFINED TERM.—In this paragraph, the term ‘transportation’ means—

(1) any use of a vehicle to transport an H-2A worker, unless the employer specifically requested or arranged such transportation; or

(2) car pooling arrangements made by an H-2A employer to an H-2A worker at the request or direction of an H-2A worker.

(iii) CLARIFICATION.—Providing a job offer to an H-2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs incurred by an H-2A worker using his or her own vehicle, unless specifically requested by the employer directly or through a farm labor contractor, shall not constitute an arrangement of, or participation in, such transportation.

(3) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H-2A worker who is a common carrier or whose journey is for the purpose of the transportation of live stock or poultry or engaged in transportation incident thereto.

(4) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certificate of authorization for such purposes from an appropriate Federal, State, or local agency.

(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of transportation to which this paragraph applies, each employer shall—

(1) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1914(b) and other
applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate and maintain such vehicle;

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(d) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(e) EFFECT OF WORKERS’ COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers’ compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under any other policy;

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation worker employers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer’s application and job offer as described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

"(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS

"SEC. 218B. (a) PETITIONING FOR ADMISSION OF ALIENS.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

"(b) REQUIREMENTS FOR PETITION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days of the filing date, cable or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, issue an appropriate immigration official at the port of entry or United States consulate (as the case may be) where the petition has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

"(c) CRITERIA FOR ADMISSIBILITY.—(1) In general.—An alien shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered ineligible to enter the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated the provisions of this section, including the requirement to promptly depart the United States when the alien’s authorized period of admission under this section has expired;

"(B) otherwise violated a term or condition of admission into the United States as a non-immigrant, including overstaying the period of authorized admission as such a non-immigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B) if an alien described in the preceding sentence entered the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

"(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

"(c) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of and the period of the time the worker is required to travel to the work site and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed 10 months.

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to remove the alien under any other provision of this Act.

"(d) REMOVAL FROM THE UNITED STATES.—

"(1) GENERAL.—The alien may, at any time, be removed by the Secretary to the United States if the alien fails to comply with any of the following:

"(A) violated a material provision of this Act;

"(B) was not employed for a lawful job-related reason.

"(2) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay except in the case of—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States.

"(4) VOLTARY TERMINATION.—No petition may be filed to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay or a change of status which was the basis for such admission or status shall be considered to have failed to meet the requirements if the alien voluntarily departs the United States upon termination of such employment.

"(5) ABANDONMENT OF EMPLOYMENT.—(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker

"(A) who abandoned or prematurely terminated employment; or

"(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(ii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

"(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

"(g) IDENTIFICATION DOCUMENT.—

"(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not otherwise eligible determined to be an alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States.

"(f) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay and a change in the alien’s employment.

"(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States.
under paragraph (1) on the date on which the petition is filed.

"(2) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail, via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with documented acknowledgment of the date of receipt of the petition.

"(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien indicating the new validity date, together with a copy of the petition, the alien's identification and employment eligibility document, and the information required under paragraph (1). The alien shall keep the petition, the alien's identification and employment eligibility document, together with a copy of the petition, for a period of not more than 60 days after the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

"(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—If an alien is not authorized to work in the United States whose period of authorized status as an H–2A worker (including any extensions) is 3 years, the Secretary of Labor shall not authorize the alien to work for a period equal to at least ¾ the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions)."
The Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association or other association member as well.

(2) VIOlATIONS BY AN ASSOCIATION Acting collaboratively.—If a violation is committed by an association as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of, the violation, in which case the penalty shall be invoked against the association member or members as well.

DEFINITIONS

SEC. 218D. For purposes of sections 218 through 218D:

(1) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural employment’ means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(f)) or agricultural labor under section 321(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(A).

(2) BONA FIDE UNION.—The term ‘bona fide union’ means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, directed, or controlled by an employer or employer association or its agents or representatives.

(3) DISPLACE.—The term ‘displace’, in the context of an application with respect to 1 or more H-2A workers by an employer, means laying off a United States worker from a job for which the H-2A worker or workers is or are authorized to work.
farm labor contractor and any agricultural association, that employs workers in agricultural employment.


(8) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for temporary agricultural employment at a place in the United States to which United States workers can be referred.

(9) LAYS OFF.—The term ‘lays off’, with respect to a worker—

(i) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary layoffs due to weather, markets, or other temporary conditions; but

(ii) does not include any situation in which the worker is offered, as an alternative to employment at a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b) or other arrangement described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer’s access to water for irrigation purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

(11) SEASONAL.—Labor is performed on a ‘seasonal’ basis if—

(A) ordinarily, it pertains to or is of the kind of labor performed at certain seasons or periods of the year; and

(B) from its nature, it may not be continuous or carried on throughout the year.

(12) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

(13) TEMPORARY.—A worker is employed on a ‘temporary’ basis where the employment is intended not to exceed 10 months.

(14) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, whether a United States citizen or national, a lawful permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(A).

(b) TABLE OF CONTENTS.—The table of contents of this Act shall take effect 1 year after the date of enactment of this Act.
under section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

Subtitle A—Adjustment to Lawful Status

SEC. 11. AGRICULTURAL WORKERS.

(a) Temporary Resident Status.—
(i) Notwithstanding any other provision of law, the Secretary shall confer upon an alien who qualifies under this subsection the status of an alien lawfully admitted for temporary residence if the Secretary determines that the alien—
(A) has performed agricultural employment in the United States for at least 575 hours during any 12 consecutive months; or
(B) is otherwise provided under subsection (e)(2).
(ii) Authorized Travel.—During the period in which an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) in the same manner as an alien lawfully admitted for permanent residence.
(iii) Authorized Employment.—During the period in which an alien is in lawful temporary resident status granted under this subsection, the alien shall be provided an “employment authorized” endorsement or other appropriate documentation in the same manner as an alien lawfully admitted for permanent residence.
(iv) Termination of Temporary Resident Status.—
(A) In General.—During the period of temporary resident status granted under this subsection, the Secretary may terminate such status only upon a determination under this Act that the alien is deportable.
(B) Grounds for Termination of Temporary Resident Status.—Before any alien becomes eligible for adjustment of status under subsection (c), the Secretary may deny adjustment to permanent resident status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—
(i) the Secretary finds, by a preponderance of the evidence, that the adjustment to temporary resident status was the result of fraud or willful misrepresentation (as determined in section 212A(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i))); or
(ii) the alien—
(I) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (e)(2); or
(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or
(III) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.
(v) Record of Employment.—
(A) In General.—Each employer of a worker granted status under this subsection shall annually—
(I) provide a written record of employment to the Secretary; and
(II) provide a copy of such record to the Secretary.
(B) Sunset.—The obligation under subparagraph (a) shall terminate on the date that is 6 years after the date of enactment of this Act.

(b) Rights of Aliens Granted Temporary Resident Status.—
(i) In General.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a), such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence for any purpose of any other provision of law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
(ii) Delayed Eligibility for Certain Federal Public Benefits.—An alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a) as described in subparagraph (A) shall be eligible, by reason of such acquisition of that status, for any form of assistance or benefit described in section 409(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the Secretary confers permanent resident status upon that alien under subsection (a).

(c) Rights of Employment Respecting Aliens Admitted Under This Section.—

(i) Prohibition.—No alien granted temporary resident status under subsection (a) may be terminated from employment by any employer during the period of temporary resident status except for just cause.

(ii) Treatment of Complaints.—
(I) Establishment.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this Act and the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

(II) Arbitration Proceeding.—The Secretary shall have the power to order the termination of an employment relationship if the employer engages in a pattern or practice of employing aliens in violation of this Act, or if the employer fails to comply with the terms of a labor certification or labor contract, or if the employer fails to provide the Secretary with evidence of compliance with the terms of a labor certification or labor contract.

(III) Arbitration Proceedings.—The arbitrator shall have the power to order the termination of an employment relationship if the employer engages in a pattern or practice of employing aliens in violation of this Act, or if the employer fails to comply with the terms of a labor certification or labor contract, or if the employer fails to provide the Secretary with evidence of compliance with the terms of a labor certification or labor contract.

(IV) Effect of Arbitration Findings.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted temporary resident status under subsection (c) without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of subsection (c)(1). The parties shall bear the cost of their own attorney’s fees involved in the litigation of the complaint.

(iii) Nonexclusive Remedy.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

(d) Effect of Other Actions or Proceedings.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employer’s current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was brought by the same parties or involved the same facts, except that the arbitrator’s specific finding of the number of days or hours of work lost by the employee arising from the employment relationship may be referred to the Secretary pursuant to clause (iv).

(e) Civil Penalties.—
(i) In General.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted temporary resident status under subsection (a) has failed to provide records of employment required under subsection (a)(5) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(ii) Limitation.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(f) Adjustment to Permanent Resident Status.—

(i) Agricultural Workers.—
(A) In General.—Except as provided in subparagraph (B), the Secretary shall adjust the status of an alien lawfully admitted for temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the Secretary determines that the alien—
(I) provides a written record of employment to the Secretary; and
(II) provides a copy of such record to the Secretary.

(B) Sunset.—The obligation under subparagraph (A) shall terminate on the date that is 6 years after the date of enactment of this Act.

(ii) Rights of Aliens Granted Temporary Resident Status.—
(i) In General.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a), such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence for any purpose of any other provision of law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(iii) Delayed Eligibility for Certain Federal Public Benefits.—An alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (a) as described in subparagraph (A) shall be eligible, by reason of such acquisition of that status, for any form of assistance or benefit described in section 409(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the Secretary confers permanent resident status upon that alien under subsection (a).

(iv) Rights of Employment Respecting Aliens Admitted Under This Section.—

(i) Prohibition.—No alien granted temporary resident status under subsection (a) may be terminated from employment by any employer during the period of temporary resident status except for just cause.

(ii) Treatment of Complaints.—
(I) Establishment.—The Secretary shall establish a process for the receipt, initial review, and disposition in accordance with this Act and the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)).

(II) Arbitration Proceeding.—The Secretary shall have the power to order the termination of an employment relationship if the employer engages in a pattern or practice of employing aliens in violation of this Act, or if the employer fails to comply with the terms of a labor certification or labor contract, or if the employer fails to provide the Secretary with evidence of compliance with the terms of a labor certification or labor contract.

(III) Arbitration Proceedings.—The arbitrator shall have the power to order the termination of an employment relationship if the employer engages in a pattern or practice of employing aliens in violation of this Act, or if the employer fails to comply with the terms of a labor certification or labor contract, or if the employer fails to provide the Secretary with evidence of compliance with the terms of a labor certification or labor contract.

(IV) Effect of Arbitration Findings.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted temporary resident status under subsection (c) without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of subsection (c)(1). The parties shall bear the cost of their own attorney’s fees involved in the litigation of the complaint.

(iii) Nonexclusive Remedy.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

(iv) Effect of Other Actions or Proceedings.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employer’s current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was brought by the same parties or involved the same facts, except that the arbitrator’s specific finding of the number of days or hours of work lost by the employee arising from the employment relationship may be referred to the Secretary pursuant to clause (iv).

(C) Civil Penalties.—
(i) In General.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted temporary resident status under subsection (a) has failed to provide records of employment required under subsection (a)(5) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(ii) Limitation.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(iii) Adjustment to Permanent Resident Status.—

(A) In General.—Except as provided in subparagraph (B), the Secretary shall adjust the status of an alien lawfully admitted for temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(I) Qualifying Employment.—The alien has performed at least 390 work days or 2,060 hours, but in no case less than 2,060 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(II) Qualifying Year.—The alien has performed at least 75 work days or 430 hours, but in no case less than 430 hours, of agricultural employment in the United States, during the 6-year period beginning after the date of enactment of this Act.

(III) Qualifying Periods.—At least 3 nonoverlapping periods of 12 consecutive months during the 6-year period beginning after the date of enactment of this Act.

(iv) Application Period.—The alien applies for adjustment of status not later than 7 years after the date of enactment of this Act.
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qualified designated entity, to examine individual applications.

(B) Required disclosures.—The Secretary shall provide the information furnished under subparagraph (A) to any other individual derived from such furnished information, to—

(i) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(ii) an official coroner, for purposes of affirms, identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(C) Construction.—

(i) In general.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Department of Homeland Security pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.—Information concerning an alien applicant who, at any time between the beginning of the application period described in subsection (a) during the application period to complete the filing of an application for temporary resident status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit for such purpose.

(G) Administrative and Judicial Review.—

(1) In general.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c), except in accordance with this subsection.

(2) Administrative review.—

(A) Single level of administrative appeal.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) Standard for review.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination of the application and upon such newly discovered evidence as may not have been available at the time of the determination.

(3) Judicial review.—There shall be judicial review of such a determination only in the judicial review of an application for status under subsection (a) or (c).
have occurred before the date on which the alien was granted lawful temporary resident status.

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of enactment of this Act.

Subtitle B—Reform of H2A Worker Program

SEC. 21. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) In General.—The Immigration and Nationality Act is amended by striking section 218 (8 U.S.C. 1188) and inserting the following:

"H2A EMPLOYER APPLICATIONS

'Sec. 218. (a) Applications to the Secretary—

"(1) In general.—No alien may be admitted to the United States as an H2A worker, or otherwise provided status as an H2A worker, unless the employer has filed with the Secretary of Labor an application containing—

"(A) the assurances described in subsection (b); and

"(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and end dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers;

"(2) Accompanied by job offer.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer described in clause (a) and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question;

"(b) Assurances for Inclusion in Applications.—The assurances referred to in subsection (a) are the following:

"(1) Job opportunities covered by collective bargaining agreements.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) Union contract described.—The job opportunity is covered by a union contract which was negotiated at arm's length between the employer and the union;

"(B) Strike or lockout.—The specific job opportunity for which the employer is requesting an H2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(2) Notification of bargaining representatives.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) Temporary or seasonal job opportunity.—The job opportunity is temporary or seasonal.

"(E) Offers to United States workers.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

"(F) Provision of insurance.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) Job opportunities not covered by collective bargaining agreements.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) Strike or lockout.—The specific job opportunity for which the employer is requesting an H2A worker is not vacant because the cause of the strike or lockout is on strike or being locked out in the course of a labor dispute.

"(B) Temporary or seasonal job opportunity.—The job opportunity is temporary or seasonal.

"(C) Benefits, wage, and working conditions.—The employer, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer seeks approval to employ H2A workers are identical to those offered or will be offered to any eligible United States worker who applies and is equally or better qualified for the job opportunity.

"(D) Non-displacement of United States workers.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H2A workers.

"(E) Requirements for placement of nonimmigrant with other employers.—The employer will not place the nonimmigrant with another employer;

"(i) the nonimmigrant performs duties in whole or in part at 1 or more work sites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

"(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H2A workers;

"(F) Statement of liability.—The application form shall include a clear statement explaining the liability under subparagraph (E) on the part of the employer described in such subparagraph as follows:

"(i) the employer was hired;

"(ii) the employer was employed in the job opportunity known to such previous workers, and

"(iii) the employer seeks to employ an H2A worker in a temporary or seasonal agricultural job opportunity, the employer will provide employment to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

"(G) Provision of insurance.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(H) Employment of United States workers.—

"(i) Recruitment.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H2A nonimmigrant is, or H2A nonimmigrants are, sought:

"(1) Contacting former workers.—The employer shall make reasonable efforts to contact any United States worker known to the employer during the previous season who was employed by the employer for seasonal agricultural job opportunity for which the employer is seeking approval to employ H2A workers, and at any time thereafter, to offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.
with the job service that offer similar job opportunities in the area of intended employment.

(iv) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job or industry, and as long as such criteria are not applied in a discriminatory manner.

(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF MEMBER EMPLOYERS.—(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members. The association shall certify in its application has or have agreed in writing to comply with the requirements of this section and sections 218A through 218C.

(2) MORE THAN 100% OF MEMBERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its employer members named in the application, and such workers may be transferred among such producer members to perform services of a temporary or seasonal nature for which the certifications were granted.

(d) WITHDRAWAL OF APPLICATIONS.—(1) AN EMPLOYER MAY WITHDRAW AN APPLICATION FILED PURSUANT TO SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION FILED PURSUANT TO SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBERS. TO WITHDRAW AN APPLICATION, THE EMPLOYER OR ASSOCIATION SHALL NOTIFY THE SECRETARY OF LABOR, AND THE SECRETARY OF LABOR SHALL ACKNOWLEDGE IN WRITING THE RECEIPT OF SUCH WITHDRAWAL NOTICE. AN EMPLOYER WHO WITHDRAWS AN APPLICATION UNDER SUBSECTION (A), OR ON WHOSE BEHALF AN APPLICATION IS WITHDRAWN, IS RELIEVED OF THE OBLIGATIONS UNDERTAKEN IN THE APPLICATION.

(2) LIMITATION.—AN APPLICATION MAY NOT BE WITHDRAWN WHILE ANY ALIEN PROVIDED STATUS UNDER SECTION 101(a)(15)(H)(i)(a) PURTANT TO SUCH APPLICATION IS EMPLOYED BY THE EMPLOYER.

(3) OBLIGATIONS UNDER OTHER STATUTES.—ANY OBLIGATION INCURRED BY AN EMPLOYER UNDER ANY OTHER LAW OR REGULATION AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A) WILL CONTINUE TO APPLY TO SUCH APPLICATION UNTIL IT IS WITHDRAWN.

(e) REVIEW AND APPROVAL OF APPLICATIONS.—(1) RESPONSIBILITY OF EMPLOYERS.—THE EMPLOYER SHALL MAKE AVAILABLE FOR PUBLIC EXAMINATION, WITHIN 1 WORKING DAY AFTER THE DATE ON WHICH AN APPLICATION UNDER SUBSECTION (A) IS FILED, AT THE EMPLOYER’S PRINCIPAL PLACE OF BUSINESS OR WORK SITE, A COPY OF EACH SUCH APPLICATION (AND SUCH ACcompanyING DOCUMENTS AS ARE NECESSARY).

(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—(A) COMPILATION OF LIST.—THE SECRETARY OF LABOR SHALL COMPILE, ON A CURRENT BASIS, A LIST (HERAFTER CALLED THE “AGRICULTURAL WORKERS LIST”) OF THE APPLICATIONS FILED UNDER THIS SUBSECTION. SUCH LIST SHALL INCLUDE THE WARE, RACE, NUMBER OF WORKERS REQUESTED, PERIOD OF INTENDED EMPLOYMENT, AND DATE OF NEED. THE SECRETARY OF LABOR SHALL MAKE SUCH LIST AVAILABLE FOR EXAMINATION IN THE DISTRICT OF COLUMBIA.


H–2A EMPLOYMENT REQUIREMENTS

SEC. 218A. TEMPORARY TREATMENT OF ALIENS PROHIBITED.—EMPLOYERS SEEKING TO HIRE UNITED STATES WORKERS SHALL OFFER THE UNITED STATES WORKERS NO LESS THAN THE SAME BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SECTION 218A, EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.

(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—EXCEPTION CASES WHERE HIGHER BENEFITS, WAGES, OR WORKING CONDITIONS ARE REQUIRED AS A RESULT OF MAKING AN APPLICATION UNDER SUBSECTION (A), IN ORDER TO PROTECT SIMILARLY EMPLOYED UNITED STATES WORKERS FROM ADVERSE EFFECTS WITH RESPECT TO BENEFITS, WAGES, AND WORKING CONDITIONS, EVERY JOB OFFER WHICH SHALL ACCOMPANY AN APPLICATION UNDER SUBSECTION (A), EXCEPT THAT IF THE EMPLOYER IS AN AGRICULTURAL ASSOCIATION, THE ASSOCIATION MAY WITHDRAW AN APPLICATION UNDER SUBSECTION (A) WITH RESPECT TO 1 OR MORE OF ITS MEMBER EMPLOYERS.
the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation to such subsequent employer’s place of employment.

“(C) LIMITATION.—

(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

(ii) DISTANCE TRAVELED.—No reimbursement required by subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence reimbursement required by subparagraph (A) or (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A) or (B).

“(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORK SITE.—The employer shall provide transportation between the worker’s living quarters and the employer’s work site without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(F) FREQUENCY OF PAY.—The employer shall pay the worker not less than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than June 1, 2007, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

“(H) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

“(1) 4 representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

“(1) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has endangered United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(2) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers from falling below the wage levels that would have prevailed in the absence of employment of H–2A workers in those occupations;

“(3) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

“(4) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(5) recommendations for future wage protection under this section.

“(4) FINAL REPORT.—Not later than June 1, 2007, the Commission shall submit a report to the Congress in its final setting of the study conducted under clause (iii).

“(2) FUTURE WAGE PROTECTIONS.—Not later than June 1, 2007, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, a report that addresses—

“(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has endangered United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of employment of H–2A workers in those occupations;

“(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(v) recommendations for future wage protection under this section.

“(5) FINAL REPORT.—Not later than June 1, 2007, the Commission shall submit a report to the Congress in its final setting of the study conducted under clause (iii).

“(1) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has endangered United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;
before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employer obligations in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

"(5) MOTOR VEHICLE SAFETY.—

"(A) AVOIDANCE OF TRANSPORTATION SUBJECT TO COVERAGE.—

"(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any piercing the transportation of persons or property arising from the ownership, possession, or control of the employer, and the transportation of such persons or property by an H–2A employer, shall not constitute an insurance policy.

"(ii) DEFINED TERM.—In this paragraph, the term "uses or causes to be used"—

"(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker, at the request or direction of an H–2A employer; and

"(II) does not apply to—

"(aa) transportation provided, or transportation in connection with, by an H–2A worker, unless the employer specifically requested or arranged such transportation; or

"(bb) car pooling arrangements made by H–2A workers using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

"(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural crops or the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as transporting passengers for hire and holds a valid certificate of authority for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) IN GENERAL.—When using, or causing to be used, for the purpose of providing transportation to which this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to drive the vehicle and the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the operation, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(III) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H-2A worker provides workers' compensation coverage to an H–2A worker, this paragraph does not apply.

"(IV) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances under which there is coverage under such State laws.

"(A) REQUIREMENT OF INSURANCE OR LIABILITY BOND.—An insurance policy or liability bond shall be required of the employer, if such transportation of such workers is not provided under such State laws.

"(B) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, and that such an insurance policy or liability bond shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(C) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer authorized job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract, the employment in question, such separate employment contract.

"(D) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this subsection or section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS

"SEC. 218B. (a) PETITIONING FOR ADMISSIBILITY.—An employer, or an association acting as agent or joint employer for its members, the petitioners, to the appropriate immigration officer, shall submit for the period of employment in question, such separate employment contract.

"(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"(c) FILING REQUIREMENTS.—An employer or association acting as agent or joint employer for its members, the petitioners, to the appropriate immigration officer, shall file a petition with the Department of Labor with the Secretary of Labor.

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer authorized job offer described in section 218(a).

"(e) NOTICE OF ACTION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"(f) NOTICE OF ACTION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"(g) NOTICE OF ACTION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"(h) NOTICE OF ACTION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"(i) NOTICE OF ACTION.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working daysshall, by fax, cable, or other means, transmit a copy of notice of action on the petition to the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.
promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker-

(1) whose employment terminates or prematurely terminates employment; or

(2) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(3)(A)(i)(a) of the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a reason described in subparagraph (C), (D), (E), or (H).

(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be provided to United States workers under any other provision of this Act.

(g) IDENTIFICATION DOCUMENT.—

(1) In general.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify such person’s proper identity.

(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

(A) The document shall be capable of reliably determining whether—

(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

(ii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H-2A worker.

(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

(C) The document shall—

(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

(h) EXTENSION OF STAY OF H-2A ALIENS IN THE UNITED STATES.—

(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H-2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay and a change in the alien’s authorized employment.

(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

(A) for a period of more than 10 months; or

(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States under this section.

(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

(B) DEFINITION.—For purposes of subparagraph (A), the term ‘file’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, and endorsed by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

(C) EXCLUSION.—The employer shall provide a copy of the employer’s petition to the alien, who shall keep the petition with the alien’s identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

(D) APPROVAL OR REJECTION OF PETITION FOR EXTENSION OF STAY.—If the Secretary determines to be appropriate, the Secretary may impose such other administrative remedies (including civil money penalties in an

amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(2) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

(3) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(a) or during the period of 30 days preceding such failure or misrepresentation, the employer displaced a United States worker employed by the employer during the period of employment on the date on which the employer’s application under section 218(a) or during the period of 30 days preceding such period of employment—

(a) investigating the employer’s petition, impose such other administrative remedies (including civil money penalties in an
shall attempt mediation within the period of the dispute. Upon a filing of such request and the consent of all issues involving all parties to the parties in reaching a satisfactory resolution of service of the complaint, a party to the proceeding may file a request for mediation or other dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

(C) Applicability. —

(i) In general. — Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $45,000 for each fiscal year to carry out this section.

(ii) Limitations on civil money penalties. — It is determined under a State workers’ compensation law that the workers’ compensation law is not applicable to a claim for the injury or death of an H-2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death was pending under the State workers’ compensation law.

(9) Preclusive effect. — Any settlement by an H-2A worker and H-2A employer reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same transaction or occurrence as the injury or death of such worker under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

(10) Settlements. — Any settlement by the Secretary of Labor with an H-2A employer on behalf of an H-2A worker is subject to appeal as provided in chapter 83 of title 28, United States Code.
the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as added by section §21 of this Act, and sufficiently provide for the direct cost of providing services related to an employer's authorization to employ eligible aliens pursuant to this Act, to include the certification of such employer's compliance with the documentation and the admission of eligible aliens.

(2) PROCEDURE.—(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(3) TREATMENT AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

SEC. 32. REGULATIONS.

(a) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture on all regulations to implement the duties of the Secretary under this title and the amendments made by this title.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this title and the amendments made by this title.

(4) DUE DILIGENCE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218 and 218B of the Immigration and Nationality Act, as added by section §21 of this Act, shall take effect on the effective date of section §21 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 33. RELIGIOUS ORGANIZATIONS.

Section 27(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(C)(iv)) is amended by adding at the end the following:

"(C) It is not a violation of clauses (ii), (iii), or (iv) of subparagraph (A) for a religious denomination described in section 101(a)(27)(C)(iv) or an affiliated religious organization described in section 101(a)(27)(C)(iv)(II), or their agents or officers to encourage an alien who is present in the United States in violation of law to carry on the vocation described in section 101(a)(27)(C)(iv)(I), or as an employee, notwithstanding the provision of room, board, travel, and other basic living expenses.

SEC. 34. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, sections §21 and §31 shall take effect
1 year after the date of enactment of this Act.
(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the measures being taken and the progress made in implementing this title.

SA 1179. Mr. INOUYE submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, after line 24, insert the following:

VULNERABILITY AND RISK ASSESSMENT

For necessary expenses of the Transportation Security Administration in working with the Department of Transportation and other appropriate agencies, to complete a vulnerability and risk assessment of passenger and freight rail transportation.

On page 77, line 18, strike "$2,694,300,000" and insert "$2,959,300,000".

On page 79, between lines 22 and 23, insert the following:

(7) $265,000,000 for rail security grants, of which:
(A) $185,000,000 shall be for grants to railroads, hazardous materials shippers, rail car owners, universities, State and local governments, and Amtrak for activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security threats;
(B) $40,000,000 shall be for grants to Amtrak to make the life and safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC; and
(C) $50,000,000 shall be for research and development to improve freight and intercity passenger rail security.

SA 1180. Mr. KENNEDY (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

DIVISION I—BORDER SECURITY AND IMMIGRATION

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This division may be cited as the "Secure America and Orderly Immigration Act".

(b) Table of Contents.—The table of contents for this division is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 101. Definitions.
Subtitle A—Border Security and Planning
Sec. 112. Reports to Congress.
Sec. 113. Authorization of appropriations.
Subtitle B—Border Infrastructure, Technology Integration, and Security Enhancement
Sec. 121. Border security coordination plan.
Sec. 122. Border security advisory committee.
Subtitle C—Border Enforcement
Sec. 132. Information sharing agreements.
Sec. 133. Improving the security of Mexico’s southern border.
Subtitle D—State Criminal Alien Assistance
Sec. 201. State criminal alien assistance program authorization of appropriations.
Sec. 202. Reimbursement of States for indirect costs relating to the incarceration of illegal aliens.
Sec. 203. Reimbursement of States for pre-conviction costs relating to the incarceration of illegal aliens.
Subtitle E—Essential Worker Visa Program
Sec. 301. Essential workers.
Sec. 302. Admission of essential workers.
Sec. 303. Employer obligations.
Sec. 304. Protection for workers.
Sec. 305. Market-based numerical limitation.
Sec. 306. Adjustment to lawful permanent resident status.
Sec. 307. Essential Worker Visa Program Task Force.
Sec. 308. Willing worker-willing employer electronic job registry.
Sec. 309. Authorization of appropriations.
Subtitle F—Enforcement
Sec. 401. Document and visa requirements.
Sec. 402. Employment Eligibility Confirmation System.
Sec. 403. Improved entry and exit data system.
Sec. 404. Department of labor investigative activities.
Sec. 405. Protection of employment rights.
Sec. 406. Increased fines for prohibited behavior.
Subtitle G—Promoting Circular Migration Patterns
Sec. 501. Labor migration facilitation programs.
Sec. 502. Reimbursements to Mexico to reduce migration pressures and costs.
Subtitle H—Family Unity and Backlog Reduction
Sec. 601. Elimination of existing backlogs.
Sec. 602. Country limits.
Sec. 603. Allocation of immigrant visas.
Sec. 604. Priorities for children and widows.
Sec. 605. Amending the affidavit of support requirements.
Sec. 606. Discretionary authority.
Sec. 607. Family unity.
Subtitle I—H605B Nonimmigrants
Sec. 701. H605B nonimmigrants.
Sec. 702. Adjustment of status for H605B nonimmigrants.
Sec. 703. Aliens not subject to direct numerical limitations.
Sec. 704. Employer protections.
Sec. 705. Authorization of appropriations.
Subtitle J—Protection Against Immigration Fraud
Sec. 801. Right to qualified representation.
Sec. 802. Protection of witness testimony.
Subtitle K—Civics Integration
Sec. 901. Funding for the Office of Citizenship.
Sec. 902. Civics integration grant program.
Subtitle L—Promoting Access to Health Care
Sec. 1001. Federal reimbursement of emergency health services furnished to undocumented aliens.
Sec. 1002. Prohibition against offset of certain Medicare and Medicaid payments.
Sec. 1003. Prohibition against discrimination against aliens on the basis of employment in hospital-based versus nonhospital-based settings.
Sec. 1004. Binational public health infrastructure and health insurance.
will allow for the best use of security and enforcement resources to be focused on the greatest risks.

(14) Comprehensive immigration reform and streamlining of immigration laws will encourage legal immigration, deter illegal immigration, and promote the economic and national security interests of the United States.

TITLE I—BORDER SECURITY

SEC. 101. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on the Judiciary of the Senate;

(C) the Committee on Homeland Security of the House of Representatives; and

(D) the Committee on the Judiciary of the House of Representatives.

(2) INTERNATIONAL BORDER OF THE UNITED STATES.—The term "international border of the United States" means the international border between the United States and Canada and the international border between the United States and Mexico, including points of entry at international border points.

(3) SECRETARY.—Except as otherwise provided, the term "Secretary" means the Secretary of Homeland Security.

(4) SECURITY PLAN.—The term "security plan" means a security plan developed as part of the National Strategy for Border Security set forth under section 111(a) for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

Subtitle A—Border Security Strategic Planning

SEC. 111. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) In general.—In conjunction with strategic homeland security planning efforts, the Secretary shall develop, implement, and update, as needed, a National Strategy for Border Security that includes a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States. Such plan shall include estimated costs of implementation and training from a fiscal and personnel perspective and a cost-benefit analysis of any technological security implementations.

(2) SUBSEQUENT SUBMISSIONS.—After the submission required under paragraph (1), the Secretary shall submit to the appropriate congressional committees any revisions to the National Strategy for Border Security, including any revisions to a security plan, not less frequently than April 1 of each odd-numbered year. The plan shall include estimated costs for implementation and training and a cost-benefit analysis of technological security implementations that take place during the time frame under evaluation.

(b) Periodic Progress Reports.—(1) REQUIREMENT FOR REPORT.—Each year, in conjunction with an annual submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Border Security, including each security plan.

(2) CONTENT.—Each progress report submitted under this subsection shall include any recommendations for improving and implementing the National Strategy for Border Security, including any recommendations for improving and implementing a security plan.

(c) CLASSIFIED MATERIAL.—(1) IN GENERAL.—Any material included in the National Strategy for Border Security, including each security plan, that includes information that is properly classified under title I of the Atomic Energy Act of 1954 (42 U.S.C. 1731 et seq.) and is properly classified under any other applicable act shall be submitted to the appropriate congressional committees in a classified form.

(2) UNCLASSIFIED VERSION.—As appropriate, an unclassified version of the material described in paragraph (1) shall be provided to the appropriate congressional committees.

SEC. 121. BORDER SECURITY COORDINATION PLAN.

(a) In general.—The Secretary shall coordinate with Federal, State, local, and tribal authorities on law enforcement, emergency response, and security-related responsibilities with regard to the international border of the United States to develop and implement a plan to ensure that the security of such international border is not compromised.

(b) Elements of plan.—In developing the plan, the Secretary shall consider methods to—

(1) coordinate emergency responses;

(2) improve data-sharing, communications, and technology among the appropriate agencies;

(3) promote research and development relating to the activities described in paragraphs (1) and (2); and

(4) combine personnel and resource assets when practicable.

(c) Report.—Not later than 1 year after implementing the plan developed under subsection (a), the Secretary shall transmit a report to the appropriate congressional committees on the development and implementation of such plan.

SEC. 122. BORDER SECURITY ADVISORY COMMITTEE.

(a) Establishment.—The Secretary is authorized to establish a Border Security Advisory Committee (referred to in this section as the "Advisory Committee") to provide advice and recommendations to the Secretary on border security and enforcement issues.

(b) Composition.—The Advisory Committee shall be comprised of members who represent a broad cross section of perspectives.

(1) States that are adjacent to the international border of the United States;

(2) local law enforcement agencies; community officials, and tribal authorities of such States; and

(3) other interested parties.

(2) Membership.—The Advisory Committee shall be comprised of members who represent a broad cross section of perspectives.

SEC. 123. PROGRAMS ON THE USE OF TECHNOLOGIES FOR BORDER SECURITY.

(a) AERIAL SURVEILLANCE TECHNOLOGIES PROGRAM.

(1) In general.—In conjunction with the border surveillance plan developed under section 5306 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), the Secretary, not later than 60 days after the date of enactment of this Act, shall develop and implement a program to integrate aerial surveillance technologies to enhance the border security of the United States.

(2) UNCLASSIFIED VERSION.—As appropriate, an unclassified version of the material described in paragraph (1) shall be provided to the appropriate congressional committees.
(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—
(A) consider current and proposed aerial surveillance technologies;
(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;
(C) consult with the Secretary of Defense regarding any technologies or equipment, which may be appropriate to deploy along the international border of the United States; and
(D) consult with the Administrator of the Federal Aviation Administration regarding traffic safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS.—
(A) IN GENERAL.—The program developed under this subsection shall include the utilization of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near the international border of the United States, in order to evaluate the range of circumstances in which the Secretary considers such technologies appropriate to combat human smuggling.

(B) USE OF UNMANNED AERIAL VEHICLES.—The aerial surveillance technologies utilized in the program shall include unmanned aerial vehicles.

(C) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the utilization of aerial surveillance technologies while assessing the effectiveness of their utilization and until such time the Secretary determines appropriate.

(D) REPORT.—(A) REQUIREMENT.—Not later than 1 year after implementing the program under this subsection, the Secretary shall submit a report on such program to the appropriate congressional committees.

(B) CONTENT.—The Secretary shall include in the report required by subparagraph (A) a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(4) DEMONSTRATION PROGRAMS.—The Secretary may implement demonstration programs to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international border between Mexico and Guatemala or Belize.

Subtitle C—International Border Enforcement

SEC. 131. NORTH AMERICAN SECURITY INITIATIVE.

(a) IN GENERAL.—The Secretary of State shall enhance the mutual security and safety of the United States, Canada, and Mexico by providing a framework for better management, coordination, and cooperation between the Governments of North America.

(b) RESPONSIBILITIES.—In implementing the provisions of this subtitle, the Secretary of State shall carry out all of the activities described in this subtitle.

SEC. 132. INFORMATION SHARING AGREEMENTS.

The Secretary of State, in coordination with the Secretary of Homeland Security, is authorized to enter into information sharing agreements with the governments of Central American countries in order to—

(1) assess the specific needs of the governments of such countries;

(2) use the assessment made under paragraph (1) to determine the financial and technical support needed by the governments of Central American countries from Canada, the United States, and other eligible countries for support for reintegration of these deportees; and

(3) provide technical assistance to support stronger immigration control at the border with Mexico.

SEC. 133. IMPROVING THE SECURITY OF MEXICO’S SOUTHERN BORDER.

(a) TECHNICAL ASSISTANCE.—The Secretary of State, in coordination with the Secretary of Homeland Security, is authorized to—

(1) cooperate with Central American countries in U.S. policies with respect to the illegal immigration of Central American citizens; and

(2) provide technical assistance to support stronger immigration control at the border with Mexico.

(b) CARCERATION OF ILLEGAL ALIENS.

(1) AMOUNTS APPLICABLE TO FISCAL YEARS 2005 THROUGH 2013.—

(A) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall program to provide Federal immigration enforcement officials any additional authority to enforce Federal immigration law.

(B) LIMINTATION ON USE OF FUNDS.—Notwithstanding section 204(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1227), the Secretary of Homeland Security is authorized to obligate funds for the purpose of—

(i) the acquisition of equipment and other property (including service vehicles) or the provision of services or other assistance (including training and supplies) to any entity that is authorized to be responsible for the detention, care, or custody of aliens or is responsible for the detention, care, or custody of illegal aliens; and

(ii) the support of the U.S. government or a foreign government, and any entity authorized to be responsible for the detention, care, or custody of aliens, for the costs of equipment, services, and supplies (including transportation) provided to any entity that is authorized to be responsible for the detention, care, or custody of aliens or is responsible for the detention, care, or custody of illegal aliens.

SEC. 201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM AUTHORIZATION OF APPROPRIATIONS.

Section 211(d) of the Immigration and Nationality Act (8 U.S.C. 1373) is amended by striking paragraphs (5) and (6) and inserting the following:

(5) AUTHORIZATION OF APPROPRIATIONS.—The Secretary of Homeland Security is authorized to be appropriated to carry out the purposes of this subsection—

(i) such sums as may be necessary for fiscal years 2005 through 2007;

(ii) $750,000,000 for fiscal year 2006;

(iii) $850,000,000 for fiscal year 2007; and

(iv) $950,000,000 for each of the fiscal years 2008 through 2013.

SEC. 202. REMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1331) is amended by

(3) share relevant information with Mexico, Canada, and the United States.

(b) IMMIGRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Homeland Security and appropriate officials of the governments of Central American countries shall provide robust law enforcement assistance to such governments that specifically addresses migrants and increase the ability of such governments to dismantle human smuggling organizations and gain tighter control over the border.

(c) BORDER SECURITY BETWEEN MEXICO AND GUATEMALA OR BELIZE.—The Secretary of State, in consultation with the Secretary of Homeland Security, the Government of Mexico, and appropriate officials of the Governments of Guatemala, Belize, and neighboring countries, shall establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international border between Mexico and Guatemala and between Mexico and Belize.

(d) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the appropriate officials of the Governments of Central American countries, shall—

(1) assess the direct and indirect impact on the United States and Central America on deporting violent criminal aliens;

(2) establish a program and database to track Central American gang activities, focusing on the identification of returning deportable criminals;

(3) devise an agreed-upon mechanism for notification applied prior to deportation and for support for reintegration of these deportees; and

(4) devise an agreement to share all relevant information with the appropriate officials of Mexico and other Central American countries.

TITLe II—STATE CRIMINAL ALIEN ASSISTANCE

SEC. 201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM AUTHORIZATION OF APPROPRIATIONS.

Section 211(i) of the Immigration and Nationality Act (8 U.S.C. 1373) is amended by striking paragraphs (5) and (6) and inserting the following:

(5) AUTHORIZATION OF APPROPRIATIONS.—The Secretary of Homeland Security is authorized to be appropriated to carry out the purposes of this subsection—

(i) such sums as may be necessary for fiscal year 2005; and

(ii) $750,000,000 for fiscal year 2006; and

(iii) $850,000,000 for fiscal year 2007; and

(iv) $950,000,000 for each of the fiscal years 2008 through 2013.

(6) LIMITATION ON USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) that are distributed to a State or political subdivision of a State in the same fiscal year for use by a municipality, may be used only for correctional purposes.

SEC. 202. REMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1331) is amended by

(1) in subsection (a)—

(A) by striking "for the costs" and inserting the following: "for the costs of"

(B) by striking "such State." and inserting the following: "such State; and

(2) by striking subsections (c) through (e) and inserting the following:
SEC. 202. REIMBURSEMENT OF STATES FOR PRE-CONVICTIOON COSTS RELATING TO THE DEPORTATION OF ILLEGAL ALIENS.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(a) is amended by inserting "charged with or" before "convicted.

TITLE III—ESSENTIAL WORKER VISA PROGRAM

SEC. 301. ESSENTIAL WORKERS.


(a) by striking "(H) an alien (i)(b)" and inserting the following:

(H) an alien

(i)(b);

(b) by striking "or (i)(a)" and inserting the following:

(iii);

(c) by striking "(ii)" and inserting the following:

(iii);

(d) by striking "(ii)" and inserting the following:

(iii);

(e) by striking "(iii)" and inserting the following:

(iii).".

SEC. 302. ADMISSION OF ESSENTIAL WORKERS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"ADMISSION OF TEMPORARY HOUSA WORKERS

Sec. 218A. (a) The Secretary of State may grant a temporary visa to a nonimmigrant described in section 101(a)(15)(H)(v)(a) who demonstrates the ability to perform labor or services in the United States (other than those occupational classifications covered under the provisions of clause (i)(b) or (i)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R) of section 101(a)(15)."

(b) REQUIREMENTS FOR ADMISSION.—In order to be eligible for nonimmigrant status under section 101(a)(15)(H)(v)(a), an alien shall meet the following requirements:

(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(v).

(2) EVIDENCE OF EMPLOYMENT.—The alien's evidence of employment shall be provided through the National Eligibility Confirmation System established under section 274E or in accordance with requirements issued by the Secretary of State, in consultation with the Secretary of Homeland Security. In carrying out this paragraph, the Secretary may consider evidence from employers, employee associations, and labor representatives.

(3) FEE.—The alien shall pay a $500 application fee to apply for the visa in addition to the cost of any medical examination or processing required by subparagraph (b)(1).

(d) PERIOD OF AUTHORIZED ADMISSION.—

(1) IN GENERAL.—In determining an alien's admissibility as a nonimmigrant under section 101(a)(15)(H)(v)(a)—

(A) paragraphs (5), (6) (except for subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may be waived for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

(B) the Secretary of Homeland Security may not waive—

(i) subparagraph (A), (B), (C), (E), (G), (H), (I), or (J) of section 212(a)(2) (relating to criminal history);

(ii) section 212(a)(3) (relating to security and related grounds);

(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors).".

(f) APPLICABILITY OF OTHER PROVISIONS.—

(1) IN GENERAL.—Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

(2) BAR TO FUTURE VISAS FOR VIOLATIONS.—

(a) IN GENERAL.—Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall not be eligible to renew such nonimmigrant status if the alien willfully violates any material term or condition of such status.

(b) WAIVERS.—The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or other violations for which the alien was not at fault.

(2) REMISSION.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

(3) LOSS OF IMMUNITY.—

(A) IN GENERAL.—Subject to subsection (c), the period of authorized admission of a nonimmigrant described in section 101(a)(15)(H)(v)(a) shall be 3 years.

(B) RENEWALS.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

(4) VISITS OUTSIDE UNITED STATES.—

(A) IN GENERAL.—An alien holding a nonimmigrant visa to enter the United States shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

(B) RENEWALS.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

(5) LIMITATIONS ON USE OF TEMPORARY WORKER VISA.—

(1) IN GENERAL.—An alien holding a nonimmigrant visa to enter the United States shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

(2) LIMITATIONS.—An alien holding a nonimmigrant visa to enter the United States shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

(3) IMMEDIATE FAMILY.—An alien holding a nonimmigrant visa to enter the United States shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

(4) WAIVERS.—The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or other violations for which the alien was not at fault.
(1) Definitions.—As used in this subsection and in subsections (1) through (k):

(A) employ; employee; employer.—The terms ‘employ,’ ‘employee,’ and ‘employer’ have the meanings given in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(B) foreign labor contractor.—The term ‘foreign labor contractor’ means any person who, for any compensation or other valuable consideration paid, performs any foreign labor contracting activity.

(C) foreign labor contracting activity.—The term ‘foreign labor contracting activity’ means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a non-immigrant alien described in section 101(a)(15)(H)(v)(a).

(2) Code provision.—Notwithstanding any other provision of law—

(A) a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) is prohibited from being treated as an independent contractor; and

(B) no person may treat a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as an independent contractor.

(3) applicability of laws.—A non-immigrant alien described in section 101(a)(15)(H)(v)(a) shall not be subject to any state and local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien’s status as a non-immigrant worker.

(4) tax responsibilities.—With respect to each employed nonimmigrant alien described in section 101(a)(15)(H)(v)(a), an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

(5) non-discrimination in employment.—An employer shall provide nonimmigrants issued a visa under this section with the same wages, benefits, and working conditions that are provided by the employer to United States workers similarly employed in the same occupation and the same place of employment.

(6) replacement of striking employers.—An employer may not hire a non-immigrant alien described in section 101(a)(15)(H)(v)(a) as a replacement worker if there is an ongoing labor dispute in the occupational classification at the place of employment.

(7) waiver of rights prohibited.—A non-immigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act. Nothing under this provision shall be construed to affect the interpretation of other laws.

(8) no threatening of employers.—It shall be unlawful for an employer or a labor contractor of a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) to threaten or by any action, including economic retaliation, to intimidate, threaten, or discriminate against an employee or former employee because the employee or former employee—

(A) registered with the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of Secure America and Orderly Immigration Act.

(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning enforcement of the terms and conditions of the Secure America and Orderly Immigration Act.

(9) labor recruiters.—In general, each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose to each worker who is recruited for foreign labor contracting during the recruitment at the time of the worker’s recruitment:

(A) The place of employment.

(B) The compensation for the employment.

(C) A description of employment activities.

(D) The period of employment.

(E) Any other employee benefit to be provided and any costs to be charged for each benefit.

(F) Any travel or transportation expenses to be assessed.

(G) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

(H) The extent to which workers will be compensated by a labor contractor under a compensation insurance carrier or the name of the policyholder of the private insurance, or otherwise for injuries or death, including work related injuries and deaths, during the period of employment.

(I) Any education or training to be provided or required, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employment, continued employment, or future employment.

(K) A statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

(10) false or misleading information.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading information to any worker concerning any matter required to be disclosed in paragraph (9).

(11) certification.—No employer or foreign labor contractor shall violate the terms of any agreement made by that contractor or employer regarding employment under this program.

(12) written agreements.—No foreign labor contractor or employer charges the employee for transportation such transportation costs shall be reasonable.

(13) notification.—Every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for or on behalf of the employer.

(14) registration of foreign labor contractors.—

(A) in general.—No person shall engage in foreign labor recruiting activity unless such person shall be issued a certificate of registration by the Secretary of Labor specifying the activities that such person is authorized to perform.

(B) issuance.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed. Such process shall include requirements under paragraphs (1), (4), and (5) of section 1812 of title 29, United States Code, an expeditious means to update registrations and renew certificates and any other requirements the Secretary may prescribe.

(C) renewal.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or revoke a certificate of registration under this subparagraph. The justification for such refusal, suspension, or revocation may include the following:

(1) the application or holder of the certificate has knowingly made a material misrepresentation in the application for such certificate.

(2) the applicant for or holder of the certificate is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate under this paragraph.

(3) the application or holder of the certificate has failed to comply with the Secure America and Orderly Immigration Act.

(4) remedy for violations.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates this Act shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k).

(5) written agreements.—No foreign labor contractor or employer violates any provision of this subsection, the employer shall also be subject to remedies under subsections (j) and (k).

(E) employer notification.—An employer that violates a provision of this subsection shall require the employer obligations shall be subject to remedies under subsections (j) and (k).

(F) bonding requirement.—The Secretary of Labor may require a foreign labor contractor under this subsection to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has ties to the United States to adequately enforce this subsection.
ATTORNEYS’ FEES.—A complainant who
substantially prevails in an action brought under
this subchapter shall be entitled to an award of
reasonable attorneys’ fees and costs.

CRIMINAL PENALTIES.—If a willful and
knowing violation of subsection (j) causes extreme
physical or financial harm to an individual, the
Secretary of Labor shall institute a criminal
prosecution.

(i) that is outside a metropolitan
statistical area; and

(ii) during the 20-year-period ending on
the last day of the calendar year preceding
the calendar year of the county at the beginning
of such 20-year period, the cumulative total of
the number of visas allocated for that year
were allotted the previous fiscal year than
the program is implemented, if fewer visas
were issued in the previous fiscal year than
allocated in the fiscal year.

The limitation under section 302(d) re-

described in section 101(a)(15)(H)(v)(a) upon the
filing of a petition for such a visa—

(A) by the alien’s employer; or

(B) by the alien, if the alien has main-
tained such nonimmigrant status in the
United States for a cumulative total of 4
years.

(2) An alien having nonimmigrant status
described in section 101(a)(15)(H)(v)(a) may not apply for adjustment of status under this
section unless the alien—

(A) is physically present in the
United States; and

(B) the alien establishes that the alien—

(i) meets the requirements of section 312;
or

(ii) is satisfactorily pursuing a course
of study to achieve such an understanding of
English and knowledge and understanding of
the history and government of the United
States.

(3) An alien who demonstrates that
the alien meets the requirements of section 312
may be considered to have satisfied the re-
quiments of that section for purposes of
becoming naturalized as a citizen of the United
States under title III.

(4) Filing a petition under paragraph (1)
on behalf of an alien or otherwise seeking
permanent resident status under section
101(a)(15)(H)(v)(a) for such alien shall not constitute evidence of
the alien’s eligibility for nonimmigrant status

(5) The limitation under section 302(d) re-
garding the period of authorized stay shall not apply to any alien having nonimmigrant status
“(6) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (5) in 1-year increments until a final decision is made on the alien’s lawful permanent residence.

“(7) Nothing in this subsection shall be construed to prevent an alien having non-immigrant status described in section 101(a)(15)(H)(v)(a) from filing an application for adjustment of status under this section in accordance with any other provision of law.”

SEC. 307. ESSENTIAL WORKER VISA PROGRAM TASK FORCE.

(a) Establishment of Task Force.—

(1) In General.—There is established a task force to be known as the Essential Worker Visa Program Task Force (referred to in this section as the “Task Force”).

(2) Purposes.—The purposes of the Task Force are—

(A) to study the Essential Worker Visa Program (referred to in this section as the “Program”) established under this title; and

(B) to make recommendations to Congress with respect to such program.

(b) Members.—

(1) In General.—The Task Force shall be composed of 10 members, of whom—

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the Democratic Party in the Senate, in consultation with the Democratic Party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House;

and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(c) Qualifications.—

(A) In General.—Members of the Task Force shall be—

(i) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(ii) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia;

(B) Political Affiliation.—Not more than 5 members of the Task Force may be members of the same political party.

(C) Nongovernmental Appointees.—An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(d) Deadline for Appointment.—All members of the Task Force shall be appointed not later than 6 months after the Program has been implemented.

(e) Vacancies.—Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(f) Meetings.—

(A) Initial Meeting.—The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(B) Subsequent Meetings.—After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(g) Quorum.—Six members of the Task Force shall constitute a quorum.

(h) Duties.—The Task Force shall examine and make recommendations regarding the Program, including recommendations regarding—

(1) the development and implementation of the Program;

(2) the criteria for the admission of temporary workers under the Program;

(3) the formula for determining the yearly numerical limitations of the Program;

(4) the impact of the Program on immigration;

(5) the impact of the Program on the United States workforce and United States businesses;

(6) any other matters regarding the Program that the Task Force considers appropriate.

(i) Information and Assistance From Federal Agencies.—

(1) Information From Federal Agencies.—The Task Force may seek directly from any Federal department or agency such information, including suggestions, estimates, and statistics, as the Task Force considers necessary to carry out the provisions of this section. Upon request of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(2) Assistance From Federal Agencies.—The Administrator of General Services shall, on a reimbursable basis, provide the Task Force with administrative support and other services for the effective management of the Task Force’s functions. The departments and agencies of the United States may provide the Task Force with such services, funds, facilities, and other support services as they determine advisable and as authorized by law.

(j) Reports.—

(1) Initial Report.—Not later than 2 years after the Program has been implemented, the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains—

(A) findings with respect to the duties of the Task Force;

(B) recommendations for improving the Program; and

(C) suggestions for legislative or administrative action to implement the Task Force recommendations.

(2) Final Report.—Not later than 4 years after the submission of the initial report under paragraph (1), the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains additional findings, recommendations, and suggestions, as described in paragraph (1).

SEC. 308. WILLING WORKER-VOLUNTEER EMPLOYMENT AND VISAS FOR ELIGIBLE CLASS.

(a) Program.—The Commissioner of Customs and Border Protection shall direct the administration of the Visas for Eligible Class Program to be conducted in a manner that is consistent with the regulations promulgated by the Secretary of State.

(b) Recruitments.—

(A) Initial Recruitment.—Not later than 6 months after the effective date of the regulations promulgated by the Secretary of State, the Commissioner shall begin the recruitment of workers for the Visas for Eligible Class Program.

(B) Subsequent Recruitments.—After the initial recruitment, the Commissioner shall conduct subsequent recruitments in a manner determined to be appropriate by the Secretary of State.

(c) Authorization.—The Commissioner of Customs and Border Protection is authorized to enter into agreements with any State or local government for the purpose of conducting the recruitment process.

(d) Access to Job Registry.—

(1) Circulation in Interstate Employment Service System.—The Secretary of Labor shall ensure that job opportunities advertised in the electronic job registry established under this section are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

(2) Internet.—The Secretary of Labor shall ensure that the Internet-based electronic job registry established or approved under this section may be accessed by workers, employers, labor organizations, and other interested parties.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out this title and the amendments made by this title for the period beginning on the date of enactment of this Act and ending on the last day of the fiscal year beginning after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE IV—ENFORCEMENT

SEC. 401. DOCUMENT AND VISA REQUIREMENTS.

(a) In General.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1211(a)) is amended by adding at the end the following:

“(3) VISAS AND IMMIGRATION RELATED DOCUMENT REQUIREMENTS.—

(A) Visas issued by the Secretary of State and immigration related documents issued by the Secretary of State or the Secretary of Homeland Security shall comply with authentication and biometric standards recognized by domestic and international standards organizations.

(B) Such visas and documents shall—

(i) be machine-readable and tamper-resistant;

(ii) use biometric identifiers that are consistent with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1353), and represent the benefits and status set forth in such section;

(iii) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

(iv) be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under section 274A.

(b) Effective Date.—The information contained on the visas or immigration related documents described in subparagraph (B) shall include—

(i) the alien’s name, date and place of birth, alien registration or visa number, and, if applicable, social security number;

(ii) the alien’s citizenship and immigration status in the United States; and

(iii) any other information that such alien’s authorization to work in the United States expires, if appropriate.”.

SEC. 402. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) In General.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1212 et seq.) is amended by inserting after section 274D the following:

“SEC. 274E. (a) Employment Eligibility Confirmation System.—

(1) IN GENERAL.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish an Employment Eligibility Confirmation System (referred to in
this section as the ‘System’) through which the Commissioner responds to inquiries made by employers who have hired individuals concerning each individual’s identity and employment authorization.

‘(2) MAINTENANCE OF RECORDS.—The Commissioner shall electronically maintain records by which compliance under the System may be verified, and that additional verification will be required, beyond what is required for most job applicants; (D) to use the System to deny certain employment eligibility to any individual who has not submitted to the Commissioner any required information contained in the Database.

‘(3) OBJECTIVES OF THE SYSTEM.—The System shall—

(A) facilitate the eventual transition for all businesses from the employer verification system established in section 274A with the System; (B) utilize, as a central feature of the System, machine-readable documents that contain encrypted electronic information to verify employment eligibility; and (C) provide for the evidence of employment required under section 218A.

‘(4) INITIAL RESPONSE.—The System shall provide—

(A) confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility not later than 1 working day after the initial inquiry; and (B) an appropriate code indicating such confirmation or tentative nonconfirmation.

‘(5) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—

(A) in paragraph (1), by striking ‘Social Security, in consultation and coordination with the Secretary of Homeland Security’ and inserting ‘Social Security, in consultation and coordination with the Secretary of Homeland Security, to establish a secondary verification process.’ The employer shall make the secondary verification inquiry not later than 10 days after receiving a tentative nonconfirmation.

(B) DISCREPANCIES.—If an employee chooses to contest a secondary nonconfirmation, the employee shall provide the employee with a referral letter and instruct the employee to visit an office of the Department of Homeland Security or the Social Security Administration to resolve the discrepancy not later than 10 working days after the receipt of such referral letter in order to obtain confirmation.

‘(6) FAILURE TO CONTEST.—An individual’s failure to contest a confirmation shall not constitute knowledge (as defined in section 274A.11) of the fact that the person has not violated this section.

‘(7) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed, implemented, and operated—

(A) to maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information and personal financial information; (B) to allow employers to verify that a newly hired individual is authorized to be employed; (C) to permit individuals to—

(i) view their own records in order to ensure the accuracy of such records; and (ii) contact the appropriate agency to correct an inaccurate record established by the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security; and (D) to prevent discrimination based on national origin or citizenship status under section 274B.

‘(8) UNLAWFUL USES OF SYSTEM.—It shall be unlawful for any employer to use the System selectively or without authorization.

‘(9) to use the System prior to an offer of employment; (B) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants; (D) to use the System to deny certain employment eligibility to any individual who has not submitted to the Commissioner any required information contained in the Database.

‘(10) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than individuals responsible for the verification of employment eligibility or for the evaluation of the employment verification program at the Social Security Administration, the Department of Homeland Security, or the Department of Labor, may have access to any information contained in the Database.

‘(11) PROTECTION OF AUTHORIZED DISCLOSURE.—Information in the Database shall be adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor.

‘(12) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to design, implement, and maintain the Database.

‘(13) GRADUAL IMPLEMENTATION.—The Commissioner of Social Security, in coordination with the Secretary of Homeland Security and the Secretary of Labor, shall develop a plan to phase in the operation and phase out the employer verification system established in section 274A over a period of time that the Commissioner determines to be appropriate.

‘(14) EMPLOYER RESPONSIBILITIES.—Each employer shall—

(A) notify employees and prospective employees of the use of the System and that the System may be used for immigration enforcement purposes; (B) verify identification and employment authorization status for newly hired individuals described in section 101(a)(15)(H)(v)(a) not later than 3 days after the date of hire; (C) use a machine-readable document described in subsection (a)(13)(B); or (D) the telephonic or electronic system to access the Database.

‘(15) USE.—(A) provide, for each employer hired, the occupational, metropolitan statistical area of the employer, annual compensation paid; (B) retain the code received indicating confirmation or nonconfirmation, for use in any investigation described in section 212(n)(2); and (C) provide a copy of the employment verification receipt to such employees.

‘(16) GOOD-FAITH COMPLIANCE.—(A) AFFIRMATIVE DEFENSE.—A person or entity that establishes good faith compliance with the requirements of this section with respect to the employment of an individual in the United States has established an affirmative defense that the person or entity has not violated this section.

‘(17) LIMITATION.—Paragraph (1) shall not apply if a person or entity engages in an unlawful immigration-related employment practice described in subsection (a)(7).’;

(b) INTERIM DIRECTIVE.—Before the implementation of the Employment Eligibility Verification System (referred to in this section as the ‘System’) established under section 274E of the Immigration and Nationality Act, as added by subsection (a), the Commissioner of Social Security, in coordination with the Secretary of Homeland Security, shall, to the maximum extent practical, implement an interim system to confirm employment eligibility that is consistent with the provisions of such section.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 3 months after the last day of the second year and of the third year that the System is in effect, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the House of Representatives a report on the System.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the impact of the System on the employment of unauthorized workers; (B) an assessment of the accuracy of the Employment Eligibility Verification System maintained by the Department of Homeland Security and Social Security Administration databases, and timeliness and accuracy of responses from the Department of Homeland Security and the Social Security Administration to employers; (C) an assessment of the privacy, confidentiality, and system security of the System; (D) assess whether the System is being implemented in a nondiscriminatory manner; and (E) include recommendations on whether or not the System should be modified.

SEC. 403. IMPROVED ENTRY AND EXIT DATA SYS- TEM.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1366a) is amended—

(a) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; (b) in subsection (b)—

(A) in paragraph (1)(C), by striking “Justice” and inserting “Homeland Security”; (B) in paragraph (4), by striking “and” at the end of (B) and (c) and inserting “and” at the end of (A); and (D) by adding at the end the following:
"(6) collects the biometric machine-readable information from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. §1322(b)(4)), at the time an alien arrives in the United States and at the time an alien departs from the United States to determine if such alien is entering, or is present in, the United States unlawfully."); and

(3) in subsection (f)(1), by striking "Departments of Justice and State" and inserting "Department of Homeland Security and the Department of State".

SEC. 404. DEPARTMENT OF LABOR INVESTIGATION AUTHORITIES

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. §1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (J); and

(2) by inserting after subparagraph (G) the following:

"(H) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(v)(a) if the Secretary, or the Secretary's designee—

"(i) certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act 274(a), and

"(ii) approves the commencement of the investigation.

"(ii) In determining whether reasonable cause exists to initiate an investigation under this section, the Secretary shall—

"(I) monitor the Willing Worker-Willing Employer Electronic Job Registry;

"(II) monitor the Employment Eligibility Confirmation System, taking into consideration whether—

"(aa) an employer's submissions to the System generate a high volume of tentative nonconfirmation responses relative to other comparable employers;

"(bb) an employer rarely or never screens hired individuals;

"(cc) individuals employed by an employer rarely or never pursue a secondary verification process as established in section 274(a); or

"(dd) any other indicators of illicit, inappropriate or discriminatory use of the System.

"(3) ELEMENTS OF PROGRAM.—A program established under paragraph (1) may provide for—

"(A) the Secretary of State, in conjunction with the Secretary of Homeland Security and the Secretary of Labor, to confer with a foreign government—

"(i) to establish and implement a program to assist temporary workers from such a country to obtain nonimmigrant status under such section 101(a)(15)(H)(v)(a); and

"(ii) to establish programs to create economic incentives for aliens to return to their home country;

"(B) the foreign government to monitor the participation of its nationals in such a temporary worker program, including departure from and return to a foreign country;

"(C) provide long term credit to borrowers; or

"(D) develop a viable network of regional and local intermediary lending institutions; and

"(E) extend financing for alternative rural economic activities beyond direct agricultural production;

"(F) increasing the pool of savings available to help finance domestic investment in Mexico;

"(G) encouraging Mexican corporations to adopt internationally recognized corporate practices, anti-corruption and transparency principles;

"(H) enhancing Mexican efforts to strengthen governance at all levels, including efforts to increase transparency, accountability, and to eliminate corruption, which is the single biggest obstacle to development;

"(I) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's national implementation monitoring mechanism;

"(J) helping the Government of Mexico to strengthen education and training opportunities for Mexican workers, particularly emphasis on improving rural education; and

"(K) assisting the Government of Mexico to reduce migration pressures and costs.

"(a) AUTHORITY FOR PROGRAM.—

"(1) In general.—The Secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government, if such citizens participate in the temporary worker program authorized under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. §1182(n)(2)).".

SEC. 502. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

SEC. 501. LABOR MIGRATION FACILITATION PROGRAMS.

(a) AUTHORITY FOR PROGRAM.—

"(1) In general.—The Secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government, if such citizens participate in the temporary worker program authorized under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. §1182(n)(2)) is aggregated to the United States to return to

"(2) in subclause (II), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $4,000 and not more than $10,000"; and

"(3) in subsection (f)(3), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $6,000 and not more than $20,000".

"(6) collects the biometric machine-readable information from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. §1322(b)(4)), at the time an alien arrives in the United States and at the time an alien departs from the United States to determine if such alien is entering, or is present in, the United States unlawfully.; and

(3) in subsection (f)(1), by striking "Departments of Justice and State" and inserting "Department of Homeland Security and the Department of State".

SEC. 404. DEPARTMENT OF LABOR INVESTIGATION AUTHORITIES

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. §1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (J); and

(2) by inserting after subparagraph (G) the following:

"(H) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(v)(a) if the Secretary, or the Secretary's designee—

"(i) certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act 274(a), and

"(ii) approves the commencement of the investigation.

"(ii) In determining whether reasonable cause exists to initiate an investigation under this section, the Secretary shall—

"(I) monitor the Willing Worker-Willing Employer Electronic Job Registry;

"(II) monitor the Employment Eligibility Confirmation System, taking into consideration whether—

"(aa) an employer's submissions to the System generate a high volume of tentative nonconfirmation responses relative to other comparable employers;

"(bb) an employer rarely or never screens hired individuals;

"(cc) individuals employed by an employer rarely or never pursue a secondary verification process as established in section 274(a); or

"(dd) any other indicators of illicit, inappropriate or discriminatory use of the System.

"(3) ELEMENTS OF PROGRAM.—A program established under paragraph (1) may provide for—

"(A) the Secretary of State, in conjunction with the Secretary of Homeland Security and the Secretary of Labor, to confer with a foreign government—

"(i) to establish and implement a program to assist temporary workers from such a country to obtain nonimmigrant status under such section 101(a)(15)(H)(v)(a);

"(ii) to establish programs to create economic incentives for aliens to return to their home country;

"(B) the foreign government to monitor the participation of its nationals in such a temporary worker program, including departure from and return to a foreign country;

"(C) provide long term credit to borrowers; or

"(D) develop a viable network of regional and local intermediary lending institutions; and

"(E) extend financing for alternative rural economic activities beyond direct agricultural production;

"(F) increasing the pool of savings available to help finance domestic investment in Mexico;

"(G) encouraging Mexican corporations to adopt internationally recognized corporate practices, anti-corruption and transparency principles;

"(H) enhancing Mexican efforts to strengthen governance at all levels, including efforts to increase transparency, accountability, and to eliminate corruption, which is the single biggest obstacle to development;

"(I) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's national implementation monitoring mechanism;

"(J) helping the Government of Mexico to strengthen education and training opportunities for Mexican workers, particularly emphasis on improving rural education; and

"(K) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's national implementation monitoring mechanism;

"(L) helping the Government of Mexico to strengthen education and training opportunities for Mexican workers, particularly emphasis on improving rural education; and

"(M) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's national implementation monitoring mechanism;

"(N) helping the Government of Mexico to strengthen education and training opportunities for Mexican workers, particularly emphasis on improving rural education; and

"(O) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's national implementation monitoring mechanism;
aliens temporarily employed in the United States.

TITLE VI—FAMILY UNITY AND BACKLOG REVISION

SEC. 601. ELIMINATION OF EXISTING BACKLOGS.
(a) FAMILY-SUPPORTED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SUPPORTED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 480,000;

"(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those years; and

"(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2000.

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 290,000;

"(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those years; and

"(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2000.

SEC. 602. COUNTRY LIMITS.
Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking "";

(2) in subsection (f), by striking "" each place it appears and inserting "";

SEC. 603. ALLOCATION OF IMMIGRANT VISAS.
(a) PREFERENCE ALLOCATION FOR FAMILY-SUPPORTED IMMIGRANTS.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended to read as follows:

"(a) PREFERENCE ALLOCATION FOR FAMILY-SUPPORTED IMMIGRANTS.—Aliens subject to the waiting periods specified in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENTS, ALIENS.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (4) shall be allocated to qualified immigrants—

"(A) who are the spouses or children of an alien lawfully admitted for permanent residence, which aliens do not exceed 77 percent of the visas allocated under this paragraph; or

"(B) who are the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States who are at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level plus any visas not required for the classes specified in paragraphs (1) through (3)."

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 202(b) of the Immigration and Nationality Act (8 U.S.C. 1152(b)) is amended—

(1) in paragraph (1), by striking "" and inserting ""; and

(2) in paragraph (3)A—

(A) by striking "" and inserting ""; and

(b) by striking clause (ii); and

(4) by striking paragraph (4); and

(5) by redesigning paragraph (5) as paragraph (4); and

(6) in paragraph (4), as redesignated, by striking "" and inserting ""; and

(7) by striking paragraph after paragraph (4), as redesignated, the following:

"(5) OTHER WORKERS.—Visas shall be made available in a number not to exceed 30 percent of the worldwide level, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for the classes specified in paragraphs (a) and (c) of section 204(a) or clause (ii) of section 204(a) in such application as if such death death of the qualifying relative, may have had such application adjudicated as if such death had not occurred.

"(2) in subsection (f), by striking "" each place it appears and inserting ""; and

SEC. 604. RELIEF FOR CHILDREN AND WIDOWS.
"(a) I N GENERAL.—Section 204(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(2)(A)) is amended by inserting "" and deleting "" and inserting ""; and

"(b) in paragraph (2), by striking "" each place it appears and inserting ""; and

"(c) in paragraph (3), by striking "" each place it appears and inserting ""; and

"(d) in paragraph (4), by striking "" and inserting ""; and

"(e) in paragraph (5), by striking "" and inserting ""; and

"(f) in paragraph (6), by striking "".

SEC. 605. AMENDING THE AFFIDAVIT OF SUPPLEMENTARY DATA REQUIREMENTS.
Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A), by striking "" and inserting ""; and

(2) in subsection (b), by striking "" each place it appears and inserting ""; and

SEC. 606. DISCRETIONARY AUTHORITY.
"(a) I N GENERAL.—Section 202(e) of the Immigration and Nationality Act (8 U.S.C. 1152(e)) is amended—

(1) by redesigning paragraphs (2) and (3) as paragraphs (1) and (2); and

"(b) in paragraph (1), by striking clause (ii) and inserting the following:

"(2) A The Secretary of Homeland Security may waive the application of subsection (a)(c) if—

"(i) in the case of an immigrant who is the spouse, parent, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, the Secretary of Homeland Security determines that the refusal of admission to the United States of such immigrant or alien would result in extreme hardship to the citizen or lawful permanent resident spouse, child, son, daughter, or parent of such an alien; or

"(ii) in the case of an alien granted classified under clause (ii) or (iv) of section 204(a)(1)(A) or clause (i) or (ii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or to the alien and child if, such parent or child is a United States citizen, a lawful permanent resident, or a qualified alien; or

"(iii) in the case of an alien granted classified under subsection (a)(c) and inserting "" and deleting "" and inserting ""; and

"(iv) in the case of an alien lawfully admitted for permanent residence, if the Secretary of Homeland Security determines that the refusal of admission to the United States of such immigrant or alien would result in extreme hardship to the citizen or lawful permanent resident spouse, child, son, daughter, or parent of such an alien; or

"(v) in the case of an alien granted classified under clause (ii) or (iv) of section 204(a)(1)(A) or clause (i) or (ii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or to the alien and child if, such parent or child is a United States citizen, a lawful permanent resident, or a qualified alien; or
SEC. 701. H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by adding after section 250 the following:

"H–5B NONIMMIGRANTS

"SEC. 250A. (a) IN GENERAL.—The Secretary of Homeland Security may waive the application of any provision of subsection (b) for an alien who is a beneficiary of a petition filed under sections 201 and 203 if such petition was filed on or before the date of introduction of the Secure America and Orderly Immigration Act.

"(b) FAMILY UNITY.—An alien may satisfy the employment requirements under this section, in whole or in part, by full-time attendance at an institution of higher education.

"(c) SNORKELING IN THE UNITED STATES.—The alien shall establish that the alien—

"(1) was present in the United States before the date on which the Secure America and Orderly Immigration Act was introduced;

"(2) meets the requirements of this section; and

"(3) has been continuously in the United States on the date on which the Secure America and Orderly Immigration Act was introduced.

"(D) WAIVER.—

"(1) the Secretary of Homeland Security other than that of a nonimmigrant status unless the alien—

"(1) establishes that the alien—

"(a) the Social Security Administration, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

"(b) a secondary school (as defined in section 901 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

"(4) APPLICATION OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who is applying for adjustment of status in accordance with this title for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

"(e) EMPLOYMENT.—

"(1) IN GENERAL.—In addition to the fee required under paragraph (4) the Secretary may, in accordance with procedures established by the Secretary of Homeland Security, charge a fee for the processing of a petition for adjustment of status under section 252a.

"(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of an alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

"(3) EXPEDITED PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

"(4) COLLECTION OF FEES AND FINES.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under section 252a.

"(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-month period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 252a.

"(5) TREATMENT OF APPLICANTS.—

"(B) has not ordered, invited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

"(D) WAIVER.—

"(1) the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an alien for humanitarian purposes to avoid a danger to life or a serious risk to physical integrity.

"(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of an alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

"(3) EXPEDITED PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

"(4) COLLECTION OF FEES AND FINES.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under section 252a.

"(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-month period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 252a.

"(C) TREATMENT OF APPLICANTS.—

"(B) has not ordered, invited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

"(D) WAIVER.—

"(1) the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an alien for humanitarian purposes to avoid a danger to life or a serious risk to physical integrity.

"(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of an alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

"(3) EXPEDITED PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

"(4) COLLECTION OF FEES AND FINES.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under section 252a.

"(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-month period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 252a.

"(C) TREATMENT OF APPLICANTS.—

"(B) has not ordered, invited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

"(D) WAIVER.—

"(1) the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an alien for humanitarian purposes to avoid a danger to life or a serious risk to physical integrity.
``(3) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of this Act, an alien who is in removal proceedings shall have an opportunity to apply for adjustment of status under this section. (A) If the Secretary of Homeland Security grants the application, the alien shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application pursuant to this section, but before the promulgation of regulations pursuant to this section, the alien may be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien, through no fault of the alien, becomes ineligible for such adjustment of status; and (B) may not be considered an unauthorized alien (as defined in section 274A(b)(3)) until employment authorization under subparagrap (A) is denied.

``(4) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply or petition for relief, including reinstatement or adjustment of status, in accordance with this section. Such an alien shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable to the same extent as if the application or petition for relief had not been made.

``(k) ADMINISTRATIVE AND JUDICIAL REVIEW.—

``(1) ADMINISTRATIVE REVIEW.—

``(A) SINGLE LEVEL OF ADMINISTRATIVE APPEAL REVIEW.—The Secretary of Homeland Security shall establish an appellate authority, within the Department of Homeland Security, to provide a single level of administrative appellate review of a determination respecting an application for adjustment of status under this section.

``(B) STANDARD FOR ADMINISTRATION.—

``(A) Appellate review referred to in subparagraph (A) shall be conducted solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

``(2) JUDICIAL REVIEW.—

``(A) IN GENERAL.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under this section. Notwithstanding any other provision of law, the standard for review of an order of denial shall be governed by subparagraph (B).

``(B) STANDARD FOR JUDICIAL REVIEW.—

``(2) ADMISSIBILITY.—

``(C) JURISDICTION OF COURTS.—(1) IN GENERAL.—Notwithstanding any other provision of law, the district court in which the action is pending shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of a regulation of this section that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

``(ii) REMEDIES.—A district court may order any appropriate relief under clause (i) if the court determines that resolution of the cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

``(i) STAY OF REMOVAL.—Alleged seeking administrative or judicial review under this subsection may not be removed from the United States until a final decision is rendered establishing ineligibility under this section.

``(1) CONFIDENTIALITY OF INFORMATION.—(A) In general.—Information otherwise provided in this subsection, no Federal agency or bureau, nor any officer, employee, or agent of such agency or bureau, may—

``(ii) All outstanding liabilities have been paid; and

``(iv) The alien seeks employment before the date on which the Secure America and Orderly Immigration Act is introduced, shall not, on the other hand, be considered to have violated this section.

``(B) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 2520 the following:

``Sec. 2520A. H-58 nonimmigrants.

``370. ADJUSTMENT OF STATUS FOR H-58 NONIMMIGRANTS.

``(A) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1155 et seq.) is amended by inserting after section 245A the following:

``(2) AS A CONDITION OF EMPLOYMENT OR EDUCATION REQUIREMENT.—The alien establishes that the alien has been employed in the United States, either full time, part time, seasonally, or self-employed, or has met the education requirements of subsection (f) or (g) of section 2520A during the period required by section 2520A(e).

``(C) JURISDICTION OF COURTS.—

``(1) IN GENERAL.—Except as otherwise provided in this section and section 212(a)(15)(H)(v)(b), the Secretary of Homeland Security shall provide the alien with a reasonable, after-promulgation of regulations, to file an application for adjustment of status under this section.

``(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this section, and any other information derived from such furnishing information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspected of such an information is requested in writing by such entity.

``(D) CRIMINAL PENALTIES.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000 for each violation, and if the court determines that resolution of such a cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

``(E) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—(1) CRIMINAL PENALTY.—It shall be unlawful for any person—

``(i) to file or assist in filing an application for adjustment of status that is false, fictitious, or fraudulent, or in any manner misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or use or make any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

``(ii) to create or supply a false writing or document for use in making such an application.

``(2) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with section 1001(a)(15) of title 18, United States Code, imprisoned not more than 5 years, or both.

``(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains information regarding the payment of all Federal income taxes owed for employment during the period of employment required by section 2520A(e) by establishing that—

``(i) no such tax liability exists; or

``(ii) all outstanding liabilities have been met; or

``(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

``(B) IRS COOPERATION.—The Commissioner of Internal Revenue shall provide documents to an alien to establish the payment of all income taxes required by this paragraph.

``CANCELLING AN ORDER OF EXCLUSION, REMOVAL, OR DEPORTATION.—(A) No such tax liability exists; or

``(ii) all outstanding liabilities have been met; or

``(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

``(B) IRS COOPERATION.—The Commissioner of Internal Revenue shall provide documents to an alien to establish the payment of all income taxes required by this paragraph.
"(7) BASIC CITIZENSHIP SKILLS.—
"(A) IN GENERAL.—Except as provided in subparagraph (B), the alien shall establish that the alien—
"(i) meets the requirements of section 312; or
"(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge of the history and government of the United States.

"(B) RELATION TO NATURALIZATION EXAMINATION.—Whoever demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(8) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 250A(h).

"(9) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), such alien has registered under that Act."

"(b) TREATMENT OF SPOUSES AND CHILDREN.—
"(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall—
"(A) adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to the spouse or child of an alien who adjusts status to that of a permanent resident under this section; or
"(B) adjust the status to that of a lawful permanent resident under this section for an alien who was the spouse or child of an alien who adjusts status or is eligible to adjust status as a lawful permanent resident under section 245B in accordance with subsection (a), if—
"(i) the termination of the qualifying relationship was connected to domestic violence; and
"(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or child of an alien who adjusts status to that of a permanent resident under this section.

"(2) APPLICATION OF OTHER LAW.—In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of sections 212(a)(3)(B), 212(a)(9), and 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B), 1182(a)(9), and 1182(n))."

"(3) ADVERSE CONDUCT.—The preceding provisions of subsection (b) shall not apply to an alien who is an individual, is the spouse of such individual, or is a parent who was not a U.S. citizen at the time of marriage, unless such individual is an individual who is—
"(A) an alien who is an individual of the United States,
"(B) has a U.S. citizen parent or step-parent,
"(C) a U.S. citizen or national who is the spouse of a citizen of the United States, or
"(D) an individual described in section 212(a)(3)(B) who is not a U.S. citizen at the time of marriage.

"(4) ADJACENT TERRITORIES.—In the case of the adjustment of status of aliens who are an individual, the spouse of such individual, or the parent who was not a U.S. citizen at the time of marriage of an alien described in subsection (b)(1) or (b)(2), such adjustment of status shall be made as if the alien were an individual described in subsection (b)(1) or (b)(2), as the case may be.

"(5) NON-LAWFUL PERMANENT RESIDENT.—Nothing in this section shall preclude the adjustment of status of any alien who, at the time of the filing of the petition, is not a lawful permanent resident of the United States, unless the alien—
"(A) has committed a crime of moral turpitude or is otherwise deportable or ineligible for admission or adjustment of status under any provision of law; or
"(B) is inadmissible or deportable for reasons other than those specified in subparagraph (A).

"(6) ADVERSE CONDUCT.—The provisions of sections 212(a)(3)(B), 212(a)(9), and 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B), 1182(a)(9), and 1182(n)) shall not apply to an alien who is an individual, is the spouse of such individual, or is a parent who was not a U.S. citizen at the time of marriage, unless such individual is an individual who is—
"(A) an alien who is an individual of the United States,
"(B) has a U.S. citizen parent or step-parent,
"(C) a U.S. citizen or national who is the spouse of a citizen of the United States, or
"(D) an individual described in section 212(a)(3)(B) who is not a U.S. citizen at the time of marriage.

"(7) GRANTS.—The Secretary of Homeland Security may make such grants to the States and local entities as she deems appropriate to assist in the implementation of the provisions of subsection (a) or (b).

"(8) MARRIAGE REQUIREMENTS.—To provide the anomaly of not applying to marriage partners as defined by section 101(a)(32) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(32)) in the case of a marriage partner of an individual described in subsection (b), the Attorney General shall establish rules making such an individual eligible for admission or adjustment of status under section 245A or 250A of the Immigration and Nationality Act, as added by this title.

"title vi—against immigration fraud

"section 801. right to qualified representation.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended to read as follows:

"right to qualified representation in immigration matters.

"SEC. 292. REPRESENTATION IN IMMIGRATION MATTERS.—Only the following individuals are authorized to represent an individual in an immigration matter before any immigration agency or entity—

"(1) an attorney,

"(2) a law student who is enrolled in an accredited law school, or a graduate of an accredited law school who is not admitted to the bar, if—

"(A) the law student or graduate is appearing at the request of the individual to be represented;

"(B) in the case of a law student, the law student has a statement that the law student is participating, under the direct supervision of an attorney, as an accredited representative, in a legal aid program or clinic conducted by a law school or nonprofit organization, and that the law student is appearing to provide legal advice or other services to the individual at no charge or at reduced compensation from the individual to the law student;

"(C) in the case of a graduate, the graduate has filed a statement that the graduate is appearing under the supervision of an attorney or accredited representative and that the graduate is appearing without direct or indirect remuneration from the individual the graduate represents; and

"(D) the law student or graduate's appearance is permitted by the official before whom the law student or graduate wishes to appear; and

"title vii—employer protections

"section 704. employer protections.

(a) immigration status of alien.—Employers of aliens applying for adjustment of status under section 245b or 250a of the Immigration and Nationality Act, as added by this title, shall not be subject to civil and criminal tax liability relating directly to the employment of an alien prior to such alien receiving employment authorization under this title.

(b) provision of employment records.

Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under section 245b or 250a of the Immigration and Nationality Act or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of such Act for employing such unauthorized aliens.

(c) applicability of other law.—Nothing in this section may be used to shield an employer from liability under section 274b of the Immigration and Nationality Act (8 U.S.C. 1329b) or any other labor or employment law.

"section 705. authorization of appropriations.

(a) in general.—There are authorized to be appropriated—

"(1) adjustment of status.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall apply the provisions of sections 212(a)(3)(B), 212(a)(9), and 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B), 1182(a)(9), and 1182(n)) who has been approved to serve as an accredited representative by the Board of Immigration Appeals under subsection (f) to individuals—

"(1) in subparagraph (A), by striking "sub-

"(2) in subparagraph (B), the alien shall establish

"(3) the individual is appearing without direct or indirect remuneration and the individual files a written declaration to that effect, except as described in subparagraph (D); or

"(4) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or friend, and remuneration may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available.

"(D) in the case of a law student, the law student shall choose, of being represented (at

"(E) the individual is appearing on an individual to be represented; and

"(F) the individual files a written declaration to that effect, except as described in subparagraph (D); or

"(G) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or friend, and remuneration may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available.

"(D) in the case of a law student, the law student shall choose, of being represented (at

"(E) the individual is appearing on an individual to be represented; and

"(F) the individual files a written declaration to that effect, except as described in subparagraph (D); or

"(G) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or friend, and remuneration may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available.

"(D) in the case of a law student, the law student shall choose, of being represented (at

"(E) the individual is appearing on an individual to be represented; and

"(F) the individual files a written declaration to that effect, except as described in subparagraph (D); or

"(G) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or friend, and remuneration may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available.

"(D) in the case of a law student, the law student shall choose, of being represented (at

"(E) the individual is appearing on an individual to be represented; and

"(F) the individual files a written declaration to that effect, except as described in subparagraph (D); or

"(G) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or friend, and remuneration may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available.
(e) BENEFITS FILINGS.—In any filing or submission for an immigration related benefit or a determination related to the immigration status of an individual made to the Department of Homeland Security, the Department of Labor, or the Department of State, the individual shall have the privilege, as the individual shall choose, of being represented by or in place of the Government by an individual described in subsection (a). Representation by an individual other than an individual described in subsection (a) shall be subject to civil or criminal penalties, as may be applicable.

(f) RECOGNIZED ORGANIZATIONS AND ACCREDITED REPRESENTATIVES.—

(1) RECOGNIZED ORGANIZATIONS.—

(A) IN GENERAL.—The Board of Immigration Appeals may determine that a person is a recognized organization if such person—

(i) is a nonprofit religious, charitable, social service, or similar organization established in the United States that—

(I) is recognized by the Board of Immigration Appeals; and

(II) has at its disposal adequate knowledge, information, and experience.

(B) BONDING.—The Board, in its discretion, may require bonding on new organizations seeking recognition.

(2) REPORTING OBLIGATIONS.—Recognized organizations shall promptly notify the Board whenever an organization no longer meets the requirements for recognition or when an accredited representative employed by the recognized organization ceases to be employed by the recognized organization.

(2) ACCREDITED REPRESENTATIVES.—The Board of Immigration Appeals shall approve any qualified individual designated by a recognized organization to serve as an accredited representative. Such individual must be employed by the recognized organization and must meet all requirements set forth in this section. Any individual representing an attorney in an immigration matter, Accredited representatives, through their recognized organizations, must certify their continuing eligibility for accreditation every 3 years with the Board of Immigration Appeals.

(3) NONPREEMPTION.—Nothing in this subsection shall be construed to preempt any other private right of action or any right of action pursuant to the laws of any jurisdiction.

(4) DISCOVERY.—Information obtained through discovery in an immigration-related action under this subsection shall not be used in any criminal action. Upon the request of any party to a civil action under this subsection, any part of the court file that makes reference to information discovered in a civil action under this subsection may be sealed.

(b) GIFTS.—

(1) TO FOUNDATION.—The Foundation may accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, gifts, grants, and other contributions as may be necessary to carry out the functions of the Board of Immigration Appeals, and shall be entitled to accept and retain any contributions, gifts, or other donations made to it, either directly or indirectly, by or affiliated with an attorney, when such representation is false; or

(2) the term ‘representation’ means money, property, labor, promise of payment, or any other consideration provided directly or indirectly to an individual with respect to the immigration or citizenship status of any person, which arises under any immigration related order of the Secretary of Homeland Security, acting through the Director of the Office of Citizenship, or any other entity certified by the Office of Citizenship to provide civics and English as a second language courses; or
(2) other activities approved by the Secretary to promote civics and English as a second language.

(b) ACCEPTANCE OF GIFTS.—The Secretary may accept gifts and grants from the United States Citizenship Foundation for grants under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

SEC. 1001. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FOR UNDOCUMENTED ALIENS.

Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395ddd note) is amended—

(1) by striking “2008” and inserting “2011”;

and

(2) in subsection (c)(5), by adding at the end the following:


(2) ANNUAL SUBMISSION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of Homeland Security shall submit quarterly reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the number of aliens who were issued visas or otherwise provided non-immigrant status under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)) during the preceding 3-month period.

(3) by adding at the end the following:

“(w)(1) There is established in the general fund of the Treasury the National Health Care for Undocumented Aliens Fund, which shall be available without fiscal year limitation to the Secretary of Health and Human Services for the following purposes:

(A) all fees collected under section 218A; and

(B) all fines collected under section 212(n)(2)(C).

(3) Of the fees and fines deposited into the H-5 Nonimmigrant Petitioner Account—

(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H-5 visa programs described in section 218A; and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act and the amendments made by such Act, of the Secretary shall allocate—

(1) 10 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H-5 visa programs described in section 218A; and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act.

(2) not more than 1 percent to provide publicity awareness of the H-5 visa program, to protect migrants from fraud, and to combat the unauthorized practice of law described in title III of the Secure America and Orderly Immigration Act.

(3) not more than 1 percent to the Office of Citizenship to promote civics integration activities described in section 901 of the Secure America and Orderly Immigration Act; and

(4) 2 percent for the Civil Integration Grant Program under section 902 of the Secure America and Orderly Immigration Act.

(4) 15 percent shall remain available to the Secretary of Labor for the enforcement of workplace standards in those geographic and occupational areas in which H-5A visa holders are likely to be employed and for other enforcement efforts under the Secure America and Orderly Immigration Act.

(5) 15 percent shall remain available to the Commissioner of Social Security for the creation and maintenance of the Employ- ment Eligibility Confirmation System described in section 402 of the Secure America and Orderly Immigration Act; and

(6) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving individuals working under programs established in this Act.

SEC. 1101. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H-5A NONIMMIGRANTS.

(a) ENSURING ACCURATE COUNT.—The Secretary of State and the Secretary of Homeland Security shall maintain an accurate count of the number of aliens subject to the provisions of this Act, the Secure America and Orderly Immigration Act.

(b) REIMBURSEMENT OF HOSPITALS.—The Secretary of Homeland Security shall provide reimbursement to hospitals caring for aliens under programs established in this Act.

(c) ACCURATE COUNT.—The Secretary of State and the Secretary of Homeland Security shall maintain an accurate count of the number of aliens subject to the provisions of this Act, the Secure America and Orderly Immigration Act.

(t) by adding at the end the following:

“(w)(1) There is established in the general fund of the Treasury the National Health Care for Undocumented Aliens Fund, which shall be available without fiscal year limitation to the Secretary of Health and Human Services for the following purposes:

(A) all fees collected under section 218A; and

(B) all fines collected under section 212(n)(2)(C).

(3) Of the fees and fines deposited into the H-5 Nonimmigrant Petitioner Account—

(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H-5 visa programs described in section 218A; and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act and the amendments made by such Act, of the Secretary shall allocate—

(1) 10 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H-5 visa programs described in section 218A; and any other efforts necessary to carry out the provisions of the Secure America and Orderly Immigration Act.

(2) not more than 1 percent to provide publicity awareness of the H-5 visa program, to protect migrants from fraud, and to combat the unauthorized practice of law described in title III of the Secure America and Orderly Immigration Act.

(3) not more than 1 percent to the Office of Citizenship to promote civics integration activities described in section 901 of the Secure America and Orderly Immigration Act; and

(4) 2 percent for the Civil Integration Grant Program under section 902 of the Secure America and Orderly Immigration Act.

(4) 15 percent shall remain available to the Secretary of Labor for the enforcement of workplace standards in those geographic and occupational areas in which H-5A visa holders are likely to be employed and for other enforcement efforts under the Secure America and Orderly Immigration Act.

(5) 15 percent shall remain available to the Commissioner of Social Security for the creation and maintenance of the Employ- ment Eligibility Confirmation System described in section 402 of the Secure America and Orderly Immigration Act; and

(6) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving individuals working under programs established in this Act.

SEC. 1102. H-5 NONIMMIGRANT PETITIONER ACCOUNT.

Section 218B of the Immigration and Nationality Act (8 U.S.C. 1395ddd note) is amended—

(1) in clause (1), by striking “and” at the end;

and

(2) by adding at the end the following:

“(iii) such interested Federal agency or interest involved in determining which aliens will be eligible for such waivers, does not utilize selection criteria, other than as described in this subsection, that discriminate on the basis of the alien’s employment in a hospital-based versus nonhospital-based facility or organization; and”.

SEC. 1004. BANIONAL PUBLIC HEALTH INFRASTRUCTURE AND HEALTH INSURANCE.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academies (referred to in this section as the “Institute”) to study binational public health infrastructure and health insurance efforts.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Health and Human Services enters into a contract under paragraph (a), the Institute shall submit a report concerning the study conducted under subsection (a) to the Secretary of Health and Human Services and the appropriate committees of Congress.

(2) CONTENTS.—The report submitted under paragraph (1) shall include the recommendations of the Institute on ways to expand or improve binational public health infrastructure and health insurance efforts.
SB 8063

CONGRESSIONAL RECORD — SENATE

July 11, 2005

S. 8063

Mar. 20, 2005

Mr. BIDEN submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of States.
Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

TITLE VI—HAZARDOUS MATERIALS

SEC. 601. SHORT TITLE; FINDINGS.

(a) Short Title.—This title may be cited as the “Hazardous Materials Vulnerability Reduction Act of 2005”.

(b) Findings.—Congress makes the following findings:

(1) Congress has specifically given the Department of Homeland Security, working in conjunction with the Department of Transportation, the primary authority for the security of the United States transportation sector, including passenger and freight rail.

(2) This authority includes the responsibility to protect American citizens from terrorist incidents related to the transport by rail of extremely hazardous materials.

(3) Rail shipments of extremely hazardous materials are often routed through highly attractive targets and densely populated areas, including within a few miles of the White House and United States Capitol.

(4) According to security experts, certain extremely hazardous materials present a mass casualty terrorist potential rivaled only by nuclear weapons, certain acts of bioterrorism, and the collapse of large occupied buildings.

(5) A report by the Chlorine Institute found that a 90-ton rail tanker, if successfully targeted by an explosive device, could cause a catastrophic release of an extremely hazardous material, creating a toxic cloud 40 miles long and miles wide.

(6) The Environmental Protection Agency estimates that in an urban area a toxic cloud could extend for 14 miles.

(7) The United States Naval Research Laboratories concluded that a toxic plume of this type, created while there was a public event on the National Mall, could kill or incapacitate up to 100,000 people in less than 30 minutes.

(8) According to security experts, rail shipments of extremely hazardous materials are particularly vulnerable to attack and that extremely hazardous materials are particularly vulnerable to attack.

(9) The United States Naval Research Laboratory concluded that extremely hazardous materials can be used as tools of destruction and terror and that extremely hazardous materials can be used as tools of destruction.

(10) Rail shipments of extremely hazardous materials are often routed through highly attractive targets and densely populated areas, including within a few miles of the White House and United States Capitol.

(11) While the safety record related to rail shipments of hazardous materials is very good, recent accidental releases of extremely hazardous materials in rural South Carolina and San Antonio, Texas, demonstrate the potential danger posed by extremely hazardous materials.

(12) Security experts have determined that re-routing these rail shipments is the only way to immediately eliminate this danger in high threat areas, which currently puts hundreds of thousands of people at risk.

(13) Security experts have determined that the primary benefit of re-routing the shipment of extremely hazardous materials is a reduction in the number of people that would be exposed to the deadly impact of the release due to an attack, and the principal cost would be the additional operating expense associated with possible increase inhaul for the shipment of extremely hazardous materials.

(14) Less than 5 percent of all hazardous materials shipped by rail will meet the definition of extremely hazardous materials under this title.

SEC. 602. DEFINITIONS.

In this title, the following definitions apply:

(1) EXTREMELY HAZARDOUS MATERIAL.—The term “extremely hazardous material” means any chemical, toxic, or other material being shipped or stored in sufficient quantities to represent an unreasonable risk of harm, including high likelihood of causing injuries, casualties, or economic damage if successfully targeted by a terrorist attack, including materials that—

(A) are—

(i) toxic by inhalation;

(ii) extremely flammable; or

(iii) highly explosive;

(B) contain high level nuclear waste; or

(C) are otherwise designated by the Secretary as extremely hazardous.

(2) HIGH THREAT CORRIDOR.—

(A) IN GENERAL.—The term “high threat corridor” means a geographic area that has been designated by the Secretary as particularly vulnerable to a catastrophic terrorist incident involving extremely hazardous materials, including—

(i) large populations centers;

(ii) areas important to national security; or

(iii) areas that terrorists may be particularly likely to attack;

(B) OTHER AREAS.—

(i) IN GENERAL.—Any city that is not designated as a high threat corridor under subparagraph (A) may file a petition with the Secretary to be so designated.

(ii) PROCEDURE.—The Secretary shall establish, by rule, regulation, or order, procedures for petitions under clause (i), including—

(I) designating the local official eligible to file a petition;

(II) establishing the criteria a city shall include in a petition; and

(III) allowing a city to submit evidence supporting its petition; and

(iv) requiring the Secretary to rule on the petition not later than 90 days after the date of submission of the petition.

(iii) NOTICE.—The Secretary’s decision regarding any petition under clause (i) shall be communicated to the requesting city, the Governor of the State in which the city is located, and the Senators and Members of the House of Representatives that represent the State in which the city is located.

(3) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security or the Secretary’s designee.

(4) STORAGE.—The term “storage” means any temporary or long-term storage of extremely hazardous materials in rail tankers or any other medium utilized to transport extremely hazardous materials by rail.

SEC. 603. REGULATIONS FOR TRANSPORTATION OF EXTREMELY HAZARDOUS MATERIALS.

(a) PURPOSES OF REGULATIONS.—The regulations issued under this section shall establish a national, risk-based policy for extremely hazardous materials transported by rail, including—

(1) provisions for owners and operators of railroads, in consultation with other Federal, State, and local government entities, security experts, representatives of the hazardous materials rail shipping industry, labor and rail operators, and public interest groups, to implement measures to reduce the risk of extremely hazardous materials by rail that—

(2) include a list of the high threat corridors designated by the Secretary;

(3) require that any rail shipment containing extremely hazardous materials be rerouted around any high threat corridor; and

(4) require reports regarding the transport by rail of extremely hazardous materials by the Secretary to local governmental officials designated by the Secretary, and Local Emergency Planning Committees, established under the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 et seq.);

(b) ISSUANCE OF REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue, after notice and opportunity for public comment, regulations concerning the transportation, bulk storage, and delivery of extremely hazardous materials by owners and operators of railroads. In developing such regulations, the Secretary shall consult with other Federal, State, and local government entities, security experts, representatives of the hazardous materials rail shipping industry, labor and rail operators, and public interest groups who work with hazardous materials in the rail shipping industry, and other interested persons, including private sector intermediaries.

(c) REQUIREMENTS.—The regulations issued under this section shall—

(1) include a list of the high threat corridors designated by the Secretary;

(2) contain the criteria used by the Secretary to determine whether an area qualifies as a high threat corridor;

(3) include a list of extremely hazardous materials;

(4) establish protocols for owners and operators of railroads that ship extremely hazardous materials regarding notifying all governors, mayors, and other designated officials and local emergency responders in a high threat corridor of the type and quantity of extremely hazardous materials that are transported by rail through the high threat corridor;

(5) require reports regarding the transport by railroad of extremely hazardous materials by the Secretary to local governmental officials designated by the Secretary, and Local Emergency Planning Committees, established under the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 et seq.);

(6) establish protocols for the coordination of Federal, State, and local law enforcement authorities in creating a plan to respond to a terrorist attack, sabotage, or accident involving a rail shipment of extremely hazardous materials that causes the release of such materials;

(7) require that any rail shipment containing extremely hazardous materials be rerouted around any high threat corridor; and

(8) establish standards for the Secretary to grant exceptions to the re-routing requirements under paragraph (a).

(d) HIGH THREAT CORRIDORS.—

(1) IN GENERAL.—The criteria under subsection (c)(2) for determining whether an area qualifies as a high threat corridor may be the same criteria used for the distribution of funds under the Urban Area Security Initiative program.

(2) INITIAL LIST.—If the Secretary is unable to complete the review necessary to determine which areas should be designated as high threat corridors within 90 days after the date of enactment of this Act, the initial list shall include—

(I) explosives classified as Class 1.1, or Class 1.2, or Class 1.3, as applicable, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 500 kilograms; and

(ii) flammable gasses classified as Class 2, Division 1.1, or Class 1.2, or Class 1.3, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 10,000 liters;

(3) EXTREMELY HAZARDOUS MATERIALS LIST.—If the Secretary is unable to complete the review necessary to determine which materials should be designated extremely hazardous materials under subsection (c)(3) within 90 days of the date of enactment of this Act, the initial list shall include—

(I) explosives classified as Class 1.1, Class 1.2, or Class 1.3, as applicable, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 500 kilograms; and

(ii) flammable gasses classified as Class 2, Division 1.1, or Class 1.2, or Class 1.3, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 10,000 liters;

(4) OTHER MATERIALS CLASSIFIED AS HAZARDOUS MATERIALS.—If the Secretary determines that it is not practicable or feasible to designate extremely hazardous materials under subsection (c)(3) that are not already designated as hazardous materials under subsection (c)(2), the Secretary shall designate such materials as hazardous materials, and regulate the transport of such materials by rail.
assigned to Hazard Zones A or B under section 173.116 of title 49, Code of Federal Regulations, in a quantity greater than 500 liters; and

(2) poisoning materials, other than gases, classified in class 3, division 1.1, under section 173.2 of title 49, Code of Federal Regulations, that are also assigned to Hazard Zones A or B under section 173.116 of title 49, Code of Federal Regulations, in a quantity greater than 1,000 kilograms; and

(3) anhydrous ammonia classified as class 2, division 2, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 1,000 kilograms.

(f) Notification.—

(1) In general.—The protocols under subsection (c)(4) shall provide for specific actions to be taken in response to the release of an extremely hazardous material, including procedures for in-towing, the rail operator, and local agencies responsible for responding to the release of an extremely hazardous material.

(2) Transportation and Storage of Extremely Hazardous Materials Through High Threat Corridors.—

SEC. 605. SAFETY TRAINING.

(a) Homelands Security Grant Program.—

(1) In general.—The Secretary may award grants to local governments and owners and operators of railroads to conduct training regarding the transportation and storage of extremely hazardous materials and to prevent or respond appropriately to the incident.

(b) Railway Hazmat Training Program.—

(1) In general.—The Secretary of Transportation shall administer the Railway Hazmat Training Program to the Director of the National Institute of Occupational Health Sciences under subsection (g).

(2) Grant application.—A local government or operator of a railroad desiring a grant under this subsection shall submit an application to the Secretary, including under a leased track or rail siding agreement, and to make quarterly updates if there has been any significant change in the type, quantity, or frequency of shipments.

(c) Considerations.—In developing protocols under subsection (c)(4), the Secretary shall consider both the security needs of the United States and the interests of State and local governmental officials.

(d) Need to Consider.—The protocols under subsection (c)(4) shall consider both the security needs of the United States and the interests of State and local governmental officials.

(e) Reports.—

(1) Frequency.—

(A) In general.—The Secretary shall make an annual report to local governmental officials and Local Emergency Planning Committees in that geographic area.

(B) Updates.—If there has been any significant change in the type, quantity, or frequency of rail shipments in a geographic area, the Secretary shall make a quarterly update report to local governmental officials and Local Emergency Planning Committees in that geographic area.

(f) Costs.—Each report made under subsection (c)(5) shall inform the Secretary of the costs under subsection (c)(4) and shall include—

(i) a hazard assessment of the potential effects of a release of the extremely hazardous materials, including—

(A) an estimate of the potential release quantities; and

(B) a determination of the downwind effects and the potential exposures to affected populations;

(ii) a program to prevent a release of extremely hazardous materials, including—

(A) security precautions; and

(B) monitoring programs; and

(iii) employee training measures utilized; and

(iv) an emergency response program that provides for specific actions to be taken in response to the release of an extremely hazardous material, including procedures for informing the public and Federal, State, and local agencies responsible for responding to the release of an extremely hazardous material.

(2) Transportation and Storage of Extremely Hazardous Materials Through High Threat Corridors.—

SEC. 605. RESEARCH AND DEVELOPMENT.

(a) Transportation.—

(1) In general.—Not later than 90 days after the date of enactment of this Act, the Secretary shall conduct a study of the feasibility of requiring chemical shippers to electronically track the movement of all shipments of extremely hazardous materials and report this information to the Department of Homeland Security on a vessel-by-vessel basis as such shipments are transported and other required activities in the event of such an attack.

(2) Matters Studied.—The study conducted under this subsection shall include the evaluation of—

(A) who is responsible for storing extremely hazardous materials;

(B) the feasibility of requiring chemical shippers to electronically track the movement of all shipments of extremely hazardous materials; and

(C) the feasibility of utilizing finger-print based access controls for all chemical conveyances.

(b) Physical Security.—

(1) In general.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report to Congress describing the findings of the study conducted under this subsection, which shall include recommendations and cost estimates for securing shipments of extremely hazardous materials.

(c) Leased Track Storage Arrangements.—

(1) In general.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report to Congress describing the findings of the study conducted under this subsection, which shall contain recommendations and cost estimates for securing shipments of extremely hazardous materials.

(2) Matters Studied.—The study conducted under this subsection shall include the evaluation of—

(A) other technical alternatives for securing shipments of extremely hazardous materials.
recommendations and cost estimates for securing shipments of extremely hazardous materials.

SEC. 606. WHISTLEBLOWER PROTECTION.

(a) Prohibition against discrimination.—No owner of a railroad may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee—(or any person acting pursuant to the request of the employee) provided information to the Secretary, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this title by the owner or operator of a railroad or any director, officer, or employee of an owner or operator of a railroad.

(b) Enforcement.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court for the end of the 2-year period beginning on the date of such discharge or discrimination.

(c) Remedies. The appropriate district court determines that a violation has occurred, the court may order the owner or operator of a railroad that committed the violation to—

(1) reinstate the employee to the employee’s former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy the discrimination.

(d) Limitation.—The protections of this section shall not apply to any employee who—

(1) deliberates causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

SEC. 607. PENALTIES.

(a) Right of action.—

(1) In general.—Any State or local government or any owner of a railroad may bring a civil action in a United States district court for redress of injuries caused by a violation of this title against any person (other than an individual) who transmits, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials by rail and who violated this title.

(b) Procedure.—In an action under paragraph (1), the State or local government may seek, for each violation of this title—

(1) an order for injunctive relief; and

(2) a civil penalty of not more than $1,000,000.

(c) Administrative penalties.—

(1) In general.—The Secretary may issue an order imposing an administrative penalty of not more than $1,000,000 for each failure by a person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials by rail and who violated this title.

(2) Notice and hearing.—Before issuing an order under paragraph (1), the Secretary shall provide the person who allegedly violated this title with—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the person received the notice, a hearing on the proposed order.

(3) Procedures.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations establ...
(6) To coordinate with the Chief Information Officer of the Department in establishing a secure information sharing architecture and information sharing processes, including the development of appropriate policies, for the Department and with respect to the Department’s operation centers.

(7) To consult with the Electronic Crimes Task Force of the United States Secret Service on cross-sector outreach and information sharing activities.

(8) To consult with the Office for Domestic Preparedness to ensure that realistic cyber tests are incorporated into tabletop and recovery exercises.

(9) To consult and coordinate, as appropriate, with other Federal agencies on cybersecurity-related programs, policies, and operations.

(10) To consult and coordinate within the Department and, where appropriate, with other relevant Federal agencies, on security of digital control systems, such as Supervisory Control and Data Acquisition (SCADA) systems.

(11) AUTHORITY OVER THE NATIONAL COMMUNICATIONS SYSTEM.—The Assistant Secretary shall have primary authority within the Department over the National Communications System.

(2) The table of contents in section 1(b) of such Act is amended by adding at the end of the items relating to subtitle A of title II the following:

203. Assistant Secretary for Cybersecurity.

(b) Section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101) is amended by adding at the end of that section the following:

(17)(A) The term ‘cybersecurity’ means the prevention of damage to, the protection of, and the secure operation of computers, electronic communications systems, electronic communication services, wire communication, and electronic communication, including information therein, ensuring its availability, integrity, authentication, confidentiality, and nonrepudiation.

(B) In this paragraph—

(i) each of the terms ‘damage’ and ‘computer’ has the meaning that term has in section 1030 of title 18, United States Code; and

(ii) each of the terms ‘electronic communication’, ‘electronic communication service’, ‘wire communication’, and ‘electronic communication’ has the meaning that term has in section 2510 of title 18, United States Code.

SA 1187. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 203. Assistant Secretary for Cybersecurity.

That none of the funds appropriated under this Act may be used to implement plans by the Department of State and the Department of Homeland Security pursuant to section 729(b) of the 9/11 Commission Implementation Act of 2004 (U.S.C. 1185) note) to require passports as the only acceptable document to enter the United States from Canada or Mexico. The above funding shall be used to implement plans to improve border security that would allow travelers into the United States from Canada and Mexico to use alternative documentation that is as secure as a passport, but more cost effective and efficient to obtain.

SA 1188. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, line 9, strike "$1,372,399,000" and insert "$1,472,399,000."

On page 91, line 23, strike "reprogrammed." and insert the following: "reprogrammed; Provided further. That of the total funds made available under this heading, $100,000,000 shall be for grants to eligible entities (national laboratories, nonprofit private sector, states, tribes, education, and other entities the Secretary of Homeland Security determines to be eligible) to research and develop technologies that can be used to secure the ports of the United States, to develop technologies to increase the ability of the Customs Service to inspect merchandise carried on any vessel that arrives at any port in the United States, to develop equipment that accurately detects explosives, nuclear, radiological, chemical and biological agents that could be used to contaminate an airport, and to improve "tags and seals designed for use on shipping containers."

SA 1189. Mr. SCHUMER (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, beginning on line 2, strike "$4,452,318,000" and all that follows through "and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, beginning on line 2, strike "$4,452,318,000" and all that follows through "and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, beginning on line 2, strike "$4,452,318,000" and all that follows through "and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, beginning on line 2, strike "$4,452,318,000" and all that follows through "and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, beginning on line 2, strike "$4,452,318,000" and all that follows through "and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:
amount made available under this heading, not to exceed $3,726,929,000 shall be for screening operations, of which $1,590,969,000 shall be available for passenger screener pay, compensation, recruitment fund, benefits of which $901,961,000 shall be available for baggage screener pay, compensation, and benefits, of which $140,000,000 shall be available only for procurements of checked baggage explosive detection systems and $14,000,000 shall be available only for installation of checked baggage explosive detection systems; and not to exceed $1,963,370,000 shall be for aviation security direction and enforcement presence: Provided further, That security service fees authorized under section 4940 of title 49, United States Code, shall be credited to this appropriation as offsetting collections: Provided further, That the sum herein appropriated from the General Fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2006, so as to result in a final fiscal year appropriation from the General Fund estimated at not more than $2,797,299,000:

SA 1193. Mr. DODD submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 21: strike $1,518,000,000 and insert $2,186,814,841

On page 77, line 22: strike $425,000,000 and insert $2,058,178,673

On page 78, line 13: strike $365,000,000 and insert $2,186,814,841

On page 78, line 16: strike $200,000,000 and insert $1,029,089,337

On page 78, line 22: strike $5,000,000 and insert $257,272,334

On page 78, line 24: strike $10,000,000 and insert $51,454,467

On page 77, line 18: strike $2,694,000,000 and insert $1,590,969,000

On page 77, line 20: strike $1,518,000,000 and insert $7,810,788,066

On page 79, line 1: strike $100,000,000 and insert $1,352,399,000

On page 79, line 5: strike $500,000,000 and insert $257,272,334

On page 79, line 7: strike $50,000,000 and insert $257,272,334

On page 79, line 9: strike $40,000,000 and insert $257,272,334

On page 88, line 21: strike $321,300,000 and insert $1,252,022,019

On page 81, line 24, strike $615,000,000 and insert $1,352,399,000

On page 81, line 24: strike $550,000,000 and insert $2,058,178,673

On page 81, line 26: strike $65,000,000 and insert $334,491,000

On page 82, line 12: strike $180,000,000 and insert $334,491,000

On page 83, line 12: strike $203,499,000 and insert $1,047,210,000

On page 89, line 3: strike $194,000,000 and insert $998,267,000

SA 1194. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security acting through the Under Secretary for Emergency Preparedness shall propose new inspection guidelines that prohibit inspectors from entering into a contract with any individual or entity for whom the inspector performs an inspection for purposes of such assistance from the Federal Emergency Management Agency.

SA 1195. Mr. DeWINE submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 57, line 1, strike $146,322,000 and insert "$141,876,000"

On page 67, line 17, strike $50,150,000 and insert "$40,150,000"

On page 79, strike lines 21 and 22, and insert the following:

(b) $257,272,334 for training, exercises, technical assistance, and other programs, of which $135,000,000 shall be available for the National Domestic Preparedness Consortium and $20,888,000 shall be available for the Citizen Corps.

On page 81, line 24, strike "$615,000,000" and insert "$712,000,000"

On page 81, line 24, strike "$550,000,000" and insert "$650,000,000"

On page 89, line 5, strike $194,000,000 and insert "$183,300,000"

On page 89, line 26, strike $88,358,000 and insert "$63,743,000"

On page 89, line 19, strike $701,793,000 and insert "$811,654,000, of which $14,387,000 shall be available for programs related to evaluations and studies.

On page 81, line 9, strike $1,372,399,000 and insert "$1,352,399,000, of which $54,650,000 shall be available for projects related to conventional missions support".

SA 1196. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

TITLE —RAIL SECURITY

SEC. 601. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) In general.—

(1) VULNERABILITY AND RISK ASSESSMENT.—

The Secretary of Homeland Security shall establish a task force, including the Transportation Security Administration, the Department of Transportation, and other appropriate agencies, to complete a vulnerability and risk assessment of freight and passenger rail transportation (comprising railroad, transit, and intercity passenger rail transportation, as defined in section 10202(1) of title 49, United States Code). The assessment shall include—

(A) identification and evaluation of critical assets and infrastructures;

(B) identification of vulnerabilities and risks to those assets and infrastructures; and

(C) identification of vulnerabilities and risks that are specific to the transportation of hazardous materials via railroad; and

(D) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the public and private sectors; and

(b) Consultation; Use of Existing Resources.—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary of Homeland Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, shippers of hazardous materials, public safety officials, and other relevant parties.

(c) Report.—

(1) In general.—Within 180 days after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report containing the assessment, prioritized recommendations and plans required by subsection (a) and an estimate of the cost to implement such recommendations.

(2) Format.—The Secretary may submit the report in both classified and unclassified formats if the Secretary determines that such action is appropriate or necessary.
(3) FAILURE TO MEET DEADLINE.—The Secretary fails to transmit the report required by paragraph (1) within the period required by paragraph (1), the Comptroller General on Governmental Operations, Science, and Transportation and the House of Representatives Committee on Homeland Security and explain in writing the reason for the failure.

(d) ANNUAL UPDATES.—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committee in subsection (c)(1), containing the updated assessment and recommendations.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section $5,000,000 for fiscal year 2006.

SEC. 62. RAIL WORKER SECURITY TRAINING PROGRAM.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Under Secretary of Homeland Security and the Secretary of Homeland Security, shall develop and issue detailed guidance for a rail worker security training program.

(b) REPORT.—

1) IN GENERAL.—The Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the guidance developed for the program under subsection (a).

2) REPORT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

SEC. 63. RAIL POLICE OFFICERS.

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended by striking ‘‘rail carrier’’ each place it appears and inserting ‘‘any rail carrier’’.

(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security for Border and Transportation Security, shall review existing rail regulations of the Department of Transportation for the purposes of identifying areas in which such regulations need to be revised to improve rail security.

SEC. 64. STUDY OF FOREIGN RAIL TRANSIT SECURITY PROGRAMS.

(a) REQUIREMENT FOR STUDY.—Within one year after the date of enactment of this Act, the Comptroller General shall complete a study of foreign transit security programs that are carried out for rail transportation systems in Japan, member nations of the European Union, and other foreign countries.

(b) PURPOSE.—The purpose of the study shall be to identify effective rail transit security measures that are in use in foreign rail transportation systems, including innovative measures and screening procedures determined effective.

(c) REPORT.—The Comptroller General shall transmit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include the Comptroller General’s assessment regarding whether it is feasible to implement within the United States any of the same or similar security measures that are determined effective under the study.

SEC. 65. PASSENGER, BAGGAGE, AND CARGO SCREENING.

(a) REQUIREMENT FOR STUDY AND REPORT.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall carry out a study of the rail passenger transportation systems, including security screening for passengers, baggag, and cargo on passenger trains including an analysis of any screening train in screening pilot programs undertaken by the Department of Homeland Security; and report the results of the study, together with any recommendations that the Secretary of Homeland Security may have for implementing a rail security screening program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(b) REPORT.—

1) IN GENERAL.—Not later than 60 days after the date of the study, the Under Secretary of Homeland Security shall complete a pilot program of random security screening of passengers and baggage at 5 rail stations served by Amtrak selected by the Under Secretary. In conducting the pilot program, the Under Secretary shall—

A. test a wide range of explosives detection technologies, devices and methods;

B. require that intercity rail passengers produce government-issued photographic identification that establishes the name on the passenger’s tickets prior to boarding trains; and

C. attempt to give preference to locations at the high end of risk of terrorist attack and achieve a distribution of participating train stations in terms of geographic location, size, passenger volume, and whether the station is used by commuter rail passengers as well as Amtrak passengers.

(c) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 114(u)(2) of title 49, United States Code, there shall be made available to the Secretary of Homeland Security to carry out this section $5,000,000 for fiscal year 2006.

SEC. 66. LIFE AND SAFETY IMPROVEMENTS.

(a) LIFE-SAFETY NEEDS.—The Secretary of Transportation is authorized to make grants to Amtrak for improving fire protection and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY; Baltimore & Potomac; a modified plan, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation the portion of the plan the Secretary finds the plan is still incomplete, and the Secretary deems appropriate.

(b) REVIEW OF PLANS.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans and approval or disapproval of the plans within 45 days after the date on which each such plan is submitted by Amtrak. The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—

1) FOR TUNNELS.—For the Baltimore & Potomac tunnel and the Union tunnel, the Secretary may have for the failure.

2) FOR TUNNELS.—The Secretary shall—

A. obtain financial contributions or compensation from other tunnel users; and

B. make available to the Secretary of Transportation for fiscal year 2006 $10,000,000; for fiscal year 2007 $10,000,000; for fiscal year 2008 $10,000,000; for fiscal year 2009 $8,000,000; for fiscal year 2010 $8,000,000; for fiscal year 2011 $5,000,000 for fiscal year 2012 $5,000,000; for fiscal year 2013 $8,000,000; and for fiscal year 2014 $8,000,000.

(d) AVAILABLE FUNDING.—Amounts appropriated pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary may not make amounts available to Amtrak for obligation or expenditure under subsection (a) until the Secretary has approved an engineering and financial plan for such projects and, unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak, including a project cost estimate, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports, and such other matters the Secretary deems appropriate.

(f) REVIEW OF PLANS.—The Secretary of Transportation shall disapprove the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. The Secretary may, if the Secretary determines that a plan is incomplete or deficient, specify the deficiencies and the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary’s notification, submit a modified plan for the Secretary’s review. Within 15 days after receiving a modified plan in a manner the Secretary deems appropriate, Amtrak may appeal the Secretary’s decision, and the Secretary shall, upon the petition, amend the plan to reflect the changes.

(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

1) consider the extent to which rail carriers other than Amtrak use the tunnels;

2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

3) obtain financial contributions or compensation from such carriers at levels reflecting the extent of their use of the tunnels, if feasible.
SEC. 07. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) In General.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

"§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents.

"(a) Submission of Plan.—Not later than 6 months after the date of the enactment of the Department of Homeland Security Appropriations Act, 2006, Amtrak shall submit to the Administrator of the National Transportation Safety Board and the Secretary of Transportation a plan for addressing the needs of the families of passengers involved in an accident resulting in a loss of life.

"(b) Contents of Plan.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

"(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of passengers aboard the train (whether or not such names have been verified) and will periodically update the list.

"(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

"(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

"(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

"(5) A process by which the family of each passenger will be consulted about the disposal of all remains and personal effects of the passenger, within Amtrak's control; and, that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 30 months.

"(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers described in paragraph (5).

"(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

"(c) Use of Information.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any information contained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

"(d) Limitation on Liability.—Amtrak shall not be liable for damages in any action brought by the State or any other person for personal injury or death out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

"(e) Limitation on Statutory Construction.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have to the families of passengers involved in a rail passenger accident.

"(f) Authorization of Appropriations.—There are appropriated to the Secretary of Transportation for the use of Amtrak $500,000 for fiscal year 2006 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended."

SEC. 08. SYSTEMWIDE AMTRAK SECURITY UPGRADES.

(a) In General.—Subject to subsection (c), the Under Secretary of Homeland Security for Border and Transportation Security is authorized to make grants, through the Secretary of Transportation, to Amtrak—

"(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

"(2) to secure Amtrak stations;

"(3) to obtain a watch list identification system approved by the Under Secretary;

"(4) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

"(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

"(6) to hire additional police and security officers, including canine units; and

"(7) to expand emergency preparedness efforts.

"(b) Conditions.—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless the projects are contained in a systemwide security plan approved by the Under Secretary, in consultation with the Secretary, the Secretary of Homeland Security, and the Under Secretary of Homeland Security for Border and Transportation Security, and, for capital projects, meet the requirements of section 24317. The Secretary shall also take into account passenger priorities and the Secretary shall equitably distribute the funds authorized by this section. Amounts appropriated pursuant to this section may be made—

"(1) in excess of $65,000,000 to Amtrak; or

"(2) in excess of $100,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

"(c) Authorization of Appropriations.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $70,000,000 for fiscal years 2006 through 2010 to carry out the purposes of this section. Amounts appropriated pursuant to this section shall remain available until expended.

"(d) High Hazard Materials Defined.—In this section, the term "high hazard materials" includes —

"(1) hazardous materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia.

"(e) Authority to Grant Transportation Security Act Reimbursements.—The Under Secretary shall ensure that the Secretary of Homeland Security determines that the critical rail transportation security needs are to be met—

"(1) for the full cost of the security enhancements.

"(2) for capital projects, meet the requirements of section 24317. The Secretary shall also take into account passenger priorities and the Secretary shall equitably distribute the funds authorized by this section. Amounts appropriated pursuant to this section may be made—

"(1) in excess of $65,000,000 to Amtrak; or

"(2) in excess of $100,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

"(f) Authorization of Appropriations.—There are authorized to be appropriated to the Under Secretary of Homeland Security for Border and Transportation Security $70,000,000 for fiscal years 2006 through 2010 to carry out the purposes of this section. Amounts appropriated pursuant to this section shall remain available until expended.
SEC. 10. OVERSIGHT AND GRANT PROCEDURES.

(a) Secretarial Oversight.—The Secretary of Transportation may use up to 0.5 percent of amounts made available to Amtrak for capital projects under this title to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

(b) Use of Funds.—The Secretary may use amounts available under subsection (a) of this section to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of assistance under this title.

(c) Procedures for Grant Award.—The Under Secretary shall prescribe procedures and schedules for the awarding of grants under this title and other applicable requirements and criteria developed by the Under Secretary.

(d) Authorization of Appropriations.—

(1) The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

(2) The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

SEC. 11. RAIL SECURITY RESEARCH AND DEVELOPMENT PROGRAM.

(a) Establishment of Research and Development Program.—The Under Secretary of Homeland Security for Border and Transportation Security shall establish a program to conduct research and development for the purpose of improving freight and passenger rail security that may include research and development projects to—

(1) reduce the vulnerability of passenger trains to an attack;

(2) develop emergency response techniques and technologies;

(3) develop improved freight technologies, including—

(A) technologies for sealing rail cars;

(B) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety;

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety;

(4) other projects recommended in the report required by section 901.

(b) Coordination With Other Research Initiatives.—The Secretary of Homeland Security for Border and Transportation Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department and the Department of Transportation. The Under Secretary of Homeland Security for Border and Transportation Security shall carry out any research and development project authorized by this section in cooperation with the Secretary of Transportation if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a facility or capability that would be useful in carrying out the project.

(c) Accountability.—The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and other criteria developed by the Under Secretary.

(d) Authorization of Appropriations.—

(1) The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

(2) The procedures shall include the execution of a grant agreement between the grant recipient and the Under Secretary. The Under Secretary shall issue a final rule establishing the procedures not later than 90 days after the date of enactment of this Act.

SEC. 12. WELD RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) Track Standards.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(1) require each track owner using continuous welded rail track to include procedures in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations to improve the emergency response training; and

(2) promulgate rules that require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

(b) Tank Car Safety.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall carry out a research program to periodically review continuous welded rail joint bar inspection data from railroads and Administration track inspectors and, whenever the Administration determines that it is necessary or appropriate, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail.

(c) older Tank Car Impact Resistance

(1) an assessment of the current program of older tank car tests to determine the impact of alternative technologies and agencies with respect to the impact of alternative technologies on the older tank car industry, including—

(2) technologies to detect a breach in a tank car and transmit information about the integrity of the tank car to the train crew;

(3) technologies to detect a breach in a tank car, with a focus on tank cars that carry high hazard materials (as defined in section 42301(e) of this title);


(6) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers travelling between the United States and Canada to the Department of Homeland Security; and

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening passenger lists for rail passengers travelling between the United States and Canada.

SEC. 15. WHISTLEBLOWER PROTECTION PROGRAM.

(a) In General.—Subchapter A of chapter 205 of title 49, United States Code, is amended by inserting after section 20517 the following:

“§20516. Whistleblower protection for rail security matters

(a) Discrimination Against Employee.—

(1) Nothing in this subchapter—

(A) shall prevent an employer, or any foreign commerce, from discharging an employee or otherwise discriminating against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

(B) provided, caused to be provided, or is about to provide or cause to be provided, to any Federal or State proceeding relating to a perceived threat to security; or

(2) provided, caused to be provided, or is about to provide or cause to be provided, to any Federal or State proceeding relating to a perceived threat to security; or

(3) provided, caused to be provided, or is about to provide or cause to be provided, to any Federal or State proceeding relating to a perceived threat to security; or

(b) Protection of Interests.—

(1) No individual is subject to an order, decision, or other action taken by the Secretary of Homeland Security, or the Secretary of Transportation, that would be in violation of any law, rule or regulation related to rail security.
"(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding involving National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim, the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 212 of this title, including the burdens of proof, applies to any complaint brought under this section.

(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under this subsection until another provision of law for the same allegedly unlawful act of the carrier.

(e) DISCLOSURE OF IDENTITY.—

(1) In general.—A person provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may disclose the name of an employee who has provided information about an alleged violation of this section.

(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

(f) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20115 the following:

"2016. Whistleblower protection for rail security matters."

SEC. 16. HAZMAT ROUTING COMMISSION.

(a) IN GENERAL.—The President shall establish and appoint the members of a commission to study and make recommendations to the President concerning—

(1) the routing of hazardous materials being transported by rail through or near facilities at high risk for catastrophic damage due to any accident involving the leakage, spilling, or release of such materials;

(2) alternative routings, the construction of additional rail facilities, and other risk reduction strategies to address issues associated with the rail transportation of such materials through or near such facilities; and

(3) feasibility and funding strategies and mechanisms, including such alternative routings and other risk reduction strategies, including cost-benefit analyses.

(b) REPORT.—The commission shall report its findings and recommendations to the President within 12 months after the date of enactment of this Act and transmit a copy of the report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on Transportation and Infrastructure.

SA 1197. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 78, line 19 after "based on", insert "risk and".

SA 1198. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 78, line 22: strike $425,000,000 and insert $2,058,178,673.

On page 78, line 13: strike $365,000,000 and insert $1,878,088,040.

On page 78, line 16: strike $200,000,000 and insert $1,029,089,337.

On page 78, line 22: strike $5,000,000 and insert $25,727,233.

On page 78, line 24: strike $10,000,000 and insert $51,454,467.

On page 77, line 18: strike $2,689,000,000 and insert $13,863,377,000.

On page 77, line 20: strike $1,518,788,066 and insert $311,544,668.

On page 79, line 1: strike $100,000,000 and insert $51,454,467.

On page 79, line 5: strike $50,000,000 and insert $257,272,394.

On page 79, line 7: strike $50,000,000 and insert $257,272,394.

On page 79, line 9: strike $50,000,000 and insert $205,817,867.

On page 79, line 21: strike $321,300,000 and insert $1,653,252,019.

On page 81, line 24: strike "$615,000,000" and insert "$715,000,000" and strike "$500,000,000" and insert "$800,000,000".

SA 1200. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 81, line 24, strike "$615,000,000" and insert "$715,000,000" and strike "$500,000,000" and insert "$800,000,000".

SA 1201. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 81, line 20 and insert the following:

"award: Provided further, That any recipient of Federal funds granted through the State Homeland Security Grant Program, the Law Enforcement Terrorism Prevention Program, and the Urban Area Security Initiative Program, or any predecessor or successor to these programs, as appropriated in fiscal year 2004 and fiscal year 2005, shall expend funds pursuant to the relevant, approved State plan by September 30, 2007: Provided further, That any recipient of Federal funds granted through any program described in the preceding proviso, as appropriated in fiscal year 2006, shall expend funds pursuant to the relevant, approved State plan by September 30, 2008: Provided further, That any funds not expended by September 30, 2007 or September 30, 2008, respectively, as required by the preceding 2 provisos shall be returned to the Department of Homeland Security to be reallocated to State and local entities based on risk and in accordance with the assessments now being conducted by the States under Homeland Security Presidential Directive 8."

SA 1202. Mr. DODD (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, line 26: strike $65,000,000 and insert $51,454,467.

On page 79, line 1: strike $100,000,000 and insert $314,544,698.

On page 79, line 5: strike $50,000,000 and insert $257,272,394.

On page 79, line 7: strike $50,000,000 and insert $257,272,394.

On page 79, line 9: strike $40,000,000 and insert $205,817,867.

On page 81, line 21: strike $321,300,000 and insert $1,653,252,019.

On page 81, line 24: strike "$615,000,000" and insert "$715,000,000" and strike "$500,000,000" and insert "$800,000,000".

On page 81, line 26: strike "$65,000,000" and insert "$800,000,000".

On page 82, line 12: strike $180,000,000 and insert $926,284,000.

On page 83, line 12: strike $203,499,000 and insert $1,947,210,000.

On page 85, line 3: strike $194,000,000 and insert $998,327,800.

SA 1203. Mr. CORNYN (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, between lines 11 and 12, insert the following:

"TITLE VI—HOMELAND SECURITY GRANT ENHANCEMENTS"

SEC. 601. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Funding Our Risks With Appropriate Resource Disbursement Act of 2005" or the "Homeland Security FORWARD Funding Act of 2005."

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

Section 601. Short title; table of contents.

Section 602. Risk-based funding for homeland security.

Section 603. Essential capabilities, task forces, and standards.

Section 604. Effective administration of homeland security grants.

Section 605. Implementation and definitions.

SEC. 602. RISK-BASED FUNDING FOR HOMELAND SECURITY.

(a) RISK-BASED FUNDING IN GENERAL.—The Homeland Security Act of 2002 (Public Law 107-296, 116 Stat. 2137, 8 U.S.C. 2301 et seq.) is amended by adding at the end the following:

"TITLE XVIII—RISK-BASED FUNDING FOR HOMELAND SECURITY"

SEC. 1801. RISK-BASED FUNDING FOR HOMELAND SECURITY.

(a) RISK-BASED FUNDING.—The Secretary shall ensure that homeland security grants..."
CITIZEN CORPS PROGRAM.—The Citizen Corps program, under the Department, or any successor to such grant program.

(4) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the Fire and Emergency Management Assistance Act (42 U.S.C. 5195 et seq.), as amended by subsection (a), is amended by subsection (b) of section 331 of Public Law 107–296; 6 U.S.C. 361 et seq., the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (113 Stat. 1047 et seq.), and the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).


(4) EFFECT ON COVERED GRANTS.—Nothing in this title shall be construed to require the elimination of a covered grant program.

(5) COVERED GRANT ELIGIBILITY AND CRITERIA.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program, under the Department, or any successor to such grant program.

(2) EXISTING URBAN AREA SECURITY INITIATIVE AREAS.—Notwithstanding subparagraphs (B) and (C) of section 1807(b), a geographic area shall be designated as a high-threat urban area for purposes of the Urban Area Security Initiative under section 1803.

(3) STATE HOMELAND SECURITY PLANS.—

(1) SUBMISSION OF PLANS.—The Secretary shall require that any State applying to the Secretary for a covered grant shall submit to the Secretary a 3-year State homeland security plan that:

(A) demonstrates the extent to which the State has achieved the essential capabilities that apply to the State;

(B) demonstrates the needs of the State necessitating homeland security preparedness activities funded by covered grants;

(C) includes a prioritization of such needs based on threat, vulnerability, and consequence assessment factors applicable to the State;

(D) describes how the State intends to address such needs at the city, county, regional, tribal, State, and interstate level, including a precise description of any regional structure the State has established to address the State homeland security preparedness activities funded by covered grants;

(E) to use all Federal, State, and local resources available for the purpose of addressing such needs; and

(F) to give particular emphasis to regional planning and cooperation, including the activities of multi-jurisdictional planning and agencies governed by local officials, both within its jurisdictional borders and with neighboring States;

(G) is in consultation with and subject to appropriate comment by local governments within the State; and

(H) with respect to the emergency preparedness of first responders, addresses the unique aspects of terrorism as part of a comprehensive State emergency management plan.

(2) APPROVAL BY SECRETARY.—The Secretary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

(3) APPLICATION FOR GRANT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, any State, region, directly eligible tribe, or operator of an airport, port, or similar facility may apply for a covered grant from the Secretary at such time, in such manner, and containing such information as is required under this subsection, or as the Secretary may reasonably require.

(2) DEADLINES FOR APPLICATIONS AND AWARDS.—All applications for covered grants shall be submitted at such time as the Secretary may reasonably require for the fiscal year for which they are submitted. The Secretary shall award covered grants pursuant to all approved applications for such fiscal year for which an award is practicable, but not later than March 1 of such year.

(3) AVAILABILITY OF FUNDS.—All funds awarded by the Secretary under covered grants in a fiscal year shall be available for obligation through the end of the subsequent fiscal year.

(4) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall require that each applicant include in its application, at a minimum—

(A) the purpose for which the applicant seeks covered grant funds and the reasons why the applicant needs grants to meet the essential capabilities for terrorism preparedness within the State, region, or directly eligible tribe or at the airport, port, or similar facility to which the application pertains;

(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of funds proposed in the application, including, where applicable, the amount not passed through under section 1806(a)(1), would assist in fulfilling the essential capabilities specified in such plan or plans;

(C) a statement of whether a mutual aid agreement exists; and

(D) if the applicant is a State, a description of how the State plans to allocate the covered grant funds to regions, local governments, and Indian tribes;

(E) if the applicant is a region—

(i) a precise geographical description of the region and a specific description of all participating and nonparticipating local governments within the geographical area comprising that region;

(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant;

(iii) a designation of a specific individual to serve as regional liaison; and

(iv) a description of how the governmental entity administering the expenditure of funds under the covered grant program shall allocate the covered grant funds to States, local governments, and Indian tribes;

(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds; and

(G) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as tribal liaison.

(5) REGIONAL APPLICATIONS.—

(A) RELATIONSHIP TO STATE APPLICATIONS.—Any application submitted by the Secretary shall be accompanied with an application submitted by the State or States of which such region is a part.

(B) Opportunity for State review and comment.—
(A) SUBMISSION TO THE STATE OR STATES.—

"(i) coordinate with Federal, State, and private sector officials on the prioritization of additional needs under subsection (c)(1)(C).

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region concerning terrorism preparedness; and

"(iii) administer, in consultation with State, local, regional, and private officials with respect to each regional application, to improve the region’s access to covered grants; and

"(D) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO REGIONS.—Any State that receives a regional award under subparagraph (C) shall certify to the Secretary, by not later than 30 days after the expiration of the period described in subparagraph (C) with respect to the grant, that the State has made available to the region the required funds and resources in accordance with subparagraph (C).

"(E) DIRECT PAYMENTS TO REGIONS.—If any State desires to pass through a regional award to a region as required by subparagraph (C) within 45 days after receiving such award and direct such grant for its use or for extension of such period under section 1806(h)(2), the region may petition the Secretary to receive directly the portion of the regional award that is passed through to such region under subparagraph (C).

"(F) REGIONAL LIASONS.—A regional liaison designated under paragraph (4)(E)(iii) shall—

"(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

"(ii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO THE STATE OR STATES.—

"(B) OPPORTUNITY FOR STATE COMMENT.—

Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe’s application with the State’s homeland security plan. Any such comments shall be submitted to the Secretary concurrently with the submission of the State and regional applications.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans, and to approve any application of such tribe. The Secretary shall notify each State within the boundaries of which any part of such tribe is located of the approval of an application by such tribe.

"(D) TRIBAL LIASONS.—A tribal liaison designated under paragraph (4)(G) shall—

"(1) coordinate with Federal, State, and private sector officials to assist in the development of the application of such tribe and to improve the tribe’s access to covered grants; and

"(2) administer, in consultation with State, local, regional, and private officials, covered grants awarded to such tribe.

"(E) LIMITATION ON THE NUMBER OF DIRECT GRANTS.—The Under Secretary, in consultation with the Under Secretary for Indian Affairs, shall—

"(i) develop, update, and make available a standardization plan of the Federal government for the purposes of homeland security grants awarded under this chapter; and

"(ii) develop a process for receiving applications for homeland security grants awarded under this chapter.

"(F) ADMINISTERING THE PROGRAM.—The Under Secretary shall—

"(1) determine the extent to which to prioritize covered grants, shall give great weight to threats of terrorism based on their specificity and credibility, including an analysis of any other relevant information;

"(2) provide a process for the Secretary of Homeland Security to consult with the Head of the Department and the Office of the Secretary of Homeland Security to develop and implement a strategy for the prioritization of covered grants, shall give great weight to threats of terrorism based on their specificity and credibility, including an analysis of any other relevant information;

"(3) provide a process for the Secretary of Homeland Security to consult with the Head of the Department and the Office of the Secretary of Homeland Security to develop and implement a strategy for the prioritization of covered grants, shall give great weight to threats of terrorism based on their specificity and credibility, including an analysis of any other relevant information;

"(4) development of a process for receiving input from State, local, regional, and private sector officials within the region concerning terrorism preparedness; and

"(5) maintain a process for receiving input from Federal, State, local, regional, and private sector officials within the region concerning terrorism preparedness.

"(G) LIASONS.—A liaison designated under paragraph (4)(E)(iii) shall—

"(1) coordinate with Federal, State, and private sector officials on the prioritization of additional needs under subsection (c)(1)(C).

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region concerning terrorism preparedness; and

"(iii) administer, in consultation with State, local, regional, and private officials with respect to each regional application, to improve the region’s access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO THE STATE OR STATES.—

"(B) OPPORTUNITY FOR STATE COMMENT.—

Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe’s application with the State’s homeland security plan. Any such comments shall be submitted to the Secretary concurrently with the submission of the State and tribal applications.

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"(iii) administer, in consultation with State, local, regional, and private officials with respect to each regional application, to improve the region’s access to covered grants; and

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"(3) provide a process for the Secretary of Homeland Security to consult with the Head of the Department and the Office of the Secretary of Homeland Security to develop and implement a strategy for the prioritization of covered grants, shall give great weight to threats of terrorism based on their specificity and credibility, including an analysis of any other relevant information;

"(4) development of a process for receiving input from State, local, regional, and private sector officials within the region concerning terrorism preparedness; and

"(5) maintain a process for receiving input from Federal, State, local, regional, and private sector officials within the region concerning terrorism preparedness.

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"(1) coordinate with Federal, State, local, regional, and private officials on the prioritization of additional needs under subsection (c)(1)(C).

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region concerning terrorism preparedness; and

"(iii) administer, in consultation with State, local, regional, and private officials with respect to each regional application, to improve the region’s access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO THE STATE OR STATES.—

"(B) OPPORTUNITY FOR STATE COMMENT.—

Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe’s application with the State’s homeland security plan. Any such comments shall be submitted to the Department along with the application of such State or States.
(3) Provision of Essential Capabilities.—The Secretary shall ensure that a detailed description of the essential capabilities established under paragraph (1) is provided to the States and local governments and that the States shall make the essential capabilities available as necessary and appropriate to local governments and operators of air transportation and other similar facilities within their jurisdictions.

(b) Objectives.—The Secretary shall ensure that essential capabilities established under this section meet the following objectives:

(1) Specificity.—The determination of essential capabilities specifically shall describe the training, planning, personnel, and equipment that different types of communities in the Nation should possess, or to which they should have access, in order to meet the Department’s goals for terrorism preparedness based upon—

(A) the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States;

(B) the types of threats, vulnerabilities, geography, size, and other factors that the Secretary has determined to be applicable to each different type of community; and

(C) the principles of regional coordination and mutual aid among State and local governments.

(2) Flexibility.—The establishment of essential capabilities shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined and internationally coordinated terrorism preparedness goals within a specified timeframe.

(3) Measurability.—The establishment of essential capabilities shall be designed to enable measurement of progress toward specific terrorism preparedness goals.

(4) Comprehensiveness.—The determination of essential capabilities for terrorism preparedness shall be made within the context of a comprehensive State emergency management system.

(c) Factors to Be Considered.—

(1) In General.—In establishing essential capabilities under subsection (a), the Secretary shall consider the variables of threat, vulnerability, and consequence with respect to the Nation’s population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

(2) Critical Infrastructure Sectors.—The Secretary shall consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

(A) Agriculture.

(B) Banking and finance.

(C) Chemical industries.

(D) Defense industrial base.

(E) Emergency services.

(F) Energy.

(G) Food.

(H) Government.

(I) Postal and shipping.

(J) Public health.

(K) Information and telecommunications networks.

(L) Transportation.

(M) Water.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be considered the order of priority for consideration of the importance of such sectors.

(3) Types of Threat.—The Secretary specifically shall consider the following types of threat to the critical infrastructure sectors described in paragraph (2), and to populations in all areas of the Nation, urban and rural:

(A) Biological threats.

(B) Nuclear threats.

(C) Radiological threats.

(D) Incendiary threats.

(E) Chemical threats.

(F) Explosives.

(G) Suicidal bombers.

(H) Cyber threats.

(4) Other Threats.—The Secretary shall consider the following other threats that may be known activity of any terrorist group. The order in which the types of threat are listed in this section shall not be construed as an order of priority for consideration of the importance of such threats.

(4) Consideration of Additional Factors.—In establishing essential capabilities under subsection (a)(1), the Secretary shall take into account any other specific threat to a population (including a transcontinental commuting or tourist population) or critical infrastructure sector that the Secretary has determined to be essential.

SEC. 1804. TASK FORCE ON ESSENTIAL CAPABILITIES.

(a) Establishment.—To assist the Secretary in establishing essential capabilities under section 1803(a), the Secretary shall establish an advisory body pursuant to section 871(a) not later than 60 days after the date of enactment of this section, which shall be known as the Task Force on Essential Capabilities.

(b) Report.—

(1) In General.—The Task Force shall submit to the Secretary, not later than 9 months after its establishment by the Secretary under subsection (a) and every 3 years thereafter, a report on its recommendations for essential capabilities for preparedness for terrorism.

(2) Contents.—The report shall—

(A) include a priority ranking of essential capabilities in order to provide guidance to the Secretary and to Congress on determining the appropriate allocation of, and funding levels for, essential first responder disciplines; and

(B) set forth a methodology by which the Secretary shall determine the extent to which it possesses or has access to, and the capability to acquire, essential capabilities that are necessary for essential first responder disciplines from the Department of Health and Human Services, or that have been determined to be essential and have undertaken to support the development of, promulgate, and support the implementation of, voluntary consensus codes and standards development community, particularly those with expertise in first responder disciplines; and

(c) Membership.—(1) Members shall be selected from the emergency response field, including fire service and law enforcement, hazardous materials response, emergency medical services, and emergency management personnel (including public works personnel routinely engaged in emergency response).

(2) Health scientist, emergency and impa
tient medical providers, and public health professionals, including emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

(3) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus codes and standards development community, particularly those with expertise in first responder disciplines; and

(d) Applicability of Federal Advisory Committee Act.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552(b)(c) of title 5, United States Code, shall apply to the Task Force.

(2) Coordination with the Department of Health and Human Services.—In the selection of members of the Task Force who are health professionals, including emergency medical professionals, the Secretary shall coordinate the selection of the Secretary of Health and Human Services.

(3) Ex Officio Members.—(1) The Secretary and the Secretary of Health and Human Services shall each designate 1 or more officials of their respective Departments to serve as ex officio members of the Task Force. One of the ex officio members from the Department of Health and Human Services shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act (5 App. U.S.).

(e) Applicability of Federal Advisory Committee Act.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552(b)(c) of title 5, United States Code, shall apply to the Task Force.

SEC. 1805. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

(a) Equipment Standards.—

(1) In General.—The Secretary, in consultation with the Under Secretary for Emergency Preparedness and Response and Science and Technology and the Director of the Office of Science and Technology Policy, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and support the implementation of, voluntary consensus standards for the performance, use, and validation of first responder equipment.
for purposes of section 1802(e)(7). Such standards—

"(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards developed or promulgated, and shall take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed;

"(B) shall be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety; and

"(D) shall cover all appropriate uses of the equipment.

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall specifically consider the following categories of first responder equipment:

"(A) Communication equipment.

"(B) Radiation detection and analysis equipment.

"(C) Biological detection and analysis equipment.

"(D) Chemical detection and analysis equipment.

"(E) Decontamination and sterilization equipment.

"(F) Personal protective equipment, including garments, boots, gloves, and hoods, and other protective clothing.

"(G) Respiratory protection equipment.

"(H) Interoperable communications, including wireless and wireline voice, video, and data equipment.

"(I) Explosive mitigation devices and explosive detection and analysis equipment.

"(J) Containment vehicles.

"(K) Contaminant-resistant vehicles.

"(L) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate.

"(b) TRAINING STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office of State and Local Government Coordination, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for first responder training carried out with grants provided under covered grant programs, that will enable State and local government first responders to achieve optimum levels of terrorism preparedness as quickly as practical. Such standards shall give priority to providing training to—

"(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

"(B) facilitate first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of first responder activities:

"(A) Regional planning.

"(B) Joint exercises.

"(C) Intelligence collection, analysis, and sharing.

"(D) Emergency notification of affected populations.

"(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

"(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

"(3) CONSISTENCY.—In carrying out this subsection, the Secretary shall ensure that such training standards are consistent with the principles of emergency preparedness for all hazards.

"(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

"(1) the National Institute of Standards and Technology;

"(2) the National Fire Protection Association;

"(3) the National Association of County and City Health Officials;

"(4) the Association of State and Territorial Health Officials;

"(5) the American National Standards Institute;

"(6) the National Institute of Justice;

"(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

"(8) the National Public Health Performance Standards Program;

"(9) the National Institute for Occupational Safety and Health;

"(10) the American Society for Testing and Materials;

"(11) the International Safety Equipment Association;

"(12) the Emergency Management Accreditation Program;

"(13) the National Domestic Preparedness Consortium; and

"(14) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

"(d) COORDINATION WITH SECRETARY OF HHS.—In establishing any national voluntary consensus standards under this section for first responder equipment or training that involve or relate to health professionals, including emergency medical professionals, the Secretary shall coordinate activities under this section with the Secretary of Health and Human Services.

SEC. 604. EFFECTIVE ADMINISTRATION OF HOME- LAND SECURITY GRANTS.

(a) USE OF GRANT FUNDS AND ACCOUNTABILITY.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.), as amended by sections 802 and 803, is amended by adding at the end the following:

"SEC. 1806. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

"(a) IN GENERAL.—A covered grant may be used for—

"(1) purchasing, upgrading, or maintaining equipment, including computer software, to enhance terrorism preparedness and response;

"(2) exercises to strengthen terrorism preparedness and response;

"(3) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and countermeasures;

"(4) developing or updating response plans;

"(5) establishing or enhancing mechanisms for sharing terrorism threat information;

"(6) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

"(7) additional personnel costs resulting from—

"(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

"(B) travel to and participation in exercises and training in the use of equipment and on prevention activities;

"(C) the temporary replacement of personnel during travel to or participation in exercises and training in the use of equipment and on prevention activities; and

"(D) participation in information, investigatory, and intelligence-sharing activities specifically related to terrorism prevention;

"(8) the costs of equipment (including software) required to successfully transmit, handle, and store classified information;

"(9) target hardening to reduce the vulnerability of high-value targets, as determined by the Secretary;

"(10) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the cost of such measures may not exceed the greater of—

"(A) $1,000,000 per project; or

"(B) such greater amount as may be approved by the Secretary, which may not exceed 10 percent of the total amount of the covered grant;

"(11) the costs of commercially available interoperable communications equipment (which, where applicable, is based on national, voluntary consensus standards) that is not otherwise reimbursable under this title, provided that the Chairman of the Federal Communications Commission, deems best suited to facilitate interoperability, coordination, and integration between and among emergency communications systems, and complies with prevailing grant guidance of the Department for interoperable communications;

"(12) educational curriculum development for first responders to ensure that they are prepared for terrorist attacks; and

"(13) training and exercises to assist public elementary and secondary schools in developing and implementing programs to instruct students regarding age-appropriate skills to prepare for and respond to an act of terrorism;

"(14) paying of administrative expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant; and

"(15) other appropriate activities as determined by the Secretary.

"(b) FACIILITATED USES.—Funds provided as a covered grant may be used—

"(1) to supplant State or local funds that have been obligated for a homeland security or other first responder-related project;

"(2) to construct buildings or other physical facilities, except for—

"(A) activities under section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5166); and

"(B) upgrading facilities to protect against, test for, and treat the effects of biological agents, which shall be included in the homeland security plan approved by the Secretary under section 1802(c);

"(3) to acquire land; or

"(4) for any State or local government cost-sharing contributions of travel to—

"(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this section shall be construed to preclude State and local governments from using covered grant funds in a manner that also enhances first responder preparedness for emergencies and disasters unrelated to acts of terrorism; or if such use assists such governments in achieving essential capabilities for terrorism preparedness established by the Secretary under section 1803.

"(d) REMUNERATION.—Costs. In addition to the activities described in subsection (a), a covered grant may be used to provide a reasonable stipend to paid-on-call or volunteer first responders who are not otherwise compensated for travel to or participation in
training covered by this section. Any such reimbursement shall not be considered compensation for purposes of rendering such a first responder an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(e) Assistance Requirement.—The Secretary shall not disapprove a request for, wholly or in part, with funds provided as a covered grant be made available for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

(f) Inspect Homeland Security Grant Funds.—Upon request by the recipient of a covered grant, the Secretary may allow funds to be transferred from one part of funds provided as the covered grant from uses specified in the grant agreement to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

(g) State, Regional, and Tribal Responsibilities.—

(1) Pass-Through.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local government entities that will receive fundings or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (g)(1); and

(2) Certifications Regarding Distribution of Grant Funds to Local Governments.—Any State that receives a covered grant shall certify to the Secretary, by not later than 90 days after the expiration of the period described in paragraph (1) with respect to the grant, not less than 80 percent of the grant recipient's grant-related overtime for law enforcement officers and personnel purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

(3) Quarterly Report on Homeland Security Spendings.—Each recipient of a covered grant shall submit a quarterly report to the Secretary not later than 30 days after the end of each fiscal quarter. Each such report shall include, for each recipient of a covered grant or a pass-through under paragraph (1)—

(A) the amount obligated to that recipient in that quarter; and

(B) the amount expended by that recipient in that quarter; and

(C) a summary description of the items purchased by such recipient with such amount.

(4) Annual Report on Homeland Security Spending.—Each recipient of a covered grant shall submit an annual report to the Secretary not later than 90 days after the end of each fiscal year. Each recipient of a covered grant that is a region shall simultaneously submit its report to each State of which any part is included in the region. Each recipient of a covered grant that is a directly eligible tribe shall simultaneously submit its report to each State within the boundaries of which any part of such tribe is located. Each report shall include the following:

(A) The amount, ultimate recipients, and dates of disbursement of all such funds expended in compliance with the grant; or pursuant to any mutual aid agreements or other sharing arrangements that apply within the State, region, or directly eligible tribe, as applicable, during the previous fiscal year.

(B) How the funds were utilized by each ultimate recipient or beneficiary during the previous fiscal year.

(C) How the funds were used by each ultimate recipient or beneficiary during the previous fiscal year.

(D) The extent to which essential capabilities identified in the applicable State homeland security plan or plans were achieved, maintained, or enhanced as a result of the expenditure of grant funds during the preceding fiscal year.

(E) The extent to which essential capabilities identified in the applicable State homeland security plan or plans remain unmet.

(F) Inclusion of Restricted Annexes.—A recipient of a covered grant may submit to the Secretary an annex to the annual report under paragraph (4) that is subject to appropriate handling restrictions, if the recipient believes that discussion in the report of unmet needs would reveal sensitive but unclassified information.

(G) Provision of Reports.—The Secretary shall ensure that each annual report under paragraph (4) is provided to the Under Secretary for Emergency Preparedness and Response and the Office of State and Local Government Coordination.

(h) Incentives to Efficient Administration of Homeland Security Grants.—

(1) Penalties for Delay in Passing Through Local Share.—If a recipient of a covered grant that is a State fails to pass through under subsection (g)(1); or

(ii) requiring the grant recipient to distribute to local government beneficiaries all or a portion of grants funds required to be passed through under subsection (g)(1); or

(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with paragraph (g)(1), reducing the grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1); or

(iv) for each day that the grant recipient fails to pass through funds or resources in accordance with paragraph (g)(1), reducing the grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1); or

(v) it identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application;

(vi) it petitioned the grantee for the return of a portion of the overall grant for a specific purpose that is identified in the grant application; and

(vii) it petitioned the grantee for the return of the funds or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (g)(1); and

(iii) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

(j) Effect or Payment of Grant Funds to a Local Government under this Paragraph.—

(i) shall not affect any payment to another local government under this paragraph; and

(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

(k) Deadlines for Action by Secretary.—

(1) Reports to Congress.—The Secretary shall submit an annual report to Congress by December 31 of each year.

(2) Certifications to收录 Homeland Security Grant Funds.—The Secretary may—

(3) Provisions of Non-Local Share to Non-Local Share Recipients.—

(A) the Nation's progress in achieving, maintaining, and enhancing its essential capabilities established under section 1803(a) as a result of the expenditure of covered grant funds during the preceding fiscal year; and

(B) the total amount of expenditures required to attain across the United States the essential capabilities established under section 1803(a).—

(1) Finding.—Congress finds that—

(A) many emergency response providers as defined under section 1801(a) of the Homeland Security Act of 2002 (6 U.S.C. 101), as amended by this title) working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another; and

(B) their inability to do so threatens the public's safety and may result in unnecessary loss of lives and property.

(2) Sense of Congress Regarding Interoperable Communications.—It is the sense of Congress that interoperable emergency communications systems and radios should be deployed in the United States as soon as practicable for use by the emergency response provider community, and that upgraded and new digital communications systems and new digital communications standards designed to establish voluntary consensus standards for interoperability,
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(c) SENSE OF CONGRESS REGARDING CITIZEN CORPS COUNCILS.—

(1) FINDING.—Congress finds that Citizen Corps councils help to enhance local citizen participation and responsibility in terrorism preparedness by coordinating multiple Citizen Corps programs, developing community action plans, assessing possible threats, and identifying local resources.

(2) SENSE OF CONGRESS.—It is the sense of Congress that individual Citizen Corps councils should seek to enhance the preparedness and responsibility capabilities of all organizations participating in the councils, including by providing funding to as many of their participating organizations as practicable to promote local terrorism preparedness programs.

(d) REQUIRED COORDINATION.—The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness.

(e) COORDINATION OF INDUSTRY EFFORTS.—Section 102(f) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 112(f)) is amended by striking "Secretary" and inserting "Secretary shall consider the use of the telecommunication, wireless communications, and other appropriate Federal agencies and representatives of providers and participants in the telecommunications industry, shall conduct a study to determine whether it is cost effective and feasible to establish and implement an emergency telephonic alert notification system that will—"

FACILITIES BEHAVIORAL RESPONSIBILITIES.— Secretary shall submit to Congress a report regarding appropriate measures that may be undertaken to alleviate or minimize threats to their safety and welfare posed by such events.

(2) TECHNOLOGIES TO CONSIDER.—In conducting the study under paragraph (1), the Secretary shall consider the use of the telephone, wireless communications, and other existing communications networks to provide as essential action.

(3) REPORT.—Not later than 9 months after the date of enactment of this title, the Secretary shall submit to Congress a report regarding the conclusions of the study conducted under paragraph (1).

(g) STUDY OF EXPANSION OF AREA OF JURISDICTION OF OFFICE OF NATIONAL CAPITAL REGION COORDINATION.—

(1) STUDY.—The Secretary of Homeland Security, acting through the Director of the Office of National Capital Region Coordination, shall conduct a study of the feasibility and desirability of modifying the definition of "National Capital Region" applicable under section 802 of the Homeland Security Act of 2002, as amended, under the jurisdiction of the Office of National Capital Region Coordination.

(2) FACTORS.—In conducting the study under paragraph (1), the Secretary shall analyze whether expanding the geographic area under the jurisdiction of the Office of National Capital Region Coordination will—

(A) promote coordination among State and local governments within the Region, including regional governing bodies, and coordination at the federal level to either the highest or second-highest threat level under the Homeland Security Advisory System referred to in section 2605.

(B) enhance the ability of such State and local governments and the Federal Government to prevent and respond to a terrorist attack within the Region.

(3) REPORT.—Not later than 6 months after the date of the enactment of this title, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations (including recommendations for legislation to amend section 802 of the Homeland Security Act of 2002) as the Secretary considers appropriate.

SEC. 605. IMPLEMENTATION; DEFINITIONS; TABLE OF CONTENTS.

(a) TECHNICAL AND CONFORMING AMENDMENT.—Section 1014 of the USA PATRIOT ACT (42 U.S.C. 3714) is amended—

(1) by striking subsection (c)(3);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

"(c) ADMINISTRATION.—Grants under this section shall be administered in accordance with title 18 of the Homeland Security Act of 2002."

(b) TEMPORARY LIMITATIONS ON APPLICATION.—

(1) 1-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as added by this title, shall not apply during the 1-year period beginning on the date of enactment of this title—

(A) subsections (b), (c), and (e)(4) (A) and (B) of section 1802; and

(B) in section 1802(5)(A)(4)(i), the phrase "by achieving, maintaining, or enhancing the essential capabilities of the applicants on a nationwide basis,".

(2) 2-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as added by this title, shall not apply during the 2-year period beginning on the date of enactment of this title—

(A) subparagraphs (D) and (E) of section 1806(c)(4); and

(B) section 1806(1)(C).

(c) DEFINITIONS.—

(1) TITLE XVIII.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.), as amended by sections 602, 603, and 604, is amended by adding at the end the following:

"SEC. 1807. DEFINITIONS.—

In this title:

(1) BOARD.—The term 'Board' means the Homeland Security Grant Board established under section 1802(f).

(2) CONSEQUENCE.—The term 'consequence' means the assessment of the effect of a completed attack.

(3) COVERED GRANT.—The term 'covered grant' means any grant to which this title applies under section 1801(b).

(4) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe, band, nation, or other organization or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term 'elevations in the threat alert level' means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second-highest threat level under the Homeland Security Advisory System referred to in section 2605.

(6) EMERGENCY PREPAREDNESS.—The term 'emergency preparedness' shall have the same meaning that term has under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155a).

(7) ESSENTIAL CAPABILITIES.—The term 'essential capabilities' means—

A. levels, availability, and competency of emergency personnel, planning, training, and equipment accuracy of data to effectively and efficiently prevent, prepare for, and respond to acts of terrorism consistent with established practices;

B. FIRST RESPONDER.—The term 'first responder' shall have the same meaning as the term 'emergency response provider' under section 2.

C. NATIVE TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organization or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) COVERED OR ELIGIBLE TRIBE.—The term 'covered or eligible tribe' means the tribe, band, nation, or other organization or community that is set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c).

(9) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe, band, nation, or other organization or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(10) INDIGENOUS SELF-DETERMINATION.—The term 'Indian tribe' as set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c).
(2) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Paragraph (6) of section 2 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101(b)) is amended by striking “includes Federal, State, and local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency medical, and health care facilities, and related personnel, organizations, agencies, and authorities.”

(d) TABLE OF CONTENTS.—Section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101 note) is amended in the table of contents by adding at the end the following:

Title XVIII—Risk-Based Funding for Homeland Security

Sec. 1801. Risk-based funding for homeland security.

Sec. 1802. Covered grant eligibility and criteria.

Sec. 1803. Essential capabilities for homeland security.

Sec. 1804. Task Force on Essential Capabilities.

Sec. 1805. National standards for first responder equipment and training.

Sec. 1806. Use of funds and accountability requirements.

Sec. 1807. Definitions.

SA 1204. Mr. KYL (for himself and Mr. CORNYN) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

TITLe — Border Enforcement and Visa Security

Sec. 3. Section 303 of Public Law 107–173 (8 U.S.C. 1732) is amended—

(1) in the header, by striking “ENTRY AND EXIT DOCUMENTS” and inserting “TRAVEL AND ENTRY DOCUMENTS AND EVIDENCE OF STATUS”;

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

“(d) OTHER DOCUMENTS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall—

(1) in subsection (a), by adding “and any other nonimmigrant visa issued by the United States; or the possession of the alien” after “such visa”;

(2) in paragraph (2)(A), by striking “other than the visa described in paragraph (1)” and inserting “other than a visa described in paragraph (1) issued in a consular office located in the country of the alien’s nationality or foreign residence”.

Sec. 5. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(7), by adding at the end the following:

“(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who seeks admission to the United States under section 215(c) or 235(d) is inadmissible;”;

(2) in subsection (d), by inserting after paragraph (1) the following:

“(2) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to an alien described in subparagraph (C) subsection (a)(7) and may waive the application of such subparagraph, for an individual alien or a class of aliens, at the discretion of the Secretary.

Sec. 6. Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185(b)) is amended—

(1) by redesignating subsection (c) as subsection (g); and

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

“(c) The Secretary of Homeland Security is authorized to require aliens departing the United States to provide biometric data and other information relating to their immigration status.

Sec. 7. Section 235(d) of the Immigration and Nationality Act (8 U.S.C. 1185(d)) is amended by adding at the end the following:

“(d) INCLUSION OF BIOMETRIC DATA.—In conducting inspections under subsection (b), immigration officers are authorized to collect biometric data from—

(1) any applicant for admission or alien seeking to transit through the United States;

(2) any lawful permanent resident who is entitled to enter the United States, but is not regarded as seeking admission under section 101(a)(13)(C).”;

Sec. 8. Section 232 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by inserting “immigration officers are authorized to collect biometric data from any alien crewman seeking permission to land temporarily in the United States.” after “this title.”;

(e) Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to Congress a report on the full implementation of the exit portal of US-VISIT.

Sec. 9. Section 236(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)) is amended—

(1) by striking “on”;

(2) in subsection (A)—

(A) by inserting “except as provided under subparagraph (B), upon the giving of a”;

(B) by striking “or” at the end;

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

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

“(B) if the alien is a national of a non-contiguous country, has not been admitted or paroled into the United States, and was apprehended within 100 miles of the international border of the United States or presents a flight risk, as determined by the Secretary of Homeland Security, upon the giving of a bond of at least $5,000 with security approved by, and containing conditions prescribed by, the Secretary of Homeland Security or the Attorney General; or”;

(5) by adding at the end the following:

“(6) if included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of Public Law 104–208).

Sec. 10. Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1255(a)(5)) is amended—

(1) by striking “Attorney General” and inserting “Secretary of Homeland Security”;

(2) by adding at the end the following: “Reinstatement under this paragraph shall not require a proceeding under section 240.”;

(b)(1) The amendment made by subsection (a)(1) shall take effect if enacted on March 2, 2003.

(2) The amendments made by subsection (a) shall take effect on September 30, 1996, as if included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of Public Law 104–208).

Sec. 11. The Attorney General and the Secretary of Homeland Security shall continue to operate and implement the Institutional Removal Program, which identifies removable criminal aliens in Federal and State correctional facilities, ensures such aliens are not released into the community, and removes such aliens from the United States after the completion of their sentences.

(b) The Institutional Removal Program shall be made available to all States.

(c) Law enforcement officers of a State or political subdivision of a State are authorized to hold an alien for a period of up to 14 days after the alien has completed the alien’s State prison sentence in order to effectuate the transfer to the Federal government when the alien is removable or not lawfully present in the United States.

(d) Technology, such as videconferencing, shall be used to the maximum extent practicable in order to make the Institutional Removal Program available to facilities in remote locations.

SA 1205. Mr. SHELBY (for himself, Mr. SARBANES, Mr. REED, MRS. DOLE,
Mr. DODD, Mr. SCHUMER, Ms. STABENOW, Mr. CORZINE, Mr. BYRD, Mrs. CLINTON, Mr. LIEBERMAN, Ms. MUKULSI, Mr. LAUTENBERG, Mr. KENNEDY, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

(a) FINDINGS.—The Senate finds that—

(1) F REQUENCY AND SCOPE .—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

SEC. 1208. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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:

(1) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 1209. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 1208. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 1209. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 1208. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.

SEC. 1209. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security 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. 519. QUADRENNIAL HOMELAND DEFENSE REVIEW.

(a) IN GENERAL.—

(1) FREQUENCY AND SCOPE.—Beginning in fiscal year 2006, and every four years thereafter, the Secretary of Homeland Security shall conduct a survey of State and local government emergency officials that—

(A) involve enough respondents to get an adequate, representational response from public, private, fire, and police planners on the regional, state, county, and municipal levels, and other State and local homeland security officials as determined by the Secretary; and

(B) identifies problems relating to the effectiveness and user-friendliness of programs in which the Department of Homeland Security interacts with State and local officials, including grant management, intelligence sharing, training, incident management, regional coordination, critical infrastructure protection, and long-term homeland security planning.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that the Congress should pass legislation establishing enforceable federal standards to protect against a terrorist attack on chemical facilities within the United States.
that national homeland defense strategy required to execute successfully the full range of missions called for in the national homeland defense strategy delineated under paragraph (1).

(3) Identify—

(A) the budget plan required to provide sufficient resources to successfully execute the full range of missions called for in the national homeland defense strategy at a low-to-modest level of risk, and

(B) any additional resources required to achieve such a level of risk.

(c) Level of Risk.—The assessment of the level of risk for purposes of subsection (b)(3) shall be conducted by the Director of National Intelligence.

(d) Reporting.—

(1) IN GENERAL.—The Secretary of Homeland Security shall submit a report regarding each quadrennial homeland defense review to the Committee on Homeland Security and the Governmental Affairs Committee of the Senate and the Committee on Homeland Security of the House of Representatives. The report shall be submitted not later than September 30 of the year in which the review is conducted.

(2) CONTENTS OF REPORT.—The report submitted under paragraph (1) shall include—

(A) the results of the quadrennial homeland defense review;

(B) the threats to the assumed or defined national homeland security interests of the United States that were examined in the course of the review and the scenarios developed in the examination of those threats;

(C) the status of cooperation among Federal agencies in the effort to promote national homeland security;

(D) the status of cooperation between the Federal Government and State governments in preparing for emergency response to any terrorist attacks and insufficient emergency access and exits; and

(E) any other matter the Secretary of Homeland Security considers appropriate.

SA 1210. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.

On page 100, between lines 11 and 12, insert the following:

SEC. 519. RAIL TUNNEL SECURITY RESEARCH.

(a) FINDINGS.—The Senate finds that—

(1) railroad tunnels, and underground stations have been identified as particularly high risk terrorist targets because of the potential for large passenger volumes, confined spaces, relatively unrestricted access, and the potential for network disruptions and significant economic, political and social impact;

(2) many rail tunnels have safety problems including structural deficiencies, ventilation problems, lack of communications equipment and insufficient emergency access and exits;

(3) there are more than 800 miles of rail tunnels in transit systems across the country;

(A) security experts have identified a number of legal and training needs to prevent attacks on tunnels and to mitigate and remediate the impact of such attacks;

(B) technological needs include detection systems, dispersal control, and decontamination techniques; and

(C) training for emergency response to a variety of scenarios is also needed; and

(5) the Transportation Technology Center in Pueblo, Colorado—

(A) is one of the Nation’s largest and most advanced rail safety research centers in the Nation; and

(B) offers full-scale testing, dynamic modeling, performance monitoring, technical analyses, feasibility and economic studies as well as training classes to prepare first responders and test new safety technologies.

SA 1211. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.

On page 79, between lines 22 and 23, insert the following:

SEC. 3. INTEROPERABLE COMMUNICATION.

On page 79, strikes lines 21 and 22 and insert in lieu thereof the following:

(b) Sense of the Senate.—It is the sense of the Senate that—

(1) the Department of Homeland Security is urged to invest in research to promote rail tunnel safety; as well as training to ensure first responders are prepared to respond to rail tunnel emergencies; and

(2) employing existing Federal facilities in this effort can result in efficiencies and permit this important research to proceed at decreased cost to the taxpayer and with minimal interference with ongoing passenger and freight rail traffic.

SA 1212. Ms. STABENOW submitted an amendment intended to be proposed by her to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.

On page 79, between lines 22 and 23, insert the following:

SEC. 10. RAIL TUNNEL SECURITY.

On page 79, strikes lines 21 and 22 and insert in lieu thereof the following:

On page 77, line 18, strike ''$2,694,300,000'' and insert ''$2,737,300,000''.

On page 79, line 22, strike the colon and insert a period.

On page 79, between lines 22 and 23, insert the following:

(7) $43,000,000 for interoperable communications equipment grants.
SA 1215. Mrs. FEINSTEIN (for herself, Mr. CORKIN, Mr. LAUTENBERG, Mrs. BOXER, Mrs. HUTCHISON, Mr. KERRY, Mr. MARTINEZ, Mr. SCHUMER, Mr. NELSON of Florida, Mrs. CLINTON, Mr. CORZINE, and Mr. KENNEDY) proposed an amendment to amendment SA 1142 proposed by Mr. COLLINS (for himself, Mr. LIEBERMAN, Mr. DEWINE, Mr. COBURN, Mr. AKAKA, Mr. CARPER, Mr. SALAZAR, Mr. COLEMAN, Mr. VOINOVICH, Mr. REED, Mr. BINGMAN, and Mr. HAR- 
KIN) to the bill H.R. 2360, making appro- 
priations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes; as follows:

In lieu of the matter proposed to be in- 
serted, insert the following:

TITLE VI—HOMELAND SECURITY GRANT ENHANCEMENT

SEC. 601. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This title may be cited as the “Funding Our Risks With Appropriate Resource Disbursement Act of 2005” or the “Homeland Security FORWARD Funding Act of 2005”.

(b) Table of Contents.—The table of con- 
 tents for this title is as follows:

Sec. 601. Short title; table of contents.
Sec. 602. Risk-based funding for homeland security.
Sec. 603. Essential capabilities, task forces, and standards.
Sec. 604. Effective administration of homeland security grants.
Sec. 605. Implementation and definitions.

SEC. 602. RISK-BASED FUNDING FOR HOMELAND SECURITY.

(a) Risk-Based Funding in General.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is amended by adding at the end the following:

"TITLE XVIII—RISK-BASED FUNDING FOR HOMELAND SECURITY"

"SEC. 1801. RISK-BASED FUNDING FOR HOMELAND SECURITY.

"(a) Risk-Based Funding.—The Secretary shall ensure that homeland security grants are allocated based on an assessment of threat, vulnerability, and consequence to the maximum extent practicable.

"(b) Covered Grants.—This title applies to grants provided by the Department to States, local governments, and other eligible entities for the primary purpose of improving the ability of first responders to prevent, prepare for, re- spond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, and grants pro- vided by the Department for improving homeland security, including to seaports, airports, and other transportation facilities, shall be allo- cated as described in this section.

"(c) Consideration.—Such grants shall be consid- ered, to the extent determined appro- priate by the Secretary, pursuant to the pro- cedures in section 1802, to the extent that the eligibility requirements of paragraph (1) shall not apply.

"(d) Certification of Regions.—If the Secretary determines, based on an assessment of threat, vulnerability, and con- sequence, that certifying the geographic area as a region under this title is in the interest of national homeland security, the Secretary may certify a geographic area as a region if:

"(i) the geographic area meets the criteria under section 1807(10)(B) and (C); and

"(ii) the geographic area, based on an assessment of threat, vulnerability, and consequence, is necessary to achieve, maintain, or enhance the essential capabilities for terrorism preparedness that the State has established for the purpose of organizing homeland security activities funded by covered grants;

"(ii) to use all Federal, State, and local re- sources available for the purpose of address- ing such needs; and

"(ii) to address such needs at the city, county, regional, tribal, State, and inter- 
state level, including a precise description of any regional structure the State has estab- lished for the purpose of organizing home- land security preparedness activities funded by covered grants;

"(iii) with respect to the emergency prepar- edness of first responders, addresses the unique aspects of terrorism as part of a com- prehensive State emergency management plan.

"(2) Approval by Secretary.—The Sec- retary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

"(3) Consistency With State Plans.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the ap- 
pllicable State homeland security plan or plans.

"(4) Application for Grant.—Each appli- 
cant for a covered grant under this subsec- 
tion shall submit a covered grant applica- 
tion to the Secretary.

"(5) Deadlines for Applications and Awards.—All applications for covered grants shall be submitted at such time as the Sec- retary may reasonably require for the fiscal year for which they are submitted. The Secre- 
try shall award covered grants pursuant to all approved applications for such fiscal year by March 1 of such year.

"(6) Minimum Contents of Application.—The Secretary shall require that each appli- 
cant include in its application, at a mini- 
mum:

"(A) the purpose for which the applicant seeks the grant funds, including why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the State, region, or di- strict; 

"(B) a prioritization of such needs based on threat, vulnerability, and consequence factors applicable to the State;

"(C) describes how the State intends—

"(i) to address such needs at the city, county, regional, tribal, State, and inter- 
state level, including a precise description of any regional structure the State has estab- lished for the purpose of organizing home- land security preparedness activities funded by covered grants;

"(ii) to use all Federal, State, and local re- sources available for the purpose of address- ing such needs; and

"(iii) with respect to the emergency prepar- edness of first responders, addresses the unique aspects of terrorism as part of a com- prehensive State emergency management plan.

"(2) Approval by Secretary.—The Sec- retary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

"(3) Consistency With State Plans.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the ap- 
pllicable State homeland security plan or plans.

"(4) Application for Grant.—Each appli- 
cant for a covered grant under this subsec- 
tion shall submit a covered grant applica- 
tion to the Secretary.

"(5) Deadlines for Applications and Awards.—All applications for covered grants shall be submitted at such time as the Sec- retary may reasonably require for the fiscal year for which they are submitted. The Secre- 
try shall award covered grants pursuant to all approved applications for such fiscal year by March 1 of such year.

"(6) Minimum Contents of Application.—The Secretary shall require that each appli- 
cant include in its application, at a mini- 
mum:

"(A) the purpose for which the applicant seeks the grant funds, including why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the State, region, or di- 

“(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of grant funding proposed in the application, including, where applicable, the amount of any covered grant funds not passed through under section 1806(g)(1), would assist in fulfilling the essential capacities specified in such plan or plans; ”

“(C) a statement of whether a mutual aid agreement applies to the use of all or any portion of the covered grant funds; ”

“(D) if the applicant is a State, a description of plans to allocate the covered grant funds to regions, local governments, and Indian tribes; ”

“(E) the applicable regional application—

“(i) a precise geographical description of the region and a specification of all participating and nonparticipating local governments within the geographical area comprising that region; ”

“(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant; ”

“(iii) a designation of a specific individual to serve as regional liaison; and ”

“(iv) a description of how the governmental entity administering the expenditure of funds under the covered grant plans to allocate the covered grant funds to regions, local governments, and Indian tribes; ”

“(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds; ”

“(G) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as the tribal liaison; ”

“(H) REGIONAL APPLICATIONS.—

“(A) RELATIONSHIP TO STATE APPLICATIONS.—A regional application—

“(i) shall be coordinated with an application for assistance to the State or States of which such region is a part; ”

“(ii) shall supplement and avoid duplication with such State application; and ”

“(iii) shall add the unique regional aspects of such region’s terrorism preparedness needs beyond those provided for in the application of such State or States. ”

“(B) OPPORTUNITY FOR STATE REVIEW AND COMMENT.—

“(i) IN GENERAL.—To ensure coordination with an application submitted by a State or States of which such region is a part, the State shall be given an opportunity to submit its application to each State within the boundaries of which any part of such region is located. Before awarding any covered grant to a region, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such region is located to comment to the Secretary on the consistency of the region’s application with the State’s homeland security plan. Any such comments and the underpinnings rationale for such comments shall be submitted to the Secretary concurrently with the submission of the State and regional applications. ”

“(C) DISTRIBUTION OF REGIONAL AwarDS.—If the Secretary approves a regional application, then the Secretary shall distribute the applicable regional application under subparagraph (B), and each such State shall, not later than the end of the 45-day period beginning on the date after receiving a regional award, pass through to the region all covered grant funds or resources pur-
year for purposes of implementing its homeland security plan in accordance with the prioritization of additional needs under subsection (c)(1)(C).

(4) The Under Secretaries are available to and considered relevant expertise and input of the staff of their directorates are available to and considered by the Board.

SEC. 603. ESSENTIAL CAPABILITIES, TASK FORCES, AND STANDARDS.

(a) Establishment of Essential Capabilities.—

(1) In General.—For purposes of covered grants, the Secretary shall establish clearly defined essential capabilities for State and local government preparedness for terrorism, in consultation with—

(A) the Task Force on Essential Capabilities established under section 1804(b); and

(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

(2) Provision of Essential Capabilities.—The Secretary shall ensure that a detailed description of the essential capabilities established under subsection (a)(1) is provided promptly to the States and to Congress.

The States shall make the essential capabilities available as necessary and appropriate to their first responder agencies and officials and through the National Incident Management System.

(3) Types of Threat.—The Secretary shall consider the types of threats to the critical infrastructure sectors defined in paragraph (2) and to populations across the Nation, urban and rural:

(A) Biological threats.

(B) Nuclear threats.

(C) Radiological threats.

(D) Incendiary threats.

(E) Chemical threats.

(F) Explosives.

(G) Suicide bombers.

(H) Cyber threats.

(I) Any other threats based on proximity to the operations of terrorist groups.

(4) Consideration of Additional Factors.—The Secretary may specify in order to further the order in which the critical infrastructure sectors are listed in paragraph (2), and to populations in all areas of the Nation, urban and rural:

(A) Agriculture.

(B) Chemical industries.

(C) Defense industrial base.

(D) The defense industrial base.

(E) Emergency services.

(F) Energy.

(G) Food.

(H) Government.

(I) Postal and shipping.

(J) Public health.

(K) Information and telecommunications networks.

(L) Transportation.

(M) Water.

(5) Prior Measures.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness take into account any capabilities that the Secretary may specify in order to further the order in which the critical infrastructure sectors are listed in paragraph (2) and to populations in all areas of the Nation, urban and rural.

(b) Task Force on Essential Capabilities.—

(1) In General.—In establishing essential capabilities under subsection (a)(1), the Secretary shall consider the variables of threat, vulnerability, and consequences with respect to the Nation’s population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

(2) Critical Infrastructure Sectors.—The Secretary shall specifically consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

(A) Agriculture.

(B) Banking and finance.

(C) Chemical industries.

(D) Defense industrial base.

(E) Emergency services.

(F) Energy.

(G) Food.

(H) Government.

(I) Postal and shipping.

(J) Public health.

(K) Information and telecommunications networks.

(L) Transportation.

(M) Water.

(3) Types of Threat.—The Secretary shall consider the types of threats to the critical infrastructure sectors defined in paragraph (2) and to populations in all areas of the Nation, urban and rural:

(A) Biological threats.

(B) Nuclear threats.

(C) Radiological threats.

(D) Incendiary threats.

(E) Chemical threats.

(F) Explosives.

(G) Suicide bombers.

(H) Cyber threats.

(I) Any other threats based on proximity to the operations of terrorist groups.

The order in which the types of threat are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

(c) Board of Experts.—The Secretary shall establish a board of experts to identify additional threats and capabilities necessary for terrorism preparedness for the Nation’s population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

(1) In General.—The Board shall submit to the Secretary, not later than 9 months after its establishment by the Secretary in accordance with this section, a report on its recommendations for essential capabilities for preparedness for terrorism.

(2) Contents.—The report shall—

(A) include a prioritization of essential capabilities in order to provide guidance to the Secretary and to Congress on determining the appropriate levels of funding needed to meet first responder needs;

(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

(C) describe the availability of national voluntary consensus standards, and whether there is need for new national voluntary consensus standards, with respect to first responder training and equipment;

(D) include such additional matters as the Secretary may specify in order to further the order in which the critical infrastructure sectors are listed in paragraph (2) and to populations across the Nation, urban and rural.

(d) Prior Measures.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness are made within the context of a comprehensive State emergency management system.

(1) In General.—The Task Force shall consist of 35 members appointed by the Secretary, and such members shall, to the extent feasible, represent a geographic and substantive cross section of governmental and nongovernmental first responder disciplines from the State and local levels, including as appropriate—

(A) members selected from the emergency response field, including fire service and law enforcement, public health service, emergency medical services, and emergency management personnel (including public works personnel) routinely engaged in emergency response;

(B) health scientists, emergency and incident management personnel, and public health professionals, including experts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus standards process.

(2) Board of Experts.—The Board of Experts shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined terrorism preparedness levels within a specified time period.

(3) Measurability.—The establishment of essential capabilities shall be determined by an achievable measurement of progress toward specific terrorism preparedness goals.

(4) Comprehensive.—The determination of essential capabilities shall be based upon the threat of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

(A) Agriculture.

(B) Chemical industries.

(C) Defense industrial base.

(D) The defense industrial base.

(E) Emergency services.

(F) Energy.

(G) Food.

(H) Government.

(I) Postal and shipping.

(J) Public health.

(K) Information and telecommunications networks.

(L) Transportation.

(M) Water.

(4) Prior Measures.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness are made within the context of a comprehensive State emergency management system.

(5) Membership.—The Board of Experts and the Secretary shall ensure that the board consists of 35 members appointed by the Secretary, and such members shall, to the extent feasible, represent a geographic and substantive cross section of governmental and nongovernmental first responder disciplines from the State and local levels, including as appropriate—

(A) members selected from the emergency response field, including fire service and law enforcement, public health service, emergency medical services, and emergency management personnel (including public works personnel) routinely engaged in emergency response;

(B) health scientists, emergency and incident management personnel, and public health professionals, including experts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus standards process.

(3) Types of Threat.—The Secretary shall specifically consider the types of threats to the critical infrastructure sectors defined in paragraph (2) and to populations in all areas of the Nation, urban and rural:

(A) Biological threats.

(B) Nuclear threats.

(C) Radiological threats.

(D) Incendiary threats.

(E) Chemical threats.

(F) Explosives.

(G) Suicide bombers.

(H) Cyber threats.

(I) Any other threats based on proximity to the operations of terrorist groups.

The order in which the types of threat are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such threats.

(5) Prior Measures.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness take into account any capabilities that the Secretary may specify in order to further the order in which the critical infrastructure sectors are listed in paragraph (2) and to populations in all areas of the Nation, urban and rural.
“(D) State and local officials with expertise in terrorism preparedness, subject to the condition that if any such official is an elected official representing 1 of the 2 major political parties, the number of elected officials shall be selected from each such party.

(2) COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—In the selection of members of the Task Force who are health professionals, including emergency medical professionals, the Secretary shall coordinate the selection with the Secretary of Health and Human Services.

(3) EX OFFICIO MEMBERS.—The Secretary and the Under Secretaries for Emergency Preparedness and Response, Science and Technology and the Director of the Office of State and Local Government Coordination, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for the performance, use, and validation of first responder equipment, with amounts provided under covered grant programs, that will enable State and local government first responders to achieve optimal levels of preparedness and response as quickly as practicable. Such standards shall give priority to providing training to—

(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

(B) familiarize first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

(4) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall include the following categories of first responder equipment:

(A) Regional planning.

(B) Joint exercises.

(C) Intelligence collection, analysis, and sharing.

(D) Emergency notification of affected populations.

(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

(5) CONSULTATION.—In carrying out this subsection, the Secretary shall consult with the following organizations:

(1) the National Institute of Standards and Technology;

(2) the National Fire Protection Association;

(3) the National Association of County and City Health Officials;

(4) the Association of State and Territorial Health Officials;

(5) the American National Standards Institute;

(6) the National Institute of Justice;

(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

(8) the National Public Health Performance Standards Program;

(9) the National Institute for Occupational Safety and Health;

(10) ASTM International;

(11) the International Safety Equipment Association;

(12) the Emergency Management Accreditation Program;

(13) the National Domestic Preparedness Consortium; and

(14) the Secretary, or a similar elevation in the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary.

(6) IN GENERAL.—A covered grant may be used for—

(A) purchasing, upgrading, or maintaining equipment, including computer software, to enhance terrorism preparedness and response;

(B) exercises to strengthen terrorism preparedness and response;

(C) training for prevention (including detection) of, prepared for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

(D) developing or updating response plans;

(E) establishing or enhancing mechanisms for sharing terrorism threat information;

(F) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life cycle design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

(G) additional personnel costs resulting from—

(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

(B) travel to and participation in exercises and training in the use of equipment and on prevention activities;

(C) the temporary replacement of personnel caring for any personnel required to participate in exercises and training in the use of equipment and on prevention activities; and

(D) participation in information, investigative, and intelligence-sharing activities specifically related to terrorism prevention;

(E) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

(F) target hardening to reduce the vulnerability of high-value targets, as determined by the Secretary;

(G) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the Secretary finds that such measures may not exceed the greater of—

(A) $1,000,000 per project; or

(B) such greater amount as may be appropriated by the Secretary, which may not exceed 10 percent of the total amount of the covered grant.

(3) Consultation With Standards Organizations.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

(1) the National Institute of Standards and Technology;

(2) the Fire Protection Association;

(3) the National Association of County and City Health Officials;

(4) the Association of State and Territorial Health Officials;

(5) the American National Standards Institute;

(6) the National Institute of Justice;

(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

(8) the National Public Health Performance Standards Program;

(9) the National Institute for Occupational Safety and Health;

(10) ASTM International;

(11) the International Safety Equipment Association;

(12) the Emergency Management Accreditation Program;

(13) the National Domestic Preparedness Consortium; and

(14) the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and affected persons.

(4) COORDINATION WITH SECRETARY OF HHS.—In establishing any national voluntary consensus standards under this section for first responder equipment or training that involve or relate to health professionals, including emergency medical professionals, that will enable State and local government first responders to achieve optimal levels of preparedness and response as quickly as practicable, such standards shall be coordinated with the Secretary of Health and Human Services.''

SEC. 604. EFFECTIVE ADMINISTRATION OF HOME- LAND SECURITY GRANTS.

(a) USE OF GRANT FUNDS AND ACCOUNTABILITY.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.), as amended by sections 602 and 603, is amended by adding at the end the following:

"SEC. 606. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

(a) IN GENERAL.—A covered grant may be used for—

(A) purchasing, upgrading, or maintaining equipment, including computer software, to enhance terrorism preparedness and response;

(B) exercises to strengthen terrorism preparedness and response;

(C) training for prevention (including detection) of, prepared for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

(D) developing or updating response plans;

(E) establishing or enhancing mechanisms for sharing terrorism threat information;

(F) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life cycle design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

(G) additional personnel costs resulting from—

(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

(B) travel to and participation in exercises and training in the use of equipment and on prevention activities;

(C) the temporary replacement of personnel caring for any personnel required to participate in exercises and training in the use of equipment and on prevention activities; and

(D) participation in information, investigative, and intelligence-sharing activities specifically related to terrorism prevention;

(E) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

(F) target hardening to reduce the vulnerability of high-value targets, as determined by the Secretary;

(G) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the Secretary finds that such measures may not exceed the greater of—

(A) $1,000,000 per project; or

(B) such greater amount as may be appropriated by the Secretary, which may not exceed 10 percent of the total amount of the covered grant.

(3) Consultation With Standards Organizations.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

(1) the National Institute of Standards and Technology;

(2) the Fire Protection Association;

(3) the National Association of County and City Health Officials;

(4) the Association of State and Territorial Health Officials;

(5) the American National Standards Institute;

(6) the National Institute of Justice;

(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

(8) the National Public Health Performance Standards Program;

(9) the National Institute for Occupational Safety and Health;

(10) ASTM International;

(11) the International Safety Equipment Association;

(12) the Emergency Management Accreditation Program;

(13) the National Domestic Preparedness Consortium; and

(14) the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and affected persons.
"(12) educational curricula development for first responders to ensure that they are prepared for terrorist attacks;

"(13) training and exercises to assist public elements of the amount of the grant, and

"(14) paying of administrative expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant;

"(15) other appropriate activities as determined by the Secretary.

(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

"(1) to supplant State or local funds that have been obligated for a homeland security or other first responder-related project;

"(2) to fund costs or other physical facilities, except for—

"(A) activities under section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5163); and

"(B) upgrading facilities to protect against, test for, and treat the effects of biological agents, which shall be included in the homeland security or other first responder-related project approved by the Secretary under section 1802(c);

"(3) to acquire land; or

"(4) for a local government cost-sharing contribution.

(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this section shall be construed to preclude State or local governments from supplanting grant funds in a manner that also enhances first responder preparedness for emergencies and disasters unrelated to acts of terrorism, provided that such use assists such governments in achieving essential capabilities for homeland security preparedness established by the Secretary under section 1802.

(d) REIMBURSEMENT OF COSTS.—In addition to the activities described in subsection (a), a covered grant may be used to provide a reasonable stipend to paid-on-call or volunteer first responders who are not otherwise compensated for travel to or participation in training provided under this section. Any such reimbursement shall not be considered compensation for purposes of rendering such a first responder an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(e) ASSISTANCE REQUIREMENT.—The Secretary may not request that equipment paid for, wholly or in part, with funds provided as a covered grant be made available for expenditure by local governments, first responders, and other local groups the required amount of grant funds pursuant to subsection (a) of this section if the State has not made the grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1); or

"(f) INCLUSION OF RESTRICTED ANNEXES .—A covered grant shall include an annex that—

"(1) prohibits use of such funds to pay administrative costs or other expenses;

"(2) terminates payment of funds under the grant, which may include—

"(a) prohibiting use of such funds to pay the grant recipient's grant-related overhead or other expenses;

"(b) requiring the grant recipient to distribute funds to local government beneficiaries all or a portion of grant funds not required to be passed through under subsection (g)(1); or

"(c) impose additional restrictions or burdens on the recipient's use of funds under the grant, which may include—

"(i) reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1); and

"(ii) requiring the grant recipient to disallow the local government beneficiaries all or a portion of grant funds not required to be passed through under subsection (g)(1); or

"(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (g)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

(g) STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—

"(1) the grantee shall ensure that each State within the boundaries of which the grant is awarded certifies to the Secretary, by not later than 30 days after the expiration of the period described in paragraph (1) with respect to the grant, whether the State has made the required amount of grant funds available for expenditure by local governments, first responders, and other local groups and the extent to which essential capabili-
"(D) DEADLINE FOR ACTION BY SECRETARY.—
The Secretary shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Department.

(ii) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to Congress by December 31 of each year, including:

(A) describing in detail the amount of Federal funds provided as covered grants that were directed to each State, region, and directly eligible tribe in the preceding fiscal year;
(B) containing information on the use of such grant funds by grantees; and
(C) describing—

(A) the Nation’s progress in achieving, maintaining, and enhancing the essential capabilities established under section 1803(a) as a result of the expenditure of covered grant funds during the preceding fiscal year; and

(B) an estimate of the amount of expenditures required to attain the essential capabilities established under section 1803(a)."

(4) DIRECTLY ELIGIBLE TRIBE.—The term ‘directly eligible tribe’ means any Indian tribe or consortium of Indian tribes that—

(A) meets the criteria for inclusion in the Quadrennial Review and that raises the homeland security threat level to either the highest or second-highest threat level.

(B) in section 1802(f)(3)(A)(i), the phrase ‘by achieving, maintaining, or enhancing the essential capabilities of the applicants on a nationwide basis.’

(2) 2-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as added by this title, shall not apply during the 2-year period beginning on the date of enactment of this title:

(A) subparagraphs (D) and (E) of section 1806(g)(4); and

(B) section 1806(i)(3).

(c) DEFINITIONS.—

(1) TITLE XVIII.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.), as amended by sections 602, 603, and 604, is amended by adding at the end the following:

"SEC. 1807. DEFINITIONS.

"In this title:

(1) BOARD.—The term ‘Board’ means the Homeland Security Grants Board established under section 1802(c).

(2) CONSEQUENCE.—The term ‘consequence’ means the assessment of the effect of a completed attack.

(3) COVERED GRANT.—The term ‘covered grant’ means any grant to which this title applies under section 1801(b).

(4) DIRECTLY ELIGIBLE TRIBE.—The term ‘directly eligible tribe’ means any Indian tribe or consortium of Indian tribes that—

(A) meets the criteria for inclusion in the Quadrennial Review and that raises the homeland security threat level to either the highest or second-highest threat level.

(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

(C) is located on, or within 5 miles of, an international border or waterway;

(ii) is located within 5 miles of a facility designated as high-risk critical infrastructures.

(iv) has more than 1,000 square miles of Indian country, as that term is defined in section 151 of title 18, United States Code.

(E) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term ‘elevations in the threat alert level’ means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second-highest threat level under the Homeland Security Advisory System referred to in section 201(7).

(6) EMERGENCY PREPAREDNESS.—The term ‘emergency preparedness’ shall have the same meaning that term has under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a).

(7) ESSENTIAL CAPABILITIES.—The term ‘essential capabilities’ means the levels, availability, and competence of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently manage and respond to acts of terrorism consistent with established practices.

(8) FIRST RESPONDER.—The term ‘first responder’ shall have the same meaning as the term ‘emergency response provider’ under section 2.
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(9) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in, or established pursuant to, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special rights and services provided by the United States to Indians because of their status as Indians.

(10) RISK.—The term ‘risk region’ means any geographic area:

(A) certified by the Secretary under section 1802(a)(3);

(B) consisting of all or parts of 2 or more counties, municipalities, or other local governments and including a city with a core population exceeding 500,000 according to the most recent estimate available from the United States Census, and

(C) that, for purposes of an application for a covered grant—

(i) is represented by 1 or more local governments or governmental agencies within such geographic area; and

(ii) is established by law or by agreement of 2 or more such local governments or governmental agencies such as through a mutual aid agreement.

(11) RISK-BASED FUNDING.—The term ‘risk-based funding’ means the allocation of funds based on an assessment of threat, vulnerability, and consequence.

(12) TASK FORCE.—The term ‘Task Force’ means the Task Force on Essential Capabilities established under section 1804.

(13) THREAT.—The term ‘threat’ means the assessment of the plans, intentions, and capability of an adversary to implement an identified attack scenario.

(14) VULNERABILITY.—The term ‘vulnerability’ means the degree to which a facility is available or accessible to an attack, including which the facility is inherently secure or has been hardened against such an attack.’’

(2) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Paragraph (6) of section 2 of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 101) is amended by striking ‘‘includes’’ and all that follows and inserting ‘‘includes, Federal, State, and local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, and authorities.’’

(d) TABLE OF CONTENTS.—Section 1(b) of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 101 note) is amended in the table of contents by adding at the end the following:

TITLE XVIII—RISK-BASED FUNDING FOR HOMELAND SECURITY

‘‘Sec. 1801. Risk-based funding for homeland security.

‘‘Sec. 1802. Covered grant eligibility and authorities.

‘‘Sec. 1803. Essential capabilities for homeland security.

‘‘Sec. 1804. Task Force on Essential Capabilities.

‘‘Sec. 1805. National standards for first responder equipment and training.

‘‘Sec. 1806. Use of funds and accountability requirements.

‘‘Sec. 1807. Definitions.’’

PRIVILEGE OF THE FLOOR

Mr. BYRD. I ask unanimous consent that Sean MacKenzie, a Coast Guard detailee to the Subcommittee on Homeland Security, be given floor privileges during consideration of H.R. 2360.

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

RELATIVE TO THE DEATH OF FORMER SENATOR GAYLORD A. NELSON

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 194, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

A resolution (S. Res. 194) relative to the death of Gaylord A. Nelson, a former United States Senator from the State of Wisconsin.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FEINGOLD. Mr. President, I rise to speak on a resolution submitted by Senator Frist and Senator Risch to provide an official work of Senator Gaylord Nelson. It is with mixed emotions that I make this statement honoring Senator Nelson.

I am proud—proud to have known Gaylord Nelson, proud to be from the same State as him, and proud to occupy his Senate seat. I am also deeply saddened—saddened by the loss to his family, especially to his wife of 58 years, Carrie Lee; saddened by the loss to our Nation; and saddened that a personal hero and dear friend of mine is gone. I am also thankful—thankful for Senator Nelson’s long life, thankful for the example he set of how to make a difference in this world, and thankful to his family for sharing this good and decent man with the Nation. We mourn his death, but we also celebrate his remarkable legacy.

Gaylord Anton Nelson was born on June 4, 1916, in Clear Lake, WI. Gaylord’s parents were always interested in political issues. According to tradition, they were La Follette Progressive Republicans at the State level and Democrats at the national level. Their Wisconsin-style progressive politics rubbed off on young Gaylord.

When he was 10, Gaylord traveled with his dad to hear a campaign speech by Senator Bob La Follette, Jr., who succeeded his father in the Senate in 1925. Gaylord recalls in his biography:

‘‘On the way back home to Clear Lake, my dad asked if I wanted to be a senator. I said I was going to be a lawyer. He was glad to hear that. And he said Bob La Follette will solve all of our problems before I get a chance to serve.’’

Thirty-three years later, Gaylord was nominated to be the Democrat candidate for Governor of Wisconsin. At the 1958 Democrat convention in LaCrosse, Gaylord’s father had a heart attack. When Gaylord went to see him in the hospital, the elder Nelson smiled and then said to his son, ‘‘Do you think Bob La Follette left enough problems behind for me to solve?’’ Gaylord’s father died 10 days later.

Unfortunately, Gaylord’s father did not get to see his son’s rise to the national political level. If he had, he would have seen Gaylord attack those ‘‘remaining problems left to solve’’ with La Follette-like dogged determination and commitment to Progressive politics. From consumer protection to employee rights, Senator Nelson was one of three senators to vote against the proposal. In a speech on this floor, he said:

‘‘At a time in history when the Senate should be vindicating its historic reputation as the greatest deliberative body in the world, we are stumbling over each other to see who can say “yes” the quickest and the loudest. I regret it, and I think some day we shall all regret it. . . . Reluctantly, I express my opposition. . . . here by voting “nay.” The support in the Congress for this measure is clearly overwhelming. Obviously, you need my vote less than I need my conscience.

Whether it was issues of war and foreign affairs, worker safety and health, or access to affordable healthcare, Gaylord Nelson was guided by his concern and by the unique Wisconsin sensibilities. Out of his impressive record, however, one issue stands out as central to his legacy—Gaylord Nelson’s passion and commitment to protecting our environment.

Not many people who have served in this distinguished body can lay claim to a day, but Gaylord Nelson can. On April 22, 1970, Gaylord Nelson created a day to celebrate the glory of the Earth. Where did Nelson get his lifelong interest and dedication to the environment? ‘‘By osmosis,’’ Nelson would say, ‘‘while growing up in Clear Lake, WI.’’

It’s true that Wisconsin has a tradition of great conservationists—Aldo Leopold, author of A Sand County Almanac; Sigurd Olson, one of the founders of the Wilderness Society; and John Muir, founder of the Sierra Club. The people of Wisconsin, living in such a beautiful and ecologically diverse State, feel a special connection to our natural resources. We share a long tradition of our State government achieving excellence in its conservation policies. Many Wisconsinites would agree with Senator Nelson that ‘‘national conservation ethic comes “by osmosis” from the intense natural beauty of our State. Every year I hold a town hall meeting in each one of Wisconsin’s 72 counties, and protecting the environment is always one of the top issues raised at these forums.

Senator Nelson’s vision and determination helped crystallize this Wisconsin conservation ethic into an international phenomenon. Thanks to Gaylord Nelson, Wisconsin can lay claim to the genesis of Earth Day, a day of national and international reflection on the importance of our natural resources and a clean environment. Thanks to him, for the past 35