By Mrs. DOLE (for herself and Mr. BURR):

S. Res. 26. A resolution commending the Appalachian State University football team for winning the 2006 National Collegiate Athletic Association Division I–AA Football Championship; considered and agreed to.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. REID, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 3

At the request of Mr. REID, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3, a bill to amend part D of title XVIII of the Social Security Act to provide for fair prescription drug prices for Medicare beneficiaries.

S. 4

At the request of Mr. REID, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 4, a bill to make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

S. 5

At the request of Mr. BROWN, his name was added as a cosponsor of S. 5, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 6

At the request of Mr. BROWN, his name was added as a cosponsor of S. 6, a bill to enhance the security of the United States by reducing the dependence of the United States on foreign and unsustainable energy sources and the risks of global warming, and for other purposes.

S. 7

At the request of Mr. BROWN, his name was added as a cosponsor of S. 7, a bill to amend title IV of the Higher Education Act of 1965 and other laws and provisions and urge Congress to make college more affordable through increased Federal Pell Grants and providing more favorable student loans and other benefits, and for other purposes.

S. 8

At the request of Mr. BROWN, his name was added as a cosponsor of S. 8, a bill to restore and enhance the capabilities of the Armed Forces, to enhance the readiness of the Armed Forces, to support the men and women of the Armed Forces, and for other purposes.

S. 10

At the request of Mr. BROWN, his name was added as a cosponsor of S. 10, a bill to reinstate the pay-as-you-go requirement and reduce budget deficits by strengthening budget enforcement and fiscal responsibility.

At the request of Mr. CONRAD, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 10, supra.

S. 21

At the request of Mr. REID, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 21, a bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce abortions, and improve access to women's health care.

S. 119

At the request of Mr. LEAHY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 119, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts, and for other purposes.

S. 154

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 154, a bill to promote coal-to-liquid fuel activities.

S. 155

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 155, a bill to promote coal-to-liquid fuel activities.

S. 231

At the request of Mrs. FEINSTEIN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 231, a bill to authorize the Edward Byrne Memorial Justice Assistance Grant Program at fiscal year 2006 levels through 2012.

S. 237

At the request of Mrs. FEINSTEIN, the names of the Senator from New York (Mrs. CLINTON), the Senator from Illinois (Mr. OBAMA) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 237, a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes.

S. 243

At the request of Mr. ENSIGN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 243, a bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

S. 244

At the request of Mr. GREGG, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 244, a bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

AMENDMENT NO. 20

At the request of Mr. KYL, his name was added as a cosponsor of amendment No. 20 proposed to S. 1, a bill to provide greater transparency in the legislative process.

At the request of Mr. BENNETT, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 20 proposed to S. 1, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mr. GRAHAM, Mr. BIDEN, and Mr. ALEXANDER):

S. 256. A bill to harmonize rate setting standards for copyright licenses under section 112 and 114 of title 17, United States Code, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am pleased to introduce the Platform Equality and Remedies for Rights-holders in Music Act along with Senators GRAHAM, BIDEN, and ALEXANDER.

The need to protect creative works has been an important principle recognized in our country since the time when our Constitution was first drafted.

However, the founding fathers could not have predicted the path innovation would eventually lead us down, nor the amazing new technologies that we now take for granted.

While many of us still enjoy traditional radio, this too is rapidly changing.

Recently, radio stations have begun advertising for a national campaign to switch to High Definition, or HD, radio. This new platform is changing the way music is transmitted and, according to its promoters, ''radio has never sounded better.''

In addition, we can now have music radio programs provided not just in our cars, or on traditional home stereos, but radio programs have expanded to be available through Internet, cable, and satellite music stations.

And radio services are looking to use the new digital transmissions and new technologies to change how music is delivered so that the audience can not only listen but also record, manipulate, collect and create individual music play lists.

Thus, what was once a passive listening experience has turned into a forum where consumers can create their own personalized music libraries.

As the modes of distribution change and the technologies change, so must our laws change.

The government granted a compulsory license for radio-like services by Internet, cable, and satellite providers in order to encourage competition and the creation of new products.

However, as new innovations alter these services from a performance to a distribution, the law must respond.

In addition, as the changing technology evolves the distinctions between the services become less and less, and the differences in how they are treated under the statutory license make less and less sense.

Therefore, I am introducing a bill that will begin to fix the inequities currently in the statute and open the door to further debate about additional issues that need to be addressed.

First, the bill I am introducing today, the PERFORM Act, would create rate parity. All companies covered by the government license created in section 114 of title 17 would be required to pay a ''fair market value'' for use of music libraries rather than having different rate standards apply based on what medium is being used to transmit the music.

The bill would also establish content protection. All companies would be required to use reasonably available, technologically feasible, and economically reasonable means to prevent music theft. In addition, a company may not provide a recording device to a customer that would allow him or her to create their own personalized music library that can be manipulated and maintained without paying a reproduction royalty.

This does not mean such devices cannot be made or distributed. It simply means that the business must negotiate the payment for the music outside of the statutory license.

The bill also contains language to make sure that consumers' current recording habits are not inhibited. Therefore, any recording the consumer chooses to do manually will still be allowed.

In addition, if the device allows the consumer to manipulate music by program, channel, or time period that would still be permitted under the statutory license.

For example, if a listener chooses to automatically record a news station every morning at 9:00 a.m.; a jazz station every afternoon at 2:00 p.m., a blues station every Friday at 3:00 p.m., and a talk radio show every Saturday at 4:00 p.m., that would be allowable. In addition, that listener could then use their recording device to move these programs so that each program of the same genre would be back to back.

What a listener cannot do is set a recording device to find all the Frank Sinatra songs being played on the radio-service and only record those songs. By making these distinctions this bill supports new business models and technologies without harming the songwriters and performers in the process.

Unfortunately, this bill was unable to move last Congress primarily because of misinformation about what the bill does and does not do.

However, there were also some questions that were raised, not about problems with the bill, but about ways to expand its reach. For example, currently the bill does not apply to traditional radio distributed by the broadcasters. This legislation only covers businesses that are under the section 114 license: Internet, cable, and satellite. Yet, some of my Republican colleagues argued that the bill should apply the same recording limitations to over-the-air broadcasters as are applied to Internet, cable, and satellite. While this change has not been made in the version of the bill I am introducing today, I believe it is an issue we should look at in the 110th Congress.

Also, the bill as introduced does not address the other conditions applied to Internet, cable, and satellite services in order for them to get the benefit of the statutory license. The one that I am most concerned with is interactivity.

I think there is real confusion about what is and what is not allowed under the current statute: how much personalization and customization may these new services offer?

Currently, licensing rates are higher for interactive services. However, there are clear disagreements as to what constitutes an ''interactive'' service. I tried to have the parties meet to negotiate a solution to this issue so that we could include new language in this bill; however, the parties were so far apart that a solution could not be reached.

Despite this, I still believe this is an important issue that must be addressed. As introduced, the bill calls for the Copyright Office to make recommendations to Congress, but I am hopeful that through the process of moving this bill through the Senate we can develop a solution sooner rather than rely on a study.

Finally, some have raised concerns that applying content protection to all providers is unfair. They argue that if there is no connection between the distributor of the music and the technology provider that allows for copying and manipulating of performances then they should not be required to protect the music that they broadcast. In general, I do not agree. We know that there are websites out there now that provide so-called stream-ripping services that allow an individual to steal music off an Internet webcast.

It is not enough to turn a blind eye to this type of piracy and do nothing simply because there is no formal connection between the businesses. At the same time, I am sympathetic to the concerns that if the type of technology a company uses is inadequate or ineffective, through no fault of their own, they should not be saddled with huge mandatory penalties.

I am interested in looking at this issue more closely to see if there is some way to address this concern and find a compromise solution.

To be clear, I see this as the beginning of the process. I think this legislation is a good step forward in addressing a real problem that is occurring in the music industry. Changes or additions may be necessary as the bill moves forward, but I believe to wait and do nothing does a disservice to all involved.

Music is an invaluable part of all of our lives. The new technologies and changing delivery systems provide exciting new options for all consumers. As we continue to move forward into new frontiers we must ensure that our laws can stand the test of time.

I look forward to working with my colleagues to pass this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 256

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Platform Equality and Remedies for Rights Holders in Music Act of 2007'' or the ''Perform Act of 2007''.

SEC. 2. RATE SETTING STANDARDS.

(a) SECTION 112 LICENSES.—Section 112(e)(4) of title 17, United States Code, is amended in the third sentence by striking ''fees that would have been negotiated in the marketplace between a willing buyer and a willing seller'' and inserting ''the fair market value of the rights licensed under this subsection''.

(b) SECTION 114 LICENSES.—Section 114(f) of title 17, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively; and

(3) in paragraph (1) (as redesignated under this subsection)—

(A) in subparagraph (A), by striking all after ''Proceedings'' and inserting ''under chapter 8 shall determine reasonable rates and terms of royalty payments for transmissions during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.'';

(B) in subparagraph (B)—

(i) in the first sentence, by striking ''affected by this paragraph'' and inserting ''under this section'';

(ii) in the second sentence, by striking ''eligible nonsubscription transmission''; and

(iii) in the third sentence—

(I) by striking ''eligible nonsubscription services and new subscription''; and

(II) by striking ''rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller'' and inserting ''the fair market value of the rights licensed under this section'';

(iv) in the fourth sentence, by striking ''base its'' and inserting ''base their'';

(v) in clause (i), by striking ''and'' after the semicolon;

(vi) in clause (ii), by striking the period and inserting ''; and'';

(vii) by inserting after clause (ii) the following:

''(iii) the degree to which reasonable recording affects the potential market for sound recordings, and the additional fees that are required to be paid by services for compensation.''; and

(viii) in the matter following clause (ii), by striking ''described in subparagraph (A)''; and

(C) by striking subparagraph (C) and inserting the following:

''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any transmitting entity indicating that a new type of service on which sound recordings are performed is or is

about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services, eligible nonsubscription services, or new subscription services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.''.

(c) CONTENT PROTECTION.—Section 114(d)(2) of title 17, United States Code, is amended—

(1) in subparagraph (A)—

(A) in clause (ii), by striking ''and'' after the semicolon;

(B) in clause (iii), by adding ''and'' after the semicolon; and

(C) by adding after clause (iii) the following:

''(iv) the transmitting entity takes no affirmative steps to authorize, enable, cause or induce the making of a copy or phonorecord by or for the transmission recipient and uses technology that is reasonably available, technologically feasible, and economically reasonable to prevent the making of copies or phonorecords embodying the transmission in whole or in part, except for reasonable recording as defined in this subsection;'';

(2) in subparagraph (C)—

(A) by striking clause (vi); and

(B) by redesignating clauses (vii) through (ix) as clauses (vi) through (viii), respectively; and

(3) by adding at the end the following:

''For purposes of subparagraph (A)(iv), the mere offering of a transmission and accompanying metadata does not in itself authorize, enable, cause, or induce the making of a phonorecord. Nothing shall preclude or prevent a performing rights society or a mechanical rights organization, or any entity owned in whole or in part by, or acting on behalf of, such organizations or entities, from monitoring public performances or other uses of copyrighted works contained in such transmissions. Any such organization or entity shall be granted a license on either a gratuitous basis or for a de minimus fee to cover only the reasonable costs to the licensor of providing the license, and on reasonable, nondiscriminatory terms, to access and retransmit as necessary any content contained in such transmissions protected by content protection or similar technologies, if such licenses are for purposes of carrying out the activities of such organizations or entities in monitoring the public performance or other uses of copyrighted works, and such organizations or entities employ reasonable methods to protect any such content accessed from further distribution.''.

(d) DEFINITION.—Section 114(j) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (10) through (15) as paragraphs (11) through (16), respectively; and

(2) by inserting after paragraph (9) the following:

''(10)(A) A 'reasonable recording' means the making of a phonorecord embodying all or part of a performance licensed under this section for private, noncommercial use where technological measures used by the transmitting entity, and which are incorporated into a recording device—

''(i) permit automated recording or playback based on specific programs, time periods, or channels as selected by or for the user;

''(ii) do not permit automated recording or playback based on specific sound recordings, albums, or artists;

''(iii) do not permit the separation of component segments of the copyrighted material contained in the transmission program which results in the playback of a manipulated sequence; and

''(iv) do not permit the redistribution, retransmission or other exporting of a phonorecord embodying all or part of a performance licensed under this section from the device by digital outputs or removable media, unless the destination device is part of a secure in-home network that also complies with each of the requirements prescribed in this paragraph.

''(B) Nothing in this paragraph shall prevent a consumer from engaging in non-automated manual recording and playback in a manner that is not an infringement of copyright.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 114.—Section 114(f) of title 17, United States Code (as amended by subsection (b) of this section), is further amended—

(A) in paragraph (1)(B), in the first sentence, by striking ''paragraph (3)'' and inserting ''paragraph (2)''; and

(B) in paragraph (4)(C), by striking ''under paragraph (4)'' and inserting ''under paragraph (3)''.

(2) SECTION 804.—Section 804(b)(3)(C) of title 17, United States Code, is amended—

(A) in clause (i), by striking ''and 114(f)(2)(C)''; and

(B) in clause (iv), by striking ''or 114(f)(2)(C), as the case may be''.

SEC. 3. REGISTER OF COPYRIGHTS MEETING AND REPORT.

(a) MEETING.—Not later than 90 days after the date of enactment of this Act, the Register of Copyrights shall convene a meeting among affected parties to discuss whether to recommend creating a new category of limited interactive services, including an appropriate premium rate for such services, within the statutory license contained in section 114 of title 17, United States Code.

(b) REPORT.—Not later than 90 days after the convening of the meeting under subsection (a), the Register of Copyrights shall submit a report on the discussions at that meeting to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

By Mr. AKAKA (for himself, Mr. INOUYE, Mr. BYRD, Mr. REID, Mr. STEVENS, Mr. KENNEDY, Mr. COCHRAN, Mr. BIDEN, Mrs. CLINTON, Mr. DOMENICI, Mr. DORGAN, Mr. KERRY, Mr. LEAHY, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. REED, Mr. ROCKEFELLER, Mr. SPECTER, and Mrs. DOLE):

S. 259. A bill to authorize the establishment of the Henry Kuualoha Giugni Kupuna Memorial Archives at the University of Hawaii; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, I am introducing with my dear friend, the senior Senator from Hawaii, DAN INOUYE, and several of our colleagues from both sides of the aisle, a bill paying tribute to one of this body's most loyal servants. The Henry Kuualoha Giugni Kupuna Memorial Archives bill honors Henry K. Giugni, our former Sergeant-at-Arms of the U.S. Senate, through the establishment of cultural and historical digital archives. Mr. Giugni would have turned 82 today, if he were still alive. These archives will enable the sharing and perpetuation of the culture, collective memory, and history of peoples Mr. Giugni so dearly loved.

As many of my colleagues are aware, Henry was a man full of life and loyalty who served our country with distinction. He enlisted in the U.S. Army at the age of 16 after the attack on Pearl Harbor. During World War II he served in combat at the battle of Guadalcanal. Following World War II, he continued to serve the State of Hawaii and our Nation by working as a police officer and firefighter. After nearly a decade of service with Senator INOUYE in the Hawaii territorial legislature, he came to Washington, DC, as the senior Senator's senior executive assistant and then chief of staff for more than 20 years. Mr. Giugni was appointed in 1987 to serve as Sergeant-at-Arms of our revered body—a position that each of my colleagues and I know as crucial to the running of the Senate.

Henry also sought to tear down barriers in society. In 1965 it was Mr. Giugni who represented Senator INOUYE's office, and thus the people of Hawaii, in the famous 1965 Selma to Montgomery civil rights march led by Dr. Martin Luther King, Jr. As Senator INOUYE's chief of staff, Mr. Giugni served as a vital link between the Senator's office and minority groups. He was the first person of color and the first Native Hawaiian to be appointed Senate Sergeant-at-Arms. In this influential position, he sought out capable minorities and women for promotion to ensure that our workforce reflects America. He appointed the first minority, an African-American, to lead the Service Department, and was the first to assign women to the Capitol Police plainclothes unit. Because of his concern about people with disabilities, Mr. Giugni enacted a major expansion of the Special Services Office, which now conducts tours of the U.S. Capitol for the blind, deaf, and wheelchair-bound, and publishes Senate maps and documents in Braille.

Further in his capacity as Sergeant-at-Arms, Henry was the chief law enforcement officer of the U.S. Senate and an able manager of a majority of the Senate's support services. He oversaw a budget of nearly $120 million and approximately 2,000 employees. As Sergeant-at-Arms, Mr. Giugni presided over the inauguration of President George H.W. Bush, and escorted numerous dignitaries on their visits to the U.S. Capitol, including Nelson Mandela, Margaret Thatcher, and Vaclav Havel.

Establishing the Henry Kuualoha Giugni Memorial Archives would be a poignant and appropriate way to honor our loyal friend, colleague, and fellow American, as well as his dear wife Lani, who recently followed him to the great beyond. Henry lived a life full of rich experiences, and along the way he accumulated a wealth of wisdom. His memory and spirit live on, but it is essential we perpetuate his wisdom and

experiences, and those of others like him, so what was learned and accomplished will not be lost to future generations. This is the primary impetus behind creating these archives. There is a dearth of physical archives, museums, or libraries devoted to preserving and perpetuating the history, culture, achievements and collective narratives of indigenous peoples. As one generation passes, a wealth of traditional knowledge could be lost forever. Establishing these archives to perpetuate the traditional knowledge of indigenous peoples such as Henry will ensure that future generations have access to that widsom and, in a sense, will be able to learn from the original sources themselves.

The development of the Internet in managing knowledge in electronic format has enabled the most pervasive storing and sharing of information the world has ever seen. Electronic, digital archives would facilitate the sharing, preservation and perpetuation of the unique native culture, language, tradition and history. These archives will be a source of enduring knowledge, accessible to all. It will help to ensure that the children of today and tomorrow will not be deprived of the rich culture, history and collective knowledge of indigenous peoples. These archives will help to guarantee that the experiences, wisdom and knowledge of kupuna, or elders such as Henry, will not be lost to future generations.

The first section of the Henry Kuualoha Giugni Memorial Archives bill authorizes a grant awarded to the University of Hawaii's Academy for Creative Media for the establishment, maintenance and update of the archives which are to be located at the University of Hawaii. These funds would be used to enable a statewide archival effort which will include the acquisition of a secure, web-accessible repository that will house significant historical and cultural information. This information may include oral histories, collective narratives, photographs, video files, journals, creative works and documentation of practices and customs such as traditional dance and traditional music that were used to convey historical and cultural knowledge in the absence of written language. The funds will enable this important effort by assisting in the purchasing of equipment, hiring of personnel, and establishment of space for the collection and transfer of media, housing the archives, and creating this in-depth database.

The second section of this bill authorizes the use of these grant funds for several different educational activities, many of which are intended to magnify the resourcefulness of these archives and benefit the student populations who will likely access the archives the most. This includes the development of educational materials from the archives that can be used in teaching indigenous students. Despite their focus, these materials are meant to enhance the education of all students, even students from non-native backgrounds. This also includes developing outreach initiatives to introduce the archives to elementary and secondary schools, and as enabling schools to access the archives through the computer.

Grant funds would also be available to help make a college education possible for students who otherwise could not independently afford such an education through scholarship awards. Additionally, funds can be used to address the problem of cultural incongruence in teaching, an issue that impedes effective learning in our Nation's classrooms. Such a lack of congruence exists in a wide range of situations, from rural and underserved communities in remote areas to well-populated urban centers, from my State of Hawaii to areas on the eastern seaboard. The dynamic I am describing exists along lines of race and ethnicity, socioeconomic strata, age, and many other vectors, which can muddy the effective transmission of knowledge. Many of us, especially those from rural, indigenous, or ethnic minority backgrounds, including Henry Giugni, have experienced barriers to learning as we have worked our way through the education system. This bill seeks to improve student achievement by addressing cultural incongruence between teachers and the student population. This will be accomplished by providing professional development training to teachers, enabling them to better communicate with their students.

Finally, as financial illiteracy is a growing problem, especially among college age youth who are exposed to a variety of financial products, funds can be used to increase the economic and financial literacy of college students. This will be accomplished through the propagation of proven best practices that have resulted in positive behavioral change in regards to improved debt and credit management, and economic decision making. Such activities can help to ensure that students stay in school, graduate in a better financial position, and remain disciplined in effectively managing their finances throughout their working and retirement years.

Henry K. Giugni served among us with distinction and honor. I am very grateful to have known him and his family. I encourage all of my colleagues to perpetuate his memory by supporting the Henry Kuualoha Giugni Memorial Archives bill. These archives are the most fitting way we can honor and remember our friend and dear public servant, Henry Kuualoha Giugni.

I ask unanimous consent that the text of the bill be printed in the RECORD and that support letters from University of Hawaii President David McClain and Academy for Creative Media Director Christopher Lee also be printed in the RECORD.

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

S. 259

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. HENRY KUUALOHA GIUGNI KUPUNA MEMORIAL ARCHIVES.

(a) GRANTS AUTHORIZED.—The Secretary of Education is authorized to award a grant to the University of Hawaii Academy for Creative Media for the establishment, maintenance, and periodic modernization of the Henry Kuualoha Giugni Kupuna Memorial Archives at the University of Hawaii.

(b) USE OF FUNDS.—The Henry Kuualoha Giugni Kupuna Memorial Archives shall use the grant funds received under this section—

(1) to facilitate the acquisition of a secure web accessible repository of Native Hawaiian historical data rich in ethnic and cultural significance to our Nation for preservation and access by future generations;

(2) to award scholarships to facilitate access to a college education for students who can not independently afford such education;

(3) to support programmatic efforts associated with the web-based media projects of the archives;

(4) to create educational materials, from the contents of the archives, that are applicable to a broad range of indigenous students such as Native Hawaiians, Alaskan Natives, and Native American Indians;

(5) to develop outreach initiatives that introduce the archival collections to elementary schools and secondary schools;

(6) to develop supplemental web-based resources that define terms and cultural practices innate to Native Hawaiians;

(7) to rent, lease, purchase, maintain, or repair educational facilities to house the archival collections;

(8) to rent, lease, purchase, maintain, or repair computer equipment for use by elementary schools and secondary schools in accessing the archival collections;

(9) to provide pre-service and in-service teacher training to develop a core group of kindergarten through grade 12 teachers who are able to provide instruction in a way that is culturally congruent with the learning modalities of the kindergarten, elementary school, or secondary school students the teachers are teaching, particularly indigenous students such as Native Hawaiians, Alaskan Natives, and Native American Indians, in order to—

(A) ameliorate the lack of cultural congruence between the teachers and the students the teachers teach; and

(B) improve student achievement; and

(10) to increase the economic and financial literacy of college students through the proliferation of proven best practices used at other institutions of higher education that result in positive behavioral change toward improved debt and credit management and economic decision making.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2007, $10,000,000 for fiscal year 2008, and such sums as may be necessary for each of the fiscal years 2009 through 2012.

UNIVERSITY OF HAWAI'I,
Honolulu, HI, August 3, 2006.

Hon. DANIEL K. AKAKA,
U.S. Senator, State of Hawai'i, Hart Senate Office Building, Washington DC.

DEAR SENATOR AKAKA: The University of Hawai'i is proud to support the establishment of the Henry Kuualoha Giugni Kupuna Memorial Archives as detailed in the Senate Bill reviewed with your staff during my June 2006 visit to Washington, D.C. As you know, Henry Giugni was a great friend of the University of Hawai'i. We were honored to be

able to award him an Honorary Doctorate in Humane Letters from the University of Hawai'i in 2003.

Please add the University of Hawai'i to the growing list of many friends and congressional co-sponsors who have joined with you and Senator Inouye to pay appropriate tribute to a great Hawaiian and a worthy advocate for minorities in government—Henry Kuualoha Giugni. Thank you for this opportunity to express our support for one who was so important to our University 'ohana.

With best wishes and Aloha,

DAVID MCCLAIN,
President.

UNIVERSITY OF HAWAI'I,
ACADEMY FOR CREATIVE MEDIA,
Honolulu, HI, August 21, 2006.

Hon. DANIEL K. AKAKA,
U.S. Senator, State of Hawai'i, Hart Senate Office Building Washington, DC.

DEAR SENATOR AKAKA: The Academy for Creative Media at the University of Hawai'i at Manoa is proud to support, and honored to be designated as the primary home for the establishment of the Henry Kuualoha Giugni Kupuna Memorial Archives.

As you know, there is an exciting visual history of Hawai'i that has yet to be collected, documented and archived for the benefit of historians, teachers, students, and all people who embrace the Spirit of Aloha. This is a people's history and archive that will tap deeply into the diversity and multiculturalism of our state.

Unfortunately, much of this rich treasure of moving images on film and video tape is deteriorating with age and cries out to be permanently preserved in a digital archive where it can be readily and interactively accessed by all.

The establishment of the Henry Kuualoha Giugni Kupuna Memorial Archives will enable the creation of a plethora of illustrated oral histories of our beloved elders, create educational programs which can be used to bridge intercultural gaps while embracing an ever wider multicultural society, and empower new generations by grounding them in the richness of values, as reflected by Mr. Giugni, that has defined Hawai'i as the Aloha State.

The Academy for Creative Media stands ready to make this Archive a primary educational center and resource, a living tribute to Henry Kuualoha Giugni and the people of Hawai'i.

Sincerely,

CHRISTOPHER LEE,
Director.

Mr. INOUYE. Mr. President, today I join my partner from Hawaii, Senator AKAKA, and other esteemed colleagues, in lending my support to the Henry Kuualoha Giugni Kupuna Memorial Archives Bill. I offer my support today, on this, the eleventh day of January, Henry's birthday, to herald the significant role that the establishment of these archives will play in shaping the future of a new generation of Americans, just as Henry did during his remarkable tenure as the 30th Sergeant-at-Arms of the United States Senate.

In addition to creating a digital archive and preserving the traditions and culture of Native Hawaiians, this bill will support initiatives critical to the development of Web-based media projects and the creation of educational materials that will richly enhance the educational experience for countless students.

It is my hope that the establishment of these archives will inspire greater academic achievement of indigenous students by sharing with them the stories and histories of accomplished individuals with indigenous backgrounds, such as Henry.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 260. A bill to establish the Fort Stanton-Snowy River Cave National Conservation Area; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I rise today to introduce legislation to protect a natural wonder in my home State of New Mexico. A passage within the Fort Stanton Cave contains what can only be described as a magnificent white river of calcite. I am pleased to be joined in this effort again this year by my colleague from New Mexico, Senator BINGAMAN.

Many locals are familiar with the Fort Stanton Cave in Lincoln County, NM. Exploration of the cave dates back to at least the 1850s, when troops stationed in the area began visiting the network of caverns. Exploration continued over the years and in 2001 BLM volunteers discovered a two-mile long continuous calcite formation.

We have not found a formation of this size anywhere else in New Mexico or perhaps even in the United States. Because of the beauty and distinct appearance of this discovery, I continue to be excited about the scientific and educational opportunities associated with the find. This large, continuous stretch of calcite may yield valuable research opportunities relating to hydrology, geology, and microbiology. In fact, there may be no limits to what we can learn from this snow white cave passage.

It is not often that we find something so striking and so significant. I believe this find is worthy of study and our most thoughtful management and conservation.

My legislation does the following: (1) creates a Fort Stanton-Snowy River Cave Conservation Area to protect, secure and conserve the natural and unique features of the Snowy River Cave; (2) instructs the BLM to prepare a map and legal description of the Snowy River cave, and to develop a comprehensive, long-term management plan for the cave area; (3) authorizes the conservation of the unique features and environs in the cave for scientific, educational and other public uses deemed safe and appropriate under the management plan; (4) authorizes the BLM to work with State and other institutions and to cooperate with Lincoln County to address the historical involvement of the local community; (5) protects the caves from mineral and mining leasing operations.

As the people of my home State of New Mexico know, we have many natural wonders, and I am proud to play a role in the protection of this recent unique discovery. I hope my colleagues will join with me in approving the Fort Stanton-Snowy River National Cave Conservation Area Act.

I ask unanimous consent that text of the bill be printed in the RECORD.

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

S. 260

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Stanton-Snowy River Cave National Conservation Area Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Fort Stanton-Snowy River Cave National Conservation Area established by section 3(a).

(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed for the Conservation Area under section 4(c).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. ESTABLISHMENT OF FORT STANTON-SNOWY RIVER CAVE NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT; PURPOSES.—There is established the Fort Stanton–Snowy River Cave National Conservation Area in Lincoln County, New Mexico, to protect, conserve, and enhance the unique and nationally important historic, cultural, scientific, archaeological, natural, and educational subterranean cave resources of the Fort Stanton–Snowy River cave system.

(b) AREA INCLUDED.—The Conservation Area shall include the area within the boundaries depicted on the map entitled ''Fort Stanton–Snowy River Cave National Conservation Area'' and dated November 2005.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall submit to Congress a map and legal description of the Conservation Area.

(2) EFFECT.—The map and legal description of the Conservation Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Conservation Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. MANAGEMENT OF THE CONSERVATION AREA.

(a) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Area—

(A) in a manner that conserves, protects, and enhances the resources and values of the Conservation Area, including the resources and values described in section 3(a); and

(B) in accordance with—

(i) this Act;

(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(iii) any other applicable laws.

(2) USES.—The Secretary shall only allow uses of the Conservation Area that are consistent with the protection of the cave resources.

(3) REQUIREMENTS.—In administering the Conservation Area, the Secretary shall provide for—

(A) the conservation and protection of the natural and unique features and environs for scientific, educational, and other appropriate public uses of the Conservation Area;

(B) public access, as appropriate, while providing for the protection of the cave resources and for public safety;

(C) the continuation of other existing uses or other new uses of the Conservation Area that do not impair the purposes for which the Conservation Area is established;

(D) management of the surface area of the Conservation Area in accordance with the Fort Stanton Area of Critical Environmental Concern Final Activity Plan dated March, 2001, or any amendments to the plan, consistent with this Act; and

(E) scientific investigation and research opportunities within the Conservation Area, including through partnerships with colleges, universities, schools, scientific institutions, researchers, and scientists to conduct research and provide educational and interpretive services within the Conservation Area.

(b) WITHDRAWALS.—Subject to valid existing rights, all Federal surface and subsurface land within the Conservation Area and all land and interests in the land that are acquired by the United States after the date of enactment of this Act for inclusion in the Conservation Area, are withdrawn from—

(1) all forms of entry, appropriation, or disposal under the general land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation under the mineral leasing and geothermal leasing laws.

(c) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the Conservation Area.

(2) PURPOSES.—The management plan shall—

(A) describe the appropriate uses and management of the Conservation Area;

(B) incorporate, as appropriate, decisions contained in any other management or activity plan for the land within or adjacent to the Conservation Area;

(C) take into consideration any information developed in studies of the land and resources within or adjacent to the Conservation Area; and

(D) provide for a cooperative agreement with Lincoln County, New Mexico, to address the historical involvement of the local community in the interpretation and protection of the resources of the Conservation Area.

(d) ACTIVITIES OUTSIDE CONSERVATION AREA.—The establishment of the Conservation Area shall not—

(1) create a protective perimeter or buffer zone around the Conservation Area; or

(2) preclude uses or activities outside the Conservation Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Conservation Area.

(e) RESEARCH AND INTERPRETIVE FACILITIES.—

(1) IN GENERAL.—The Secretary may establish facilities for—

(A) the conduct of scientific research; and

(B) the interpretation of the historical, cultural, scientific, archaeological, natural, and educational resources of the Conservation Area.

(2) COOPERATIVE AGREEMENTS.—The Secretary may, in a manner consistent with this Act, enter into cooperative agreements with the State of New Mexico and other institutions and organizations to carry out the purposes of this Act.

(f) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation of any water right.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act. To establish the Fort Stanton-Snowy River Cave National Conservation Area.

By Ms. CANTWELL (for herself, Mr. ENGLISH, Mr. SPECTER, Mr. DURBIN, Mr. ALLARD, Mr. VITTER, Mr. LEVIN, Ms. COLLINS, Mr. KYL, and Mrs. FEINSTEIN):

S. 261. A bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President, I rise today to join with my colleagues, Senators SPECTER and ENSIGN, in reintroducing the Animal Fighting Prohibition Enforcement Act of 2007. This legislation has won the unanimous approval of the Senate several times, but unfortunately has not yet reached the finish line. I look forward to working with my colleagues to see this important bill finally become the law of the land.

There is no doubt, animal fighting is terribly cruel. Dogs and roosters are drugged to make them hyper-aggressive and forced to keep fighting even after suffering severe injuries such as punctured eyes and pierced lungs.

It's all done for ''entertainment'' and illegal gambling. Children are sometimes brought to these spectacles, and the fights are frequently accompanied by illegal drug trafficking and acts of human violence. In 2006, nine murders related to animal fighting occurred across the country.

Some dogfighters steal pets to use as bait for training their dogs, while others allow trained fighting dogs to roam neighborhoods and endanger the public.

The Animal Fighting Prohibition Enforcement Act will strengthen current law by making the interstate transport of animals for the purpose of fighting a felony and increase the punishment to three years of jail time. This is necessary because the current misdemeanor penalty has proven ineffective—considered a ''cost of doing business'' by those in the animal fighting industry which continues unabated nationwide. These enterprises depend on interstate commerce, as I evidenced by the animal fighting magazines that advertise and promote them.

Our bill also makes it a felony to move cockfighting implements in interstate or foreign commerce. These are razor-sharp knives known as ''slashers'' and ice pick-like gaffs designed exclusively for cockfights and attached to the birds' legs for fighting. Cockfighting magazines I and websites contain hundreds of advertisements for mail-order knives and gaffs, revealing a thriving interstate market for the weapons used in cockfights.

This is long overdue legislation. Both the Senate and House approved felony animal fighting provisions in their Farm Bills in 2001, but they were stripped out in conference. The Senate included felony animal fighting provisions in the 2003 Health Forest Bill, but they were again dropped in conference. In September 2004, the Animal Fighting Prohibition Enforcement Act was approved by the House Judiciary Committee, but did not reach the floor. In April 2005, the Senate passed a bill nearly identical to the one we are introducing today, when it unanimously approved S. 382. In May 2006, the House Crime, Terrorism and Homeland Security Subcommittee held a comprehensive hearing on the House companion bill, H.R. 817, which garnered 324 cosponsors but was not considered on the House floor. The legislative history of this animal fighting felony legislation shows it has broad bipartisan support of more than half the Senate, and it has won unanimous approval on the floor time and time again.

It's time to get this felony animal fighting language enacted. With the bird flu threat looming, we can't afford to wait any longer. The economic consequences are staggering—the World Bank projects worldwide losses of $1.5 to $2 trillion. We must be able to say we did all we could to prevent such a pandemic, and this is an obvious, easy and necessary step.

Interstate and international transport of birds for cockfighting is known to have contributed to the spread of avian influenza in Asia and poses a threat to poultry and public health in the United States. According to the World Health Organization and local news reports, at least nine confirmed human fatalities from avian influenza in Thailand and Vietnam may have been contracted through cockfighting activity since the beginning of 2004. Several children are among those who are reported to have died from avian influenza as a result of exposure through cockfighting, including 4-year-old, 6-year-old, and 18-year-old boys in Thailand and a 6-year-old girl in Vietnam.

There have been many news stories focusing on the connection between bird flu and cockfighting. For example, an MSNBC report headlined, ''Cockfights blamed for Thailand bird flu spread.'' A World Health Organization Asia regional spokesperson interviewed recently on the CBS Evening News described the risk of spreading disease through cockfighting with infected animals as a ''total disaster waiting to happen.''

Because human handling of fighting roosters is a regular occurrence, the opportunity of disease transmission from fighting birds to people is substantial. Fighting-bird handlers come into frequent, sustained contact with their birds during training and during organized fights. It is common practice for handlers to suck saliva and blood from roosters' beaks to help clear their airways and enable them to keep fighting.

Cockfighters frequently move birds across State and foreign borders, bringing them to fight in different locations and risking the spread of infectious diseases. Communications in national

cockfighting magazines and websites have shown that U.S. cockfighters regularly transport their birds to and from other parts of the world, including Asia.

The U.S. Department of Agriculture (USDA), in endorsing the Animal Fighting Prohibition Enforcement Act, noted that strengthening current Federal law on the inhumane practice of animal fighting would enhance the agency's ability to safeguard the health of U.S. poultry against deadly diseases such as avian influenza and exotic Newcastle disease (END). The USDA has stated that cockfighting was implicated in an outbreak of END that spread through California and the Southwest in 2002 and 2003. That outbreak cost U.S. taxpayers nearly $200 million to eradicate and cost the U.S. poultry industry many millions more in lost export markets. The costs of an avian influenza outbreak in this country could be much higher—with the Congressional Budget Office estimating losses between 1.5 and 5 percent of GDP ($185 billion to $618 billion).

The National Chicken Council, which represents 95 percent of all U.S. poultry producers and processors, has also endorsed the Animal Fighting Prohibition Enforcement Act, expressing concern that avian influenza and other diseases can be spread by the movement of game birds and that the commercial chicken industry remains under considerable threat because it operates amidst a national network of game bird operations.

Avian influenza has not yet crossed the species barrier in this country, as it has in Asia. But we must do all we can to minimize this risk. Establishing a more meaningful deterrent to illegal interstate and foreign movement of animals for fighting purposes is an obvious step we can take to reduce this risk.

Besides those associated with the poultry industry, this legislation has been endorsed by a number of other organization including the Humane Society of the United States, the American Veterinary Medical Association, the National Coalition Against Gambling Expansion, the League of United Latin American Citizens, the National Sheriffs' Association, and more than 400 individual sheriffs and police departments covering every State in the country. Those law enforcement agencies recognize that animal fighting often involves the movement of animals across State and foreign borders, so they can't do the job on their own. They need the Federal Government to do its part to help curb this dangerous activity.

Our legislation does not expand the federal government's reach into a new area, but simply aims to make current law more effective. It is explicitly limited to interstate and foreign commerce, so it protects States' rights in the two States where cockfighting is still allowed, and it protects States' rights the other 48 States—and all 50, for dogfighting—where weak Federal law is compromising their ability to keep animal fighting outside their borders.

The bill we introduce today is identical to S. 382, which passed the Senate unanimously in the last Congress, except for one change. The new bill provides for up to three years' jail time, compared to two in S. 382, in order to bring this more in line with penalties for other federal animal cruelty-related felonies. For example, in 1999, Congress authorized imprisonment of up to 5 years for interstate commerce in videos depicting animal cruelty, including animal fighting, P.L. 106–152, and mandatory jail time of up to 10 years for willfully harming or killing a federal police dog or horse (P.L. 106–254).

With every week, there are new reports of animal fighting busts, as local and state law enforcement struggle to rein in this thriving industry. In my own State of Washington, police arrested 5 people on Christmas Day at a cockfight in Brewster, and about 50 people ran off, according to recent news accounts. Three days later, six more were arrested in Okanogan for promoting cockfighting. And nine people were arrested in Tacoma last spring, where investigators seized methamphetamines, marijuana, weapons, thousands of dollars, and fighting roosters.

It's time for Congress to strengthen the federal law so that it can provide as a meaningful deterrent against animal fighting. State and local law enforcement will have a tough law on the books necessary to help them crack down on this interstate industry. I thank my colleagues for their support, and look forward to working with them to finally enacting this common-sense measure into law.

By Mr. BINGAMAN (for himself, Mr. SMITH, Mr. REID, Mrs. FEINSTEIN, Mrs. BOXER, Mr. BAUCUS, Mrs. MURRAY, and Ms. CANTWELL)

S. 267. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine; to the Committee on the Judiciary.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Native American Methamphetamine Enforcement and Treatment Act of 2007.

Unfortunately, when Congress passed the Combat Methamphetamine Epidemic Act, tribes were unintentionally left out as eligible applicants in some of the newly-authorized grant programs. The bill I am introducing today, along with Senators SMITH, REID, BAUCUS, FEINSTEIN, BOXER, FEINGOLD, CANTWELL, and MURRAY, would simply ensure that tribes are able to apply for these funds and give Native American communities the resources they need to fight scourge of methamphetamine use.

The recently-enacted Combat Methamphetamine Epidemic Act of 2005 authorized new funding for three grant programs. The Act authorized $99 million in new funding for the COPS Hot Spots program, which helps local law enforcement agencies obtain the tools they need to reduce the production, distribution, and use of meth. Funding may also be used to clean up meth labs, support health and environmental agencies, and to purchase equipment and support systems.

The Act also authorized $20 million for a Drug-Endangered Children grant program to provide comprehensive services to assist children who live in a home in which meth has been used, manufactured, or sold. Under this program, law enforcement agencies, prosecutors, child protective services, social services, and health care services, work together to ensure that these children get the help they need.

In addition, the Combat Meth Act authorized grants to be made to address the use of meth among pregnant and parenting women offenders. The Pregnant and Parenting Offenders program is aimed at facilitating collaboration between the criminal justice, child welfare, and State substance abuse systems in order to reduce the use of drugs by pregnant women and those with dependent children.

Although Tribes are eligible applicants under the Pregnant and Parenting Offenders program, they were not included as eligible applicants under either the Hot Spots program or the Drug-Endangered Children program. I see no reason why tribes should not be able to access all of these funds.

Meth use has had a devastating impact in communities throughout the country, and Indian Country is no exception. According to NCAI, Native Americans have the highest meth abuse rate among any ethnic group and 70 percent of law enforcement rate meth as their greatest challenge—indeed, a FBI survey found that an estimated 40 percent of violent crime in Indian Country was related to meth use. And last year there was an article in the Gallup Independent newspaper about a Navajo grandmother, her daughter, and granddaughter, who were all arrested for selling meth. There was also a one-year-old child in the home when police executed the arrest warrant. It is absolutely disheartening to hear about cases such as this, with three generations of a family destroyed by meth.

I strongly believe that we need to do everything we can to assist communities as they struggle to deal with the consequences of meth, and ensuring that Native American communities are able to access these funds is an important first step. I hope my colleagues will join me in supporting this important measure.

By Ms. SNOWE (for herself, Mr. LOTT, Mr. ISAKSON, Mr. CHAMBLISS, and Ms. COLLINS):

S. 269. A bill to amend the Internal Revenue Code of 1986 to increase and permanently extend the expensing of certain depreciable business assets for small businesses; to the Committee on Finance.

By Ms. SNOWE (for herself and Mrs. LINCOLN):

S. 270. A bill to permit startup partnerships and S corporations to elect taxable years other than required years; to the Committee on Finance.

By Ms. SNOWE (for herself, Mrs. LINCOLN, Mrs. HUTCHISON, and Mr. KERRY):

S. 271. A bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain improvements to retail space; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce a series of proposals that, once enacted, will reduce not only the amount of taxes that small businesses pay, but also the administrative burdens which saddle small companies trying to comply with the tax laws. Small businesses are the engine that drives our Nation's economy and I believe these proposals strengthen their ability to lead the way. I am pleased to be joined by colleagues from both sides of the aisle as we work to move these important initiatives for small businesses from legislation to law.

A top priority I hear from small businesses across Maine is the need for tax relief. Despite the fact that small businesses are the real job-creators for Maine's and our Nation's economy, the current tax system is placing an entirely unreasonable burden on them when trying to satisfy their tax obligations. The current tax code imposes a large, and expensive, burden on all taxpayers in terms of satisfying their reporting and record-keeping obligations. The problem, though, is that small companies are disadvantaged most in terms of the money and time spent in satisfying their tax obligation.

For example, according to the Small Business Administration's Office of Advocacy, small businesses spend an astounding 8 billion hours each year complying with government reports. They also spend more than 80 percent of this time on completing tax forms. What's even more troubling is that companies that employ fewer than 20 employees spend nearly $1,304 per employee in tax compliance costs; an amount that is nearly 67 percent more than larger firms.

For that reason, I am introducing a package of proposals that will provide not only targeted, affordable tax relief to small business owners, but also simpler rules under the tax code. By simplifying the tax code, small business owners will be able to satisfy their tax obligation in a cheaper, more efficient manner, allowing them to be able to devote more time and resources to their business.

I am introducing legislation today in response to the repeated requests from small businesses in Maine and from across the nation to allow them to expense more of their investments, like the purchase of essential new equipment. My bill modifies the Internal Revenue Code by doubling the amount a small business can expense from $100,000 to $200,000, and make the provision permanent as President Bush proposed this change in his fiscal year 2007 tax proposals. With small businesses representing 99 percent of all employers, creating 75 percent new jobs and contributing 51 percent of private-sector output, their size is the only 'small' aspect about them.

By doubling and making permanent the current expensing limit and indexing these amounts for inflation, this bill will achieve two important objectives. First, qualifying businesses will be able to write off more of the equipment purchases today, instead of waiting five, seven or more years to recover their costs through depreciation. That represents substantial savings both in dollars and in the time small businesses would otherwise have to spend complying with complex and confusing depreciation rules. Moreover, new equipment will contribute to continued productivity growth in the business community, which economic experts have repeatedly stressed is essential to the long-term vitality of our economy.

Second, as a result of this bill, more businesses will qualify for this benefit because the phase-out limit will be increased to $800,000 in new assets purchases. At the same time, small business capital investment will be pumping more money into the economy. This is a win-win for small business and the economy as a whole and I am please to have Senators LOTT, ISAKSON, CHAMBLISS, and COLLINS join me as cosponsors of this legislation.

Another proposal that I am introducing with Senator LINCOLN, the Small Business Tax Flexibility Act of 2007, will permit start-up small business owners to use a taxable year other than the calendar year if they generally earn fewer than $5 million during the tax year.

Specifically, the Small Business Tax Flexibility Act of 2007 will permit more taxpayers to use the taxable year most suitable to their business cycle. Until 1986, businesses could elect the taxable year-end that made the most economic sense for the business. In 1986, Congress passed legislation requiring partnerships and S corporations, many of which are small businesses, to adopt a December 31 year-end. The tax code does provide alternatives to the calendar year for small businesses, but the compliance costs and administrative burdens associated with these alternatives prove to be too high for most small businesses to utilize.

Meanwhile, C corporations, as large corporations often are, receive much more flexibility in their choice of taxable year. A C corporation can adopt either a calendar year or any fiscal year for tax purposes, as along as it keeps its books on that basis. This creates the unfair result of allowing larger businesses with greater resources greater flexibility in choosing a taxable year than smaller firms with fewer resources. This simply does not make sense to me. My bill changes these existing rules so that more small businesses will be able to use the taxable year that best suits their business.

To provide relief and equity to our nation's 1.5 million retail establishments, most of which have less than five employees, I am introducing a bill with Senators LINCOLN, HUTCHISON, and KERRY that reduces from 39 to 15 years the depreciable life of improvements that are made to retail stores that are owned by the retailer. Under current law, only retailers that lease their property are allowed this accelerated depreciation, which means it excludes retailers that also own the property in which they operate. My bill simply seeks to provide equal treatment to all retailers.

Specifically, this bill will simply conform the tax codes to the realities that retailers on Main Street face. Studies conducted by the Treasury Department, Congressional Research Service and private economists have all found that the 39-year depreciation life for buildings is too long and that the 39-year depreciation life for building improvements is even worse. Retailers generally remodel their stores every five to seven years to reflect changes in customer base and compete with newer stores. Moreover, many improvements such as interior partitions, ceiling tiles, restroom accessories, and paint, may only last a few years before requiring replacement.

This package of proposals are a tremendous opportunity to help small enterprises succeed by providing an incentive for reinvestment and leaving them more of their earnings to do just that. I urge my colleagues to join me in supporting these proposals.

I ask unanimous consent that the the text of these bills be printed in the RECORD.

There being no objection, the texts of the bills were ordered to be printed in the RECORD, as follows:

S. 269

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE AND PERMANENT EXTENSION FOR EXPENSING FOR SMALL BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking ''$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2010)'' and inserting ''$200,000''.

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) of such Code (relating to reduction in limitation) is amended by striking ''$200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2010)'' and inserting ''$800,000''.

(c) INFLATION ADJUSTMENTS.—Section 179(b)(5)(A) of such Code (relating to inflation adjustments) is amended—

(1) in the matter preceding clause (i)—

(A) by striking ''after 2003 and before 2010'' and inserting ''after 2007'', and

(B) by striking ''the $100,000 and $400,000 amounts'' and inserting ''the $200,000 and $800,000 amounts'', and

(2) in clause (ii), by striking ''calendar year 2002'' and inserting ''calendar year 2006''.

(d) REVOCATION OF ELECTION.—Section 179(c)(2) of such Code (relating to election irrevocable) is amended to read as follows:

''(2) REVOCABILITY OF ELECTION.—Any election made under this section, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.''.

(e) OFF-THE-SHELF COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) of such Code (relating to section 179 property) is amended by striking ''and before 2010''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

S. 270

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Tax Flexibility Act of 2007''.

SEC. 2. QUALIFIED SMALL BUSINESSES ELECTION OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

(a) IN GENERAL.—Part I of subchapter E of chapter 1 of the Internal Revenue Code of 1986 (relating to accounting periods) is amended by inserting after section 444 the following new section:

''SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTION OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

''(a) GENERAL RULE.—A qualified small business may elect to have a taxable year, other than the required taxable year, which ends on the last day of any of the months of April through November (or at the end of an equivalent annual period (varying from 52 to 53 weeks)).

''(b) YEARS FOR WHICH ELECTION EFFECTIVE.—An election under subsection (a)—

''(1) shall be made not later than the due date (including extensions thereof) for filing the return of tax for the first taxable year of the qualified small business, and

''(2) shall be effective for such first taxable year or period and for all succeeding taxable years of such qualified small business until such election is terminated under subsection (c).

''(c) TERMINATION.—

''(1) IN GENERAL.—An election under subsection (a) shall be terminated on the earliest of—

''(A) the first day of the taxable year following the taxable year for which the entity fails to meet the gross receipts test,

''(B) the date on which the entity fails to qualify as an S corporation, or

''(C) the date on which the entity terminates.

''(2) GROSS RECEIPTS TEST.—For purposes of paragraph (1), an entity fails to meet the gross receipts test if the entity fails to meet the gross receipts test of section 448(c).

''(3) EFFECT OF TERMINATION.—An entity with respect to which an election is terminated under this subsection shall determine its taxable year for subsequent taxable years under any other method that would be permitted under subtitle A.

''(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under paragraph (1)(A) results in a short taxable year—

''(A) items relating to net profits for the period beginning on the day after its last fiscal year-end and ending on the day before the beginning of the taxable year determined under paragraph (3) shall be includible in income ratably over the 4 taxable years following the year of termination, or (if fewer) the number of taxable years equal to the fiscal years for which the election under this section was in effect, and

''(B) items relating to net losses for such period shall be deductible in the first taxable year after the taxable year with respect to which the election terminated.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SMALL BUSINESS.—The term 'qualified small business' means an entity—

''(A)(i) for which an election under section 1362(a) is in effect for the first taxable year or period of such entity and for all subsequent years, or

''(ii) which is treated as a partnership for the first taxable year or period of such entity for Federal income tax purposes,

''(B) which conducts an active trade or business or which would qualify for an election to amortize start-up expenditures under section 195, and

''(C) which is a start-up business.

''(2) START-UP BUSINESS.—For purposes of paragraph (1)(C), an entity shall be treated as a start-up business so long as not more than 75 percent of the entity is owned by any person or persons who previously conducted a similar trade or business at any time within the 1-year period ending on the date on which such entity is formed. For purposes of the preceding sentence, a person and any other person bearing a relationship to such person specified in section 267(b) or 707(b)(1) shall be treated as one person, and sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse and the individual's children under the age of 21.

''(3) REQUIRED TAXABLE YEAR.—The term 'required taxable year' has the meaning given to such term by section 444(e).

''(e) TIERED STRUCTURES.—The Secretary shall prescribe rules similar to the rules of section 444(d)(3) to eliminate abuse of this section through the use of tiered structures.''.

(b) CONFORMING AMENDMENT.—Section 444(a)(1) of the Internal Revenue Code of 1986 is amended by striking ''section,'' and inserting ''section and section 444A''.

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 444 the following new item:

''Sec. 444A. Qualified small businesses election of taxable year ending in a month from April to November.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

S. 271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN IMPROVEMENTS TO RETAIL SPACE.

(a) 15-YEAR RECOVERY PERIOD.—Subparagraph (E) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to 15-year property) is amended by striking ''and'' at the end of clause (vii), by striking the period at the end of clause (viii) and inserting '', and'', and by adding at the end the following new clause:

''(ix) any qualified retail improvement property.''.

(b) QUALIFIED RETAIL IMPROVEMENT PROPERTY.—Subsection (e) of section 168 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(8) QUALIFIED RETAIL IMPROVEMENT PROPERTY.—

''(A) IN GENERAL.—The term 'qualified retail improvement property' means any improvement to an interior portion of a building which is nonresidential real property if—

''(i) such portion is open to the general public and is used in the trade or business of selling tangible personal property or services to the general public; and

''(ii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

''(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

''(i) the enlargement of the building,

''(ii) any elevator or escalator, or

''(iii) the internal structural framework of the building.''.

(c) REQUIREMENT TO USE STRAIGHT LINE METHOD.—Paragraph (3) of section 168(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

''(I) Qualified retail improvement property described in subsection (e)(8).''.

(d) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) of the Internal Revenue Code of 1986 is amended by inserting after the item relating to subparagraph (E)(viii) the following new item:

''(E)(ix) ..... 39''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified retail improvement property placed in service after the date of the enactment of this Act.

By Mr. COLEMAN:

S. 272. A bill to amend Public Law 87–383 to reauthorize appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetland and other waterfowl habitat essential to the preservation of migratory waterfowl, and for other purposes; to the Committee on Environment and Public Works.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill I introduce today—to amend Public Law 87–383 to reauthorize appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetland and other waterfowl habitat essential to preservation of migratory waterfowl, and for other purposes—be printed in the RECORD.

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

S. 272

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF FUNDS FOR CONSERVATION OF MIGRATORY WATERFOWL AND HABITAT.

The first section of Public Law 87–383 (16 U.S.C. 715k–3) is amended—

(1) by striking ''That in'' and inserting the following:

''SECTION 1. AUTHORIZATION OF FUNDS FOR CONSERVATION OF MIGRATORY WATERFOWL HABITAT.

''(a) IN GENERAL.—In'';

(2) by striking ''for the period'' and all that follows through the end of the sentence and inserting ''$400,000,000 for the period of fiscal years 2008 through 2017.''; and

(3) by adding at the end the following:

''(b) ADVANCE TO MIGRATORY BIRD CONSERVATION FUND.—Funds appropriated pursuant to this Act shall be treated as an advance, without interest, to the Migratory Bird Conservation Fund.

''(c) REPAYMENT TO TREASURY.—

''(1) IN GENERAL.—Effective beginning July 1, 2008, funds appropriated pursuant to this Act shall be repaid to the Treasury out of the Migratory Bird Conservation Fund.

''(2) AMOUNTS.—Repayment under this subsection shall be made in annual amounts that are equal to the funds accruing annually to the Migratory Bird Conservation Fund that are attributable to the portion of the price of migratory bird hunting stamps sold that year that is in excess of $15 per stamp.''.

SEC. 2. SENSE OF CONGRESS REGARDING THE USE OF CERTAIN FUNDS.

It is the sense of Congress that—

(1) the funds provided pursuant to the amendments made by this Act—

(A) should be used for preserving and increasing waterfowl populations in accordance with the goals and objectives of the North American Waterfowl Management Plan; and

(B) to that end, should be used to supplement and not replace current conservation funding, including funding for other Federal and State habitat conservation programs; and

(2) this Act and the amendments made by this Act should be implemented in a manner that helps private landowners achieve long-term land use objectives in a manner that enhances the conservation of wetland and wildlife habitat.

By Mr. SPECTER:

S. 273. A bill to amend part D of title XVIII of the Social Security Act to authorize the Secretary of Health and Human Services to negotiate for lower prices for Medicare prescription drugs; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce the Prescription Drug and Health Improvement Act of 2007 to reduce the high prices of prescription drugs for Medicare beneficiaries. I introduced a similar version of this bill in the 108th and the 109th Congress, S. 2766 and S. 813, respectively.

Americans, specifically senior citizens, pay the highest prices in the world for brand-name prescription drugs. With 46.6 million uninsured Americans and many more senior citizens without an adequate prescription drug benefit, filling a doctor's prescription is unaffordable for many people in this country. The United States has the greatest health care system in the world; however, too many seniors are forced to make difficult choices between life-sustaining prescription drugs and daily necessities.

The Centers for Medicare and Medicaid Services report that in 2005, per capita spending on prescription drugs rose approximately 7 percent, with a similar rate of growth expected for this year. Much of the increase in drug spending is due to higher utilization and the shift from older, lower cost drugs to newer, higher cost drugs. However, rapidly increasing drug prices are a critical component.

High drug prices, combined with the surging older population, are also taking a toll on State budgets and private sector health insurance benefits. Medicaid spending on prescription drugs rose by 7.5 percent between 2004 and 2005. Until lower priced drugs are available, pressures will continue to squeeze public programs at both the State and Federal level.

To address these problems, my legislation would reduce the high prices of prescription drugs to seniors by repealing the prohibition against interference by the Secretary of Health and Human Services (HHS) with negotiations between drug manufacturers, pharmacies, and prescription drug plan sponsors and instead authorize the Secretary to negotiate contracts with manufacturers of covered prescription drugs. It will allow the Secretary to use Medicare's large beneficiary population to leverage bargaining power to obtain lower prescription drug prices for Medicare beneficiaries.

Price negotiations between the Secretary of HHS and prescription drug manufacturers would be analogous to the ability of the Secretary of Veterans Affairs to negotiate prescription drug prices with manufacturers. This bargaining power enables veterans to receive prescription drugs at a significant cost savings. According to the National Association of Chain Drug Stores, the average ''cash cost'' of a prescription in 2005 was $51.89. The average cost in the Veterans Affairs (VA) health care system in fiscal year 2006 was $28.61.

In the 108th Congress, in my capacity as chairman of the Veterans' Affairs Committee, I introduced the Veterans Prescription Drugs Assistance Act, S. 1153, which was reported out of committee, but was not considered before the full Senate. In the 109th Congress, I again introduced the Veterans Prescription Drugs Assistance Act, S. 614, which was not reported out of committee.

This legislation will broaden the ability of veterans to access the Veterans Affairs' Prescription Drug Program. Under my bill, all Medicare-eligible veterans will be able to purchase medications at a tremendous price reduction through the Veterans Affairs' Prescription Drug Program. In many cases, this will save veterans who are Medicare beneficiaries up to 50 percent on the cost of prescribed medications, a significant savings for veterans. Similar savings may be available to America's seniors from the savings achieved using the HHS bargaining power, like the Veterans Affairs bargaining power for the benefit of veterans. These savings may provide America's seniors with fiscal relief from the increasing costs of prescription drugs.

I believe this bill can provide desperately needed access to inexpensive, effective prescription drugs for America's seniors. The time has come for concerted action in this arena. I urge my colleagues to move this legislation forward promptly.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 273

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prescription Drug and Health Improvement Act of 2007''.

SEC. 2. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) NEGOTIATING FAIR PRICES.—

(1) IN GENERAL.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and by inserting the following:

''(i) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—In order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) HHS REPORTS COMPARING NEGOTIATED PRESCRIPTION DRUG PRICES AND RETAIL PRESCRIPTION DRUG PRICES.—Beginning in 2008, the Secretary of Health and Human Services shall regularly, but in no case less often than quarterly, submit to Congress a report that compares the prices for covered part D drugs (as defined in section 1860D–2(e) of the Social Security Act (42 U.S.C. 1395w–102(e)) negotiated by the Secretary pursuant to section 1860D–11(i) of such Act (42 U.S.C. 1395w–111(i)), as amended by subsection (a), with the average price a retail pharmacy would charge an individual who does not have health insurance coverage for purchasing the same strength, quantity, and dosage form of such covered part D drug.

By Mr. AKAKA (for himself, Ms. COLLINS, Mr. GRASSLEY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. VOINOVICH, Mr. CARPER, Mr. DURBIN, Mr. PRYOR, and Mr. LAUTENBERG):

S. 274. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, today I rise to reintroduce the Federal Employee Protection of Disclosures Act, which will make much needed changes to the Whistleblower Protection Act, WPA. I am pleased once again to be

joined in this effort by Senators COLLINS, GRASSLEY, LEVIN, LIEBERMAN, LEAHY, VOINOVICH, CARPER, DURBIN, PRYOR, and LAUTENBERG.

Senator LEVIN and I first introduced this legislation in 2000. In the House, Representatives HENRY WAXMAN and TOM DAVIS, the chairman and ranking member of the House Government Reform Committee, and Representative TODD PLATTS, who has sponsored companion legislation since 2003, have been working to enact strong whistleblower protections.

Over the years, we've worked to educate our colleagues on the need to strengthen the WPA and build consensus for the legislation. I'm especially pleased that last year our bill passed the Senate by unanimous consent as an amendment to the fiscal year 2007 Defense Authorization Act. While the measure was removed with other non-defense specific material in conference, I believe the Senate's action will provide the momentum to make a real difference for Federal whistleblowers in the 110th Congress.

We agree that to ensure the success of any government program there must be appropriate checks in place to weed out mismanagement and wasteful spending. A strong and vibrant WPA is a critical tool in saving taxpayer money and ensuring an open government.

The Federal Employee Protection of Disclosures Act addresses many court decisions that have eroded protections for Federal employees and have ignored congressional intent. Our legislation ensures that Federal whistleblowers are protected from retaliatory action when notifying the public and government leaders of waste, fraud, and abuse. If we fail to protect whistleblowers, then our efforts to improve government management, protect the public, and secure the nation will also fail.

The legislation: clarifies congressional intent that Federal employees are protected for any disclosure of waste, fraud, or abuse—including those made as part of an employee's job duties; provides an independent determination as to whether the loss or denial of a security clearance is retaliation against a whistleblower; and suspends the Federal Circuit Court of Appeals' sole jurisdiction over Federal employee whistleblower cases for 5 years, which would ensure a fuller review of a whistleblower's claim.

Given that the United States will be fighting the war on terror for years to come and that funding such operations requires significant resources, it is imperative that government funds are spent wisely. That is why Federal employees must be confident that they can disclose government waste, fraud, and abuse without fear of retaliation. Restoring credibility to the WPA is no less than a necessity. I look forward to working with my colleagues to pass this critical legislation.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Protection of Disclosures Act''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''.

(c) COVERED DISCLOSURES.—Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

''This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress, except that an employee or applicant may be disciplined for the disclosure of information described in paragraph (8)(C)(i) to a Member or employee of Congress who is not authorized to receive such information. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that they have disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

(e) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

''(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

''(xiii) an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and''

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling'; or

''(14) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section.''.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated;

''(2) may not order the President or the designee of the President to restore a security clearance or otherwise reverse a determination of clearance status or reverse an access determination; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regard to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regard to the security clearance or access determination.

''(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

''(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

''(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(h) DISCIPLINARY ACTION.—Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under paragraph (8) or (9) of section 2302(b) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

(i) SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with section 2302(b) (8) or (9), or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b) (8) or (9) or subchapter III of chapter 73 and the impact court decisions would have on the enforcement of such provisions of law.

''(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described in subsection (a).''.

(j) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b)(1) of title 5, United States Code, is amended to read as follows:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2), a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board in a case alleging a violation of paragraph (8) or (9) of section 2302(b) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2).''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review relating to paragraph (8) or (9) of section 2302(b) obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting paragraph (8) or (9) of section 2302(b). If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(k) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''.

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement

shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(l) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (6 U.S.C. 133(c)) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(m) ADVISING EMPLOYEES OF RIGHTS.—Section 2302(c) of title 5, United States Code, is amended by inserting '', including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures'' after ''chapter 12 of this title''.

(n) SCOPE OF DUE PROCESS.—

(1) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(2) INDIVIDUAL ACTION.—Section 1221(e)(2) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(o) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 275. A bill to establish the Prehistoric Trackways National Monument in the State of New Mexico; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I'm pleased to reintroduce today with Senator DOMENICI a bill we introduced last Congress. The Prehistoric Trackways National Monument Establishment Act would protect a site of worldwide scientific significance in the Robledo Mountains in my State. The bill would create a national monument to preserve and allow for the continuing scientific investigation of this remarkable ''megatracksite'' of 280,000,000 year-old fossils. The Energy Committee held a hearing last year where the Bureau of Land Management testified in support; in addition the bill has the support of the local community. I appreciate Senator DOMENICI's support on this measure and hope that with the progress we made last Congress we can look forward to moving the bill quickly through the Senate this year.

The vast tidal mudflats that made up much of modern New Mexico 60 million years before the dinosaurs preserved the marks of some of the earliest life on our planet to make its way out of the ocean. The fossil record of this time is scattered throughout New Mexico but, until this discovery, there were few places where the range of life and their interactions with each other could be studied.

Las Cruces resident Jerry MacDonald first brought the find to light in 1988 when he revealed that there was far more to be found in the Robledos than the occasional fossil that local residents had been seeing for years. The trackways he hauled out on his back, some over 20 feet long, showed that there was a great deal of useful information buried in the rock there. These trackways help complete the puzzle of how these ancient creatures lived in a way that we cannot understand from only studying their fossilized bones.

Senator DOMENICI and Representative Skeen joined me in creating legislation, passed in 1990, to protect the area and study its scientific value. In 1994, scientists from the New Mexico Museum of Natural History and Science, the University of Colorado, and the Smithsonian Institution completed their study and documented the significant scientific value of the find. Particularly owing to the quality of the specimens and the wide range of animals that had left their imprint there the study found that the site was of immense scientific value. The study concluded, in part, ''[t]he diversity, abundance and quality of the tracks in the Robledo Mountains is far greater than at any other known tracksite or aggregation of tracksites. Because of this, the Robledo tracks allow a wide range of scientific problems regarding late Paleozoic tracks to be solved that could not be solved before.'' This bill would take the next logical step to follow up from these efforts and set in place permanent protections and allow for scientific investigation of these remarkable resources.

In addition to permanently protecting the fossils for the scientific community the bill would make it a priority that local residents get the opportunity to see these unique specimens and participate in their curation. This should provide a unique scientific and educational opportunity to Las Cruces and the surrounding community.

I look forward to working with my colleagues to protect these important resources and allow for their continuing contribution to our understanding of life on the ancient earth.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 275

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prehistoric Trackways National Monument Establishment Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MONUMENT.—The term ''Monument'' means the Prehistoric Trackways National Monument established by section 4(a).

(2) PUBLIC LAND.—The term ''public land'' has the meaning given the term ''public lands'' in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. FINDINGS.

Congress finds that—

(1) in 1987, a major deposit of Paleozoic Era fossilized footprint megatrackways was discovered in the Robledo Mountains in southern New Mexico;

(2) the trackways contain footprints of numerous amphibians, reptiles, and insects (including previously unknown species), plants, and petrified wood dating back approximately 280,000,000 years, which collectively provide new opportunities to understand animal behaviors and environments from a time predating the dinosaurs;

(3) title III of Public Law 101–578 (104 Stat. 2860)—

(A) provided interim protection for the site at which the trackways were discovered; and

(B) directed the Secretary of the Interior to—

(i) prepare a study assessing the significance of the site; and

(ii) based on the study, provide recommendations for protection of the paleontological resources at the site;

(4) the Bureau of Land Management completed the Paleozoic Trackways Scientific Study Report in 1994, which characterized the site as containing ''the most scientifically significant Early Permian tracksites'' in the world;

(5) despite the conclusion of the study and the recommendations for protection, the site remains unprotected and many irreplaceable trackways specimens have been lost to vandalism or theft; and

(6) designation of the trackways site as a National Monument would protect the unique fossil resources for present and future generations while allowing for public education and continued scientific research opportunities.

SEC. 4. ESTABLISHMENT.

(a) IN GENERAL.—In order to conserve, protect, and enhance the unique and nationally important paleontological, scientific, educational, scenic, and recreational resources and values of the public land described in subsection (b), there is established the Prehistoric Trackways National Monument in the State of New Mexico.

(b) DESCRIPTION OF LAND.—The Monument shall consist of approximately 5,367 acres of public land in Doña Ana County, New Mexico, as generally depicted on the map entitled ''Prehistoric Trackways National Monument'' and dated June 1, 2006.

(c) MAP; LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare and submit to Congress an official map and legal description of the Monument.

(2) CORRECTIONS.—The map and legal description submitted under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct any clerical or typographical errors in the legal description and the map.

(3) CONFLICT BETWEEN MAP AND LEGAL DESCRIPTION.—In the case of a conflict between the map and the legal description, the map shall control.

(4) AVAILABILITY OF MAP AND LEGAL DESCRIPTION.—Copies of the map and legal description shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(d) MINOR BOUNDARY ADJUSTMENTS.—If additional paleontological resources are discovered on public land adjacent to the Monument after the date of enactment of this Act, the Secretary may make minor boundary adjustments to the Monument to include the resources in the Monument.

SEC. 5. ADMINISTRATION.

(a) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Monument—

(A) in a manner that conserves, protects, and enhances the resources and values of the Monument, including the resources and values described in section 4(a); and

(B) in accordance with—

(i) this Act;

(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(iii) other applicable laws.

(2) NATIONAL LANDSCAPE CONSERVATION SYSTEM.—The Monument shall be managed as a component of the National Landscape Conservation System.

(3) PROTECTION OF RESOURCES AND VALUES.—The Secretary shall manage public land adjacent to the Monument in a manner that is consistent with the protection of the resources and values of the Monument.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a comprehensive management plan for the long-term protection and management of the Monument.

(2) COMPONENTS.—The management plan under paragraph (1)—

(A) shall—

(i) describe the appropriate uses and management of the Monument, consistent with the provisions of this Act; and

(ii) allow for continued scientific research at the Monument during the development of the management plan; and

(B) may—

(i) incorporate any appropriate decisions contained in any current management or activity plan for the land described in section 4(b); and

(ii) use information developed in studies of any land within or adjacent to the Monument that were conducted before the date of enactment of this Act.

(c) AUTHORIZED USES.—The Secretary shall only allow uses of the Monument that the Secretary determines would further the purposes for which the Monument has been established.

(d) INTERPRETATION, EDUCATION, AND SCIENTIFIC RESEARCH.—

(1) IN GENERAL.—The Secretary shall provide for public interpretation of, and education and scientific research on, the paleontological resources of the Monument, with priority given to exhibiting and curating the resources in Doña Ana County, New Mexico.

(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate public entities to carry out paragraph (1).

(e) SPECIAL MANAGEMENT AREAS.—

(1) IN GENERAL.—The establishment of the Monument shall not change the management status of any area within the boundary of the Monument that is—

(A) designated as a wilderness study area and managed in accordance with section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); or

(B) managed as an area of critical environment concern.

(2) CONFLICT OF LAWS.—If there is a conflict between the laws applicable to the areas described in paragraph (1) and this Act, the more restrictive provision shall control.

(f) MOTORIZED VEHICLES.—

(1) IN GENERAL.—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the Monument shall be allowed only on roads and trails designated for use by motorized vehicles under the management plan prepared under subsection (b).

(2) PERMITTED EVENTS.—The Secretary may issue permits for special recreation events involving motorized vehicles within the boundaries of the Monument, including the ''Chile Challenge''—

(A) to the extent the events do not harm paleontological resources; and

(B) subject to any terms and conditions that the Secretary determines to be necessary.

(g) WITHDRAWALS.—Subject to valid existing rights, any Federal land within the Monument and any land or interest in land that is acquired by the United States for inclusion in the Monument after the date of enactment of this Act are withdrawn from—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing laws, geothermal leasing laws, and minerals materials laws.

(h) GRAZING.—The Secretary may allow grazing to continue in any area of the Monument in which grazing is allowed before the date of enactment of this Act, subject to applicable laws (including regulations).

(i) HUNTING.—

(1) IN GENERAL.—Nothing in this Act diminishes the jurisdiction of the State of New Mexico with respect to fish and wildlife management, including regulation of hunting on public land within the Monument.

(2) REGULATIONS.—The Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones in which and establishing periods during which hunting shall not be allowed for reasons of public safety, administration, or public use and enjoyment.

(j) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation by the United States of any water or water rights with respect to the Monument.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. DOMENICI. Mr. President, the fossilized trackways near Las Cruces, New Mexico, in Dona Ana County came to my attention in the early 1990's. During the 101st Congress, I cosponsored Senator BINGAMAN's legislation that directed the Bureau of Land Management to study and report on the significance of the prehistoric sites near the Robledo Mountains.

I believe our Federal lands are truly national treasures, and I understand the challenges we face in managing our public lands in a responsible and environmentally sensitive manner. Local leaders, special interest groups, multiple users, New Mexico State University, and the Bureau of Land Management, BLM, have identified many land issues in the Las Cruces area that need to be addressed. The trackways are but one of these issues that can and should be addressed in the context of a broader lands bill. I continue to believe that introduction of comprehensive or omnibus legislation is a preferable approach, rather than the introduction of individual bills to deal with each separate issue.

The trackways are a remarkable resource that need and deserve protection, and I support the intent of this bill. While I am very supportive of the overall goal to protect these prehistoric trackway sites, there are several particulars in this bill that I do not fully embrace and on which I want to continue to work with Senator BINGAMAN, such as ensuring that we authorize all uses in the area that are not inconsistent with the purposes of the bill, and reworking the section regarding BLM authority with respect to hunting activities. As we work through the legislative process, I look forward to working with Senator BINGAMAN to accomplish the objective of protecting the prehistoric trackway sites, while at the same time addressing some of the broader Federal land issues in Dona Ana County.

By Mrs. FEINSTEIN (for herself and Mr. SESSIONS):

S. 276. A bill to strengthen the consequences of the fraudulent use of United States or foreign passports and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, Senator SESSIONS and I are introducing legislation today that will enhance our national security by expanding and strengthening the current passport and visa fraud laws.

The Passport and Visa Security Act bill adds much needed law to punish trafficking in passports and visas and clarifies the current criminal law. It also punishes those who engage in schemes to defraud immigrants based on changes in the immigration law.

This bill is an improved version of a bill Senator SESSIONS and I introduced in the 109th Congress. We both have long been concerned about the need to strengthen our national security by strengthening our document fraud laws.

In fact, we introduced our passport fraud bill well before the comprehensive immigration reform bill was passed in the Senate last Spring.

For that reason, I was pleased that the comprehensive immigration reform bill contained important document fraud provisions. This bill builds on those provisions.

The evidence has shown repeatedly that false immigration documents provide a gateway for organized crime and terrorism. The need to take action against this crime is clear.

For too long, the Federal Government has moved too slowly—or not at all—to enhance our border security. According to the 9/11 National Commission Staff Report on Terrorist Travel, prior to September 11, 2001, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal.

Still today, over five years since the tragic attacks on September 11, the Federal Government has failed to devote sufficient time, technology, personnel and resources to make border security a cornerstone of our national security policy.

Last year, Congress passed a law to build a border fence. I believe this law was an important first step, but a fence alone cannot sufficiently protect our vulnerable borders.

In fact, as the 9/11 Commission report demonstrates, individuals with fraudulent documents can pose a far greater threat to our national security than those traveling with no documents at all.

Fraudulent documents give criminals free reign to create a new identity and to plan and carry out attacks in the United States.

We know, for example, that at least two of the 9/11 hijackers used passports that were altered when they entered this country and as many as 15 of the 19 hijackers could have been intercepted by border officials, based in part on their travel documents.

The 9/11 Commission Report detailed the way the terrorist operatives carefully selected the documents they used for travel—most often relying on fraudulent ones.

The terrorists altered passports by substituting photographs, adding false visas, bleaching stamps, and by substituting pages.

The terrorists devoted extensive resources to acquiring and manipulating passports—all to avoid detection of their nefarious activities and objectives.

Today, over five years later, Interpol reports that they have records of more than 12 million stolen and lost travel documents from 113 different countries. These are only the ones we know about.

Interpol estimates that 30 to 40 million travel documents have been stolen worldwide.

We know that over the past few years, passport and visa forgery has become even easier thanks to home computers, digital photography, scanners and color laser printing.

News articles document that passport and visa fraud has become so lucrative that gangs are offering franchises in the multimillion-dollar scam to forgers.

Unfortunately, it's not only foreign passports that can be forged. Forged and fraudulent United States passports can be the most dangerous when in the wrong hands.

With a U.S. passport, criminals can establish American citizenship and have unlimited access to virtually every country in the world.

It's no surprise, then, that passport and visa fraud are often linked to other, very serious crimes in the United States and abroad: narcotics trafficking, organized crimes, money laundering, human trafficking, and identity theft.

For example, this past December, the son of former Liberian President Charles Taylor, Charles McArthur Emmanuel, who headed a violent paramilitary unit in his father's government, was sentenced in Miami for passport fraud.

A day later, a Federal grand jury indicted him on charges of torture and conspiracy involving acts committed in Liberia in 2002.

Emmanuel, also known as Charles ''Chuckie'' Taylor and Roy Belfast Jr., was on Interpol's Most Wanted list and the United Nations travel watch list.

Nevertheless, he escaped detection by falsifying his passport application, ultimately gaining easy entry and exit from the United States while he perpetrated his crimes.

Despite evidence that these crimes are widespread and that millions of travel documents are on the black market, in 2004, the State Department's Diplomatic Security Service reports that it made about 500 arrests for passport fraud, with only 300 convictions.

For these reasons, Senator SESSIONS and I are introducing a bill today to strengthen current passport and visa laws in a number of key ways.

First, this bill adds two new laws with strong penalties to punish those who traffic in fraudulent travel documents. The current law makes no distinction between those caught with multiple false travel documents—the very worst offenders who are often part of organized crime rings—and those with only one false document. Our bill would change that.

The bill also updates the current travel document fraud laws—using plain language advocated for by the practitioners that passed the Senate as part of the comprehensive immigration reform bill.

Thirdly, the bill adds provisions to the current passport and visa fraud laws to ensure that conspiracies and attempts to commit these crimes are investigated and prosecuted just as vigorously as the completed crime.

Fourth—the bill makes explicit that there is extraterritorial jurisdiction over these offenses, so that individuals who counterfeit travel documents while abroad but are caught trying to enter the United States are still subject to prosecution.

The bill also directs the U.S. Sentencing Guidelines Commissions to reconsider the relatively low sentencing guidelines to reflect the potential seriousness of these crimes.

Currently, offenders who engage in passport or visa fraud generally serve less than a year imprisonment, providing little incentive for U.S. Attorney's Offices to expend scarce resources in prosecuting these crimes.

Finally, the bill creates a law to punish sham attorneys who cheat immigrants out of thousands of dollars by preying on their fears that they could be forced to leave the country. We know that when Congress discusses changing the immigration law, scam artists target and exploit these vulnerable populations. These crimes should not go unpunished.

This bill provides much needed reform. It strengthens the security of documents used to illegally gain entry to this country and empowers the agents and prosecutors who enforce our borders to take swift and strong action against these criminals.

I ask my colleagues to join Senator SESSIONS and me in supporting this legislation.

I ask unanimous consent that a bill summary and the text of this bill be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

THE PASSPORT AND VISA SECURITY ACT OF 2007

BILL SUMMARY

Adds two new crimes to penalize the trafficking in 10 or more passports or visas and creates a 20 year maximum penalty for violating these provisions. Under current law, there is no specific provision punishing the trafficking of multiple fraudulent documents and each document must be prosecuted individually.

Simplifies the language of the current passport and visa fraud laws, specifically by changing the required criminal intent from ''knowingly and wilfully'' to ''knowingly.'' The maximum penalty for committing these crimes is amended from 10 years for a first or second offense and 15 years in the case of any other offense to simply 15 years.

Creates a new crime that would penalize those who engage in schemes to defraud aliens in connection with matters authorized by or arising under Federal immigration laws.

Clarifies existing law that the maximum sentence for passport fraud, when used to facilitate a drug trafficking crime, is 20 years; and the maximum sentence for passport fraud, when used to facilitate an act of international terrorism is 25 years. (This change is technical, not substantive, as these are the maximum penalties already in the individual sections of the criminal code.)

Adds language to punish conspiracies and attempts to commit passport fraud and other false document crimes.

Makes explicit that there is extraterritorial jurisdiction over these offenses, so that the United States can prosecute individuals who may have committed a passport fraud crime while abroad (e.g., the law would reach someone who manufactures fake passports in Cameroon and is arrested in the United States).

Adds a definitional section to clarify the terms used in these laws.

Directs the U.S. Sentencing Guidelines Commissions to reconsider the current low sentencing guidelines to reflect the potential seriousness of these crimes and the changes made by this bill.

Creates a rebuttable presumption that a person who commits one of these crimes, or who is found to be unlawfully in the country after having already been ordered deported, is to be detained pending trial.

Adds language directing the Attorney General to create binding regulations to ensure that the prosecution of these crimes is in keeping with current U.S. treaty obligations relating to refugees (which states that refugees carrying false passports should not be prosecuted) without creating a private right of action to enforce this provision.

Clarifies that the Diplomatic Security Service (of the State Department) has authority to investigate these new and revised crimes (using the language found in the 109th Congress Senate passed immigration bill, S. 2611). The Diplomatic Security Service currently investigates passport fraud, this section just clarifies their authority to do so.

Clarifies that the same statute of limitations (10 years) applies to all of the offenses

added or modified by this bill—again incorporating language from the 109th Congress Senate passed immigration bill, S. 2611.

S. 276

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Passport and Visa Security Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—REFORM OF PASSPORT FRAUD OFFENSES

SEC. 101. TRAFFICKING IN PASSPORTS.

Section 1541 of title 18, United States Code, is amended to read as follows:

''§ 1541. Trafficking in passports

''(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more passports;

''(2) forges, counterfeits, alters, or falsely makes 10 or more passports;

''(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

''(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make a passport, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.''.

SEC. 102. FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.

Section 1542 of title 18, United States Code, is amended to read as follows:

''§ 1542. False statement in an application for a passport

''(a) IN GENERAL.—Whoever knowingly makes any false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) VENUE.—

''(1) IN GENERAL.—An offense under subsection (a) may be prosecuted in any district—

''(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

''(B) in which or to which the application was mailed or presented.

''(2) ACTS OCCURRING OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

''(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.''.

SEC. 103. FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.

Section 1543 of title 18, United States Code, is amended to read as follows:

''§ 1543. Forgery and unlawful production of a passport

''(a) FORGERY.—Any person who knowingly—

''(1) forges, counterfeits, alters, or falsely makes any passport; or

''(2) transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority,

shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

''(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

''(2) produces, issues, authorizes, or verifies a United States passport for or to any person knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

''(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.''.

SEC. 104. MISUSE OF A PASSPORT.

Section 1544 of title 18, United States Code, is amended to read as follows:

''§ 1544. Misuse of a passport

''Any person who knowingly—

''(1) uses any passport issued or designed for the use of another;

''(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

''(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

''(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

shall be fined under this title, imprisoned not more than 15 years, or both.''.

SEC. 105. SCHEMES TO DEFRAUD ALIENS.

Section 1545 of title 18, United States Code, is amended to read as follows:

''§ 1545. Schemes to defraud aliens

''(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender claims or represents is authorized by or arises under Federal immigration laws, to—

''(1) defraud any person; or

''(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, promises,

shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.''.

SEC. 106. IMMIGRATION AND VISA FRAUD.

Section 1546 of title 18, United States Code, is amended to read as follows:

''§ 1546. Immigration and visa fraud

''(a) IN GENERAL.—Any person who knowingly—

''(1) uses any immigration document issued or designed for the use of another;

''(2) forges, counterfeits, alters, or falsely makes any immigration document;

''(3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation;

''(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

''(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws; or

''(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the passport was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) TRAFFICKING.—Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

''(2) forges, counterfeits, alters, or falsely makes 10 or more immigration documents;

''(3) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, stolen, falsely made, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing the documents to contain any materially false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

''(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make immigration documents, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

''(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

''(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor;

''(2) an identification document knowing (or having reason to know) that the document is false; or

''(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.''.

SEC. 107. ALTERNATIVE IMPRISONMENT MAXIMUM FOR CERTAIN OFFENSES.

Section 1547 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''(other than an offense under section 1545)'';

(2) in paragraph (1), by striking ''15'' and inserting ''20''; and

(3) in paragraph (2), by striking ''20'' and inserting ''25''.

SEC. 108. ATTEMPTS, CONSPIRACIES, JURISDICTION, AND DEFINITIONS.

Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following new sections:

''§ 1548. Attempts and conspiracies

''Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

''§ 1549. Additional jurisdiction

''(a) IN GENERAL.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under this chapter.

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

''(1) the offense involves a United States passport or immigration document (or any document purporting to be such a document) or any matter, right, or benefit arising under or authorized by Federal immigration laws;

''(2) the offense is in or affects foreign commerce;

''(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

''(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

''(5) the offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))); or

''(6) the offender is a stateless person whose habitual residence is in the United States.

''§ 1550. Authorized law enforcement activities

''Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91–452; 84 Stat. 933).

''§ 1551. Definitions

''As used in this chapter:

''(1) The term 'application for a United States passport' includes any document, photograph, or other piece of evidence submitted in support of an application for a United States passport.

''(2) The term 'false statement or representation' includes a personation or an omission.

''(3) The term 'immigration document'—

''(A) means any application, petition, affidavit, declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other official document, arising under or authorized by the immigration laws of the United States; and

''(B) includes any document, photograph, or other piece of evidence attached to or submitted in support of an immigration document described in subparagraph (A).

''(4) The term 'immigration laws' includes—

''(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

''(B) the laws relating to the issuance and use of passports; and

''(C) the regulations prescribed under the authority of any law described in subparagraph (A) or (B).

''(5) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

''(6) The term 'passport' means—

''(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

''(B) any instrument purporting to be a document described in subparagraph (A).

''(7) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

''(8) The term 'to present' means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

''(9) The 'use' of a passport or an immigration document referred to in section 1541(a), 1543(b), 1544, 1546(a), and 1546(b) of this chapter includes—

''(A) any officially authorized use;

''(B) use to travel;

''(C) use to demonstrate identity, residence, nationality, citizenship, or immigration status;

''(D) use to seek or maintain employment; or

''(E) use in any matter within the jurisdiction of the Federal government or of a State government.''.

SEC. 109. CLERICAL AMENDMENT.

The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

''Sec
''1541. Trafficking in passports.
''1542. False statement in an application for a passport.
''1543. Forgery and unlawful production of a passport.
''1544. Misuse of a passport.
''1545. Schemes to defraud aliens.
''1546. Immigration and visa fraud.
''1547. Alternative imprisonment maximum for certain offenses.
''1548. Attempts and conspiracies.
''1549. Additional jurisdiction.
''1550. Authorized law enforcement activities.
''1550. Definitions.''.

TITLE II—OTHER REFORMS

SEC. 201. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 2, to reflect the serious nature of such offenses.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the United States Sentencing Commission 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 implementation of this section.

SEC. 202. RELEASE AND DETENTION PRIOR TO DISPOSITION.

(a) DETENTION.—Section 3142(e) of title 18, United States Code, is amended to read as follows:

''(e) DETENTION.—(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

''(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

''(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

''(B) the offense described in subparagraph (A) of this paragraph was committed while the person was on release pending trial for a Federal, State, or local offense; and

''(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A) of this paragraph, whichever is later.

''(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of this title for which a maximum term of imprisonment of 10 years or more is prescribed, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

''(4) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required if the judicial officer finds that there is probable cause to believe that the person—

''(A) is an alien; and

''(B)(i) has no lawful immigration status in the United States;

''(ii) is the subject of a final order of removal; or

''(iii) has committed a felony offense under chapter 75 of this title.''.

(b) FACTORS TO BE CONSIDERED.—Section 3142(g)(3) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end; and

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

''(C) the person's immigration status; and''.

SEC. 203. PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.

(a) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for Federal prosecutors to ensure that any prosecution of an alien seeking entry into the United States by fraud is consistent with the United States treaty obligations under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(b) NO PRIVATE RIGHT OF ACTION.—The guidelines required by subsection (a), and any internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the United States. This section, such guidelines, and the process for determining such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter

SEC. 204. DIPLOMATIC SECURITY SERVICE.

Section 37(a)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as follows:

''(1) conduct investigations concerning—

''(A) illegal passport or visa issuance or use;

''(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

''(C) violations of chapter 77 of title 18, United States Code; and

''(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in paragraph (9) of section 7 of title 18, United States Code;''.

SEC. 205. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

(a) IN GENERAL.—Section 3291 of title 18, United States Code, is amended to read as follows:

''§ 3291. Immigration, passport, and naturalization offenses

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses) or 75 (relating to passport and visa offenses) of this title, or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information is filed within ten years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, passport, and naturalization offenses''.

Mr. SESSIONS. Mr. President, I want to thank my colleague Senator Feinstein for her hard work on document security issues. She currently serves as the Chair of the Judiciary Committee's Terrorism Subcommittee, Senator KYL is Ranking Member, and I am looking forward to working with her on the document security that issues I am sure our subcommittee will address this Congress.

This year will mark the 3rd year Senator FEINSTEIN and I have worked together on legislation aimed at making it easier to prosecute people trying to enter the U.S. with fraudulent documents.

One of the most dangerous document security issues we face is how to keep passports and visas out of the hands of the people we don't want to have them.

As a 2004 U.S. News and World Report article rightly stated, ''When it comes to terrorists' most valuable weapons, passports and visas probably rank higher than bullets and bombs.'' A 2004 study done by the Department of Homeland Security Office of Inspector General titled ''A Review of the Use of Stolen Passports From Visa Waiver Countries to Enter the United States,'' found that ''[there are] over 10 million lost or stolen passports that might be in circulation.'' As background for the report, the Forensics Documents Laboratory informed the Office of the Inspector General that ''criminals consider a passport'' from a Visa Waiver Country ''a very valuable commodity.''

To keep out terrorists and others we do not want to allow into the United States, we must be able to identify and effectively prosecute people who lie or give us fraudulent information to obtain a U.S. visa or a passport.

Additionally, we must be able to identify and effectively prosecute people trying to enter the U.S. with a passport or visa that belongs to someone else.

Perhaps most importantly, we must effectively prosecute those possessing multiple passports and visas they intend to distribute to others. We must be able to take these ''career'' document traffickers, those caught with more than 10 fraudulent passports or visas, off the streets.

Under current law, violators are not being prosecuted effectively because there is no statute that specifically makes trafficking in multiple (10 or more) documents its own crime. This bill will add that new crime—punishable by 20 years in jail—to the passport and visa fraud sections of the criminal code.

In addition to creating a new crime to penalize trafficking in 10 or more fraudulent immigration documents, 20 year maximum sentence, Title I of the bill simplifies the language of several of the current passport fraud provisions of the criminal code and changes the maximum penalties for these offenses from 10 years for the first offense and 15 years for subsequent offenses, to simply 15 years for each offense.

The bill also includes a new protection for immigrants. Anyone who engages in a scheme to defraud them in connection with matters under Federal immigration law, or who pretends to be an immigration lawyer, will be charged under a new crime that carries a maximum penalty of 15 years. Although this provision is not strictly related to passport fraud, it will protect immigrants from sham attorneys and legal ''experts'' who cheat them out of their money by pretending to offer them immigration benefits or legitimate documents.

Many of the bill's provisions simply clean up sections of the criminal code. For example—one section modifies the alternative sentencing penalties to make sure the penalties for severe passport fraud offenses (such as those used to facilitate a drug trafficking crime or an act of international terrorism) are consistent throughout the code.

Other provisions codify common law principles needed for effective prosecution of document fraud offenses. For example—one section makes needed clarifications on venue. Currently, false statements or documents are often included in the application which is mailed from one location but processed in another location. This section makes clear that the offense is perpetrated both at the location of the mailing and at the location of the adjudication. If the application containing false statements is prepared overseas, this section clarifies that the offense is still punishable in the United States.

In March of 2004, Mark Zuckerman, Assistant U.S. Attorney for New Hampshire, testified before the United States Sentencing Commission. New Hampshire's National Passport Center processed 2 million of the 7 million passports issued in 2003. The National Passport Center also receives nearly all of the applications for passport renewals filed with the State Department. New Hampshire conducted a passport fraud initiative in its U.S. Attorney's Office as part of its anti-terrorism effort. Zuckerman's testimony provides some insight into the problems that arose during the initiative.

Though the passport applications were processed in New Hampshire, cases of passport fraud resulting from those applications were not being handled in New Hampshire. Typically, they were sent back to the district from which they were mailed. Once returned, they were often declined for prosecution by their local U.S. Attorney's office.

One of the reasons frequently given by the regional U.S. Attorney's Offices for declining passport fraud cases was: ''The sentencing guidelines do not treat passport fraud as a serious offense for which a period of incarceration is likely.''

I would reiterate what Mr. Zuckerman so astutely pointed out in his testimony. Under the current Criminal Code, the most common forms of passport fraud—unless they constitute terrorism or drug trafficking—are just class C felonies. When the defendant has no criminal history, the court is simply required to incarcerate the defendant for 0–6 months. This is the lowest and least consequential sentencing range that can be assigned to any felony under the U.S.

Code. (page 5 of Zuckerman's testimony)

The 9/11 Commission also recognized the lack of routine prosecutions for passport fraud offenses. Page 386 of their report noted:

Fraudulent travel documents, for instance, are usually returned to travelers who are denied entry without further examination for terrorist trademarks, investigation into their source, or legal process.

Importantly, the bill we are introducing today directs the Sentencing Commission to reevaluate the current low sentencing guidelines for passport and visa fraud offenses to reflect the potential seriousness of these crimes and the changes made by our bill.

Additionally, we will require the Sentencing Commission to report back to the Congress on the rationale behind their decision to change (or not change) the sentencing guidelines as a result of this direction.

Majority Leader HARRY REID has repeatedly stated that one of the items at the top of the Democratic agenda early this Congress is the implementation of the recommendations of the 9/11 Commission. In addition to their comments on the lack of prosecutions, the 9/11 Commission had a lot more say about the use of fraudulent and altered passports and visas in the Commission of the 9/11 terrorist attacks.

''[W]e endeavor to dispel the myth that their [the hijackers'] entry into the United States was 'clean and legal'. It was not. . . . two [hijackers] carried passports manipulated in a fraudulent manner. It is likely that several more hijackers carried passports with similar fraudulent manipulation. Two hijackers lied on their visa applications'' Preface, 9/11 Commission staff report.

''To avoid detection of their activities and objectives while engaging in travel that necessitates using a passport, terrorists devote extensive resources to acquiring and manipulating passports, entry and exits stamps, and visas. The al Qaeda terrorist organization was no exception. High-level members of Al Qaeda were expert document forgers . . .'' Page 1. 9/11 Commission staff report.

''Travel history, however, is still recorded in passports with entry-exit stamps called cachets, which al Qaeda has trained its operatives to forge and use to conceal their terrorist activities''. Page 403, 9/11 Commission report.

''[C]ertain al Qaeda members were charged with organizing passport collection schemes to keep the pipelines of fraudulent documents flowing.'' Page 186., ibid

''For terrorists, travel documents are as important as weapons. They must travel clandestinely to meet, train, plan, case targets, and gain access to attack . . . In their travels, terrorists use evasive measures, such as altered and counterfeit passports and visas . . .'' Page 384. ibid.

I hope that Senator REID plans to include the Feinstein/Sessions Passport and Visa Fraud Bill in his 9/11 Commission Recommendations Implementation Package.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 23—DESIGNATING THE WEEK OF FEBRUARY 5 THROUGH FEBRUARY 9, 2007, AS ''NATIONAL SCHOOL COUNSELING WEEK''

Mrs. MURRAY submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 23

Whereas the American School Counselor Association has declared the week of February 5 through February 9, 2007, as ''National School Counseling Week'';

Whereas the Senate has recognized the importance of school counseling through the inclusion of elementary and secondary school counseling programs in the reauthorization of the Elementary and Secondary Education Act of 1965;

Whereas school counselors have long advocated that the education system of the United States must leave no child behind and must provide opportunities for every student;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding them through their academic, personal, social, and career development;

Whereas school counselors have been instrumental in helping students, teachers, and parents deal with the trauma that was inflicted upon them by hurricanes Katrina, Rita, and Wilma;

Whereas students face myriad challenges every day, including peer pressure, depression, and school violence;

Whereas school counselors are among the few professionals in a school building that are trained in both education and mental health;

Whereas the roles and responsibilities of school counselors are often misunderstood, and the school counselor position is often among the first to be eliminated in order to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 478-to-1 is more than double the 250-to-1 ratio recommended by the American School Counselor Association, the American Counseling Association, the American Medical Association, the American Psychological Association, and other organizations; and

Whereas the celebration of National School Counseling Week would increase awareness of the important and necessary role school counselors play in the lives of students in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of February 5 through February 9, 2007, as ''National School Counseling Week''; and

(2) encourages the people of the United States to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors perform in the school and the community at large in preparing students for fulfilling lives as contributing members of society.

SENATE RESOLUTION 24—DESIGNATING JANUARY 2007 AS ''NATIONAL STALKING AWARENESS MONTH''

Mr. BIDEN (for himself and Ms. COLLINS) submitted the following resolution; which was referred to the Committee on the Judiciary:

Mr. BIDEN. Mr. President, I rise today with my good friend from Maine, Senator COLLINS, to submit a Resolution Marking January as National Stalking Awareness Month. I introduce today's measure because I want to renew our Nation's resolve to fight stalking and to promote public awareness about the newest stalking tool, technology.

Imagine that you are a young wife—estranged from your husband. A court has ordered him to stay away from you, but he shows up everywhere you go. You see him while driving on the road, in the parking lot at work, at a nearby table in restaurants, and at your friends' homes. Although you haven't spoken to him in months, he always knows exactly where you are.

Last year, the Seattle police received such a report from Sherri Peak, whose estranged husband seemed to know her every move. Detectives believed that Robert Peak was stalking his wife, and they brought Sherri's car into the city shop to scan for tracking devices. After several hours of futile searching, one officer popped off the dashboard cover and spotted a global positioning system (GPS) and a cell phone embedded in the car. Then police checked the victim's home computer and found spyware that allowed her husband to hack into her e-mail. Sherri Peak was indeed being stalked—via technology.

The Peak case illustrates a disturbing criminal trend and the dark side of technology. The devices we use to surf the Internet, e-mail one another, download music, and find our way in unfamiliar towns have also equipped stalkers with powerful tools. While ''conventional'' stalkers follow a victim from home to work or place countless phone calls to their homes, technology-empowered stalkers use GPS to track victims and computer programs to trace every Web site victims visit and every e-mail they send or receive. Stalkers can harass or threaten their victims (or urge others to do so) via e-mail or Web sites set up to harm the victim.

The potential impact of these tactics is staggering. National statistics show that 1 in 12 women and 1 in 45 men will be stalked during their lifetime. The average duration of stalking is 2 years, and more often than not it is accompanied by physical violence. In one study, 3 of 4 women murdered by their intimate partners had been stalked by that partner before they were killed.

Although all 50 States and the Federal Government have stalking laws, many were drafted before the widespread use of e-mail, the Internet, chat rooms, Web sites, social networking sites, GPS, cell phones, and tiny hand-