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# *Senate*

The Senate met at 10 a.m. and was called to order by the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

God of our fathers and mothers, Your mighty hand has brought our Nation to this moment in its destiny. Lead our lawmakers to do Your will. Help them to see that You desire them to do justly, to love mercy, and to embrace humility. Remind them that You came to our world to bring deliverance to captives, to help the spiritually blind, and to comfort the bruised. May our Senators produce legislation that reflects Your priorities. As they remember that You are more impressed with their integrity than the eloquence of their debates, inspire them to look to You for strength and wisdom. Guide them by Your light so that their lives reflect Your purposes.

We pray in Your mighty Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable JEANNE SHAHEEN led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, March 3, 2009.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mrs. SHAHEEN thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF THE MAJORITY LEADER

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

## SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will resume consideration of the appropriations bill H.R. 1105. The time until 11:45 will be equally divided and controlled between Senators INOUYE and MCCAIN. At 11:45, the Senate will vote in relation to the McCain amendment. The Senate will recess from 12:30 until 2:15 for the weekly caucus luncheons. There is almost no question that additional rollcall votes will be expected throughout the day as we work through amendments on this bill. After we do the McCain amendment, I know Senator WICKER was here yesterday on an issue in which he believes strongly. I think that would be a good one to lay down. Senator COBURN has four amendments. They have not been drafted. We have asked him to make sure they are drafted as soon as possible so we can work our way through those.

Senator THUNE has an amendment he wants to offer. This is on the fairness doctrine. Senator VITTER has an amendment dealing with abortion or matters related thereto. We should get to that.

I have spoken to one of the Republican Senators yesterday and that Senator is wanting to offer an amendment to cut the spending of this appropriations bill to President Bush's budget levels. We would hope that could be laid down soon. That is an important amendment for the minority and certainly one that deserves debate.

That is a brief overview of some of the amendments I know are there and we should get to as soon as we can.

## RECOGNITION OF THE MINORITY LEADER

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

## OMNIBUS APPROPRIATIONS

Mr. MCCONNELL. Madam President, I listened to the majority leader. He did have a pretty good summary of the amendments we are aware of at the moment, all of which are significant. It is good that we will have a chance to get a vote on most or all of those.

During his campaign, the President said he would not sign any non emergency spending until the American people had at least 5 days to review it on the White House Web site.

So there is no reason for us to rush through this Omnibus appropriations bill when the White House has already promised it won't sign it without the requisite 5-day review.

Besides, we have known about the Friday deadline for months so any pressure to rush this bill is completely manufactured.

The responsible way forward is not to rush through another giant bill, but for the House to prepare a short-term CR so we have time to study and debate the Omnibus on the floor.

Back in January, Republicans urged the President to move the Omnibus before the stimulus. It is now obvious why.

The Omnibus contains funds for 122 programs that were already funded in the stimulus. It also represents an 8 percent increase over last year's regular appropriations, twice the rate of inflation.

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

What all this means is that at a time when most Americans are tightening their belts, Washington is going out and buying a bigger one.

Just consider the deficit. When we passed the last CR, the deficit was $460 billion. In January, the CBO estimated this year's deficit would be $1.2 trillion. Now after the past month, we expect the deficit to be $1.6 trillion.

Now consider some of the recent spending we have done or are contemplating doing around here. Some of us are still dizzy from the $1 trillion stimulus. We are trying to conceptualize the $3.6 trillion budget the President sent us last week. We are bracing for the potentially quarter-trillion housing plan that goes into effect tomorrow, and we are thinking about the $1 to $2 trillion we expect to be asked to spend on the financial sector.

So we won't be rushed to spend another $410 billion without the requisite review.

We need to slow down and make sure the American people understand how we intend to spend their tax dollars. The Omnibus is a massive bill that demands our close attention.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

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

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

## OMNIBUS APPROPRIATIONS

Mr. DURBIN. Madam President, I wish to address some of the comments made by the Republican leader.

First, the bill that is being considered was on the official public Web site of the House of Representatives a week ago. It has been available for at least that period of time. As a member of the Senate Appropriations Committee, most of the contents of what we are considering were passed by the committee last year in October and November. To argue that this is a surprise is wrong. It has been available for scrutiny, for review, for a long period. That is why many of us believe we should move forward with it as quickly as possible.

Second, this argument that the stimulus, which was supposed to be additive, to put money into the economy that otherwise would not go into the economy, is a reason not to pass this bill is to ignore the obvious. This bill funds the Government. This bill makes certain that when it comes to the Departments of Agriculture, Commerce, Justice, Energy, related issues, financial services, Interior, Labor, EPA, State Department, Transportation, Homeland Security, and so many others, we are going to provide for the basic appropriations and budgets for these agencies.

I understand—I hope all Senators understand—that these agencies need to do their work, whether or not the economy is strong. We need to be putting this money into these agencies to continue their ordinary business. That is essential.

I also am troubled every day to hear a chorus from the Republican side of the aisle about deficits. Let's remember the facts. When President Bill Clinton left office, he had managed to balance the budget each year for 3 years. He left to President George W. Bush a surplus. At that point, the debt of the United States, accumulated from the beginning of the Republic until that moment, was about $5 trillion. President George W. Bush was handed an economy that was strong, a budget surplus, and a national debt of $5 trillion. Eight years later, we all know the state of the economy. We certainly know that the national debt under George W. Bush doubled. It went from $5 to $10 trillion in a matter of 8 years.

We know what happened. When it came to the budgets, the Republicans and President Bush decided they would use a little sleight of hand. Do you know how much money was included in the budgets of President Bush for the wars in Iraq and Afghanistan? The answer is zero. Every year they would take the cost of these wars off the budget and say: It is emergency spending so we are not going to budget for it. So not only did they double the national debt, not only did they drive us deeply into deficit each year, they did it in a way that most of us would agree was at least concealment, instead of being honest and open with the people.

Now comes President Obama, inherits an economic recession, the likes of which this country has not seen for 75 years. He says we have to move and move quickly with the stimulus package. In 3 weeks and 2 days after being sworn in as President, he passes it, thanks to three Republican Senators who finally would join with us in moving forward to do something about the economy rather than only complain. Then he says we need to pass the ordinary budget which was not passed under the previous administration. That is what this bill is.

I urge colleagues to take a look at this as undone business from the previous administration and the previous Congress that we have to get done this week while the temporary spending measures for our Government continue.

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

Mr. DURBIN. I am happy to yield.

Mr. DORGAN. The minority leader indicated somehow or suggested that this is some new information, some large piece of legislation brought to the floor of the Senate without much scrutiny. Isn't it the case that the appropriations bills that are included in this omnibus were passed out of each individual subcommittee of the Appropriations Committee, most of them worked on for months, then passed out of the subcommittee, and then worked on in the full committee and, in most cases, passed unanimously by Republicans and Democrats? This is the normal funding of Federal agencies that should have been done last year. It wasn't, for a lot of reasons. It is now being packaged into an omnibus bill to get done. But the ingredients of that bill are not something new.

Isn't it the case that most of these individual bills were passed in a bipartisan basis, many of them unanimously, after having been worked on for some months? There is nothing strange in here, is there?

Mr. DURBIN. In response to the Senator from North Dakota through the Chair, he is a fellow member of the Appropriations Committee. He has described the process exactly. The small, relatively small appropriation which I manage in the Senate Appropriations Committee includes a plus up, an increase in the funding for several key agencies, one of which is the Securities and Exchange Commission. If one watched ''60 Minutes'' on Sunday night and heard about Bernard Madoff and criticisms of the SEC dropping the ball, not hearing the whistle being blown, we have to change that. We have to make sure the SEC is a regulatory agency that has the resources it needs to deal with an ever-expanding area of jurisdiction. The same thing is true for the Commodities Futures Trading Commission which also deals with futures and derivatives and the like. We have to make certain they have resources, and they have an increase in this budget to be the policemen on the beat. I put money in there as well for the Consumer Product Safety Commission. It was not that long ago we were frightened by the prospect of lead toys that might endanger our children. This agency is finally growing into the 21st century responsibility it has.

These are areas where we have increased funding so that government can be vigilant and helpful and we can avoid economic disasters so that investors' and savers' money can be carefully reviewed.

This was all debated in the subcommittee. It was brought forward in the full committee. In most cases it received full committee review months ago. Today we are trying to get the homework we should have done last year done and moved forward. We have so many important things to do.

I will speak for a minute or two more, if I may, on a related issue.

Mr. DORGAN. I wonder if the Senator from Illinois will excuse me and respond to an additional question.

Mr. DURBIN. I am happy to.

Mr. DORGAN. The point that is going to be discussed on the floor today and this week on this appropriations bill is very important. I just received the votes on the individual bills that have now been packaged together. If I might read them, the appropriations bill for Agriculture, with the U.S. Department of Agriculture, nutrition programs, farm programs, and so on, passed 29 to

0 by the full Appropriations Committee. That passed on July 18 of last year. Commerce, Justice, and Science passed, on June 19, 29 to 0, funds for Justice programs and so on. Energy and Water, which is the subcommittee I chair, passed 29 to 0. Financial Services passed, 29 to 0. Homeland Security passed 29 to 0. Virtually all of them passed unanimously.

To give you an example, in my subcommittee—that passed it unanimously, with Republicans and Democrats, by the subcommittee and the full Appropriations Committee—I, for example, in one account cut $100 million. Why? Because I felt that was not needed. I cut from previous years' expenditures $100 million. Now, if this piece of legislation fails, that extra $100 million is going to be spent by that account. It shouldn't be, in my judgment, but will be.

I used some of that money to increase carbon capture so we can protect the environment and continue to use coal. We have to find a way to capture carbon and decarbonize the use of coal. I invested some of that money in carbon capture research and technology. But these are the kinds of things that if we defeat this legislation—we have what is called a continuing resolution. That will be the first amendment this morning. That continuing resolution means we are effectively on autopilot, and the things that have been cut, the spending that has been cut in these subcommittees, and the spending that has been added because things need doing, that will be voided and we will instead be on an autopilot with previous years' judgments having prevailed when, in fact, all these bills passed the subcommittee, with the exception, I believe, of two of them. One was 28 ''yes'' and 1 ''no'' by the full Appropriations Committee, and the other was 26 ''yes'' and 3 ''no.'' With those two exceptions, every other piece of legislation that is included in this omnibus was passed unanimously by Republicans and Democrats in the full Appropriations Committee of the Senate.

Isn't it the case that to suggest somehow this is some mysterious bill that has not been seen, has not been considered, has not been heard, has not been reviewed—that is just not the case. This has been available since last June and July, and most of it passed unanimously on a bipartisan basis.

Mr. DURBIN. In response to the Senator from North Dakota, through the Chair, what has changed? To have the Republican leader come before us today and say: Well, this has not been on the Web site of the Senate for the requisite 5 days, when I mentioned it has been on the House Web site for 7 days, it has passed the House in its entirety.

As the Senator from North Dakota indicated, it has been debated at length and passed unanimously, for the most part—Democrats and Republicans—without objection, voting for all the contents. And now there is objection from the Republican side of the aisle.

The obvious question is, What has changed? What is different? Well, there is only one thing different. We have a new President, a new President and a new administration, facing an economic struggle, a President who is asking for help from both sides of the aisle that we should give. We need to work together. He was not successful in finding House Republicans to support him in the efforts for the stimulus package. Only a handful voted for this measure when it came up in the House on the Republican side. We are hoping that at least some will finally step forward on the Republican side to pass this bill to keep the Government operating.

What good does it do for us to shortchange the Securities and Exchange Commission at this moment in history, when we all know our savings, our retirement investments, 401(k)s, IRAs, are in peril because of a descending stock market, where there is question about the confidence that consumers, investors have in this agency? I put additional funds in there, through my appropriation, to make certain we have the integrity which we deserve in this marketplace; the same for the Commodity Futures Trading Commission.

Those who would argue, as Senator MCCAIN does in his continuing resolution amendment, that we do not need additional resources in these key agencies that protect investors and savers, they are just plain wrong. A vote for the McCain amendment is a vote to go back further to those days when these agencies were not up to the challenges they face. Some of that was conscious, where they ignored demands and warnings related to Mr. Madoff and others. Some was inadvertent in the CFTC, where they did not have the people and the equipment and the computers and the technology to follow these trades.

How in the world can we, in good conscience, say we are not going to adequately fund these agencies, while millions of American families count on us to do that? They make the choice on investments. They trust us to make certain those investments are transparent and there is accountability.

I would say to my friend from North Dakota, when we went through this, month after month, week after week, day after day in the committee, we had bipartisan support all the way. Now that we have a new President of a different political party, the other side of the aisle is raising questions—questions they did not raise for 8 months. Now they are being raised. That is unfortunate. But we are prepared to answer those questions.

## HOUSING CRISIS

Mr. DURBIN. Madam President, I would like to close with one brief statement, if I can, on the housing crisis we are facing.

Yesterday, I was in a neighborhood of Chicago named Albany Park. It is one of the most diverse neighborhoods on the north side of our city. I went into this neighborhood on Kedzie Avenue to meet in front of a house that had been boarded up going through mortgage foreclosure. A lot of families gathered around, families who live in the neighborhood. And they looked like America—Black, White, and Brown—all standing there with their neat little homes all around this one foreclosed building. The building was partially boarded up. Windows were broken. The neighbors were outraged that this mortgage foreclosure has resulted in an empty building, which is now being vandalized and turned into a drug haven.

You would be angry, too, if it were in your neighborhood. These folks who care for their lawns, care for their kids, make sure their mortgage payments are paid on time, want to know what we are doing about mortgage foreclosures in this country. The honest answer is, We are doing little or nothing.

We have to change that. For 2 years now. I have tried to pass one simple measure that would change the Bankruptcy Code and say that a bankruptcy judge can, at the last resort, for those who end up in bankruptcy with a mortgage foreclosure, take a look at the terms of the mortgage and change those terms. That is not a radical idea. Currently, the judge can do that for a second home, a farm, a ranch, but they cannot do it for your primary residence. I cannot explain why, but that is a fact.

Now we have primary residences across America that are being subjected to mortgage foreclosure. Initially, it was because of the subprime mortgages with those exotic finance deals that fell apart when the mortgage was reset. Now more and more homes going into foreclosure had fixed-rate mortgages, did not have subprimes, and we are seeing the bottom fall out of the housing market.

It is estimated one out of four mortgage holders in America are paying more principal on their mortgage than the value of their home. They are underwater, as they say. What are we going to do about it? Well, for a long time we said: We will trust the banks, the sanctity of the contract. They will work on it. They will negotiate. It has not happened. As a result, we have record numbers of mortgage foreclosures. The housing market is in a tailspin. No homes are being built, obviously. Most homes end up vacant on the rolls of the bank and become eyesores in a neighborhood.

What I am suggesting is, we have to be honest. We tried to let the banks and the mortgage bankers run this situation for the last year and they have failed and failed miserably. If we do not take control of this situation, if we do not have the bankruptcy court as the last resort that can ultimately change the terms of the mortgage, with reasonable limits—I am prepared to accept reasonable limits; there will not

be any prospective use of this; only those existing mortgages today—that is the only way to come to the bottom of this crisis.

We are working with these financial institutions to try to find reasonable terms to work this out, but we have not had a lot of luck. Citigroup stepped forward. We reached an agreement with them. We are trying to reach an agreement with others. But for the mortgage bankers, who brought us into this mess, to still hold this Congress enthralled, to hold us hostage to their so-called sanctity of contract, is to ignore the obvious.

If they have their way, there will be a continued crisis of mortgage foreclosures, the recession will get worse instead of better, and neighborhoods such as Albany Park will disintegrate, deteriorate because of the foreclosures of homes in the neighborhood. Renters who dutifully pay their rent show up one day to be told: Oh, incidentally, your landlord defaulted on the mortgage and now you are going to be thrown out on the street. Over and over again, and it is totally unfair.

We have to do something. I am glad the House is going to take up this measure. We need to move on it. We waited a year. That is long enough.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Madam President, let me withhold.

## RESERVATION OF LEADER TIME

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

## OMNIBUS APPROPRIATIONS ACT, 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 1105, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 1105) making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

Pending:

McCain amendment No. 592, in the nature of a substitute.

AMENDMENT NO. 592

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:45 a.m. will be equally divided and controlled between the Senator from Arizona and the Senator from Hawaii or their designees on amendment No. 592.

The Senator from North Dakota.

Mr. DORGAN. Madam President, let me yield myself such time as I may consume.

I will be brief this morning, but I wish to make a couple points. The appropriations bill that is on the floor of the Senate represents the bills that were not completed last year but were worked through in the individual subcommittees, and the full Appropriations Committee of the Senate, passed, as I indicated earlier, almost unanimously, for every piece of legislation, by all Republicans and all Democrats in the Appropriations Committee. So it is not as if there is something strange here.

The question is, Do we want to pass an appropriations bill, at least for the last half of this year, that funds the agencies the way Congress has determined they should be funded? Or do we want to defeat this bill and go on autopilot and say: Whatever was done last year, that is what we will do next year. That does not make much sense to me. What we might have done last year should be judged on the basis: Did it work? Did it not work? Where are the increases we probably ought to make some additional appropriations for? Or where are some areas that ought to be cut?

All these things represent a matter of judgment by Members of the Senate and particularly members of the Appropriations Committee who are funding the individual agencies.

I mentioned, a moment ago, there is an account I cut in the subcommittee I chair by $100 million because I felt it was not needed in the coming fiscal year, and I would move that $100 million to fund something else I thought was very important. Well, that is the kind of thing that will not exist if we decide: Whatever was spent last year in all those accounts, that is what we will spend going forward. That is devoid of any kind of judgment at all.

Let me mention some areas we have felt should be increased. I will give you some examples. One is the funding to prepare for a potential pandemic flu. Obviously, it is a very significant issue. This country needs to be prepared in the event we suffer in our lifetimes a pandemic flu. An influenza, pandemic epidemic that would move around this world would be very serious, kill a lot of people. The need to be prepared for that is very important. There are funds available in this legislation to begin that preparation.

The efforts to improve the warning systems to notify communities about severe weather: This deals with the funding that is necessary for the next-generation satellites. This is not just something that is convenient. When killer storms and hurricanes and other things are threatening population centers, it is a need to have the very finest capability to warn people. This is the money that is needed to continue that progress in improving warning systems through the National Oceanic and Atmospheric Administration weather and climate satellites. That is in this bill to continue that work.

In my subcommittee, nonproliferation programs—and that is the issue of trying to stop the proliferation of nuclear weapons, the programs we have to try to prevent terrorist groups from acquiring the kind of material with which they can produce nuclear weapons—we provide funding for that and increased funding for that, which is very necessary. It is funding to the National Nuclear Security Administration, and it is critical to our efforts to secure weapons-grade nuclear material around the world that even today, as I speak, terrorists are trying to acquire.

So that issue of nonproliferation—we have increased some funding for it. If we decide we are not going to proceed with the normal appropriations bills that have now been put in this omnibus and instead we are going to go with a continuing resolution, that extra funding to try to protect us and stop the proliferation of nuclear weapons is gone.

There are so many areas. The area of science: our National Laboratories. You know the Bell Labs, which used to be the jewels in our country of scientific inquiry and discovery, and all the unbelievable inventions and new knowledge, those labs are largely gone. Now our science laboratories in this country—and the three weapons laboratories and the array of science laboratories—represent the repository of the best and brightest Ph.D.s in physics and engineering and mathematics and so on. We have to keep our lead in the world in these areas. This legislation provides the increased funding for our science labs that our country has already made a decision to do. If we do not go forward, then we go backward, we lose some of those best and brightest scientists and engineers.

At one of our laboratories, we have something called the Roadrunner, which is the most powerful computer in the world.

That is not elsewhere; that is here in our country. They were telling me one day about the roadrunner, what is called a petaflop, which is a thousand teraflops. A teraflop is a computer that has capacity to do 1 trillion distinct functions per second. That is a teraflop. We reached that 11 years ago. Now we have done a thousand teraflops, or what is called a petaflop. One thousand trillion functions per second in this world's most powerful computer. What can you do with that? Well, they are talking about studying the synapses—1 billion synapses of the brain to work how it works together to produce what we call vision. We don't know that. With supercomputing, the potential to know a lot of things is breathtaking. That exists here. It is the most powerful computer in the world here.

We have to continue to keep our edge in science and knowledge and invention. Part of that will be dependent upon how we fund our national laboratories and whether we keep that group of scientists and engineers working on these breathtaking inventions and the development of new knowledge. We can only do that if we continue the commitment we have made to fund our science in our national laboratories.

Those are a few of the things I wanted to mention. Again, these were appropriation bills considered individually by a subcommittee of Appropriations, Republicans and Democrats, and then brought to the full Committee on Appropriations, Republicans and Democrats, and passed in every case, except two, unanimously, 29 to 0. In two cases, it was 26 to 3 and 28 to 1. Essentially, all of these pieces of legislation were passed unanimously. So when someone says, you know, this legislation is mysterious, new, and it has been thrust upon the Senate—that is not true. This legislation was prepared in June and July of last year. This Congress cannot continue to do appropriations this way.

The majority leader has made a commitment and one that I think makes a lot of sense. This year, this has to stop. We bring individual appropriation bills to the floor, vote on them, go to conference, have a conference report and send the bill to the President, one by one. That is the way this should work. It didn't work last year, or the year before, that way. As a result, for the last 6 months of the year, we were confronted with nine appropriation bills that were worked through on a bipartisan basis last summer and now need to be enacted.

My hope is that the Senate, working its will this week, will do the right thing and pass what is, for the most part, bipartisan legislation dealing with funding for Homeland Security, Justice, Energy, and so many different areas that are important to the functioning of our Government—and important to the American people as well.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. I ask unanimous consent that the time of the quorum call be charged equally to both sides. We are in a time agreement.

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

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

The Senator from California is recognized.

Mrs. BOXER. Mr. President, I have been listening to the various colleagues on the Republican side who are continuing to be the party of ''nope'' instead of the party of ''hope.'' I came to the floor to say that it is very easy to say no to this and no to that. But I have to tell you, the American people need leadership. When you say ''nope, nope, nope,'' it means you are in fact endorsing the status quo, and the status quo is a major problem.

I see my friend from Washington on the floor. I know she had intended to speak. I will be glad to stop at this time and ask unanimous consent that following her remarks, I be recognized.

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

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I thank my colleague from California for yielding me time on this bill and thank her for her support as we move forward in a very critical time to cast a vote that is very important to all of our communities, and that is for the Omnibus appropriations bill from last year that is currently on the Senate floor.

Let me start by commending our leadership, our new committee chairman, Senator INOUYE, and our vice chairman, Senator COCHRAN, who have put this bill in front of us. This Omnibus appropriations bill before us that we are now debating is absolutely essential to every community in our country, especially as we work to address this economic crisis. Both of our Senators, Mr. INOUYE and Mr. COCHRAN, have been very measured and even-handed as we have brought this bill together, despite the many challenges we face. I thank them for their work.

I chair the Appropriations Subcommittee on Transportation and Housing. I rise today to urge all of my colleagues to support this very important Omnibus appropriations bill. As I said, this bill is essential to families and communities across our country. It enables us, our Government, to meet the needs for health care, for housing, to make college more affordable, and to keep our communities safe. Just as important, our communities today are counting on us doing our job and passing this bill.

With this bill, we are fulfilling our commitments we made to them back in June and July of last year when these bills were marked up in our appropriations committees. Senator BYRD, who was the Appropriations Committee chairman at the time, held four separate markup sessions. Almost every committee member attended those sessions to debate and vote those appropriations bills out of committee. While, of course, not every Senator agreed with every line in every bill, they were written with the cooperation of our Republican colleagues. All of us had to make compromises, but in the end each of these bills was reported out of the full committee either unanimously or with a very large bipartisan vote. That is because each of these bills represents a bipartisan consensus and stays within the budget resolution Congress passed earlier last year.

Our Republican colleagues were full participants when we negotiated the final details of this with the House of Representatives. Therefore, the omnibus bill we are debating today reflects many of the same priorities Democrats and Republicans alike approved last July.

Even so, our Federal agencies have now been operating under a continuing resolution for 5 months now, since this fiscal year began. We cannot delay sending them this bill any longer. On Friday night of this week, at midnight, if we do not pass this bill, funding for most of our Federal agencies will stop. It will stop and the money will be cut off. The Federal Government will come to a halt. I think about what that means. Millions of Americans depend on this funding. We cannot afford to let politics stand in the way and risk a government shutdown, especially not when we face the greatest economic challenge since the Great Depression, not with so many of our Federal agencies working day and night to make sure the economic recovery bill we adopted last month can meet the needs of our families across the country, and not when we know communities across the Nation are desperate for help to keep transportation and safety and housing and all the other programs moving forward.

As chair of the Transportation and Housing Subcommittee, I want to take a little bit of time today to give some details about why this bill is so important to address the housing crisis and ensure the continued safety of our transportation system.

First of all, this bill is an essential part of our efforts to restart the housing market. In the last several weeks, I have heard some of my colleagues talk about how they want to focus on housing as we repair this economy. We cannot fix the housing market without the provisions in this omnibus bill.

Let me give just one example. Up until last year, the Federal Housing Administration's market share for guaranteeing mortgages had dropped to a low of 3 percent. But now that the mortgage industry is in crisis, lenders have turned back to the FHA in droves because they know it will be reliable. Yet, under the terms of the continuing resolution, the FHA is prevented from helping willing and qualified buyers get mortgages because that agency cannot guarantee more than $185 billion a year. If we do not pass the bill in front of us and raise that cap to a level above $300 billion, our effort to restart the real estate and housing industry is going to crash and burn. If any of us think it is hard to get a mortgage now, just watch that happen if we keep the FHA's loan volume cap at last year's level.

If we fail to pass this bill, we are going to throw thousands of low-income families out of stable, affordable

housing. In the last year alone, 3 million Americans lost their jobs. Communities across this country are struggling to meet those needs. This is absolutely the wrong time to unravel the safety net we have in place. The 2009 omnibus bill would provide enough additional money to keep up with inflation and keep the current tenant-based section 8 recipients in their homes. If we have to keep the funding for that program flat, the consequences will be severe. It is estimated that as many as 45,000 families will be turned out of their homes if we don't pass this bill; that is, 45,000 families who would lose their housing and be forced to turn to relatives, shelters—wherever they can—for help. So this bill is critical to help us address the Nation's housing needs.

But the omnibus is also essential to the safety of our airlines, our railroads, our roads, and our bridges. All of us, I hope, are aware we face very serious challenges today because our air traffic controllers and our safety inspectors are retiring in very large numbers, leaving a lot of less-experienced people to fill their shoes. Those are the people who help us land or take off at our airports, who make sure our planes are safe. We have been working for several years to address this crisis. This bill is going to make sure we can keep hiring new air traffic controllers and safety inspectors so they can get the training and experience they need. This bill provides the money to fully fund some of the safety personnel we brought on last year. I hope it is very clear to everyone how important it is to keep up these efforts. If we do not pass this bill, not only will we be unable to hire new safety personnel, but we are going to have to fire some of the people we hired last year. We face a simple choice: We can hire and train new air traffic controllers and address that huge gap in experience levels between the workers who are retiring and the new employers who are at our towers across the Nation or we can just let those shortfalls get worse. I think that is an investment we cannot afford to not make.

The same is true when it comes to the safety of the rest of our transportation system. This omnibus bill provides critical investments in rail safety inspectors, truck safety inspectors, and pipeline inspectors.

Back in the fall, through the leadership of Senators INOUYE and LAUTENBERG and many others, the Senate passed a comprehensive rail safety and Amtrak bill that was signed by President Bush. That bill laid out a very new vision for a modernized national rail network and a new safety system that requires adequate staffing at the Federal Railroad Administration. With this bill that is before us now, we begin to make those investments. It is not a moment too soon. In the last couple of years, a record number of commuters have parked their cars and started taking the train in response to the economic crisis and high gas prices. We have to expand and improve our rail transportation in America to meet that demand. But if we keep the funding levels flat, we could end up forcing Amtrak to shut down some of those routes instead.

Additionally, we finally got a settlement for Amtrak's workers last year after they were forced to go almost 9 years without a wage increase. That settlement was recommended by President Bush's emergency board. It called for the Government—us—to make a lump-sum payment in backpay to Amtrak workers. The bill before us includes the funding for that long-awaited payment. Those workers earned that money, but if we do not pass this bill, they almost certainly will not get it.

I give those as a couple of examples of what could happen if we do not approve this omnibus bill and get it to the President's desk by Friday. Those, by the way, are just the risks in transportation and housing. I know many of my fellow chairmen on the committee will be talking about what happens to health or agriculture or energy or law enforcement.

Less than a month ago, we came together on this floor to pass a huge bill designed to give our economy the jump-start we need to get the Government working again and make investments that are going to create jobs and strengthen our communities. We are already seeing it begin to work. But the progress we are already making will be forced to a stop before it can get any momentum if we do not put the people in place to carry it out.

That is why this bill is so important. This bill will keep the Government running at a time when we need Federal employees to put all of their efforts, every single day, into helping our economy recover. We need this bill to help ensure that our low-income families keep safe, affordable housing. We need this bill so that the FHA can help more people get loans and buy homes. And we need it to ensure that our transit system runs safely and smoothly. This bill is critical to every one of our communities, and we all have to work together and do what is right for the American people today. We all know our families are struggling and they are scared about what is ahead for our economy. They do not have time for us to play games. They need help now.

I hope we can all join together this week and move this bill, the 2009 Omnibus appropriations bill, to the President's desk by Friday and get our country working again.

Mr. President, I ask unanimous consent that the previously ordered vote slated to occur at 11:45 now occur at 12 noon and that the additional time be divided as previously ordered and the remaining provisions under the agreement remain in effect.

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

The Senator from California is recognized.

Mrs. BOXER. Mr. President, I thank my colleagues on the other side for giving us this little extra time. I intend to speak about 5 minutes. If the Chair will tell me when I have a minute to go, I would appreciate it.

Mr. President, before Senator MURRAY leaves the floor, I wish to thank her for her very clear explanation as to the choice that is before us. If I could restate it in my own way, it is a choice right now that Senator MCCAIN is giving us through his particular amendment, which would give us an option to go back to the budget of 2008 instead of moving forward with a current budget that reflects the needs and priorities of our Nation right now.

I do not have to tell you what has happened to our country in the last several months and in the last year. We are seeing an unprecedented recession. My personal belief is we are going to get out of this. My personal belief is there are some signs out there even in my State, which is struggling mightily with an over 10 percent unemployment rate, we see some small signs here of life. For example, sales of existing homes in California went up 100 percent in January over the year before. I might say these are mostly sales of foreclosed homes. This is a good thing. We are looking for a bottom. But if we go back to old policies, if we go back to a budget that doesn't reflect the realities we face now, we are going backward.

So we passed a stimulus package—and I am so grateful we did that. Our President led us in that. Democrats stuck together. We got three independent-thinking Republicans to join us, and we challenged the status quo and we passed it.

And now today we are facing another such choice between a budget of the past offered to us by Senator MCCAIN, and a budget of the present. Senator MURRAY was eloquent in going through all of the things—not all of the things, but some of the things. I am going to talk about a couple of others.

The Consumer Product Safety Commission gets an increase. If we go back to the old bill, as Senator MCCAIN wants, we do not get that increase. What are we doing over there in the Consumer Product Safety Commission? Protecting our children from dangerous toys.

Senator MURRAY talked about families losing housing. That will be the reality if we go with the McCain approach to a continuing resolution. The FHA will have to stop helping families facing foreclosure. Senator MURRAY pointed that out.

Here is one I will point out, enforcement of security laws. Inadequate resources for the SEC. This would hamper their ability to finally undertake investigation enforcement against these Ponzi schemes. Do we want to go back to the old budget before we knew about these Ponzi schemes? I think it would be irresponsible. It would be more of the party of nope; nope, we cannot fix this, nope, we cannot do that. I want to stand for hope, not nope.

We talked about the air traffic controllers. There are also food and medical product safety inspections. We would provide the FDA with an increase of $325 million so they can make sure we do not see people getting sick from eating peanut butter that is contaminated.

There is so much more Federal law enforcement effort through the Department of Justice. In the FBI, there would be 650 fewer FBI agents. Is this a time we want to do that, as we are continuing the war against terror?

In my last 2 minutes, I ask unanimous consent that I have an additional 2 minutes.

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

Mrs. BOXER. We see in this bill, brought to us by the Appropriations Committee, and I might say, in a bipartisan fashion—am I right on that—Senator INOUYE, working hard with the senior members of the committee, such as my colleague, Senator MURRAY—we see a bill that is relevant to the problems of today, not an old bill that is offered up by Senator MCCAIN going backward, looking backward, going in reverse. It does not make any sense. If you sit down with your family today to discuss the issues of the day, and you avoid talking about the fact that one child has gotten very ill and requires a lot of changes in your family budget, then your family budget is not going to accommodate for what has happened to your family. America is a family. This is a Government of, by, and for the people.

The last point I want to make, Senator COBURN has been on the floor bashing the congressional priorities that are in this bill, and he happened to hit on one of mine. I want to set the record straight. We have a county in our State, Orange County. It is the biggest Republican county in the State. The voters voted, 58 percent, to take a former Marine Corps air station and turn it into what is called a great park. It is going to be a diverse development. In this bill, we have answered the call of the local veterans group that wants to protect the great history of El Toro, and they want to convert an old hangar that was opened in 1943 into a military history museum and a welcoming center for the park. This response to that request will put people to work refurbishing this old Air Force base. So the Senator from Oklahoma has railed against it. He attacks a balloon ride for children. That is not what we are funding. We are funding a military museum.

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

Mrs. BOXER. Let's listen carefully. I hope we will support our leaders on the Appropriations Committee and vote down the continuing resolution as an option.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, how much time is remaining on either side?

The PRESIDING OFFICER. The Senator from Arizona controls all the remaining 24½ minutes.

Mr. MCCAIN. I thank you. It is entirely possible all the time may not be used.

As I discussed at length yesterday, this amendment would provide for a long-term continuing resolution to fund the Federal Government through the end of this fiscal year at the fiscal year 2008 level; in other words, the same level as last year.

Obviously, funds can be shifted around within agencies, and the allegations that somehow we cannot do business this year at the same level as last year, when American families are clearly not doing business this year as they did last year, I think are an example of being out of touch with the challenges the American people face.

I think it is important for us to look at what this amendment is trying to do, which is simply maintain the same level of funding as last year, in the context of what the American people are facing today. Unemployment in the previous speaker's State is now at 10 percent, home values continue to plummet, the stock market yesterday took another serious dive, as more and more of Americans' savings, 401(k)s are dramatically reduced, with massive job layoffs, in a very serious economic situation.

I want to state again, America will recover from this. It is tough. It may be long and hard. But America will recover because we are still the greatest nation in the world. But in the meantime, Americans are having to tighten their belts all across this great Nation of ours. They are having to reduce or eliminate spending they have wanted to engage in for a new car, for whatever they feel the necessities of their families are. They watch as their health insurance premiums continue to go up and that are less and less affordable for many families.

What we are asking here, obviously in this very simple 1-page resolution, is that we maintain the same funding level as last year. I will tell you, there are millions of American families who would like to stay on the same funding level as last year. So instead of that, we have a statement of managers, 1,844 pages, which no Member has read. We have the bill itself, 800, 700-some pages, whatever it is. And, obviously, we have dramatic increases, an 8-percent increase in spending over last year. We have been through many of these earmarks. We have put them out. We have twittered them. And we will continue with our top ten. We have many top ten lists for this bill. It will be passed. It will be passed. Then it will be on the President's desk, and the President will have a choice as to whether to accept all of these thousands and thousands of unnecessary, wasteful earmark projects, and business as usual in Washington, or take out his veto pen. By the way, in all spirit of candor, the last President should have taken out his veto pen and vetoed these bloated, pork-barrel, project-laden bills. He should have. He did not, and he lost the confidence of the American people because we were not careful stewards of the taxpayers' dollars.

So we went through a Presidential campaign, and we said we would stop business as usual here in Washington. The President stated very clearly at the debate in Oxford, MS, a mere 6 months ago:

We need earmark reform. And when I am President, I will go line by line to make sure that we are not spending money unwisely.

I want to give the President of the United States a line item veto. I want him to be able to go line by line and veto each unnecessary and wasteful spending project. I will be introducing, with my friend from Wisconsin, Senator FEINGOLD, a line item veto again.

But right now, this bill deserves the President's veto. By vetoing this bill, the President could send a message to America and the world that for the enormous economic difficulties every American family is facing, we will show them that we will be, for a change, careful stewards of their tax dollars.

But there is no justification for, at these difficult times, $1.7 million for pig odor research in Iowa, $2 million for the promotion of astronomy in Hawaii, termite research, $1.9 million for the Pleasure Beach water taxi service project in Connecticut, $95,000 for the State of New Mexico to find a dental school location, $1.7 million for a honey bee factory, $951,500 for a sustainable Las Vegas, a parking garage in Provo City, UT, tattoo removal, $167,000 for the Autry National Center for the Indian American West in Los Angeles, a rodeo museum in South Dakota.

These things may be nice. They may be nice to have, a Buffalo Bill historical center in Cody, WY, but right now Americans cannot afford health insurance, they cannot keep their jobs. I am not only angry about it, my constituents are angry. And Americans are angry. It is being reflected in the polls of the lack of confidence in the future of this country because we continue business as usual here in our Nation's Capital.

I know I will not be elected ''Ms. Congeniality'' again this year in the Senate. For many years I have fought to try to eliminate a great deal of this. Sometimes I have succeeded; most times I have failed. The previous chairman of the committee used to call me the sheriff. But the fact is, there is no time more important than now for us to show the American people that we are willing to tighten our belts, that we are willing to stop this practice, which, yes, has corrupted people. That is why we have former Members of Congress now residing in Federal prison, and staffers under indictment. This process is wrong. It is wrong because we do not give it the scrutiny and the

examination and the authorizing it deserves before we appropriate the money.

That is why Americans are angry at the way we do business and our approval ratings continue to be very low. Our approval ratings are something that is somewhat ephemeral. But this practice has grown and grown and grown over the years that I have been a Member of Congress and the Senate. It has continued to grow, and it has continued to waste the American taxpayers' dollars. So I ask Americans, along with me, to ask the President to veto this bill and have him send one back that is truly reflective of the tough times America is in today, that we cannot afford any longer this wasteful spending practice, this spending on projects that appear in the middle of the night, and sometimes, as in one of last year's appropriations bills, they were projects added after the President signed the bill into law. No one knows where it came from. What kind of a process is that? What kind of a process is it that we have legislation that is this high, that no Member has read? The whole process has to be fixed.

For the President's budget director to say: This is last year's business, we want to move on, and the President's Chief of Staff, who has said: Mr. Obama was not happy with the large number of earmarks in this bill but, ''The President had kept lawmakers from adding a single earmark to the $787 billion stimulus package, and a $32.8 billion State Children's Health Insurance Program,'' I find to be a very disingenuous statement on its face.

The President's pledge 6 months ago wasn't that he would claim to keep two bills earmark free and then let there be a feeding frenzy of pork barrel. His pledge was: ''We need earmark reform'' and, as President, he would do it.

I read today an article in the Chicago Tribune that Mr. Emanuel is tied to as many as 16 earmarks in this legislation, totaling $8.5 million, $900,000 for Chicago's Adler Planetarium and Astronomy Museum, and the list goes on. When do we turn off the spigot? Haven't we learned anything from the calls and letters, meetings with our constituents who pour their hearts and souls out and share their fears about keeping their jobs and homes as they struggle to put food on their families' tables? Bills such as this jeopardize their future. One of my greatest fears about the President's budget is that at no point in his budget does there seem to be a balanced budget, nor is there any triggering mechanism, such as this side proposed in the stimulus bill, that once our economy recovers—and it will recover—we embark on reductions in spending. Right now we are laying a huge debt on our children and grandchildren which is not in keeping with our responsibilities.

I urge colleagues to vote for this amendment. I doubt it will be passed. I hope the American people understand what is at stake. I hope all Americans will urge the President to veto the bill when it gets to his desk, send it back, save billions of their tax dollars, and come back with a bill that Americans can say is truly reflective of the challenges we face.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, the Senator from Arizona proposes that the Congress should enact a continuing resolution until the end of the year instead of fulfilling our responsibilities and completing work on the appropriations bills for fiscal year 2009.

Last summer the Appropriations Committee reported 10 Appropriations bills to the Senate. All of them were reported to the Senate from the Committee with overwhelming bipartisan support. Eight were reported with unanimous support. Of the ten bills, only three were enacted.

The other bills were put on hold because the previous administration refused to negotiate on overall spending levels approved by the Congress.

Two other bills, Legislative and Interior, were prepared by the Subcommittee Chairmen, in concert with their Ranking Members, but were never completed.

These nine unfinished bills were left on the shelf until the current administration was elected.

Last fall the House and Senate Appropriations Committees sat down in bipartisan negotiations to work out the differences between these nine bills.

The result of those negotiations is the bill before the Senate today, H.R. 1105.

This bill reflects a compromise between the bills of both bodies.

It is a fair outcome that protects the interests of the House and Senate.

This bill was agreed to by the House last week, with votes from Members of both parties.

I should point out that Members have had more than a week to review the legislation.

The bill and statement have been on the internet since last Monday.

I also note that this bill was not done in the dark of night. Virtually every item in the bill reflects the bipartisan work of the Appropriations Subcommittees from last year.

Most of this information was posted on the internet and has been available to Members' offices since last summer.

Unlike some omnibus bills in the past, there is no major legislation that was added at the last minute.

The direction from the leadership of both houses was not to add controversial new material in this bill, and the committees did not.

If the Senate were now to determine that we should not complete our work on the fiscal year 2009 appropriations bills at this juncture and instead agree to a continuing resolution for the rest of the year, all the efforts of the Committee in reviewing the budget request, the hearings and staff review, the countless meetings with executive branch officials, the mark ups and the ensuing direction that comes with this bill would be wasted.

More importantly than the wasted effort is that the Congress would be abrogating its responsibility.

Under a continuing resolution the government operates programs under the authority of the previous year. Programs that should have been terminated continue to be funded.

Important new programs cannot be initiated. This is true even if the program is something that was supported by both the previous administration and the Congress. It is true if the Congress passed a new authorization to fund it last year.

Is this really how we want to manage the executive branch?

Under a continuing resolution funding for the agencies covered by this bill would be held at last year's level.

The Congress authorized a pay raise for our civil servants, and it must be paid. But unless funding in the budget is increased, other programs will have to be cut to meet payroll.

A continuing resolution doesn't account for the cost of inflation. Even in these tough economic times, there has been cost growth in managing our Government. We all know that it costs more to run these agencies this year than it did in 2008. But under a continuing resolution agencies have to cut necessary functions to cover the higher costs due to inflation.

Perhaps most important, under a continuing resolution the Congress foregoes oversight of the executive branch. In each appropriations bill, the committees include guidance on how funding should be allocated. Some programs are increased; others are cut compared to the budget request. When we operate under a continuing resolution, the Congress turns over control to the agencies.

Mr. President, the Constitution provides the Congress with the power of the purse to ensure that we exercise control over the executive branch.

It is one of the most important rights of the legislative branch.

But it is also a duty.

It is the duty of the Congress to decide how the executive branch should spend the taxpayer's money.

When we decide to govern by continuing resolution we are not responsibly fulfilling this duty.

This amendment would turn over control of Government spending to the administration.

It would put the Government on autopilot for programs approved for 2008 not 2009.

This is not the way for the Congress to manage its business.

I will grant that the effect of this amendment would probably cut the earmarks that are included in this bill.

And while the majority of my colleagues have supported earmarks in this bill for their constituents, it is

well understood that the Senator from Arizona does not.

But this amendment isn't about the 1 percent of this bill for earmarks; it is about the 99 percent of the funds in the bill over which we are sacrificing oversight if this amendment were adopted.

This is bad policy for both the Congress and the executive branch, and I urge my colleagues to oppose the amendment.

As chairman of the Defense Appropriations Subcommittee, it should be noted that if it weren't for earmarks or congressional initiatives, the C–17, the highly acclaimed cargo plane, would be history. Production would have been stopped. But Congress took action to continue. Now all military leaders are saying that was a great decision. The F–22, the fighter of the future—stealth, firepower—that would be a matter of history also. I could go on and on, but we don't have the time.

All I want to say is that earmarks are not evil. Yes, there are some that are questionable, and there will come a time to do that.

I urge colleagues to oppose the amendment.

I yield the remainder of the time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, will you please state the pending business?

The PRESIDING OFFICER. All time having expired, the question is on agreeing to amendment No. 592 offered by the Senator from Arizona, Mr. MCCAIN.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNS) and the Senator from Alabama (Mr. SESSIONS).

Further, if present and voting, the Senator from Alabama (Mr. SESSIONS) would have voted ''yea.''

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

The result was announced—yeas 32, nays 63, as follows:

[Rollcall Vote No. 74 Leg.]

YEAS—32

| | | |
|---|---|---|
| Barrasso | Brownback | Burr |
| Bayh | Bunning | Chambliss |
| Coburn | Gregg | McCaskill |
| Corker | Hatch | McConnell |
| Cornyn | Hutchison | Risch |
| Crapo | Inhofe | Roberts |
| DeMint | Isakson | Thune |
| Ensign | Kyl | Vitter |
| Enzi | Lugar | Voinovich |
| Graham | Martinez | Wicker |
| Grassley | McCain | |

NAYS—63

| | | |
|---|---|---|
| Akaka | Feingold | Murray |
| Alexander | Feinstein | Nelson (FL) |
| Baucus | Gillibrand | Nelson (NE) |
| Begich | Hagan | Pryor |
| Bennet | Harkin | Reed |
| Bennett | Inouye | Reid |
| Bingaman | Johnson | Rockefeller |
| Bond | Kaufman | Sanders |
| Boxer | Kerry | Schumer |
| Brown | Klobuchar | Shaheen |
| Burris | Kohl | Shelby |
| Byrd | Landrieu | Snowe |
| Cantwell | Lautenberg | Specter |
| Cardin | Leahy | Stabenow |
| Carper | Levin | Tester |
| Casey | Lieberman | Udall (CO) |
| Cochran | Lincoln | Udall (NM) |
| Collins | Menendez | Warner |
| Dodd | Merkley | Webb |
| Dorgan | Mikulski | Whitehouse |
| Durbin | Murkowski | Wyden |

NOT VOTING—4

| | |
|---|---|
| Conrad | Kennedy |
| Johanns | Sessions |

The amendment (No. 592) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask unanimous consent to speak as in morning business for 12 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

## AMERICA'S CREDIT CRISIS

Mr. BOND. Mr. President, families and businesses across the Nation are suffering from a severe economic squeeze. Unfortunately, despite the $1 trillion stimulus bill passed by Congress, this economy will not recover—at least not until we tackle the root of the problem. As President Obama said last week, we must solve America's credit crisis.

I am hearing from folks in my home State of Missouri and across the Nation who are sick of hearing gloom and doom being preached by Government officials, sick of watching tens of billions of good taxpayer dollars being put into failing institutions, and sick of listening to the debate on how much we should pay failing CEOs, when common sense says we should fire them.

Let me be clear. All Americans need to care about the credit crisis and the Government's response. We have to solve the credit crisis to protect Main Street families and workers. The key to our economic recovery is the stabilization and restoration of the financial markets. Our financial markets make up the lifeblood of our economy, which families need to buy homes and cars, students need to receive loans, and small businesses need to purchase supplies, invest in new equipment, and meet payroll. A functioning financial system is critical to our State and local governments so they can finance critical infrastructure needs, water and sewer systems, affordable housing, and transportation.

Our banking system affects every American's standard of living, our ability to create and maintain jobs, and our ability to compete globally. It is central to all financial and household activities for Main Street America.

Unfortunately, our financial system is not working. The credit market is clogged with toxic assets mainly made up of risky subprime housing loans which were packaged into exotic financial instruments, sliced and diced, and sold here and abroad. The toxic assets are clearly at the center of the credit crisis, and until they are removed from the system, fear and uncertainty will continue to dominate the markets and our economy.

To respond to the financial crisis, the previous administration and financial regulators took a number of actions. While many of these actions were confusing and ad hoc in nature and lacking in transparency, a financial calamity was likely staved off.

Unfortunately, instead of being implemented with the expectation that the administration and the Treasury Department would provide a coherent, systematic, and transparent approach to its financial rescue efforts, the Troubled Asset Relief Program, or TARP, has been plagued by poor oversight, confusion, and changing direction.

This ''ad hocracy'' has created more uncertainty in the financial markets and for policymakers and taxpayers. Also, independent assessments have raised serious questions about the program's integrity, accountability, transparency, and effectiveness.

About 3 weeks ago, Treasury Secretary Geithner released his financial stability plan. While I welcome the Secretary's and the administration's new thoughts on resolving the financial crisis, his plan fails to live up to its promise. The plan fails to provide the clarity and the focus needed to address the financial crisis. Perhaps even more damaging, the plan created doubt and uncertainty about the Secretary's and administration's ability to lead our Nation out of this crisis.

There is no roadmap, no exit strategy, and by throwing more taxpayer money at the problem, we are only digging a deeper hole. Once again, the plan is nothing more than ''ad hocracy.''

Based on what can be gleaned from the administration's bare bones announcement, most elements of the plan appear to be stylistic changes to what has already been tried under the previous administration and leaves uncertainty about the ultimate question: How will toxic assets be addressed?

Fear and uncertainty cloud financial markets because of a lack of confidence of the solvency of our banking

system. To address this, we ultimately have to cleanse the financial institutions of the toxic assets. There are a number of ideas about how to do it. One option is to do nothing. That would not work because of massive uncertainty. The private sector is unwilling to provide capital to the banks, and the likely result would be a collapse of the system.

Let me be clear. We cannot afford to do nothing. We cannot afford a collapse of the entire banking system. A collapse of this magnitude would devastate families, farmers, students, and businesses in every community in every State.

The second option is to keep propping up the financial institutions by injecting more good taxpayer funds into sick financial institutions. That option has been applied over the past several months—most recently with AIG. Yet our financial system clearly continues to struggle. And I for one cannot support a plan that will spend more taxpayer dollars without solving the real problem.

Putting more good taxpayer money into bad institutions must end. We must implement a plan that has worked in this and other countries. We must remove toxic assets from banks.

This approach employs the statutory authorities, an approach long used by the FDIC for failed banks. It has succeeded in purging toxic assets over a long period of time.

This American credit cleanup plan is founded on lessons we learned with our experience with the savings and loan crisis and avoids the mistakes made by Japan which gave them their so-called lost decade.

First, through independent regulators, the Government must determine the true health of our banks. The overarching test is, will the bank or financial institution fail without taxpayer funds. Secretary Geithner deserves credit for recommending a stress test to determine more precisely and fully the condition of the bank—a stress test that should have been implemented a long time ago. However, a stress test cannot be a one-time snapshot. It should have been and now must be a regular and ongoing review of a bank's health.

It is critical these stress tests be done in an objective and transparent manner, without political interference, but professionally, since it is the basis for Government action. This leads to the second key principle.

For those banks found to be insolvent, toxic assets must be removed in a transparent, market friendly manner that is free from political interference, protects taxpayers, and has a clear exit strategy.

To accomplish the goal, the Government should exert temporary control of the institution through conservatorship. The FDIC has existing authorities to act as conservators and did so recently with IndyMac.

Under this approach, the taxpayer has greater protections because the Government is in control of assets and liabilities, and they can cleanse the balance sheet and off-balance sheet activities and restructure the institution.

Under conservatorship, the first order of business is to protect the bank's depositors up to the current FDIC guarantee. It is essential that we continue to protect families' investments.

Next, the Government can separate the bad assets from the good and hold the bad assets until market conditions improve. Remember, during the savings and loan crisis, the RTC took 4 to 5 years and sold off nearly $460 billion in assets. But the RTC's patience and strategy to sell off the assets in a gradual manner is a model we can use to address the massive toxic assets that are holding back the recovery of the financial industry and do so in a manner that will help limit loss to taxpayers.

The FDIC has broad powers and experience, which is why the FDIC should be the lead. Its resolution powers, including conservatorship, were authorized by Congress nearly 20 years ago and then later improved under the FDIC Improvement Act of 1991. And if the FDIC needs additional authority or resources, Congress and the administration should act quickly to ensure the FDIC can handle the crisis.

In the case of IndyMac, FDIC took over as conservator. It not only protected depositors, it also established and implemented an aggressive foreclosure mitigation program. To avoid long-term ownership of the institution, the FDIC is in the process of selling the assets and ownership of the operation back into private hands.

Finally, this approach eliminates the conundrum of valuing the assets since the Government is acquiring the assets at the bank's current book value, which means including appropriate writedowns by regulatory and accounting authorities.

For conservatorship to be effective, however, it is critical that the Government's work be free and independent from political interference. Micromanaging by Congress and the administration must end.

It is critical that one Government agency be selected to lead the cleanup. Management by committee and multiple regulators is a recipe for disaster.

While each Government regulator brings important skills and resources that may be necessary for cleaning up toxic assets, the FDIC is best equipped to carry out an efficient and effective process of cleaning up troubled banks as the lead agency. If necessary, the FDIC can draw upon additional resources from other regulatory agencies, as well as the private sector, to complete its conservatorship.

Under the third principle, failed executives and members of the board who are responsible for the failure of the sick financial institution should be replaced. Capping pay and taking away corporate jets is not enough. Firing the senior executives and boards of directors who failed the company and its shareholders must be a prerequisite to further governmental assistance.

It is time to stop taking a piecemeal, ad hoc approach in addressing our financial crisis, burying our collective heads in the sand to avoid what needs to be done, and by simply hoping things will get better. Throwing more taxpayer dollars at it or hoping they will get better on their own is unrealistic. Failing to address the toxic assets that clog the financial system undermines taxpayers' confidence in our markets, exacerbates our economic condition, and throws more tax dollars down a rathole. The time for half-baked measures is long past.

It is time we implement a bold, coherent, and smart plan to ensure accountability, transparency, and oversight. This tried and tested approach is more cost-effective and efficient than the current haphazard approach. Rather than pumping more and more taxpayer funds into sick banks, it is time to take the toxic assets that undermine the health and viability of the financial system. In other words, it is time to fire the bazooka. It is time to stop letting politics and fear drive decisions. It is time for smart, considered, and decisive action based on strategies that have worked.

In closing, I ask my colleagues and fellow Americans this question: Are we prepared to do what is necessary to save our financial system and our economy? I do not believe the answer can be anything but yes.

I thank the Chair for his indulgence, and the staff. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator requires unanimous consent to proceed and debate.

Mr. WICKER. I ask unanimous consent to proceed and debate.

Mrs. MURRAY. I object.

The PRESIDING OFFICER. Objection is heard from the Senator from Washington.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m. today.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURRIS).

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MOTION TO COMMIT WITH INSTRUCTIONS

Mr. ENSIGN. Mr. President, I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] moves to commit the bill (H.R. 1105) to the Committee on Appropriations with instructions to report the same back to the Senate with the following amendment:

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

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

The amendment is as follows:

SEC. _____. (a) ACROSS-THE-BOARD-REDUCTION.—Amounts appropriated under this Act for—

(1) fiscal year 2009 shall be reduced by $18,981,000,000; and

(2) fiscal year 2010 shall be reduced by $3,274,000,000.

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall administer the reductions in subsection (a) to the amount of budget authority provided or obligation limit imposed for any discretionary account of this Act.

Mr. ENSIGN. Mr. President, I don't think we need a long time to discuss this amendment. It is a pretty simple amendment. What it says is, we are going to take this bill back to the Appropriations Committee and have the Appropriations Committee make the appropriate cuts so this bill comes back at the 2008 funding level.

We have to ask ourselves: When is the Senate going to start being fiscally responsible? The other side of the aisle criticized us, and rightly so, for free spending over the last 8 years. That was one of the things President Obama campaigned on and the Democrats across the country campaigned on. They said they were going to be the party of fiscal responsibility.

The debt held by the public has continued to increase. The problem is that under the President's new budget, over the next 5 years, the debt is actually going to double. Over the 10-year budget he has proposed, the debt held by the public is going to triple from already unsustainable levels.

My amendment says that we give spending a little haircut around here. It is not significant. It is saying that at a time when we recently passed a stimulus package, which tremendously increased Government spending, let us not take last year's spending bills and also tremendously increase their levels of spending. The current omnibus proposes an 8-percent growth in the size of our Government from one year to the next. We are talking about a record deficit this year. $1.75 trillion is a big number; people can't even get their arms around that number.

If you to spent $1 million a day, 7 days a week, 365 days a year, beginning at the time Jesus was born, you still wouldn't be at your first $1 trillion today. Our deficit this year is $1.75 trillion. To add to that deficit with this spending bill, I believe, is outrageous.

There is a saying—and I don't remember who said it, exactly or how it was said, but it is basically along these lines: The systems of government such as we have always collapse due to two reasons: The first one is a moral collapse, the second one is followed by an economic collapse. You can understand why they happen in that order. Because what happens if people aren't moral enough to care about future generations? What they do is they vote people into office who give them what they want. They borrow from the Treasury to get it, and when the debt gets too high, it collapses the economy.

What we are doing around here is exactly that. We are repeating the mistakes of history. We are borrowing from our children. We are running up huge debts. If folks don't think our economy can't completely collapse due to the huge debt burden we are passing, they have another thing coming. Confidence in the dollar right now is questionable around the world. Looking into the future, as we run up these larger and larger deficits and add to a huge burgeoning debt in the United States, people around the world are going to wonder about the strength of the dollar. They are going to wonder whether they want to continue to buy our Treasury bonds and finance our debt. If they stop buying our bonds, our economy collapses. It literally falls off the cliff.

We have a fiscal responsibility to be moral enough to care about future generations of Americans, to not continue to add dollar after dollar, million after million, billion after billion, trillion after trillion onto their debt load. I would encourage this body to adopt this reasonable amendment to this bill; that instead of increasing the Government 8 percent over last year on these particular spending bills, let us freeze it at last year's level. We are not asking to cut anything, but let's freeze it at last year's level.

It will be up to the Appropriations Committee to decide whether some accounts are more worthy than others. They can plus up those or cut others that are not as worthy. They can take care of Members' projects if they wish to take care of Members' projects. But the bottom line is, this amendment would at least start down the road of fiscal responsibility to future generations.

I have a couple other comments. Can anybody rightly say this bill is full of good spending, of justified spending? We have heard about all the earmarks. Let me note a few of them, if you think this bill is full of good spending. Mr. President, $1.79 million—and I am not exaggerating—$1.79 million for swine odor and manure management research. I am a veterinarian by profession. I understand that pigs smell and pig farms smell worse than almost anything else. But when did it become the responsibility of the Federal Government to control pig odor? Shouldn't that be the responsibility of pig farmers?

Of course we need to pay back the labor unions. There is $190,000 to the Plumbers Local Union 27 and Steamfitters Union 449, and that is in Pennsylvania for the Western Pennsylvania Pipe Trades Regional Training Project. We also have almost $500,000 for the George Meany Center for Labor Studies at the National Labor College.

I have a whole list. As a matter of fact, I ask unanimous consent to have this list of earmarks printed in the RECORD.

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

NOTABLE EARMARKS

These earmarks are listed in the Joint Explanatory Statement which was published in the CONGRESSIONAL RECORD of February 23, 2009; after each earmark is the page number in the RECORD where it is listed.

$1.76 million for a honey bee lab (H1691).

$1.79 million for swine odor and manure management research (H1692).

$767,000 for subtropical beef germplasm (H1692).

$245,000 for aegilops cylindrica (jointed goatgrass) (H1700).

$469,000 for ethnobotanicals (ethnobotany is ''the plant lore and agricultural customs of a people'') (H1698).

$5.8 million to the Edward M. Kennedy Institute for the Senate in Boston for the planning and design of a building and possible support for an endowment (H2296).

$5 million for New Leaders for New Schools, an organization whose executive director is likely to be named the next chief of staff at the Department of Education (H2371).

$190,000 to the Plumbers Local Union 27 & Steamfitters Local Union 449, Coraopolis, Pennsylvania, for the Western Pennsylvania Pipe Trades Regional Training Project (H2364).

$238,000 to the San Francisco Department of Economic and Workforce Development, San Francisco, California, for the Green Jobs Workforce Development Training Pilot project (H2365).

$238,000 to Marquette University, Milwaukee, Wisconsin, for a dental health outreach program (H2335).

$95,000 to the State of New Mexico, Santa Fe, to collect and analyze data about the need and potential locations for a dental school within the state (H2348).

$571,000 to the U.S. Virgin Islands Department of Health, St. Thomas, Virgin Islands, of which $190,000 is for facilities and equipment for a mental health facility (H2350).

$476,000 to the George Meany Center for Labor Studies at the National Labor College, Silver Spring, Maryland, for curriculum development (H2297).

$1.6 million to the Michigan Community College Association for an alternative energy training initiative (H2299).

$1.2 million for eyeglasses for students whose educational performance may be hindered because of poor vision (H2285).

$618,000 for teacher training in the Samoan language (H2279).

$485,000 for a boarding school for at-risk Native students from remote villages across western Alaska (H2284).

$476,000 to expand the PE4life physical education program across Iowa (H2289).

$428,000 to the University of Texas Libraries for the Latino Veterans Oral History Project (H2368).

$381,000 for the Cedar Rapids Symphony Orchestra (H2280).

$381,000 for a business school in Des Moines, Iowa to recruit and train captioners and court reporters (H2293).

$357,000 for Farmingdale State College in New York to develop a green building curriculum (H2297).

$333,000 to train college students in closed captioning (H2295).

$285,000 for an associate degree program for air traffic controllers (H2293).

$262,000 to support the advancement of underrepresented minority pharmacists and pharmaceutical scientists (H2294).

$243,000 for the commercial driver's license training program at White Mountain Community College in New Hampshire (H2305).

$238,000 for the University of Hawaii to provide cultural education (H2297).

$238,000 for emergency and preparedness education programs in Beverly Hills, California (H2291).

$238,000 for daily physical education activities in Detroit (H2281).

$214,000 for the Stony Brook University School of Journalism in New York to teach scientists how to effectively communicate with the public and the press (H2303).

$190,000 for Hawaii Community College to provide cultural education (H2297).

$190,000 for Southeastern Illinois College to develop a mining and mine safety curriculum (H2302).

$143,000 for equipment at the University of Guam Marine Laboratory (H2303).

$95,000 for scholarships and program costs related to prosthetic dentistry and clinical prosthodontics (H2293).

$95,000 for Indiana University of Pennsylvania for curriculum development for a mine safety course and research on the use of mine maps (H2298).

$95,000 for Murray State University in Kentucky to purchase equipment for the Breathitt Veterinary Clinic (H2300).

$65,000 for a feasibility study of potential Iowa school sites (H2282).

Certain earmarks that have been linked to a lobbying firm reported to be under federal investigation include $951,500 for a Direct Methanol Fuel Cell (DMFC) (H2044), $951,500 for Adaptive Liquid Crystal Windows (H2038), and $951,400 for an anti-idling Lithium Ion Battery Program (H2038).

Mr. ENSIGN. There are plenty of others we could go through, but for the sake of time, let's just be fiscally responsible right now. Let's add a little fiscal responsibility into this body, and let's adopt this amendment that says we are going to freeze spending from Government that was not already plussed-up in the stimulus bill. Let's be fiscally responsible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I rise to oppose the amendment that has just been offered by the Senator from Nevada. I go home every weekend and I talk to families across my State. There is no doubt that people are hurting. Thousands of people have been laid off from their jobs, and thousands more are worried that this week they are the ones who are going to be laid off from their jobs.

Since we first came into session in January, we have been working as hard as I have ever seen to address these challenges that are facing millions of Americans today—losing their jobs, losing their homes, losing their retirement. We are trying to get this economy back on track and instill some confidence in this country so we can move forward. We passed a major economic recovery package just a few weeks ago. It is being implemented as we speak and will be implemented over the coming weeks and months.

Here we are today talking about a bill that basically is the responsibility of Congress, every single year, to fund the Government agencies that help make our country work. We should have had this bill passed 3, 4, 5 months ago. We did not. This bill was done. It was ready to go by the end of July. All of the appropriations committees had finished their work. They had passed them out of the Appropriations Committee, almost all of them on a unanimous vote, some of them with just a few negative votes in committee.

But the responsibility of the Senate and House and Congress every year is to pass our spending bills. We pass these bills in order to make our agencies work, whether it is the Food and Drug Administration that makes sure our food is safe, whether it is our air traffic controllers who manage the flights out of our airports, whether it is our health care agencies that do research and important work for this Nation's health, whether it is Government agencies that fund agriculture or any of the other agencies we have. These are people who go to work every day whose function it is to make our economy and our country work so that average citizens do not have to sit at home and worry about whether the drug they purchase is safe or whether the agriculture they buy at the market is safe or whether their schools are funded or whether we provide individuals the basic health care Americans know they need in order to keep their families secure.

It is too bad these bills didn't pass a few months ago. Why didn't they? Because we had an administration whose bottom line was to say no. The President at the time, President Bush, said: I will say no to these bills as they come to my desk.

But here in the Senate and in the House, we said: These bills are important, but if this President is going to veto them, we are going to wait a few months for the election.

That happened, we have a brandnew President, and, unfortunately a few months late because we were working on an economic stimulus package, we are here to pass these bills. I wish they were done a few months ago. I know all of us do. But we should not delay it any further. All of the people who worked with us to get these bills passed, everyone in the country, whether it is a YMCA that has a domestic violence center that is waiting for $100,000 that we marked up in committee and appropriated last year for them, or highway projects we marked up in this bill, or transit projects, across the board, whether it is law enforcement, whether it is consumer product safety, whether it is the numerous housing agencies that are funded in this—they have known for several months what they are going to get. They are waiting for us to finish our work this week, by this deadline, Friday, so we do not go back to a CR. It is our responsibility to pass these bills.

The Senate had a very strong vote just a few hours ago to say we are not going to work off a continuing resolution. We are going to do a responsible job of funding these agencies, as we said.

The amendment of the Senator from Nevada that now comes before us sends us into a tailspin. It says we are going to send these bills back to the Appropriations Committee to cut some $20 billion out of them and come back to us. First of all, just from a process point of view, this is not going to happen by this Friday, and if we do not get this bill passed by this Friday, the Government shuts down. I can talk about the consequences of that. I have been in this body before when the Government shut down. It is not pretty, and we do not want to be there for a million reasons that I am happy to talk about for some time, but we will leave that for another day.

The fact is, to send this bill back to the Appropriations Committee and tell them to cut $20 billion out of it, that will underfund critical initiatives this Senate and this House believe are important.

Let me talk for a minute about housing. We all know that one of the reasons our economy is in such trouble today is because of the housing crisis that has come before us. In this bill—if we do not pass it as it is written and before the Senate today, we have about 45,000 families who will lose their jobs on top of the thousands we have already seen. We cannot afford to put those families in jeopardy. Yet that is essentially what will happen if the amendment of the Senator from Nevada is agreed to.

We are working hard to make sure our families do not go into foreclosure. The amendment of the Senator puts all of those families at risk. Single-family guaranteed housing loans are at risk under the amendment of the Senator. Federal law enforcement efforts through the Department of Justice are at risk through the amendment of the Senator. Antiterrorist enforcement programs through the Department of Treasury are at risk under the amendment of the Senator. U.S. attorneys are at risk. Food and medical product safety—right at a time when we are all worried about peanut butter—is at risk. Consumer product safety—the risk goes on. All of these priorities that we worked through our committee on a bipartisan basis and said we need to move these initiatives forward are at risk under the amendment of the Senator.

I believe we have to all go back to our responsibilities. All of us wish the bill could have passed a few months ago. It didn't. It is in front of us now. We need to pass this bill, get it to the President's desk, and then we will have

an opportunity to look at a budget for 2010. Our Budget Committee will look at that budget hard, we will pass the budget out—it will have to pass in the Senate and House—and it will set the parameters for next year's appropriations bills. Those appropriations committees will then, in the next few months, begin to work on their bill. For anybody who has issues, small or large, that is the appropriate place to begin the debate and amendment process and hopefully in regular order to pass those bills and move forward. But we should not jeopardize this bill at this point. That is not responsible. That is not what any of us should be doing at this point.

Finally, let me talk about the debt issue we have been hearing so much about. None of us wants to operate this country in debt. All of us are fiscally responsible. I have heard every Member of the Senate come forward and talk about making sure we keep our house in order.

Who got us to where we are today? The Republicans who came into power under George Bush turned historic surpluses into historic deficits by not being honest about the costs in front of us—whether it was the Iraq war or whether it was other costs that were paid off-budget, emergencies across the country—not coming forward and being honest about the fact that we do need to fund health care research or education for our kids. Why have these bills not passed before the election? Because even Republicans didn't want to cut education or to cut health care, which would have been what we had to do to meet the President's budget level.

I take a backseat to no one when it comes to making sure our country moves forward in a fiscally responsible way and deals with the debt we have. But at the cost of laying off thousands of people because we are not being responsible and up-front about the job we have to do is irresponsible.

I hope our colleagues will defeat the amendment by Senator ENSIGN, move on, pass this bill this week, and then we can have all the debate we want about the budget that will come before this body shortly, about the appropriations moving forward.

Let me remind all of us that what we are talking about here is extremely important. No one wants to get a pink slip. No one wants to see their job lost. No one wants to see their health care at risk, their education at risk, or for that matter, within my appropriations bill, their flight from their airport at risk because we have not added air traffic controllers, which is in this bill. There are many other issues in this bill that are at risk under the proposal of the Senator, and I urge our colleagues to defeat this amendment and move forward, doing what we were sent here to do, and that is be responsible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I wish to first address a few of the misrepresentations of my amendment by the Senator from Washington. My amendment does not cut any specific program, and you know it. It says to the Appropriations Committee: We will send this back to the Appropriations Committee, and you determine which programs are funded and which ones are not funded. But you will fund them at last year's level. If you want to raise the level in certain areas, then you will have to cut funding in other areas.

We just have to ask ourselves the question: Does anybody believe there is wasteful Washington spending? Does our Government have any wasteful spending in it? If you say there obviously is wasteful spending, when was the last time we cut anything? When was the last time we cut any wasteful spending? Congress needs to address this wasteful spending. Part of the Appropriations Committee job is oversight. The Committee then figures out what is working, what is not working, fund what works and cut what does not work. But that doesn't happen around here. All they do is add and add.

If you check the Constitution, the purse strings are controlled by Congress, not by the President. Democrats are entering their third year of that control in both houses. So what we have to do here is exercise our authority and say we are going to be fiscally responsible. You can say you are fiscally responsible all you want, but unless you act on it, the words are hollow.

Businesses across America are looking for ways to cut waste from their budgets during this economic downturn. Do you know what they are finding? Talk to them. I have been in business myself. I understand that when times are good, you sometimes add staff you don't need, you waste money in places you don't need to, and that is in the private sector. The Government is less efficient than the private sector.

Times are tough in this country, instead of thinking we will just add to the deficit, we will just raise taxes, let's look for efficiency and let's eliminate wasteful spending. We have a bill in front of us that is going to increase spending over last year's level by 8 percent. Is that fiscally responsible? We just passed a nearly $1 trillion spending bill called the stimulus bill, and now we are going to increase this by 8 percent? It seems to me that is not fiscal responsibility. That is the height of irresponsibility.

Let's have a debate on this, but let's have a honest debate.

We are not cutting any specific programs. Do not say we are cutting education. Do not say we are cutting health care. Do not say we are cutting police and firefighters because this amendment does not do that.

What this amendment says is, let's send this bill back to the Appropriations Committee, to last year's level. The Appropriations Committee can determine which programs are funded at what level. If you believe there are certain priorities that need more funding, then fund them; otherwise, let's be honest about this debate. And I am more than happy to go back and forth with the other side about the merits. But if anybody thinks there is not wasteful spending going on in Washington, DC, you need to wake up and smell the coffee because it is outrageous how much waste there is in our Government today—outrageous. We do not require fiscal discipline in our agencies, and that is what we need to start doing.

I yield the floor.

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

Mr. SCHUMER. I ask unanimous consent to address the Senate as in morning business.

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

PRESIDENT OBAMA'S MISSILE SHIELD LETTER TO RUSSIA

Mr. SCHUMER. Mr. President, I rise today in support of President Obama's critical recognition that Russia must be a major player in blocking Iran's development of dangerous weapons. Yesterday, it was reported that the President wrote to Russia's President Dmitri Medvedev signaling an openness to re-examining the contested missile defense system in Eastern Europe, while urging Russia to help us stop Iran from developing nuclear warheads and long-range weapons.

This overture by President Obama is Reaganesque in its boldness. It has the potential to represent the most cooperative approach to a global threat by our two countries since President Reagan and Gorbachev signed the missile treaty 20 years ago.

It signals the ushering in of a new era of tough and smart thinking about foreign policy that has been desperately lacking in the White House. Rather than alienating potential allies, President Obama and his team are demonstrating that they will abandon the Bush unilateral approach to nuclear nonproliferation in favor of galvanizing international support to meet the challenge posed by these deadly weapons.

I am not an after-the-fact supporter of this strategy. I have long thought that the key to de-fanging Iran's nuclear threat lies in Russia's cooperation in imposing tough economic sanctions on Iran. In fact, in an opinion piece published by the Wall Street Journal last summer, I urged President Bush to offer to Russia a deal: in exchange for walking back the missile defense system that Russia so opposes, the U.S. should get Russia to back the United States' economic sanctions on Iran that are our best stick for making sure that their nuclear threat does not become a reality.

I also made this suggestion in person at the White House last year. I was literally told by Vice President Cheney ''We can't do that.'' Well, there's new

leadership in Washington and President Obama says ''Yes we can.''

Today, there should be no lingering doubt that Iran represents a profound threat to our global security. The latest International Atomic Energy Agency report confirms that Iran remains in hot pursuit of a nuclear program. The report told us that Iran now possesses 1,010 kilograms, 2,222 pounds, of low-enriched uranium, which raises concerns that it now has sufficient uranium and the means to enrich it to produce nuclear warheads.

Whether President Ahmadinejad actually intends to make good on his threat remains to be seen. But what we do know is that the administration needs to use every diplomatic tool in our arsenal to halt Iran's progress in the development of deadly nuclear weapons.

In the recent past, we have made some progress in ratcheting up economic pressure on Iran by sanctioning four of Iran's major state-owned banks. This move has dramatically limited Iran's ability to conduct international business, as a growing number of foreign banks are unwilling to risk reputational harm or loss of access to U.S. financial markets. More economic pressure can and must be applied.

These sanctions are effective against Iran for several reasons. Despite the fact that the leadership and government of Iran is a theocracy, the Iranian people are largely secular and look westward for their cultural bearings. It's a common sight to see satellite dishes hidden in air-conditioning ducts, so Iranians can stay abreast of Western culture. Its growing youthful population also has strong ties to the west. MTV is a popular TV channel among the young in the country, not al-Jazeera. Iran is also wealthier than most neighbors in its region, and its inhabitants have enjoyed a higher standard of living than most people living in the Middle East.

However, Russia is blunting the impact of the sanctions. Economic self-interest motivates Russia's arguments that there is no evidence that Iran has a secret nuclear weapons program and that sanctions would undermine the International Atomic Energy Agency's efforts. Russia makes money from business with Iran, since Russia currently supplies over 75 percent of Iran's arms imports. Russia continues to supply Iran with nuclear fuel and to train Iran's nuclear engineers.

More ominously, Prime Minister Putin's nationalist rhetoric, designed to remake Russia into a global power and restore nationalist pride to the Russians, has led Russia into an even tighter embrace with Iran, an embrace that must be untangled if we are ever to truly eliminate the Iranian nuclear threat.

It is also not a secret that little has raised Russia's anger and fueled its nationalist impulses more than the Bush administration's missile shield plan. Putin argued that such a plan would both reignite the arms race of the 1980s and damage Russia's relations with the United States, Poland, and the Czech Republic. He also said that the shield would prompt Russia to increase its own defenses and abrogate its commitments to demilitarize under the Treaty on Conventional Armed Forces in Europe.

Despite Russia's loud complaints over this missile shield, the Bush administration plowed ahead, securing reluctant agreement from our allies at the NATO summit earlier last summer to move forward with its implementation.

Let me be clear. The United States is committed to both protecting against the threat of a nuclear Iran and protecting a free and prosperous Eastern Europe. But the Bush administration's plan to deploy the missile defense system in Poland and the Czech Republic has never made much sense. The technology has never been proven to work, it has not been determined to be cost-effective, and it will do nothing to tackle the ultimate source of this threat, Iran's stubborn refusal to abandon its nuclear program. At the same time, it does very little to preserve the necessary and very important independence of Eastern Europe.

In this context, it seems clear that the U.S. and Russia each have something to gain from each other. President Obama appears to recognize this dynamic. In exchange for joining the West in imposing economic sanctions on Iran until they stop their pursuit of nuclear weapons, I encourage the administration to roll back its predecessor's plans for a missile shield. It makes sense. With Russia on board, economic sanctions will have much greater success, and countries like China will certainly think twice before engaging with the Iranian regime. Russian participation will give multilateral sanctions against Iran real teeth, and we can halt Iran's nuclear program before it is too late.

The President's gesture to Russia is the kind of smart, targeted diplomacy our dangerous world needs. Given that a nuclear Iran is such a profound threat, this strategy makes eminent sense. The United States could give up a non-vital missile program in Eastern Europe in exchange for vitally needed Russian cooperation to prevent Iran from going nuclear. President Obama and President Medvedev do not need to look into each other's soul. They just need to be able to trust each other's handshake.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, the measure before us, H.R. 1105, is consistent with the funding levels approved in the budget resolution. Therefore, I sincerely believe there is no justification for any amendment to reopen this bill to further cuts.

The Republicans argue there is an overlap between the funds added in the recovery bill and the omnibus bill before us. At the request of Republican Members, Senator COCHRAN and I called upon our staff to conduct a bipartisan review of the impact that the Recovery Act has on the omnibus bill. That review determined that there is, at most, minimal overlap. Let me explain. First, there are 900 programs in the omnibus bill. Fewer than 20 percent receive stimulus funds. For those who may want to offer an across-the-board cut to this bill, they would be harming more than 80 percent of the programs for the Department of Agriculture, Commerce, Justice, Treasury, HUD, Energy, and so on.

Second, of the programs with stimulus funds, only 100 have an increase in the 2009 omnibus bill above the 2008 funding level, and many of those increases just cover inflation or are relatively small. Nearly half of these programs averaged about $5 million in increase between 2008 and 2009. In many cases this does not even cover the cost of inflation.

Analysis will show there are 30 programs in the bill before us which grow substantially between 2008 and 2009 by a total of $15 billion. Of the omnibus growth of the $15 billion we measured, $13 billion is either entirely unrelated to the stimulus bill or is required in addition to the Recovery Act funds to achieve policy objectives or was funded in response to strong political support which would eliminate any chance of reducing it.

I would like to mention a few critical priorities that would go unmet if the Congress were to pass a CR rather than the omnibus. On food and medical product safety inspections, this omnibus bill would provide the Food and Drug Administration with an increase of nearly $325 million, of which $150 million is included in the current continuing resolution.

If this measure is not enacted into law, the proposed increased funding for the FDA would be reduced by $175 million. This reduction in funding would significantly decrease the number of food and medical product safety inspections, both domestic and overseas, that the FDA could perform.

On the matter of consumer product safety, this measure would provide the Consumer Product Safety Commission with an increase of $25 million or 32 percent above the 2008 level. Without this funding increase, this Commission would not be able to implement many of the reforms and new directives contained in the newly enacted Consumer Product Safety Improvement Act to make children's products safer, such as the consumer complaint database, an overseas presence, and increased inspector general staffing, and staffing generally.

On the matter of the enforcement of securities law, inadequate resources for the Securities and Exchange Commission would hamper the ability to undertake vigorous enforcement of security laws to help bolster the integrity of the financial markets just when such enforcement is needed.

On the matter of the Federal Aviation Administration, this agency faces a crisis in maintaining an adequate workforce of trained air traffic controllers. Without the increase provided in this omnibus bill, the FAA would be forced to freeze or reduce the number of new air traffic controllers the agency can bring on board and train, worsening the experience shortage we already have in our air traffic control towers. One accident is one too many.

These are only some of the many priorities in this legislation that would go unmet if we fail to pass this bill as written. This omnibus bill is a good package. It is bipartisan and noncontroversial. It is in compliance with the budget resolution for the committee.

Again, I believe there is no justification for an amendment to reopen this bill to further cuts that would do harm to the important national priorities I have mentioned.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANDERS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MOTION TO COMMIT WITH INSTRUCTIONS, AS MODIFIED

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senate proceed to vote in relation to the Ensign motion to commit with instructions, as modified with the changes at the desk; and that no amendments be in order to the motion prior to a vote in relation to the motion to commit; that upon disposition of the motion to commit, Senator HUTCHISON be recognized to offer an amendment which provides for a reduction in funding with no amendment in order to the amendment prior to a vote in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The motion to commit with instructions, as modified, is as follows:

Mr. ENSIGN moves to commit the bill H. R. 1105 to the Committee on Appropriations of the Senate with instructions to report the same back to the Senate with the following changes:

SEC. _____. (a) Amounts appropriated under this Act for—

(1) fiscal year 2009 shall be reduced by $18,981,000,000; and

(2) fiscal year 2010 shall be reduced by $3,274,000,000.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. CONRAD), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNS) and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 33, nays 61, as follows:

[Rollcall Vote No. 75 Leg.]

YEAS—33

| | | |
|---|---|---|
| Alexander | DeMint | Lugar |
| Barrasso | Ensign | Martinez |
| Bennett | Enzi | McCain |
| Brownback | Graham | McConnell |
| Bunning | Grassley | Murkowski |
| Burr | Gregg | Risch |
| Chambliss | Hatch | Roberts |
| Coburn | Hutchison | Thune |
| Corker | Inhofe | Vitter |
| Cornyn | Isakson | Voinovich |
| Crapo | Kyl | Wicker |

NAYS—61

| | | |
|---|---|---|
| Akaka | Gillibrand | Nelson (NE) |
| Baucus | Hagan | Pryor |
| Begich | Harkin | Reed |
| Bennet | Inouye | Reid |
| Bingaman | Johnson | Rockefeller |
| Bond | Kaufman | Sanders |
| Boxer | Kerry | Schumer |
| Brown | Klobuchar | Shaheen |
| Burris | Kohl | Shelby |
| Byrd | Landrieu | Snowe |
| Cantwell | Lautenberg | Specter |
| Cardin | Leahy | Stabenow |
| Carper | Levin | Tester |
| Casey | Lieberman | Udall (CO) |
| Cochran | Lincoln | Udall (NM) |
| Collins | McCaskill | Warner |
| Dodd | Menendez | Webb |
| Dorgan | Merkley | Whitehouse |
| Durbin | Mikulski | Wyden |
| Feingold | Murray | |
| Feinstein | Nelson (FL) | |

NOT VOTING—5

| | | |
|---|---|---|
| Bayh | Johanns | Sessions |
| Conrad | Kennedy | |

The motion, as modified, was rejected.

Mrs. MURRAY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

MOTION TO COMMIT WITH INSTRUCTIONS

Mrs. HUTCHISON. Mr. President, I have a motion at the desk which I would like to call up for consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] moves to commit the bill H. R. 1105 to the Committee on Appropriations of the Senate with instructions to report the same back to the Senate with the following change:

Amend spending levels in the bill so as to report back a bill with an aggregate non-security spending level at fiscal year 2008 funding level, adjusted for inflation, by reducing duplicative or non-essential funding in the $787,000,000,000 stimulus bill also referred to as the American Recovery and Reinvestment Act of 2009.

Mrs. HUTCHISON. Mr. President, the amendment that was just defeated was to hold us to the 2008 spending levels after the $1 trillion of stimulus spending that has already been passed and signed by the President. My amendment would be for the nonsecurity spending for 2008, plus the rate of inflation at 3.8 percent.

Basically, what I am doing is asking that we commit the bill to the Appropriations Committee to amend and find the places in the omnibus bill that is before us or the stimulus bill from 2 weeks ago where we would take out the amount of spending that is duplicative or nonessential in the amount of approximately $12 billion. This is a very modest cut, but it would begin to put us on the road toward some fiscal responsibility. We have just passed a $1 trillion stimulus package. It is in all of the areas that we could spend money on, and many of those are duplicated in what we are taking up on the floor right now.

So if you take the nonsecurity spending of 2008 and you add the regular inflation at 3.8, the Congressional Budget Office says that it would be about $12 billion in cuts that the Appropriations Committee would be able to find. So we are not saying here to slash across the board. We are certainly holding harmless defense and veterans. But we are saying that the Appropriations Committee should look at what we have passed and see where there is duplication and cut $12 billion out of this spending bill, and then we will be setting the precedent that we are going back to fiscal responsibility, which is setting the budget and having a reasonable increase—the rate of inflation—which has been the normal procedure here until this year.

When you look at the bill that is before us, it would cost about $408 billion, according to the Congressional Budget Office. When you account for the previous continuing resolution, which provided funding for defense, military construction, veterans affairs, and homeland security, the top line fiscal year 2009 spending level would exceed $1 trillion. This does not include last year's supplemental nor the stimulus which we have just passed, which, when you combine those bills, would be another total of $1.4 trillion. That is a 49-percent increase over a 1-year period. If we want to exclude the emergency or one-time actions, such as supplementals or the stimulus, then you would have an increase over last year's spending by $83 billion, which would be an 8.8-percent increase over last year's spending. That is more than twice the rate of inflation, at 3.8 percent.

Let's take some examples. I will look at my committee, Commerce Committee, and the areas of my jurisdiction. We authorize broadband grants. We share this jurisdiction with the Agriculture Committee. We provided a total of $7.2 billion for broadband grants and loans in the stimulus package, $4.7 billion for the NTIA, and $2.5 billion for rural utility service. Yet in this bill we are adding another $400

million. That totals, for the fiscal year 2009 spending, a 4,500-percent increase. Why do we need another $400 million when we haven't even begun to spend the $7.2 billion from the stimulus yet?

How about the National Institute of Standards and Technology? This is a program I support. It is a valid program, just as the previous one. But here we are increasing the NIST funding by $31 million over last year's funding level and we just gave NIST $220 million not 2 weeks ago. So the Institute of Standards and Technology would be increased not by $31 million, but $251 million over a 1-year period.

These are only some of the items in my own committee's jurisdiction. There are 122 accounts in this bill that received stimulus funding, and I support most of what is in this bill because the Appropriations Committee took up these spending bills last year. We had the ability to amend, in most cases, and we know what is in those bills. However, they were increased on the House side since we took them up last year, and now we have, between now and October 1 of this year, this spending bill for all of the accounts except the security accounts.

Why don't we show the American people that we are going to exercise fiscal restraint; that we know we have just passed $1 trillion in stimulus spending—some of which arguably is stimulus and some of which arguably is not, but we passed that stimulus bill—and it is going to cost our taxpayers $1 trillion. We hope it will increase the revenue, because we hope it will increase jobs and it will keep people in their jobs. That is what we want it to do. But now we are in the regular appropriations cycle, from today until October 1, and we are talking about $408 billion more in spending, some of which has already been provided for in the stimulus package we passed.

The American people, some of whom have lost their jobs, some of whom have received notice that their mortgages are going to be foreclosed and their homes are going to be taken, are saying: What are they doing up there? How can they spend money like that without any regard to what is fiscally responsible? And how we are going to pay it off? Because this is more debt, and we are going to increase, and increase again, and everyone who owns something or who has a mortgage understands this.

We don't have to do this. We can say today, in a bipartisan way, that we are going to turn a new page; we are going to turn a new page in this Congress and the Appropriations Committee is going to do its work. The Appropriations Committee is going to, in a bipartisan way, start looking at this $408 billion bill and compare it to the 122 accounts in this bill that got stimulus 2 weeks ago and we are going to find $12 billion in cuts—$12 billion out of $408 billion. It could come out of the stimulus. If that were the preferred way to go, we could go back into the stimulus in the outyears. It doesn't have to be in the next 2 years, it can be in the outyears of the stimulus. The Appropriations Committee would be authorized to go into either bill and shrink $12 billion.

It seems almost unthinkable that we would not be able to cut $12 billion out of $1.408 trillion of taxpayer money that is coming out of Washington and which is debt because we don't have the money to pay for it.

I urge my colleagues to pass this amendment. Let us show the American people that we do understand we should have fiscal responsibility and restraint, as every household in this country is experiencing right now; and that from now forward our appropriations bills are going to be in the regular order; that we are going to have a budget, and we are going to live within that budget, and we are not going to add 5 percent or 8 percent and then bring it over here and pass it with no amendments. That is business as usual. That is not change, it is not bipartisanship, and it is not acceptable.

Mr. President, I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. KAUFMAN). The Chair recognizes the Senator from Florida.

Mr. MARTINEZ. Mr. President, I ask unanimous consent to be recognized for 20 minutes and that the time not be counted against Senator HUTCHISON's time.

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

## CUBA

Mr. MARTINEZ. Mr. President, as this mammoth appropriations bill is being considered, there are some ramifications that go way beyond the fiscal impact of this bill and the prudence of those measures. It is about the policy implications of some of the things that have been woven into this bill. I am particularly referring to those issues referring to our relationship with Cuba.

This Senate has debated over many years issues relating to Cuba, a close neighbor; unfortunately, over the last half century, not a friendly neighbor. I think back to about 1898, when this Senate was very much in favor of Cuba's freedom from Spain and American forces intervened. In 1902, Cuba's freedom as an independent nation, freed from Spain, was granted as a result of actions by our Congress as well as our President.

As the Senate considers taking steps that would change the current approach to policy regarding Cuba, we should reflect on how and why we have the current policy in place and the ramifications of adjusting that policy at this moment in time, even temporarily.

The United States-Cuba policy is a living, breathing entity. Over the years, it has been adjusted, loosened, tightened, and tested. Ten successive U.S. Presidents have affirmed the policy, bolstering provisions for the sake of those brutalized by the regime, seeking no harm to the general Cuban public while denying the regime the resources it so desperately needs to keep the stranglehold on power.

The United States has always had the general welfare of the Cuban people in mind as evidenced by our generous humanitarian aid and the promise it is of untethered assistance. The United States is the No. 1 supplier of humanitarian aid to Cuba. The American people, in 2007 alone, sent $240 million in private assistance through reputable humanitarian assistance organizations. The foundation of our policy takes aim at the actions of the regime that expropriated private property without compensation—property owned by American citizens. On top of this foundation is our message that Cubans deserve access to free and fair elections, basic human rights, and the rule of law.

The United States built this policy so as to stand with the Cuban people, who are denied the freedoms we as Americans receive as a birthright. As we consider stripping enforcement of the sanctions, I wish to spend some time talking about what this policy means to the Cuban people, the American Government, and me personally, as someone who witnessed the violence of this revolution firsthand.

United States-Cuba relations during the Castro era have largely been defined by Cuba's record of anti-Americanism and aggressive acts of hostility. When Fidel Castro took power in the early days of 1959, there were promises of democracy, free press, and elections. But such reforms never took place. In fact, a violent dictatorial regime came in its place. Many executions took place—killings without trial, without due process. Our President, then Dwight D. Eisenhower, built a framework for the anti-Castro policy by placing trade sanctions on sugar, oil, and guns.

When barrels of Soviet oil began to arrive in Havana, United States oil companies in Cuba refused to continue refining oil, paving the way for further nationalization of United States assets—oil refineries in this instance. All of these nationalizations took place without compensation to American companies. And to this day, there never has been compensation. All of the properties owned by Americans were taken. Later, little by little, properties owned by Cubans were taken until there was no vestige of private property left in Cuba whatsoever.

My own personal story, my own life, was touched, as I was a young boy when all of this took place. Ultimately, as a result of persecution of those of us who were people of faith, as well as the stifling atmosphere in a totally controlled society, as a teenager, I emigrated to the United States. I watched firsthand the tensions between Cuba and the United States in a very personal way.

I remember watching the television and the news accounts of tensions rising between the United States and Cuba—escalating and leading up to the Cuban Missile Crisis.

That began in July of 1962, when Raúl Castro went to Moscow, and the bonds between Cuba and Russia strengthened.

The Castro brothers engaged with Russia and agreed to allow the Soviets to deploy nuclear missiles, under Moscow's jurisdiction on the island of Cuba. By the fall of 1962, Soviet freighters began delivering shipments of middle-range ballistic missiles.

In an address to the nation on October 22, 1962, on the eve of my 16th birthday, President John F. Kennedy warned of the imminent danger presented by the emerging Soviet-Cuba alliance.

In describing Cuba's nuclear strike capabilities, Kennedy said:

Several of them include medium range ballistic missiles, capable of carrying a nuclear warhead for a distance of more than 1,000 nautical miles. Each of these missiles, in short, is capable of striking Washington, D.C., the Panama Canal, Cape Canaveral, Mexico City, or any other city in the southeastern part of the United States, in Central America, or in the Caribbean area.

Five days later, in a letter to Russian Primer Nikita Khrushchev, Fidel Castro offered the island in sacrifice and urged the Soviets to use nuclear weapons against the United States if necessary.

Let's be clear, the Castro regime, under Fidel and Raul Castro, then—as they are today—in power, wanted first strike nuclear attacks against the United States. Fidel Castro urged the Russians to let the missiles fly toward our soil.

Fortunately for all, Khrushchev's response to the Castro request was to urge, ''. . . patience, firmness and more firmness.''

And these events are the foundation for U.S. Cuba policy; brutality, the theft of U.S.-owned assets, and the threat of nuclear catastrophe. All of these things perpetrated by the Castro brothers who were in power in 1959, and who remain in power today.

In the years between the Cuban Missile Crisis and now, the United States has made many good faith efforts and attempts to unilaterally engage Cuba and restore relations.

Without fail, every single attempt has failed due to the actions of the Castro regime.

Several attempts involved our offering concessions similar to those in the bill before us today.

In 1975, Secretary of State Henry Kissinger, during President Gerald Ford's presidency, tried to broker a deal with Cuba that would have lifted the trade sanctions and normalized relations. But the regime chose another route. It wanted to project power abroad. It was more interested in acting as a surrogate of the Soviets than it was in better relations with the United States. So Cuba sent troops to Angola. These troops engaged in a war as surrogates of the Soviet Union, where Cuban men died and where the Cuban Armed Forces were engaged in battle. They seized the capital city of Luanda, and the group then proclaimed independence from Portugal.

In an effort to promote peace and stability, Secretary Kissinger had no choice but to tell Cuba that as long as they had troops in Africa, the deal to normalize relations with Cuba was off the table.

In April 1980, during the Presidency of Jimmy Carter the U.S. Government once again reached out to the Cuban regime. This was rebuffed in a different way. This time it was as a result of more than 10,000 Cubans who were seeking asylum in the Peruvian Embassy; Cuban-American exile groups reached out to the island asking if willing Cubans could be allowed safe passage to the United States.

The response from the Cuban people was overwhelming and more than 125,000 Cubans fled for freedom in what became known as The Mariel boatlift. In the months that the boatlift took place, the U.S. established an interests section in Havana and reciprocated by allowing Cuba to establish theirs in Washington.

This would have been a bright spot for U.S.-Cuba relations except for the fact that the Castro regime took advantage of our generosity.

As thousands of Cubans lined up for the chance to live in freedom, the Castro regime opened its prisons and mental hospitals and sent patients and their worst criminals, murderers, thieves, and drug dealers into the United States with the idea that they would be turned loose to wreak havoc in the U.S.

This was not only cynical but also an act of aggression during a time when President Carter had extended a hand of friendship.

Once discovered, the Castro regime refused to take back the criminals and many were absorbed by our prison system where they remain to this day because they will not accept them back.

The Mariel Boatlift, as it is now known, was symbolic of the desire of the Cuban people to live freely and the flight of the people of Cuba to friendlier places, but also of the frustrating attempts to have a better relationship with the Cuban government.

Frustrated with the conditions allowed by the Cuban regime, more than 125,000 Cubans made the journey to the United States. Many were reunited with family and friends, and all had a chance at a better life.

In February 1982, the U.S. Secretary of State added Cuba to the list of countries supporting international terrorists. The U.S. State Department issued a report detailing Cuba's activities.

The State Department asserted that Cuba had, quote, ''encouraged terrorism in the hope of provoking indiscriminate violence and repression, in order to weaken government legitimacy and attract new converts to armed struggle.''

Cuba was noted to have very active operations throughout Central America and especially in Nicaragua, El Salvador, and Guatemala.

It was reportedly providing, ''advice, safe haven, communications, training, and some financial support to several violent South American organizations.''

The long record of the Cuban government's lack of respect for human life extends beyond the 1960s, 1970s and 1980s. In 1996, the Castro regime engineered a civilian murder that shocked the conscience of all Americans.

On February 24, 1996, the regime ordered the shoot down of two unarmed civilian planes flying over international waters on a humanitarian mission.

Four people were killed. Three U.S. citizens and a permanent U.S. resident; Armando Alejandre, Jr., Carlos Costa, Mario de la Pena, and Pablo Morales.

These men were part of a Florida-based humanitarian organization called ''Brothers to the Rescue,'' a group credited with spotting and saving the lives of thousands of Cubans who spotted and helped rescue Cubans trying to raft across the Florida Straits.

Following a thorough Federal investigation, it was determined the regime premeditated the shoot down as part of a conspiracy called Operation Scorpion—a mission designed to send a message to the Cuban exile community.

In the months leading up to the shoot down, Cuban-piloted MiG jets practiced intercepting and firing on slow-moving planes similar to those flown by the Brothers.

Further, the regime infiltrated an agent into Brothers for the sole purpose of encouraging the group to fly into the regime's death trap.

This agent disappeared the day before the shoot down and reappeared in Havana to denounce the humanitarian group.

The Southern District of Florida would eventually find and charge 14 individuals including Cuban spies.

The reaction from the international community was swift and harsh.

The United Nations Security Council passed a resolution condemning Cuba.

The European Union followed suit. Here in the United States, we strengthened sanctions against Cuba through the Helms-Burton Act.

A known state-sponsor of terror, the Cuban regime engaged in premeditated murder, in international airspace.

And the same people who orchestrated this unprovoked attack, Fidel and Raúl Castro, are still in power today.

Incidents such as these strengthen the resolve of Cubans looking for a better life.

José Martí, a Cuban hero, referred to as the ''Apostle for Cuban Independence,'' once said, ''Man loves liberty, even if he does not know that he loves it. He is driven by it and flees from it where it does not exist.''

Many have fled Cuba for our shores.

During the early days of the regime from 1959 to 1962, it is estimated that the U.S. resettled 200,000 Cuban refugees.

There are well over 1.5 million Cuban refugees in the U.S. and many more in Spain, Mexico, and throughout Latin America and the world where the Cuban Diaspora has gone, escaping tyranny and seeking freedom.

According to the State Department:

These include former political prisoners, persecuted religious minorities, human rights activists, forced labor conscripts, and those discriminated against or harmed based on their political or religious beliefs.

Those who choose to stay behind and courageously oppose the regime's radical ways are subjected to violence, torture, and even murder.

According to Armando Lago, an economist who has attempted to compile a list of every person killed since the start of the Cuban revolution, Raúl Castro was personally responsible for 550 executions in 1959 alone—executed without trial, without cause, without mercy—Raúl Castro, the figurehead of Cuba's modern regime.

Lago has documented 500 murders by prison guards, 500 deaths from medical neglect, 200 suicides of political prisoners, and more than 1,000 assassinations and disappearances.

Those who have voiced opposition to the regime's policies have been forced to endure harsh consequences.

Under the Cuban Criminal Code, the regime has the legal authority to detain and arrest anyone deemed not in line with the Communist State.

These individuals are defined under Article 103 of the Cuban Criminal Code as:

Any person who incites against the social order, international solidarity or the communist State, by means of oral or written propaganda or in any other way; prepares, distributes or possesses propaganda . . . Any person who disseminates false news or malicious predictions likely to cause alarm or discontent among the population, or public disorder . . . [or] Any person who permits utilization of the mass communication media shall be punished with one to four years imprisonment.

Once in prison, these individuals are subjected to unsanitary conditions, harassment, and beatings.

Here are just a few of the conditions reported by the Inter-American Commission on Human Rights.

The nutrition and hygienic situation, together with the deficiencies in medical care continue to be alarming and have caused numerous medical problems among the prison population. Anemia, diarrhea, skin diseases and also parasitism due to polluted water, appear to be commonplace in the majority of the country's prisons, while in some such as the Manacas and Combinado del Este facilities cases of tuberculosis have been recorded.

Moreover, inmates who have made any form of protest about the treatment received or who reject reeducation, which according to information received consists of political and ideological training, have been subjected to reprisals such as beatings, being shut up in punishment cells (which are extremely small, with the door closed and where the prisoner can be kept for months without seeing the light of the sun), being transferred to prisons normally far from where their families live, suspension of family visits, or denial of medical treatment.

This is in sharp contrast to the much publicized detention facility in Guantanamo. I have visited there and conditions are as good there or better than those in Florida jails. Organizations can visit Guantanamo. That is the only jail in Cuba that can be visited by an international organization like the Red Cross. The Cuban government refuses any human rights organization permission to visit their prisons.

The fact is the only uninspected, deplorable prisons in Cuba are those run by the Cuban government. Their gulag continues today unchecked, and would continue even in spite of us reaching out through this bill in this misguided way.

According to the U.S. State Department's 2008 Report on Cuban Human Rights released last week:

. . . the government continued to deny its citizens their basic human rights and committed numerous, serious abuses.

The government denied citizens the right to change their government.

In describing these abuses of human rights, the report states:

The following human rights problems were reported: beatings and abuse of detainees and prisoners, including human rights activists, carried out with impunity; harsh and life-threatening prison conditions, including denial of medical care; harassment, beatings, and threats against political opponents by government-recruited mobs, police, and State Security officials; arbitrary arrest and detention of human rights advocates and members of independent professional organizations; denial of fair trial; and interference with privacy, including pervasive monitoring of private communications.

The report notes,

. . . severe limitations on freedom of speech and press; denial of peaceful assembly and association; restrictions on freedom of movement, including selective denial of exit permits to citizens and the forcible removal of persons from Havana to their hometowns; restrictions on freedom of religion; and refusal to recognize domestic human rights groups or permit them to function legally.

One of the political prisoners mentioned in the State Department report is a man named Tomas Ramos Rodriguez, who was released on June 16 after 18 years in prison.

Following his release, Tomas Ramos noted that ''prison authorities beat prisoners with truncheons on a near-daily basis with impunity. Families of prisoners continued to report that prison staff sometimes goaded inmates with promises of rewards [if they would] beat a political prisoner.''

In describing the prison conditions, Tomas Ramos recalled the ''cell floors that had standing pools of water contaminated with sewage.''

Additionally, the report tells the story of a physician named Rodolfo Martinez Vigoa, who complained to the Ministry of Public Health about the condition of the local health clinic in Artemisa as well as the salaries of his employees.

In response, instead of taking care of the problem, the regime stood by as ''approximately 300 persons arrived at Martinez's house and shouted insults, calling him a traitor and a counter revolutionary. The government later stripped Martinez of his medical license.''

There is a long litany of the human rights abuses that exist in Cuba. The fact is, with these conditions, we would dare not have a free-trade agreement with Colombia because of concerns about human rights. President Obama, during his campaign, indicated he was concerned about human rights conditions in Colombia so, therefore, he would not be for a free-trade agreement with Colombia. It would seem to me that to be consistent, he would have to veto this bill if, in fact, it contains a relaxation of trade with Cuba, particularly if it gets into the area of providing credits, which is what this bill would do, to those in Cuba who do not pay their bills.

The fact is, there have been some pretend changes in Raoul Castro's regime since he took over Cuba. Citizens are allowed to use cell phones. That sounds like a great thing. The problem is the average Cuban makes $17 a month. The average cell phone in Cuba costs about $64. With the activation fee as high as $120, never mind the contract fee on a month-to-month basis.

Another change is Cuban citizens can now stay in hotel rooms that have been historically reserved only for tourists. The problem is, hotel rooms cost as much as 11 times the average monthly salary of a Cuban. These are not changes, these are sham assurances aimed at hiding the regime's struggle to remain financially solvent.

One clear change that has occurred is the rise of short-term arrests for so-called dangerous activity. Arbitrary detentions of prodemocracy activists have increased five times, from 325 in 2007 to 1,500 in 2008. These are just those that have been documented. Hundreds more, I am sure, take place that would be difficult to document because they happened in parts of the country where our diplomats certainly are not allowed to travel, and certainly there are no human rights organizations that could monitor it.

The regime's promise of change has fallen short of what the Cuban people want and deserve. Where are the anticipated reforms? There have been 2 years of Raoul's rule and nothing has happened.

Even the most modest calls for reform go unanswered. Since the average Cuban earns $17 a month, but the prices of goods and services are almost what they are here, many families find it very difficult to get by.

For those Cubans who have family members living abroad, here in the U.S. or Spain or elsewhere, they can receive remittances without a Government penalty. But the Cuban Government, unlike any other Government in the world, takes 20 percent from any incoming money.

A person living in the United States who sends funds to Brazil, Ecuador, Colombia, or China, they can expect to pay a private transaction fee of somewhere in the neighborhood of 2.5 percent. The Cuban Government takes a 20-percent cut right off the top. In this bill we will unilaterally be letting the Cuban Government receive unlimited remittances, asking them to do nothing—unilaterally lifting the restrictions on remittances while asking the Cuban Government to do nothing.

Would it not be nice if we were to tell the Cuban Government that in exchange for allowing them to now receive unlimited remittances, which may not be a bad thing, then they should, in fact, act in a way that allows the poor people of Cuba and those here sacrificing to send them help, not to be taking a 20-percent cut from the moneys they send to their relatives and loved ones in Cuba. These are not measures designed to serve the interests of the Cuban people.

But there is another yet darker side to this regime, as the anti-Americanism and the antagonism to our country has exemplified the actions of this regime throughout its time. Cuba and its anti-Americanism has fallen in line with Venezuela.

Mr. President, I ask unanimous consent I be allowed to have 5 additional minutes to conclude my remarks.

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

Mr. MARTINEZ. The relationship between Venezuela and Cuba is very close and obviously designed in their alliance to exercise an anti-American policy. But it does not stop there. It also includes the very dangerous Government of Iran.

Fidel Castro visited Iran in 2001. Mahmoud Ahmadinejad visited Cuba in 2006, following a visit in 2000 by then-President Khatami. The fact is, Chavez is in and out of Cuba regularly. The fact is, these governments are functioning as an alliance of sorts in the region, trying to thwart and provoke an anti-American attitude.

Before voting on this spending bill, we ought to give serious consideration to what changing the U.S. policy toward Cuba would mean going forward. While some may feel that the U.S. policy is punitive, it was created with the interests of the Cuban people in mind. Relaxing restrictions and allowing additional remittances would provide the regime with additional revenue, cash that would help it maintain its repressive policies.

According to the Cuban Assets Control Regulation: Persons visiting a member of the immediate family, who is a Cuban national, for a period not to exceed 14 days, those are allowed today once every 3 years.

What is likely to happen under these proposed changes in the omnibus is a spike increase in tourist travel under the guise of humanitarian activity. That does not serve the interest of the Cuban people and those who seek freedom inside Cuba.

In addition to that, this legislation before us would extend credit through the U.S. banking system to a Cuban nation that recently disclosed it owes more than $29 billion to the Paris Club, a debt they stopped making payment on back in the 1980s.

In fact, Cuba has the second worst credit of any nation in the world. And to that country, we are now proposing, in this legislation, in these financial times we are living in, to provide the Cuban Government with credit that can purchase agricultural goods in this country and also medicine, in fact, to the tune of some $780 million a year.

They have been doing just fine paying cash on the barrel head. This bill will give them credit. Why would we do that to this Cuban Government? Why would we do that to this enemy of the United States, when we would not sign and ratify a free-trade agreement with a country such as Colombia, which is a friend, a partner, an ally.

As we consider changing U.S. policy regarding Cuba, why are we doing it in a way where we ask for nothing? We tie neither of the changes called for in this omnibus to any yardstick of improvement. We do not call for the release of political prisoners; we do not call for lowering of the remittance fee from 20 percent to something more reasonable; we do not ask for any signs of positive behavior. We just lay the changes out there and then hope for the best. That is not the way we ought to approach a regime that has rebuffed our overtures for normal relations and humanitarian aid and instead seeks to undermine our alliances and our interests in the region.

The fact is, the Cuban Government is no friend of the United States. This is not just some benign dictator in Latin America; this is a government that purposely, during the entire time that it has existed, has had an antagonism and has exhibited every type of hostility toward the United States, which it continues to exhibit to this day.

Now, there are those who believe that Raul Castro is a reformer. After 2 years in power, as I pointed out earlier, little or no reforms have taken place. Great hopes were raised by him with many who are hoping for some sign. Yesterday, those signs of change were even further dashed when he had a major shakeup in his Government, and Carlos Lage, who has essentially been the Prime Minister of the Cuban Government, and one of those people whom folks believed was, in fact, a reformer, and the hopes were all pinned that if Lage would take over, that he might be the next President—in fact, he was fired yesterday, and he is no longer any sign of hope for undermining change in Cuba.

In fact, what happened yesterday in Cuba, by any other standard, by any other measure in any other country would be considered a military coup. We already have a totalitarian system. Now Raul Castro has put all of his friends from the military, all aging people in their seventies and older, as close to him as he can put them. Some of them are the most radical, the most vicious of those who have enforced Cuba's totalitarian regime over the years that it has existed, and they are now in the throes of government.

So, essentially, what we have here is not an example of a change in regime but one that is only consolidating power, trying to only exact more repression from its people, while at the same time exhibiting hostility and anti-Americanism anywhere that it goes and anywhere that it speaks.

So I would hope we can have this debate outside of this omnibus bill because it would be great to have a discussion on what our policy ought to be on Cuba—not to have it lumped into this massive spending measure that has to be passed by Friday. I would love for us to talk about Cuba in terms of how we encourage respect for human rights, how we encourage this Government to behave as a normal, law-abiding nation. The fact is, this unilateral act which, frankly, would not be met with any reciprocity is a mistake. It is a sign that we are trying now to legislate policy in a bill that is about spending and a very dramatic change in U.S. foreign policy.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

AMENDMENT NO. 596

Mr. COBURN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 596 be called up.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 596.

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

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

The amendment is as follows:

(Purpose: To require the use of competitive procedures to award contracts, grants, and cooperative agreements funded under this Act)

On page 1120, between lines 6 and 7, insert the following:

PROHIBITION ON NO-BID EARMARKS

SEC. 414. (a) Notwithstanding any other provision of this Act, none of the funds appropriated or otherwise made available by this Act may be used to make any payment in connection with a contract unless the contract is awarded using competitive procedures in accordance with the requirements of section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), section 2304 of title 10, United States Code, and the Federal Acquisition Regulation.

(b) Notwithstanding any other provision of this Act, none of the funds appropriated or otherwise made available by this Act may be awarded by grant or cooperative agreement unless the process used to award such grant or cooperative agreement uses competitive procedures to select the grantee or award recipient.

Mr. COBURN. Mr. President, I have to identify with the words of Senator

HUTCHISON about how the American public have to view this bill, especially in light of the fact of the stimulus bill we just passed. I will add some more to those comments as we go through this amendment.

This is a very straightforward amendment. It has been voted on by the Senate several times. Last time it passed 97 to 0. All it requires is that the money expended in this, where appropriate, be competitively bid.

I am sure there is going to be people who vote against this this time because of the situation in which we find ourselves. I wonder how you go back to your State and say that you do not think we ought to competitively bid the money we are going to spend on behalf of the American people. But some are going to say that.

We will hear all sorts of things. What this requires is all contracts, all grants, and cooperative agreements awarded under this act to be competitively bid. What do we know about competitive bids and what do we know that President Obama campaigned on? His campaign was, anything over $25,000 in the Federal Government ought to be competitively bid. So I have no doubt that my friend, the President, will endorse this idea. It is an essential part of his campaign to help us clean up the corruption, clean up the cost excesses, and clean up the overruns that we have seen.

The other thing is, we already have several laws that require it. But then we have words in the appropriations bill that exempt us from those laws requiring competitive bidding. So what do we do in this bill? We actually take away the enforcement of existing statutes so we do not have to competitively bid. Is it not interesting that the reason we do not want competitive bids mainly has to do with earmarks. It has to do with the fact that people have earmarks in the bill that they want to go to a certain set of people; maybe not the best qualified to perform that function or task under which the Government wants this service to be done, but you can bet your bottom dollar it is where the Senator or the Congressman wants it to go so he can get credit for it.

So not only do we have a tendency for less than sunshine, what we have bred is tremendous inefficiency. And it goes back to the very idea of why earmarks are so damaging to this country, which is because they give elevation and attention to the politically entitled money class. That is where 80 percent of the 7,700 earmarks in this bill are; they are to the politically entitled money class in this country, the people who can give campaign donations. That is who they are to.

So we do not want competitive bidding because the person we are counting on sending money back for a campaign contribution will not get the contract. So the deal does not get completed. In May 2006, the Senate voted 98 to 0 to require that we have competitive bidding on the stimulus package. We voted 97 to 0. What did we do in conference? They took it out so their friends do not have to competitively bid. Where I come from, in Oklahoma, we call that corruption. We call it corruption. That is a tough word. But that is what is going on with a lot of the money that our grandchildren are going to pay back that is going to go on this bill and in the stimulus bill.

The other reason we should do this is because no-bid contracts historically, when you look at them, never give value. What we get is cost overruns.

Great example: The census this next year is going to cost close to $20 billion. The census in 2000 cost $10 billion. Now we have to be scratching our head to say, why would it double? Well, $1 billion of that is because the Census Bureau had a no-bid contract for electronic data collection that fell on its face.

In spite of oversight by this body, in spite of assurances that it would not happen, we wasted $800-plus million on one contract that we cannot utilize anything from. That is the competency of no-bid contracts. If we do a review of this bill in the future, and we did not put in competitive bidding, we are going to see that same thing to a lesser degree across the whole board.

The other thing, the reason we should use competitive bidding, is that all of us would do it if it was our own money. We would want to get value. We would want to make sure we got the most value for the dollar that was spent.

We do not do that because it is not our money. Now there is a Congressman on the other side from Arizona who has above his desk written in great big red ink: The greatest pleasure in the world is to spend somebody else's money. But it instills all sorts of mischief when we do it.

So this is very straightforward, very direct. There are no tricks. It just says: Let's do what everybody else in the country would do who was making the decision about spending $410 billion. They would make sure each segment of it got some competitive bidding so we could reassure ourselves that at least we were getting value. It is not hard to do. It is easy guidelines. It is straightforward. Let's not exempt this bill from that.

AMENDMENT NO. 608

I ask unanimous consent to set aside the pending amendment and call up amendment 608.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 608.

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

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

The amendment is as follows:

(Purpose: To provide funds for the Emmett Till Unsolved Civil Rights Crime Act from funds already provided for the Weed and Seed Program)

On page 135, line 6, strike the period and insert ''of which $10,000,000 shall be available for grants to state or local law enforcement for expenses to carry out prosecutions and investigations authorized by the Emmett Till Unsolved Civil Rights Crime Act established under Public Law 110-344.''.

Mr. COBURN. This is an amendment that is about a serious issue. I agree that $10 million in a bill of $410 billion is not a lot of money in relationship, but let me tell you what this $10 million is going to do. There are 100 unsolved civil rights murders from the 1950s and 1960s and 1970s that have not been investigated, that have not come forward because Congress hasn't put the money there.

Last year, under great fanfare, several of my colleagues were critical of me because I wanted to pay for it as we passed the Emmett Till Unsolved Civil Rights Crime bill. What I said in opposing that bill initially, which I never was successful in getting it paid for, was that there is plenty of money at the Justice Department if we just direct the Justice Department to put $10 million to this. There are three cases recently that are coming due, three that have been solved now. We have several other leads. Timing is of the essence.

What I was told is: No, we will appropriate this money this year. That is what we were told. I won't go into the five pages of quotes by the general cosponsors of the Emmett Till Unsolved Civil Rights Crime bill, about how they would put the money in right now. Guess what is not in this bill. What is not in this bill is any money to the Justice Department to be directed to the Emmett Till unsolved civil rights crimes. They said to my staff: Don't worry about it. There is plenty of money at the Justice Department to do it. So the same argument that was not good enough last year when we tried to pay for it is now turned around, and they say: It is the same amount of money. We now have it, in their judgment. But we didn't last year.

The fact is, there is a sham being perpetrated. It is to claim a moral position and say you will fund something and then, when it comes time to have to give up an earmark or have to eliminate something else, you can't quite have the courage to pull up to the level of moral transparency and keep your commitments.

The information is fading away quickly. They are old crimes. People who have testimony are dying and won't be available for the future. Yet we have the insistence to say it doesn't matter to spend that money now.

There is nothing in this bill more important than solving unsolved civil rights crimes. The reason is because it says something about our justice system. It says we realize that justice delayed is justice denied, and the hurt and trauma that came out of this country in the civil rights movement will

only get closed when we have true justice. For us to now in a petty way say: We will get it next year, do you realize that ''next year'' is coming September 30, and 6 months from now, two or three more witnesses will be gone, two or three more people who committed a crime will not get convicted because the evidence and the testimony will be gone? Yet we can't bring ourselves to the point of saying this is a priority. This says something about who we are, that we are going to give up a few earmarks so we can actually stand on the side of justice. The hypocrisy of the debate we heard last year and then what we hear today at the staff level about why we can't fund this is unfortunate.

I advise the Senator from Connecticut, I have two more amendments to offer. I will talk a very short time and then be finished, if that is OK with him.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank my friend. I have come over to speak in morning business, and I will be happy to wait until he is done.

Mr. COBURN. I will come back to the floor and discuss these amendments again, but I will give the courtesy to my friend from Connecticut of being fairly short.

AMENDMENT NO. 623

The next amendment is amendment No. 623. I ask unanimous consent that the pending amendment be set aside and amendment number 623 be called up.

The PRESIDING OFFICER. Is there objection?

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. LIEBERMAN. I object on behalf of the Democratic leader.

The PRESIDING OFFICER. Objection is heard.

Mr. COBURN. I renew my request to set aside the pending amendment and call up amendment No. 623.

Mr. LIEBERMAN. Mr. President, having heard from higher authorities, I withdraw my objection.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 623.

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

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

The amendment is as follows:

(Purpose: To prohibit taxpayer dollars from being earmarked to 14 clients of a lobbying firm under Federal investigation for making campaign donations in exchange for political favors for the group's clients)

At the appropriate place, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, none of the funds made available under this Act may be obligated or otherwise expended for any congressionally directed spending item for—

(1) DIRECT Methanol Fuel Cell (IN);

(2) Solar Energy Windows and Smart IR Switchable Building Technologies (PA);

(3) Adaptive Liquid Crystal Windows (OH);

(4) Anti-idling Lithium Ion Battery Program, California (CA) ;

(5) Advanced Engineering Environment for Sandia National Lab (MA);

(6) Multi-Disciplined Integrated Collaborative Environment (MDICE) (MO);

(7) Hydrogen Optical Fiber Sensors (CA);

(8) Flexible Thin-Film Silicon Solar Cells (OH);

(9) CATALYST: Explorations in Aerospace and Innovation education program;

(10) Carnegie Mellon University, Pittsburgh, PA, for renovation and equipment;

(11) Mount Aloysius College, Cresson, PA, for college preparation programs;

(12) Washington & Jefferson College, Washington, PA, for science education outreach programs;

(13) DePaul University, Chicago, IL, for math and science teacher education in Chicago Public Schools; and

(14) Nazareth Hospital, Philadelphia, PA, for renovation and equipment.

Mr. COBURN. I gave my assurance yesterday to the majority leader that I would offer no division of any amendments so he would not worry that we would have more votes than he wanted. But I will make the point at this time, at the rate we are going, we will have less than 12 amendments on a $410 billion bill that spends $363 million a page. I would love for every American to know we are so good in the committee that none of us should be able to have significant amendments to modify this bill that I guarantee has $50 billion worth of waste, fraud, abuse, or lack of direction in how the money is spent. So to be able to get four amendments on the floor, just four on a $410 billion bill, which we are only going to spend 3 days on, I have to agree to limit what the American people should know about this bill. That tells you where we are in the Senate. But I agreed to do that to be able to at least bring some forward.

This amendment is entitled PMA earmarks. We are in the midst of an investigation of a lobbying firm that is alleged to have committed some very serious felonies. It is uniquely curious that as this has progressed, they have decided to shut down. However, within the bill, not through necessarily their clients' fault, and not saying what they are trying to do was necessarily wrong in terms of the intent of the earmark, within this bill are 14 earmarks that you can see, if you have any common sense, if you look at the lobbying efforts of the PMA firm and then look at campaign contributions in the Congress, you can see a very worrisome pattern. That is the very reason I don't do earmarks. If I did earmarks, the last thing I would do would be take any campaign money from somebody for whom I did an earmark.

Needless to say, the accusation and the alleged straw donor technique used by this lobbying firm to funnel campaign funds to Members who then give earmarks through this bill, 14 of them listed in this bill—all this amendment does is say: In the cloud of this and the way it looks, ought we be continuing to do that under the cloud of what look to be very serious allegations of impropriety at the least and, at the worst, quid pro quos for placing earmarks in campaign funds?

We will vote on this amendment. It probably won't pass. Then the American people make a judgment about how well connected we are to reality. The stench associated with this investigation is at the root cause of us having $300 billion worth of waste a year in Congress in the money we spend. It is at the root cause that we can't get commonsense amendments passed that lack competition, lack funding, real priorities in a timely fashion, such as the Emmett Till bill. This is at the root of it. It is the pay-to-play game. All this amendment does is wipe out those. It just strikes them. It won't delay the bill. It does nothing but strike them. If they are legitimate, let them come back in this next year's bill and be done in an ethical, straightforward, aboveboard, transparent manner that doesn't utilize the concept of under-the-table, false campaign contributions, allegedly.

AMENDMENT NO. 610

I ask unanimous consent that that amendment be set aside, and I call up amendment No. 610.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 610.

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

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

The amendment is as follows:

(Purpose: To prohibit funding for congressional earmarks for wasteful and parochial pork projects)

At the appropriate place, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, none of the funds made available under this Act may be obligated or otherwise expended for any congressionally directed spending item for—

(1) the Pleasure Beach Water Taxi Service Project of Connecticut;

(2) the Old Tiger Stadium Conservancy of Michigan;

(3) the Polynesian Voyaging Society of Hawaii;

(4) the American Lighthouse Foundation of Maine;

(5) the commemoration of the 150th anniversary of John Brown's raid on the arsenal at Harpers Ferry National Historic Park in West Virginia;

(6) the Orange County Great Park Corporation in California;

(7) odor and manure management research in Iowa;

(8) tattoo removal in California;

(9) the California National Historic Trail Interpretive Center in Nevada;

(10) the Iowa Department of Education for the Harkin grant program; and

(11) the construction of recreation and fairgrounds in Kotzebue, Alaska.

Mr. COBURN. This is a simple little amendment. Out of the 7,700 earmarks,

I took 11 that looked a little stinky to me, a little questionable—just 11. If I had my way, I would offer an individual amendment on every earmark in this bill, but just 11. I will go through them very lightly for a moment, and then I will come back and talk on it later, maybe this evening.

I want you to put this in your mind, that this year we are borrowing $6,000 from every man, woman, and child. That is how much we are going into debt, $6,000 for every man, woman, and child. Put that in your mind as we talk about whether these ought to be a priority: A $1.9 million earmark for the Pleasure Beach water taxi service in Connecticut. That may be great to do, but we are borrowing all this from our grandkids. Our kids are already broke, so now we are borrowing from our grandkids. Our kids will never have the same standard of living we have. Now we are going into our grandkids, and next year we will be going into our great grandkids. Should we spend $2 million on a water taxi service? I will show the pictures later of where this is to. It will knock your socks off.

There is a $3.8 million earmark to preserve the remnants of the old Tiger Stadium in Detroit. It may be a good idea to preserve that. Should we be doing that now when we are borrowing all that money? Is that a priority for the Congress? If it is really a priority for the Congress, I don't belong here. I just don't think the same way the Congress thinks if that is a priority right now for us, to preserve an old stadium that we are not going to do anything with, and we can preserve it later, spending that kind of money.

There is $238,000 for the Polynesian Voyaging Society of Honolulu, which organization runs sea voyages in ancient-style sailing canoes. Tell me, as we borrow $6,000 from every man, woman, and child in this country, that is a priority. I can't see it being a priority. I don't think anybody from my State can see that being a priority. I don't know about the rest of the States. I would be interested to hear the answers of the Senators who are going to vote against this amendment and what they tell people. I would like to have it in my repertory. I would like to know what to tell people about this kind of foolishness.

There is a $300,000 earmark to commemorate the 150th anniversary of John Brown's raid on the arsenal at Harper's Ferry National Historic Park in West Virginia. Let's do it for no money. Let's just commemorate it, and let's save 300 grand for our grandkids.

There is $1.719 million for pig odor and manure management in Ames, IA. That goes to Iowa State University. Pigs stink. We know why. We know where they live. So is that a priority for us right now?

There is $475,000 for the Orange County Great Park in California. More millionaires live there than anywhere else in the world. Yet we are going to spend money for a new park now when we are borrowing this amount of money?

Here is my favorite: $200,000 earmarked for tattoo removal in Mission Hills, CA. We are going to take Federal money, send it to California, and say: You can have this money to remove tattoos. I would think under a personal responsibility platform if you were responsible for getting a tattoo put on you, you might ought to be responsible for getting it taken off, and I do not think our grandchildren ought to be paying for it.

There is $1.5 million for the California National Historic Trail Interpretive Center. We are going to build another interpretive center at a time of economic malaise—as President Obama calls it, a crisis. I do not think it is a crisis. I think we are in a deep slump, but I do not think it is a crisis yet. It is a crisis to those people who have lost their job. But the more we say ''crisis,'' the worse we make it. But we are going to do an interpretive center now? Is now the time we should be doing it, knowing we are borrowing the money? Remember, for every $1 million we borrow, we are going to pay back $3 million. I am not including long-term interest costs in any of these numbers.

Then there is a $5,471,000 earmark for the Harkin grant program in Iowa, which says Iowa gets treated differently than every other State in this country. They actually get direct money going directly for public education outside all the other programs. We have been doing it for years, but everybody else in this country gets to pay so Senator HARKIN can look good in Iowa. I have attacked this earmark before. It is wrong. It is unfair. It is not befitting the body. But it is going to stay in. So we have brandnew schools in Iowa, and the rest of us deal with what we have in our States.

Then we have $380,000 for the construction of recreation and fairgrounds in a town in Alaska. It may be a good idea. But should we do it now? Should we do it at that cost?

AMENDMENT NO. 623, AS MODIFIED

Madam President, I ask unanimous consent that on amendment No. 623, lines 19 through 21 be removed.

The PRESIDING OFFICER. Would the Senator clarify the language to be stricken from his amendment.

Mr. COBURN. On amendment No. 623, lines 19 through 21.

The PRESIDING OFFICER. The Chair thanks the Senator.

Is there objection?

Without objection, it is so ordered.

The amendment (No. 623), as modified, is as follows:

At the appropriate place, insert the following:

SEC. ___. Notwithstanding any other provision of this Act, none of the funds made available under this Act may be obligated or otherwise expended for any congressionally directed spending item for—

(1) DIRECT Methanol Fuel Cell (IN);

(2) Solar Energy Windows and Smart IR Switchable Building Technologies (PA);

(3) Adaptive Liquid Crystal Windows (OH);

(4) Anti-idling Lithium Ion Battery Program, California (CA);

(5) Advanced Engineering Environment for Sandia National Lab (MA);

(6) Multi-Disciplined Integrated Collaborative Environment (MDICE) (MO);

(7) Hydrogen Optical Fiber Sensors (CA);

(8) Flexible Thin-Film Silicon Solar Cells (OH);

(9) CATALYST: Explorations in Aerospace and Innovation education program;

(10) Carnegie Mellon University, Pittsburgh, PA, for renovation and equipment;

(11) Mount Aloysius College, Cresson, PA, for college preparation programs;

(12) Washington & Jefferson College, Washington, PA, for science education outreach programs;

(14) Nazareth Hospital, Philadelphia, PA, for renovation and equipment.

Mr. COBURN. Madam President, I will end now so I can yield to my friend, the chairman of my committee, the Senator from Connecticut, so he will have an opportunity to speak on the floor but not before I ask unanimous consent to have printed in the RECORD a listing of the earmarks provided today by Taxpayers for Common Sense. I ask unanimous consent that list be printed in the RECORD.

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

| Senator | Solo earmarks | Number of earmarks | Solo and with other members | Number of earmarks | Solo, with other members, and president | Number of earmarks |
|---|---|---|---|---|---|---|
| Cochran | $75,908,475 | 65 | $470,857,775 | 204 | $563,152,775 | 210 |
| Wicker | 4,324,000 | 9 | 390,993,300 | 143 | 453,735,300 | 146 |
| Landrieu | 10,328,500 | 31 | 332,099,063 | 177 | 487,845,063 | 179 |
| Harkin | 66,860,000 | 56 | 292,360,036 | 177 | 370,123,036 | 185 |
| Vitter | 4,034,000 | 16 | 249,182,063 | 142 | 403,558,063 | 154 |
| Bond | 85,691,491 | 54 | 248,160,991 | 86 | 333,429,191 | 98 |
| Feinstein | 76,899,425 | 46 | 235,027,932 | 153 | 776,706,649 | 183 |
| Inouye | 46,380,205 | 42 | 225,077,157 | 106 | 225,893,157 | 110 |
| Shelby | 114,484,250 | 64 | 219,398,750 | 125 | 219,398,750 | 125 |
| Grassley | 355,000 | 8 | 199,144,486 | 119 | 276,907,486 | 127 |
| Murkowski | 74,000 | ,75071 | 181,499,75 | 093 | 181,595,750 | 95 |
| Murray | 39,228,250 | 44 | 170,960,050 | 155 | 500,923,962 | 177 |
| Lincoln | 0 | 0 | 167,348,125 | 93 | 298,025,125 | 97 |
| Pryor | 0 | 0 | 167,048,125 | 92 | 297,725,125 | 96 |
| Menendez | 0 | 0 | 159,759,300 | 171 | 273,276,160 | 182 |
| Lautenberg | 760,450 | 3 | 158,760,500 | 173 | 272,277,360 | 184 |

| Senator | Solo earmarks | Number of earmarks | Solo and with other members | Number of earmarks | Solo, with other members, and president | Number of earmarks |
|---|---|---|---|---|---|---|
| Hutchison | 9,851,000 | 35 | 152,859,250 | 106 | 267,153,966 | 113 |
| Levin, Carl | 3,800,000 | 2 | 152,111,836 | 178 | 158,521,836 | 181 |
| Stabenow | 0 | 1 | 152,024,336 | 178 | 158,434,336 | 181 |
| Byrd | 122,804,900 | 60 | 151,786,400 | 76 | 175,459,400 | 80 |
| Cardin | 1,271,000 | 7 | 149,835,1501 | 22 | 357,955,150 | 127 |
| Mikulski | 8,229,625 | 9 | 142,020,875 | 89 | 350,140,875 | 94 |
| Boxer | 7,546,250 | 16 | 139,495,021 | 116 | 515,511,738 | 133 |
| Schumer | 21,952,250 | 37 | 137,959,867 | 209 | 724,706,765 | 218 |
| Bingaman | 13,807,750 | 22 | 134,582,375 | 107 | 214,165,375 | 117 |
| Akaka | 835,000 | 2 | 132,775,702 | 50 | 132,775,702 | 51 |
| Durbin | 35,577,250 | 48 | 132,418,750 | 97 | 218,058,154 | 108 |
| Dorgan | 36,547,100 | 10 | 127,910,091 | 62 | 197,896,091 | 66 |
| Specter | 25,320,000 | 134 | 126,771,246 | 265 | 168,471,246 | 267 |
| Domenici* | 19,588,625 | 13 | 125,081,702 | 82 | 281,468,702 | 99 |
| Webb | 8,568,000 | 7 | 112,710,750 | 71 | 202,031,858 | 74 |
| Coleman* | 1,055,000 | 8 | 109,183,625 | 83 | 208,071,685 | 90 |
| Reid | 26,628,613 | 56 | 108,705,429 | 108 | 142,048,429 | 113 |
| Martinez | 18,758,000 | 8 | 106,711,896 | 62 | 502,217,592 | 73 |
| Casey | 27,169,750 | 11 | 103,440,139 | 137 | 145,140,139 | 140 |
| Nelson, Ben | 5,506,000 | 10 | 103,316,050 | 80 | 512,740,050 | 90 |
| Klobuchar | 4,740,000 | 6 | 100,155,625 | 67 | 175,108,685 | 70 |
| Kerry | 0 | 0 | 97,015,450 | 123 | 132,015,450 | 126 |
| Wyden | 427,750 | 3 | 94,859,425 | 104 | 266,537,425 | 115 |
| Dole* | 9,162,250 | 19 | 93,974,205 | 72 | 126,670,205 | 79 |
| Bennett, Robert | 18,026,500 | 23 | 93,568,150 | 63 | 195,731,150 | 66 |
| Warner | 95,000 | 1 | 91,702,750 | 56 | 181,023,858 | 59 |
| Sessions, Jeff | 4,250,500 | 12 | 89,930,750 | 31 | 89,930,750 | 31 |
| Smith, Gordon* | 0 | 0 | 88,696,675 | 84 | 260,374,675 | 95 |
| Kennedy, Ted | 714,000 | 1 | 86,416,450 | 124 | 121,416,450 | 127 |
| Cornyn | 2,518,000 | 5 | 85,965,000 | 52 | 199,738,716 | 58 |
| Johnson, Tim | 12,341,000 | 23 | 81,570,400 | 65 | 114,340,400 | 66 |
| Inhofe | 53,133,500 | 34 | 80,161,625 | 73 | 80,161,625 | 74 |
| Cantwell | 143,000 | 2 | 78,327,050 | 96 | 132,096,380 | 102 |
| McConnell | 51,186,000 | 36 | 75,548,325 | 53 | 267,789,325 | 57 |
| Baucus | 2,496,750 | 9 | 75,402,750 | 62 | 134,250,750 | 65 |
| Tester | 1,863,000 | 4 | 71,504,000 | 52 | 130,352,000 | 55 |
| Voinovich | 13,501,000 | 6 | 70,528,820 | 103 | 76,969,820 | 107 |
| Kohl | 23,832,000 | 44 | 63,496,500 | 89 | 70,696,500 | 93 |
| Hatch | 711,000 | 7 | 63,219,650 | 42 | 164,926,650 | 44 |
| Burr | 1,284,000 | 3 | 61,940,500 | 35 | 61,940,500 | 35 |
| Thune | 4,275,000 | 6 | 59,589,400 | 38 | 92,359,400 | 39 |
| Leahy | 36,161,125 | 52 | 58,197,375 | 75 | 62,025,375 | 76 |
| Ensign | 0 | 0 | 52,589,000 | 26 | 55,289,000 | 28 |
| Biden | 0 | 0 | 52,061,420 | 55 | 52,061,420 | 55 |
| Dodd | 0 | 0 | 49,462,574 | 61 | 49,462,574 | 61 |
| Brownback | 12,020,048 | 21 | 47,721,273 | 68 | 72,711,273 | 74 |
| Roberts | 2,202,000 | 11 | 46,908,875 | 60 | 82,664,875 | 68 |
| Brown, Sherrod | 3,161,500 | 8 | 46,738,860 | 86 | 56,816,860 | 89 |
| Carper | 0 | 0 | 46,232,420 | 53 | 46,232,420 | 53 |
| Chambliss | 4,253,000 | 7 | 45,706,125 | 67 | 48,372,125 | 69 |
| Craig* | 1,012,000 | 2 | 44,921,389 | 45 | 45,421,389 | 46 |
| Salazar, Ken* | 7,500,000 | 20 | 44,639,900 | 69 | 191,969,110 | 79 |
| Lieberman | 1,164,000 | 2 | 43,742,976 | 59 | 43,742,976 | 59 |
| Conrad | 0 | 0 | 42,290,313 | 40 | 42,290,313 | 40 |
| Graham | 9,545,000 | 14 | 40,634,500 | 37 | 45,214,500 | 39 |
| Crapo | 100,000 | 1 | 39,439,389 | 52 | 74,390,389 | 55 |
| Hager | 7,195,000 | 5 | 38,830,550 | 41 | 43,450,550 | 43 |
| Reed | 10,755,750 | 24 | 38,399,822 | 71 | 38,399,822 | 71 |
| Nelson, Bill | 5,715,750 | 11 | 37,632,965 | 58 | 37,632,965 | 58 |
| Lugar | 3,276,000 | 10 | 35,481,153 | 52 | 35,481,153 | 52 |
| Alexander, Lamar | 5,544,500 | 11 | 32,116,000 | 37 | 179,765,000 | 41 |
| Allard* | 5,798,750 | 7 | 30,655,900 | 43 | 154,408,110 | 49 |
| Isakson | 1,425,000 | 2 | 29,993,375 | 48 | 30,902,375 | 50 |
| Collins | 380,000 | 1 | 28,724,500 | 45 | 32,174,500 | 47 |
| Snowe | 0 | 0 | 26,807,500 | 42 | 30,257,500 | 44 |
| Whitehouse | 0 | 0 | 26,456,572 | 45 | 26,456,572 | 45 |
| Kyl | 4,950,000 | 3 | 25,768,000 | 10 | 60,262,000 | 12 |
| Gregg | 10,028,000 | 19 | 24,175,000 | 39 | 24,253,000 | 40 |
| Sununu* | 3,207,500 | 8 | 17,756,500 | 23 | 17,756,500 | 23 |
| Corker | 760,000 | 1 | 17,716,500 | 16 | 165,365,500 | 19 |
| Bayh | 1,188,000 | 4 | 14,957,760 | 17 | 14,957,760 | 17 |
| Barrasso | 2,713,000 | 4 | 12,373,350 | 19 | 12,373,350 | 19 |
| Sanders | 5,877,725 | 16 | 10,942,725 | 26 | 10,942,725 | 26 |
| Enzi | 1,725,000 | 5 | 10,894,350 | 18 | 10,894,350 | 18 |
| Bunning | 735,000 | 5 | 10,618,175 | 13 | 10,618,175 | 13 |
| Clinton* | 0 | 0 | 6,714,000 | 3 | 6,714,000 | 3 |
| Rockefeller | 0 | 0 | 5,019,000 | 1 | 5,019,000 | 1 |
| Coburn | 0 | 0 | 0 | 0 | 0 | 0 |
| DeMint | 0 | 0 | 0 | 0 | 0 | 0 |
| Feingold | 0 | 0 | 0 | 0 | 0 | 0 |
| McCain | 0 | 0 | 0 | 0 | 0 | 0 |
| McCaskill | 0 | 0 | 0 | 0 | 0 | 0 |
| Obama* | 0 | 0 | 0 | 0 | 0 | 0 |
| Stevens* | 0 | 0 | 0 | 0 | 0 | 0 |

Mr. COBURN. With that, Madam President, I yield the floor, and I thank the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my friend from Oklahoma.

(The remarks of Mr. LIEBERMAN are printed in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. INOUYE. Madam President, the motion offered by the Senator from Texas, Mrs. HUTCHISON, is very similar to the motion of the Senator from Nevada that the Senate defeated. There is only one difference between the two motions. This motion allows for the cost of inflation to be provided, and the previous one did not.

I have already informed the Senate why making reductions in this bill is not a good idea, but I wish to remind my colleagues once again that the level of funding in this bill is consistent with the amount approved by the Congress in the budget resolution. Second, as the Senator from Texas knows, the omnibus bill was written by the Appropriations subcommittees in a bipartisan process and these bills were reported out of the committee—five of them unanimously and two almost unanimously. The subcommittees worked with their House counterparts to craft this legislation. It reflects a fair compromise between the two bodies.

But, once again, the argument in favor of cutting the omnibus is that there is overlap between the funds in the Recovery Act and in the omnibus bill. As I have noted previously, this simply is not the case. The funds in the Recovery Act are either unrelated to the omnibus or were assumed in the levels approved by the Recovery Act.

This motion also suggests that the committee should cut nonessential spending. I, for one, would argue that this bill contains only essential funds, but I recognize for a few of my colleagues nonessential spending equates to earmarks. I wish to remind my colleagues once again that on the question of earmarks, there is $3.8 billion in congressionally directed spending in this bill. This represents less than 1 percent of the total bill. If you eliminated all of the earmarks in this bill, including those of Hawaii and Texas, you would still have to cut at least $8 billion more from other valid programs. If we have to cut this bill to the fiscal year 2008 level, that means there are a number of worthy projects that will have to be reconsidered.

For example, the State and Foreign Operations chapter of the bill provides a total of $5.5 billion for programs to combat HIV/AIDS—$388 million above former President Bush's request and $459 million above the fiscal year 2008 request. This increase was supported by Democrats and Republicans. Of this amount, $600 million is provided for the Global Fund to fight HIV/AIDS, which is $400 million above the request. Additionally within the total, $350 million is provided for USAID programs to combat HIV/AIDS. These additional funds, which pay for life-sustaining and antiretroviral drugs, prevention and care programs, would be lost to the detriment of 1 million people who would receive lifesaving treatment this year. With this funding, 2 million additional HIV infections would be prevented this year. Instead of 10 million lives we are saving today, we have the opportunity to save 12 million people. We have the opportunity with this bill to save or care for 1 million more orphans and vulnerable children who are either infected with HIV or have been orphaned because a parent died from HIV. Do we think that the Senate wants to reconsider this item?

Freezing funding would mean $350 million less for the FBI to protect our Nation and our communities from terrorism and violent crime. The FBI would have to institute an immediate hiring freeze of agents, analysts, and support staff. This will mean 650 fewer FBI special agents and 1,250 fewer intelligence analysts and other professionals fighting crime and terrorism on U.S. soil. Surely the Senator from Texas doesn't want us to go back and reduce funding for the FBI.

More than 30 Members requested the committee add funds for operations of our national parks. If we have to cut program goals, we will lose 3,000 park rangers. While there are funds in the Recovery Act for the Park Service, these funds were not for rangers or park operations; they were to cover deferred maintenance projects. These are projects that are ready to go and can be started almost immediately to stimulate the economy as intended. There is no duplication between the Recovery Act and the omnibus for our national parks.

I could stand here all day and list example after example of the types of programs that are funded in this omnibus bill with the increases that the Senator's amendment would eliminate. These examples shouldn't come as any surprise to the Members of the Senate, if they remember that these bills were written by our subcommittee chairmen and ranking members in a bipartisan fashion. They were marked up in open session with all Members able to offer amendments and the final product was drafted with our House colleagues on a bipartisan basis. Once again, the omnibus bill is a good package of bills. It is bipartisan, it is noncontroversial, and it is in compliance with the budget resolution totals for the committee. The idea of stimulus overlap is not based on fact. The question of earmarks is a minor point in the significant bill that protects Democratic priorities. So I believe this bill deserves the support of every Member of the Senate. I urge my colleagues to vote against this motion.

If I may speak on another subject, the Senator from Oklahoma raised questions regarding the Polynesian Voyaging Society. Students learn in different ways, and educators are constantly pressed to find inspiring ways to educate our young people, particularly those who are considered at risk. That is what the Polynesian Voyaging Society offers. The voyages organized by the Society help to train educators and scientists in ocean resource stewardship. In addition, through the use of the Internet, the society interactively communicates with students during the voyage to share the knowledge gained.

This initiative supports cultural education programs geared toward enhancing leadership skills and cultural knowledge through deep sea voyaging for students. These traditional voyaging skills utilize noninstrument navigation skills whereby participants have to rely upon themselves and their crews to arrive safely at their destination. The voyage is much more than one of miles; it is a voyage of young people discovering that they are able to accomplish more than they ever thought possible.

This knowledge of self-reliance and interdependence helps to transform students, especially native Hawaiian students, so they may chart a positive future. The program also makes science more accessible to school students as they follow the journey. Many students are encouraged to study science and care about the environment because of this program. Numerous college science majors mentioned activities on the Polynesian Voyaging Society as the reason why they chose to study science.

This leadership opportunity has been shown to be especially effective with at-risk youth diagnosed with mental illness. The success of traditional methods of addressing mental illness in adolescents involves a strong family support system. One study revealed the students who participated in this program showed great improvement regardless of the support that the student received from family. In effect, this program has been able to transcend existing social problems within the student's own family so that these young people can grow and develop into contributing members of the community.

As noted in the National Academies' Study, ''Rising Above The Gathering Storm,'' creating opportunities and incentives for students to pursue science studies is a critical component of ensuring America's future competitiveness. The Polynesian Voyaging Society's programs are geared toward providing such opportunities.

On a personal note, the program is geared to assist Native Hawaiians, in particular. As we find in Native societies throughout the United States, Native Americans have not only been mistreated and victims of discrimination, they have been deprived of their culture. In earlier days, they were forced to become Christians. They were forced to wear suits. They were forced not to wear feathers.

While in this Polynesian program, I have spoken to many of the students, and there are certain points that should be made. Several students came up to me, for example, and said, ''I am proud to be a Hawaiian.'' That is one of the things we have found lacking in Native Hawaiian youth—pride in their ancestry—especially when they learn their ancestors took a voyage much longer than the one Columbus took across the Atlantic, double the length, and the Hawaiians knew where they were headed—to Hawaiki, which is presently the State of Hawaii. Columbus thought he was going elsewhere, and he got lost. It makes them a bit proud of their ancestry. They learned their ancestors were great warriors, great voyagers, great administrators, and great farmers. This is a very inexpensive way to restore the pride that is much in need among our Native Hawaiian youth.

I have been told that the assistant leader will be seeking recognition. I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, before I make a few remarks about the underlying bill, I want to say that those following this debate on the floor are witnessing a piece of history. Senator DAN INOUYE of Hawaii has made such amazing contributions to this country. As a young man, his service in World War II led to his being honored

with the Congressional Medal for his bravery in battle. He has carried the wounds of that battle now for many years. He used his time in the service to inspire him to higher levels of public service in our Government and beyond the military, serving in Congress and as a U.S. Senator from the State of Hawaii. He is, in fact, a legend in the history of the Senate. I am honored to call him a colleague. Parenthetically, 6 years ago, when I was sworn in to my second term, I chose Senator INOUYE to escort me for that swearing-in ceremony because of my great respect for him and all he has meant to our country, his State of Hawaii, and to me personally.

What you just heard in his comments about Native Hawaiians you could have heard as well about his commitment to Native Americans. From the beginning, DANNY INOUYE has been there to fight for those who oftentimes were not given the same treatment, same respect, and same rights as other Americans. His voice has made a difference time and time again. When he comes to us and talks about this underlying Omnibus appropriations bill and some of the programs that will help Native Hawaiians and Native Americans, it is with a commitment from the heart. He really believes in helping these people, many of whom have been treated badly by the United States in our founding years.

I wanted to preface my remarks by saying, for those looking for a reason to support this bill, Senator DANNY INOUYE, our chairman, has given a good, solid reason, so that we can balance the books and right the wrongs that occurred in previous generations.

I want to come down to practical considerations. The pending amendment would dramatically cut this bill. Some of the cuts would make a big difference. I look back and remember what happened not that long ago, over two holiday seasons, when parents and families across America were frightened that the toys they were buying were dangerous. The paint contained lead that could have a negative physical impact on a child. We traced many of the toys back to China and found that not only were they careless in their manufacture, but we were careless, as a government, in our inspection.

The agency responsible for it, the Consumer Product Safety Commission, was one of the small agencies that most people never heard of. When it became a scare and concern for parents in America, we started to pay attention. In my subcommittee, we had this particular Commission. I decided to make a substantial change in the funding and staffing so that this Commission could protect Americans not just from dangerous toys but dangerous products all around. So what we did in the bill was provide $105 million for the Consumer Product Safety Commission, an increase of $25 million over last year's spending, and $10 million above the committee's report. The idea is to put the people and resources there and overseas to make sure we protect American families and consumers from dangerous products. I think most people would agree that is money well spent. When any of us go into a store and buy a product, we assume some agency of the Government took a look at it. It turns out that, in many cases, this small Commission could not keep up with that challenge. If the pending amendment by Senator HUTCHISON prevails, that money won't be there. This agency will be cut back again, and families will be vulnerable again. I don't want that to happen.

We also put in $943 million for the Securities and Exchange Commission. It is an increase of $37 million over the previously enacted level. The additional money we are putting into the SEC is a direct result of reports of dereliction of duty and their failure to respond to serious challenges. We all know about the Bernard Madoff scandal, where that man created a Ponzi scheme that went undetected and unpunished until there were innocent victims all across the United States of this man's chicanery. The SEC, it turns out, had been warned years before and didn't follow through.

The SEC has an important role in our free market economy to make certain that stocks and other financial instruments are done in a transparent and honest way. That is why we are increasing the size of the appropriation for this agency. The pending amendment would cut that back at a time when we are in such economic turmoil. We need to have certainty as Americans that we are safe when we invest and that somebody in the Government is keeping an eye on those transactions and those companies.

The same is true for the Commodity Futures Trading Commission. It is an important Commission that deals with financial instruments, such as futures, and those instruments that relate to things such as the cost of oil. We paid close attention to that when gasoline was $4.50 a gallon. I provide $146 million through my committee to the CFTC. That is a 31-percent increase over last year's appropriation. Why? So they can buy the computers to keep up with the hundreds of thousands and millions of transactions, so they can detect wrongdoing and correct it before innocent people lose their life savings, and before people who count on the integrity of the American financial institutions are defrauded. I think that is money well spent, and it is money we should spend in this instance.

I say to those who are cutting back and say: We are just making across-the-board cuts, it is not really going to touch us, there are three specific examples where money is included in this appropriations bill to protect American families and consumers, money that is small in comparison to larger appropriations but can make a significant difference in the role of Government and, I guess, the fact that the function of Government to help the helpless and protect those who need it is honored. I hope everybody will come to the floor and think long and hard about this bill.

I will add one closing fact. Many people remember the flooding that occurred in Cedar Rapids, IA, last year. It was devastating. One of the buildings devastated was the courthouse in Cedar Rapids. As a result, I had a request from Senators CHARLES GRASSLEY and TOM HARKIN to come up with emergency funds to rebuild this courthouse in the right way, so that it could be safe and functional after the flooding. We had $182 million in the 2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations bill for that purpose. It is an earmark, make no mistake about it. We earmarked the funds for that courthouse that was devastated by floodwaters at the request of Senators GRASSLEY and HARKIN. I believe this was the right expenditure. It is an earmark that we can justify as being important not just to Iowa but to the Nation. I hope both Senators know we listen carefully to them in our subcommittee. With Senator BROWNBACK of Kansas, we work to be responsive to the real needs of our colleagues across America. This is a responsible bill. I commend it to my colleagues. I hope we can enact it soon because on Friday our temporary spending measures will expire, and we need a long-term Omnibus appropriations bill so that we can get to work on the next fiscal year in an orderly manner, under the leadership of Chairman INOUYE.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Madam President, I am overwhelmed by the generous remarks of the distinguished Senator from Illinois. Thank you very much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent that at 5:45 today, the Senate vote in relation to the Hutchison amendment, with the 4 minutes prior to the vote equally divided and controlled between Senators HUTCHISON and INOUYE or their designees, and that the previous order prohibiting amendments prior to a vote remain in effect. Madam President, the 4 minutes will cause a vote not to be right at 5:45, but it will be close.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, I alert all Members that we have a number of people who want to speak in relation to the Coburn amendments. We also are told by the Republican staff that there

are a number of Senators who would be willing to offer amendments on the Republican side. I have spoken to the Republican staff, and they say they can lay down two of those and debate them tonight. That is fine with us.

Tomorrow, of course, we are going to come in at 9:30. Then we have to go to the House because Prime Minister Brown is here. That is at 10:30. And then there are other things going on. The Republican leader and I have been invited to a lunch with Prime Minister Brown, and there are other things. We have a steering meeting of the Republicans, I understand, during the lunch hour—I think that is what it is called. We have a chairman lunch. We are not going to be able to have the votes on any of these amendments until after we finish these things tomorrow. That will give us the afternoon to have some votes and find out where we are on this bill tomorrow.

We have had some good debate today. These have been very difficult amendments. I think they go to the heart of the bill, especially those offered by Senator MCCAIN, Senator ENSIGN, and Senator HUTCHISON. The rest of them I will have comments on at a later time.

I hope Senators understand where we are and where we are headed on this legislation.

Mr. INOUYE. Madam President, I yield back the remainder of the time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the motion.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nebraska (Mr. JOHANNS) and the Senator from Alabama (Mr. SESSIONS).

The ACTING PRESIDENT pro tempore (Mrs. SHAHEEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced yeas 40, nays 55, as follows:

[Rollcall Vote No. 76 Leg.]

YEAS—40

| | | |
|---|---|---|
| Alexander | DeMint | Martinez |
| Barrasso | Ensign | McCain |
| Bayh | Enzi | McCaskill |
| Bennett | Graham | McConnell |
| Brownback | Grassley | Murkowski |
| Bunning | Gregg | Nelson (NE) |
| Burr | Hatch | Risch |
| Chambliss | Hutchison | Roberts |
| Coburn | Inhofe | Thune |
| Cochran | Isakson | Vitter |
| Collins | Klobuchar | Voinovich |
| Corker | Kyl | Wicker |
| Cornyn | Lincoln | |
| Crapo | Lugar | |

NAYS—55

| | | |
|---|---|---|
| Akaka | Gillibrand | Reed |
| Baucus | Hagan | Reid |
| Begich | Harkin | Rockefeller |
| Bennet | Inouye | Sanders |
| Bingaman | Johnson | Schumer |
| Bond | Kaufman | Shaheen |
| Boxer | Kerry | Shelby |
| Brown | Kohl | Snowe |
| Burris | Landrieu | Specter |
| Byrd | Lautenberg | Stabenow |
| Cantwell | Leahy | Tester |
| Cardin | Levin | Udall (CO) |
| Carper | Lieberman | Udall (NM) |
| Casey | Menendez | Warner |
| Dodd | Merkley | Webb |
| Dorgan | Mikulski | Whitehouse |
| Durbin | Murray | Wyden |
| Feingold | Nelson (FL) | |
| Feinstein | Pryor | |

NOT VOTING—4

| | |
|---|---|
| Conrad | Kennedy |
| Johanns | Sessions |

The motion was rejected.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi is recognized.

AMENDMENT NO. 607

Mr. WICKER. Madam President, I ask unanimous consent that the pending amendment be set aside and that I be allowed to call up my amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Mississippi [Mr. WICKER] proposes an amendment numbered 607.

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

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

The amendment is as follows:

(Purpose: To require that amounts appropriated for the United Nations Population Fund are not used by organizations which support coercive abortion or involuntary sterilization)

On page 927, strike line 14 and all that follows through page 929, line 20, and insert the following:

(b) AVAILABILITY OF FUNDS.—Funds appropriated under the heading ''International Organizations and Programs'' in this Act that are available for UNFPA and are not made available for UNFPA because of the operation of any provision of law, shall be transferred to the ''Global Health and Child Survival'' account and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(c) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available under ''International Organizations and Programs'' may be made available for the UNFPA for a country program in the People's Republic of China.

(d) CONDITIONS ON AVAILABILITY OF FUNDS.—Amounts made available under ''International Organizations and Programs'' for fiscal year 2006 for the UNFPA may not be made available to UNFPA unless—

(1) the UNFPA maintains amounts made available to the UNFPA under this section in an account separate from other accounts of the UNFPA;

(2) the UNFPA does not commingle amounts made available to the UNFPA under this section with other sums; and

(3) the UNFPA does not fund abortions.

(e) REPORT TO CONGRESS AND DOLLAR-FOR-DOLLAR WITHHOLDING OF FUNDS.—

(1) IN GENERAL.—Not later than 4 months after the date of the enactment of this Act, the Secretary of State shall submit a report to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives indicating the amount of funds that the UNFPA is budgeting for the year in which the report is submitted for a country program in the People's Republic of China.

(2) DEDUCTION.—If a report submitted under paragraph (1) indicates that the UNFPA plans to spend funds for a country program in the People's Republic of China in the year covered by the report, the amount of such funds that the UNFPA plans to spend in the People's Republic of China shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted.

(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the authority of the President to deny funds to any organization by reason of the application of another provision of this Act or any other provision of law.

Mr. WICKER. Madam President, I also ask unanimous consent that the following Senators be added as cosponsors of amendment No. 607: Senator ENZI, Senator BUNNING, Senator INHOFE, Senator COBURN, Senator VITTER, and Senator GRASSLEY.

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

Mr. THUNE. Madam President, would the Senator yield?

Mr. WICKER. I will yield to the Senator.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. I ask unanimous consent to be added as a cosponsor to the Senator's amendment.

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

Mr. WICKER. Madam President, I spoke at some length yesterday about this amendment. It deals with one issue and one issue only—whether U.S. taxpayer dollars will be provided in this omnibus bill to help fund coercive population control policies, such as China's one-child policy—a policy that relies on coerced abortion and forced sterilization.

Specifically, this pro-child, pro-family, pro-woman amendment would restore the Kemp-Kasten antipopulation control provision, which has been a fundamental part of our foreign policy for almost a quarter century. As it has always done, Kemp-Kasten allows the President of the United States to certify that funds are not used for coercive family practices. As it has always done, the provision would allow the President to release those funds after he has made such a certification.

My amendment is needed because the underlying bill reverses this long-standing provision. The omnibus bill

that we have before us purports to retain Kemp-Kasten, but then it also includes six troubling words that effectively kill the provision. In addition to Kemp-Kasten, the bill directs funds to the United Nations Population Fund, or UNFPA ''notwithstanding any other provision of law.''

Perhaps these words were added inadvertently. I don't know. But the words that are added—those six little words—represent a loophole that in effect guts Kemp-Kasten and alters this longstanding bipartisan foreign policy in the process.

Some people may ask why restoring Kemp-Kasten is important, and here is why. The U.N. Population Fund, a group that is in line to receive some $50 million in this bill, has actively supported, comanaged, and whitewashed crimes against women under the cover of family planning. Under the Kemp-Kasten provision, the last administration withheld money from UNFPA for this very reason. I would like to quote then-Secretary of State Colin Powell, who stated:

UNFPA support of and involvement in China's population planning activities allows the Chinese Government to implement more effectively its program of coercive abortion. Therefore, it is not permissible to continue funding UNFPA at this time.

That is the end of the quote from our Secretary of State.

A further analysis by the U.S. State Department of the Chinese program on family planning reveals this—I will quote from the State Department analysis:

China's birth limitation program retains harshly coercive elements in law and practice, including coercive abortion and involuntary sterilization.

Does anyone in this Senate want to spend U.S. funds to support these activities: coercive abortion and involuntary sterilization? I think we ought to have a unanimous consensus in the Congress that we have no business spending our taxpayers' dollars on such things. The report goes on to say:

The State Department summarized these practices in its 2007 China Country Report on Human Rights Practices. . . . These measures include the implementation of birth limitation regulations, the provision of obligatory contraceptive services, and the use of incentives and penalties to induce compliance.

Further in the report, and I continue to quote:

China's Birth Limitation Program relies on harshly coercive measures such as so-called ''social maintenance'' fees.

And to skip down further:

In families that already have two children, one parent is often pressured to undergo sterilization. A number of provinces have legal provisions that require a woman to have an abortion if her pregnancy violates government regulations. . . .

I wish we could stop this practice worldwide. China is a sovereign nation, and they have the power to impose these laws on their people. But taxpayer funds should not be spent from the U.S. Treasury to assist an organization that funds such practices in China.

The most recent State Department report on UNFPA activities shows that their funds are indeed funneled to Chinese agencies that coercively enforce the very practices I just read about. Are we to believe that in less than a year the UNFPA has changed its practices? That is not a bet I am willing to take with the taxpayers' money.

The Wicker amendment should be adopted to once again give the President, President Obama, the opportunity to certify that UNFPA, or any other organization, is not participating in family planning techniques such as the harsh techniques I just read about.

My amendment does not represent a radical shift or departure from what is normal. In fact, it simply returns the language in this bill to language that was agreed upon by both Republicans and Democrats in last year's Foreign Operations appropriations bill during a time when Democrats controlled the House of Representatives and controlled the Senate of the United States. The language that I am offering was agreed upon by Republicans and Democrats.

Finally, there have been concerns voiced about the need not to make changes in this bill. We have been told this bill has been preconferenced. Persons say that in doing so we might delay the bill's passage by sending it back to the House for approval. I admit the funding contained in this bill is important, but that does not mean we can forget about our jobs as legislators. I do not believe the other body will let this bill die simply because we are doing what is right, by clarifying our country's policy of standing against coercive population control practices like forced abortion and forced sterilization.

I realize opinions in this Chamber and across our country vary greatly on the issue of abortion. I am pro-life and I am mindful that some Members in this body would describe themselves as pro-choice. But regardless of where we come down on that issue, can't we agree that we do not want to spend taxpayer dollars to force this on women who do not want this procedure? We ought to all be able to agree that is wrong and that is a misuse of American taxpayer funds.

The United States should not turn its head on coercive family control programs like sterilization and forced abortion, and our taxpayers should not have their dollars used to help fund such horrible acts. My amendment will help stop that from happening. It restores a longstanding foreign policy provision. It reflects our Nation's commitment to promoting human rights. I urge its adoption.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I rise to speak on the underlying bill just for a moment. I know some of my colleagues are on the floor of the Senate, and I will be very brief.

I come to the floor to support the underlying bill and also to give a few brief remarks about the legislative branch, which I chair, for the record. The legislative branch in this bill is funded at $4.4 billion—not an insignificant amount of money but very small relative to the overall bill. There is a $43 million increase over last year, which is an 11-percent increase, which would seem on the face of it rather significant, so I thought I would like to explain.

It is more than the cost of living, more than inflation, but there are three very good reasons we thought—both Republican and Democrat on our committee—that this was the right thing to do. First of all, building up Congress's oversight responsibilities at this time is critical. We have seen much of the scandal and corruption and unregulated situations that have led us to the place we are. Congress needs to make sure we are doing a better job with our inspector general offices, with our general oversight, particularly because we are stepping up so much additional spending for stimulus and investment. Our committee thought that was the responsible thing to do, to actually invest in greater oversight. So about 38 percent of this increase is related to that.

Second, there is a backlog of life safety issues related to this great Capitol complex. Trust me, there is no money in here for carpet or fancy lighting or extra offices for anyone. This is for basically asbestos removal—which can be life threatening, as you know, and cause serious harm to those people who work in this Capitol, both our staffs and the workforce. That is an unmet need. There is over $1 billion of unmet needs. This bill attempts to just deal with some immediate situations.

Finally, now that the Capitol Visitor Center is open, there are some additional security requirements of our Capitol Police. This project was started many years ago. It was supported by both Democrats and Republicans. It is now open, was dedicated recently, but we have to operate it appropriately. We have to make sure it is secure, not just for ourselves and our staff, but for the millions of visitors who come. There is some increased funding for Capitol Police that reflects that this Capitol Visitor Center is the greatest expansion of this building in over 100 years. It was not just a small addition, it was quite a large addition, and we need that extra security.

Finally, there is a full request, that was met, by the Library of Congress to provide new modern technology for the visually impaired. It is something that was a high priority for the community of the blind and the visually impaired, millions of Americans who have no access to books as we normally read them but need these digital talking

books. Not only does it help the Library of Congress but ensures every library in America, including school libraries, has access, so children who do not have their sight, and adults, can read and remain part of this economy.

Those are the reasons this bill has been expanded by 11 percent. I hope my colleagues understand. We have gotten pretty much broad-based support.

As I said Madam President, 38 percent of the total increase goes towards increased staffing for the Government Accountability Office and the Congressional Budget Office to allow for greater oversight of the Federal Government. The help of these agencies is more critical than ever during this time of economic uncertainty and national crisis. GAO and CBO intend to beef up their staffing levels to meet Congress's needs as we tackle the many critical issues facing us today.

Nearly 23 percent of the overall fiscal year 2009 increase goes to the Architect of the Capitol for fire and life safety projects in the Capitol Complex—including $56 million for asbestos removal and structural repairs in the utility tunnels which provide steam and chilled water throughout the entire complex.

Congress is facing a tremendous backlog of structural problems in our aging infrastructure here on Capitol Hill which has grown to over $1.4 billion. This bill provides a small but much-needed step towards addressing this backlog. Many of our buildings in the Capitol Complex lack the adequate fire and life safety requirements to keep Congress in compliance with health and safety regulations. As I said, I am proud of the funding included in this bill which will address these inadequacies and help make the Capitol safer for our staff and for our visitors. It would be irresponsible not to tackle these problems now—we will just be kicking them down the road where they will be more expensive and more difficult to repair.

The bill includes funding for the United States Capitol Police to hire and train additional personnel to provide security for the now open Capitol Visitor Center. The CVC which opened December 5 is a huge success and a much-needed addition to our Complex providing security, educational opportunities, restaurant facilities and many other amenities to the millions of visitors who arrive on our doorsteps each year. The bill also provides funding to fully implement the merger of the Library of Congress Police force with the Capitol Police. This long-awaited merger is essential to maintaining streamlined security throughout the Capitol Complex. Quite simply, this bill will provide the resources needed to the Capitol Police to effectively perform their required missions without putting more on their plate than they can do.

This bill fully funds the Library of Congress, including the Library's request for the Books for the Blind and Physically Handicapped. The Library's fiscal year 2009 budget includes $29 million to move forward on the Digital Talking Book for the blind project. This project is a high priority for this Congress and for the blind community. It is vital that the blind receive uninterrupted access to something the rest of us take for granted—books and other reading materials that allow us to work and learn. This bill supports that important goal allowing this project to proceed on schedule and provide more titles than originally anticipated. This is a key issue of fairness which we can and must address now.

The funding in this bill puts the Legislative Branch on solid footing for the future and invests in the right priorities. We should strongly support it.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota is recognized.

AMENDMENT NO. 635

Mr. THUNE. Madam President, I ask unanimous consent that the pending amendment be set aside and I be able to call up amendment No. 635 and make it pending.

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

The legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE], proposes an amendment numbered 635.

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

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

The amendment is as follows:

(Purpose: To provide funding for the Emergency Fund for Indian Safety and Health, with an offset)

On page 458, after line 25, insert the following:

EMERGENCY FUND FOR INDIAN SAFETY AND HEALTH

For deposit in the Emergency Fund for Indian Safety and Health established by subsection (a) of section 601 of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c), for use by the Attorney General, the Secretary of Health and Human Services, and the Secretary of the Interior in accordance with that section, $400,000,000, to be derived by transfer of an equal percentage from each other program and project for which funds are made available by this Act.

Mr. THUNE. Let me explain very simply what this amendment does.

Last summer, President Bush signed into law a $50 billion foreign aid bill; HIV and AIDS was the purpose, the direction of the bill. Included as part of that PEPFAR bill was a $2 billion authorization that I and a bipartisan group of Senators worked on, including that redirected money to critical public safety, health care, and water needs in Indian Country. All of the Senators who worked on the amendment's inclusion in the final package, including now Vice President BIDEN and Secretary of State Clinton, recognized there are great needs internationally, but they also realized we have equal or maybe even greater needs right here at home on our Nation's reservations.

The final PEPFAR bill created a $2 billion, 5-year authorization beginning in fiscal year 2009 for an emergency fund for Indian health and safety. Over the 5-year authorization, $750 million could be spent on public safety, $250 million on health care, and $1 billion for water settlements.

In order to ensure that the emergency fund for Indian health and safety was funded as quickly as possible, I and six of my colleagues sent a letter to President Bush last year asking that he include funding in the fiscal year 2010 budget for the emergency fund. Then we worked to get a total of 21 Senators to send a similar letter to President Obama on November 24, 2008. I believe this continued bipartisan effort underscores the support for addressing the needs that exist in Indian Country.

What the amendment does is seek to remedy this without raising the overall cost of the omnibus bill. It simply reduces discretionary spending throughout the bill by $400 million, the fiscal year 2009 authorized amount from PEPFAR, and redirects that money to the emergency fund for Indian safety and health. This amounts to less than one-tenth of 1 percent cut from each program funded in the omnibus bill.

Bear in mind the omnibus bill includes an overall funding increase of 8.3 percent over last year's appropriated level—that on top of the stimulus bill that passed earlier this year that, as we all know, poured billions of dollars into many of these Federal agencies. So what I am suggesting is we carve out one-tenth of 1 percent of the cost of this bill. As I said, take the overall increase in this year's bill from 8.3 percent over last year's appropriated amount to an 8.2-percent increase over last year's amount.

Since this appropriations bill was put together—I think it was put together in very short order behind closed doors, not to mention the fact that none of the nine appropriations bills were ever voted on in the Senate—I believe my amendment is a commonsense proposal that will ensure that we allocate tax dollars where they are needed the most.

The needs are great in Indian Country and I know many of my colleagues on both sides of the aisle would agree.

Nationwide 1 percent of the U.S. population does not have safe and adequate water for drinking and sanitation needs. On our Nation's reservations this number climbs to an average of 11 percent and in the worst parts of Indian Country to 35 percent.

This lack of reliable safe water leads to high incidences of disease and infection. The Indian Health Service has estimated that for each $1 it spends on safe drinking water and sewage systems it gets a twentyfold return in health benefits.

The Indian Health Service estimates that in order to provide all Native Americans with safe drinking water and sewage systems in their home they would need over $2.3 billion.

Nationally, Native Americans are three times as likely to die from diabetes compared to the rest of the population.

An individual that is served by Indian Health Service is 50 percent more likely to commit suicide than the general population.

On the Oglala Sioux Reservation in my home State of South Dakota the average life expectancy for males is 56 years old. In Iraq it is 58, Haiti it is 59, and in Ghana it is 60, all higher than right here in America.

One out of every three Native American women will be raped in their lifetime.

According to a recent Department of the Interior report, tribal jails are so grossly insufficient when it comes to cell space, that only half of the offenders who should be incarcerated are being put in jail.

That same report found that constructing or rehabilitating only those detention centers that are most in need will cost $8.4 billion.

The South Dakota attorney general released a study at the end of last year on tribal criminal justice statistics and found: homicide rates on South Dakota reservations are almost 10 times higher than those found in the rest of South Dakota and forcible rapes on South Dakota reservations are seven times higher than those found in the rest of South Dakota.

Clearly there are great needs in Indian County and my commonsense amendment would be a good step forward in addressing some of these needs because the emergency fund for Indian safety and health can be used for: detention and IHS facility construction, rehabilitation, and replacement; investigations and prosecutions of crimes in Indian Country; cross-deputization and other cooperative agreements between State or local governments and Indian tribes; IHS contract health care; and water supply projects approved by Congress.

Passage of my original amendment to PEPFAR clearly shows a commitment by the Senate to addressing domestic priorities for Native Americans.

I urge support for my amendment to fund this authorized emergency fund for fiscal year 2009.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

AMENDMENT NO. 599

Ms. MURKOWSKI. Madam President, I ask unanimous consent to set the pending amendment aside for the purpose of calling up an amendment.

Mrs. MURRAY. Madam President, I would ask the Senator from Alaska which amendment she is sending.

Ms. MURKOWSKI. This is amendment No. 599.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Ms. MURKOWSKI], for herself, Mr. BEGICH, and Mr. INHOFE, proposes an amendment numbered 599.

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

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

The amendment is as follows:

(Purpose: To modify a provision relating to the repromuglation of final rules by the Secretary of the Interior and the Secretary of Commerce)

On page 541, strikes lines 1 through 10 and insert the following:

(1) the Secretary of the Interior and the Secretary of Commerce may withdraw or repromulgate the rule described in subsection (c)(1) in accordance with each requirement described in subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedure Act''), except that the public comment period shall be for a period of not less than 60 days; and

(2) the Secretary of the Interior may withdraw or repromulgate the rule described in subsection (c)(2) in accordance with each requirement described in subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ''Administrative Procedure Act''), except that the public comment period shall be for a period of not less than 60 days.

Ms. MURKOWSKI. The amendment I bring forward this evening would modify section 429 of the bill we have before us. This amendment does not cost us any money. It will, in fact, eliminate a major obstacle to job creation, including many of the construction projects that were funded under the recently passed stimulus bill.

To be more specific, I am introducing an amendment to modify section 429 to require the Departments of Interior and Commerce to follow the process provided by existing law to withdraw and alter two provisions that were essential ingredients last year in the decision by former Secretary of the Interior Dirk Kempthorne when he listed the polar bears of northern Alaska as threatened under the Endangered Species Act.

Section 429, as it now stands, would allow those agencies to withdraw those regulations arbitrarily and then reissue them immediately without public comment. My amendment does not overturn the listing of the polar bears as threatened, even though up in Alaska most of us feel the listing was premature and perhaps totally unnecessary, but it will require the Department to follow existing public notice and comment statutes, if they want to modify last year's listing decision and the related carbon emissions rule in the future.

We are asking that you follow the process that is in place. Section 429 of the omnibus provides a provision that allows the Secretaries of Interior and Commerce to withdraw the final rule relating to the interagency cooperation under the Endangered Species Act and the final rule relating to endangered and threatened wildlife plants, the special rule for the polar bear.

This section allows the Secretaries of either Commerce or Interior, or both, to withdraw the two Endangered Species Act rules promulgated under section 7 of that act within 60 days of adoption of the omnibus bill and then reissue the rule without having to go through any notice or any public comment period, or be subject to any judicial review as to whether their actions were responsible.

Last year, after years of comment and review, the Interior Department elected to list the polar bear as threatened, solely because of the fear that greenhouse gas emissions will raise temperatures sufficiently in the future, causing the Arctic pack ice that the bear relies on for habitat to melt, making it more difficult for the bears to feed.

During the scientific review that was conducted before the listing decision, there was very little to no evidence that indicated that neither very carefully limited subsistence hunting activities by the Alaska Natives, nor onshore or offshore oil and gas exploration or production activities in any way would disturb the bears or place stress on their population.

So it was for that reason, based on all the science and the research, for that reason that the listing decision specifically provided, and this was set forth in section 4(d) of the act, it provided that oil or gas development or subsistence hunting will not be impacted by any action plan the Department will craft to remedy bear population issues in the future. Those provisions were added after extensive public comment and based on a full scientific review.

Now, without any scientific review, at the last minute, someone in the House of Representatives has decided to impose as fact their opinion that the bears should be listed as threatened without limitation. This provision makes a mockery of what we know and accept and applaud with the scientific review process.

In all the science leading up to the listing, there was no evidence that oil or gas exploration and development were having any effect on the bears which are already carefully regulated under the Marine Mammal Protection Act. In fact, the populations of both the Beaufort and Chukchi Sea areas have actually risen by around 500 bears since 1972, and any anecdotal evidence of minor recent declines is purely anecdotal.

Now, yes, Fish and Wildlife researchers have some evidence that bears may have dietary issues that may impact juvenile survival rates if the ice melt causes dislocation of the seal populations. But that problem has nothing to do directly with oil or gas or subsistence activities.

Withdrawal of the 4(d) protections could prompt lawsuits to stop any action that would increase carbon dioxide or any greenhouse gas emissions anywhere in the country, not just in the State of Alaska but anywhere in the country, if the project had not first consulted with U.S. Fish and Wildlife on potential impacts.

What this means, the potential for this is that every powerplant permit anywhere that might increase carbon emissions could face a lawsuit. Damage could extend past fossil fuel projects to include an incredible array, agricultural practices, any increase in livestock numbers, new road construction, literally any project or activity that might increase greenhouse gas emissions.

Suits that could be triggered by this seemingly limited change could stop many of the construction projects that this body has provided funding for in this stimulus bill to help get this Nation's economy moving again.

Now, the Center for Biological Diversity has already stated it intends to use the polar bear listing to regulate greenhouse gas emissions. But I am afraid such overreaching could actually harm environmental protections. That is because such an effort to overreach could trigger such a backlash that it harms support for the entire Endangered Species Act.

The administration is planning to ask Congress to pass cap-and-trade legislation this year to regulate greenhouse gasses. Debate over that bill is the proper place for this issue to be tackled, not through a back-door amendment to this key appropriations bill that will not permit public process.

For my home State of Alaska, the amendment's impacts are immediate and they are far reaching. It is almost certain to result in lawsuits to stop oil and gas development in northern Alaska, both onshore and off. Such suits certainly could stop the exploration needed to produce new natural gas finds. We know this is vital to the viability of an Alaska natural gas line to bring our clean-burning natural gas to the lower 48.

This project has been supported by the administration and most every Member of this body. We recognize that such sites could endanger Native subsistence activities, not just for the bears and marine mammals that the bears prey upon but for any species, such as the western and central Arctic caribou herds. These are vital food sources for our Alaska Natives.

So what my amendment does is it requires that if either the carbon emissions consultation rule or the polar bear 4(d) rule is to be withdrawn or reissued, such action is subject to the requirements of the Administrative Procedures Act, with at least a 60-day comment period.

What this does, it essentially gets us back to the status quo, where the Secretaries can now withdraw or repromulgate these regulations, but they have to follow the APA. Nothing Earth shattering, we are not plowing new ground. We are saying, follow the process we set up. The provision in the budget bill does much more than overturn Bush administration rules, it violates the public process and scientific review called for in the Endangered Species Act, and by doing that it weakens and risks support for the act.

As it stands, under section 429, the Secretaries can make dramatic and far-reaching changes with their rules and regulations and do so without having to comply with the longstanding Federal process requiring public notice and comment by the American public and by knowledgeable scientists. We should not make a mockery of the formal ESA review process and the APA, the Administrative Procedures Act. We should support this amendment to strike the House waiver of those acts and require that those laws be enforced.

I cannot stress how important this is to the Nation, to the American energy production of the workings of the stimulus bill, and eventually to the integrity of the Endangered Species Act and this Nation's administrative process.

Now, this afternoon President Obama issued a new directive on the ESA. But it is only pertaining to the optional consultation portion of section 7. The directive requests the Secretaries of the Interior and Commerce to review the regulation issued on December 16, 2008, and determine whether to undertake new rulemaking. Until such review is completed, the President requested the heads of all agencies to exercise their discretion, under the new regulation, to follow the prior longstanding consultation and concurrence process.

But this Presidential order did not address the issue of the polar bear 4(d) rule and does not remove the House omnibus rider. It does not maintain the Administrative Procedures Act requirement, and it does not negate the need for my amendment.

I yield the floor.

Mrs. MURRAY. I ask unanimous consent that the Senate proceed to a period of morning business with the time equally divided in the usual form.

Mr. COBURN. I would ask if the Senator would modify her amendment to allow for me to speak on the Wicker amendment. Could we do that?

Mrs. MURRAY. Madam President, I modify my request and ask unanimous consent that Senator COBURN be allowed to speak for 5 minutes on the amendment, and following his remarks, the Senate move to a period of morning business, with the time equally divided in the usual manner with a 10-minute limitation.

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

The Senator from Oklahoma.

AMENDMENT NO. 607

Mr. COBURN. Madam President, I wanted to spend a minute talking about the Wicker amendment No. 607. I am having trouble, from a philosophical viewpoint, understanding why the language is in this bill the way it is. There is no confusion as to my stand on pro-life issues, pro-choice versus pro-life. I stand in the corner of pro-life. But I want to debate this issue as if I were pro-choice, that I believe that the law as we have it today should be enforced. If, in fact, we believe that if, in fact, women have a right to choose, why in the world would we send money to UNFP that is going to take that right away from women in other countries? It is beyond me that these little six words in the bill, ''notwithstanding any other provision of law,'' are intended to eliminate the ability of the President to certify that our UNFP money is going to be used for coercive abortions and coercive sterilizations. I am having trouble understanding why those in this body who absolutely believe without a doubt that a woman has a definite right to choose on whether to carry a pregnancy to term, have a definite right to choose the number of children they are going to have or have none, we would allow this bill to go through here this way that will deny that ability to Chinese women.

If somebody in our body can explain that to me, I would love them to do so. You can't be on both sides of this issue. Either you believe in a woman's right to choose or you do not or you only believe in a woman's right to choose in America. And because the Chinese have too many people, you don't think that same human right ought to be given to women in China. I won't go into the details. There is no question that UNFP will mix this money, and we will fund forced abortions in China. That is what these six words do. They mean American taxpayer dollars are going to go to China to enforce coercive abortion against the will of women and force sterilization against the will of women in China. China is not in bad shape. They don't need our money in the first place. But then we are going to send that money over there to enable and allow that policy to progress. I find it disconcerting that anybody who is pro-choice could not vote for the Wicker amendment. Because what it says is, you are double minded. The standard applying in this country is one thing, but human beings throughout the rest of the world, that same standard doesn't apply. I think it is unfortunate that this was put in here. We will rue the day it was.

In fact, we lessen our own human rights campaigns for equal treatment and the protection of human rights around the world as we do that.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I request the regular order.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is in a period of morning business, with Senators permitted to speak for up to 10 minutes each.

## U.N. TAXATION

Mr. INHOFE. Madam President, I was misled into thinking that we would be able to introduce some amendments tonight and then was told, when I got down, that they are confining those amendments to only three. Let me mention that I have an amendment I feel very strongly about that I want to take up first thing in the morning. I will explain what it is. It is amendment No. 613.

I can remember back in 1996, the United Nations Secretary General announced that the U.N. was interested in pursuing a global tax scheme. In response, Congress passed—and President Clinton signed into law—a policy rider on the Foreign Operations and State Department appropriations bills that would prevent the United Nations from using any U.S. funds to pursue a global tax scheme. The idea was that if we had a United Nations that wanted to have a global tax—they have been attempting to do this for many years because they don't want to be held accountable to anyone—then every time something comes up that is against the interests of the United States, we normally will pass a resolution saying that we are going to withhold a percentage of our dues to the United Nations until they change this policy. In 1996 and every year since, 13 years, we have had, as a part of that, language that says that the U.N. could not use any of the funds of the United States to pursue a global tax scheme of any type. The provision has appeared in every annual appropriations since 1996. This year marks the first time an annual appropriations bill will not contain this policy provision preventing U.S. tax dollars from funding U.N. global tax schemes.

According to page 64 of division H of the joint explanatory statement, this policy provision has been intentionally left out of the fiscal year 2009 Omnibus Appropriations bill. Preventing U.S. taxpayers funding U.N. global taxes in annual appropriations bills has been a bipartisan U.S. policy for over a decade. It is very difficult for me to understand, because I haven't seen any explanation as to who is opposed to this. It was put in by Democrats and Republicans on a bipartisan basis. Now we find that it was left out. The amendment very simply puts back the language that we have had historically in the law for the past 13 years.

Let me serve notice that I will make every effort to be first in line tomorrow morning to try to get this amendment in. I would invite any opposition that is out there, because I don't know of any opposition to it. Being fair, I think it is probably the fact that they wanted to shorten tonight to restrict it to three amendments.

I ask unanimous consent that my time be extended to whatever time I shall pursue. I will not be more than 15 minutes from this point.

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

## CHANGES TO THE ESA RULES

Mr. INHOFE. Madam President, I was listening with some interest to the Senator from Alaska and what she is trying to do. I think, once again, we are faced with a backhanded attempt to regulate greenhouse gases without the transparency of public debate. Section 429 of the omnibus currently includes yet another congressional handout to some of the extremist groups and to the trial bar. This rider is clearly an attempt to legislate on a spending bill, the sort of bad habit that Democrats in Congress and the White House promised to give up during the last election.

As ranking member of the Environment and Public Works Committee, I strongly support the bipartisan amendment offered by Senators MURKOWSKI and BEGICH to revise the omnibus section 429. This subject is particularly important to me since the EPW Committee holds jurisdiction over all issues impacted by the offending provision, including endangered species, the regulation of greenhouse gases, and the transportation infrastructure which we are going to be pursuing in the next few weeks.

Without the amendment, section 429 allows the agencies to make dramatic changes to the Endangered Species Act rules and regulations without having to comply with longstanding Federal laws that require public notice and public comment by the American people and knowledgeable scientists. These changes have the potential for far-reaching and unintended consequences in our economy.

Specifically, this activist-friendly rider would allow the Secretary of Interior and the Secretary of Commerce to undo a regulation making commonsense adjustments to the ESA as well as withdraw a special rule and listing for the polar bear. By ignoring the protections of the Administrative Procedures Act, the rules in question could be withdrawn within 60 days of adoption of the omnibus bill and then reissued in whatever form the agencies preferred, without having to go through any notice or public comment period and without being subject to any judicial review as to whether their actions were responsible or justified.

This is exactly what the two Senators from Alaska are attempting to correct. Existing ESA rules clearly lay out the U.S. Fish and Wildlife Service position that oil and gas development in the Arctic and Alaska Native subsistence activities are not the reason for the polar bear's recent listing status and are not affecting polar bear population. I might add that we have made quite a study of the 13 polar bear populations in Canada. All but one are increasing. The one that is not is the western Hudson Bay. That is due to some regulations in hunting that have adversely affected them. That is being corrected at this time. So if you stop and realize over the last 40 years, we have increased the population of polar bears in the world by fivefold, then there isn't a problem. However, let's assume that there is a problem, and we want to be sure that we are able not to have the intended consequences.

If enacted, implementation of section 429 would mean that any increase in carbon dioxide or greenhouse gas emissions anywhere in the country could be subject to legal challenges due to assertions that those activities are harming a polar bear or that there has not been sufficient consultation with the U.S. Fish and Wildlife Service regarding activities that are funded, carried out, and authorized by the Federal Government.

In other words, you could have someone who is cooking on his Hasty Bake in his backyard in Tulsa, OK and have a lawsuit filed saying: You are emitting greenhouse gases; therefore, you are affecting the polar bear. Any permit for a powerplant, refinery, or road project that increases the volume of traffic anywhere in the United States could be subject to litigation, if it contributes to local carbon emissions. Lawsuits and ESA-prompted delays could extend to past fossil fuel-linked projects, if those projects could increase greenhouse gas emissions or reduce natural carbon dioxide intake.

If this provision is allowed to stand, it will likely endanger the delivery of the majority of the construction projects funded by the recent stimulus bill since these projects have not gone through a section 7 consultation regarding their impact to the polar bear. In other words, we passed the stimulus which I opposed. I had an amendment that would have actually provided a lot of jobs. That amendment they would not let me bring up. I believed that since it was an Inhofe-Boxer amendment, it would have passed. But it didn't.

So now we have a few jobs out there, a few things that are going to contribute to the employment problem of this country. If this provision is in there without the correction found in the bipartisan amendment by the two Senators from Alaska, then it is going to say the very thing we are trying to stimulate—in terms of jobs, construction, roads, bridges, and highways—cannot be done because of the section 7 consultation regarding the impacts on the polar bear. Ironically, President Obama today announced the release of $28 billion from the American Recovery and Reinvestment Act to States and local transportation authorities to repair and build highways, roads, and bridges. This investment will lead to

150,000 jobs saved or created by the end of 2010. State highway departments have already identified more than 100 transportation projects throughout the country, totaling more than $750 million, where construction can start within the month. In other words, we have already undergone all of the environmental requirements. We have the environmental impact statements. We are ready right now. In my State of Oklahoma, we have $1.1 billion worth of work that could be started tomorrow.

Now, President Obama stated that the projects funded under the ARRA are deemed so important to America's economic recovery that they will bear a newly designed emblem. The emblem is a symbol of President Obama's commitment to the American people to invest their tax dollars wisely and to put Americans back to work. Rest assured that section 429 of the omnibus bill will not bear this emblem.

I applaud the President for highlighting infrastructure spending as a main driver of immediate job growth in the stimulus plan, but I am concerned by the conflicting priorities created by section 429. You cannot support large infrastructure spending as an economic stimulus while simultaneously endangering its translation into job growth with more redtape.

The Murkowski-Begich amendment correctly requires that if these ESA rules are withdrawn or revised, the action is subject to the requirements of the Administrative Procedures Act, with at least a 60-day comment period. This is a good government amendment. The fact that this amendment is even needed to restore the public participation protections is exactly the sort of nonsense that makes the American taxpayer so suspicious of Congress. From the public's perspective, the effect of this amendment would be to bring us back to the longstanding process where the agencies may withdraw and revise regulations by following the law established to do so.

We have heard from the Democratic managers of this bill that nothing new was added to this bill since last year. We have been told there is no controversial legislative language in this bill.

We have been misinformed. This rider was not a part of the negotiations or the appropriations bills last year, and I assure you, it is very controversial. I urge the leadership to allow the Senate to vote on the Murkowski-Begich amendment, and I ask for my colleagues' support for ensuring regulatory transparency.

I believe this is very important because, without this, there is so much uncertainty as to what the application would be in terms of the Endangered Species Act. So I encourage the adoption of that amendment.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. GILLIBRAND). Without objection, it is so ordered.

## ORDER OF PROCEDURE

Mr. INHOFE. Madam President, it is my understanding we are in a period of morning business. I ask unanimous consent to be recognized for what time I shall consume.

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

## FAIRNESS DOCTRINE AND LOCALISM

Mr. INHOFE. Madam President, last week I joined 86 of my colleagues to pass Senate amendment No. 573, offered by Senator DEMINT to the DC Voting Rights Act, which prohibited the Federal Communications Commission from reinstating the fairness doctrine.

This has become an issue over the years where you can recall the action that took place back in the middle 1980s—I think 1986—that recognized the fact that we have so many opportunities for people to get at information that it is no longer necessary to have what they call the fairness doctrine.

Last week's vote was the first nail in the coffin of the fairness doctrine, but it was not the end of the attempt on the part of some people to regulate the airwaves. I have long been outspoken on this issue. It gives me great satisfaction that so many of my colleagues voted in favor of free speech over Government regulation last week. But the debate has changed. In a straight party-line vote, Democrats chose to adopt Senator DURBIN's amendment No. 591, which calls on the FCC to ''encourage and promote diversity in communication media ownership and to ensure that broadcast station licenses are used in the public interest.''

Essentially, it makes an end run around the fairness doctrine. Those on the other side of the aisle believed this would allow them to proclaim their opposition to a reinstatement of the fairness doctrine, which has always been a losing issue for them, while at the same time replacing it with an equally heinous piece of legislation that gives the FCC unfettered authority to interpret that language however they please.

So we have potentially taken away the threat of the fairness doctrine, which requires broadcasters to ''present controversial issues of public importance in an equitable and balanced manner,'' and replaced it with ''encouraging and promoting diversity in communication media ownership.'' At least with the fairness doctrine, broadcasters had an initial choice of how to interpret ''controversial issues of public importance'' before answering to the FCC, but this new authority gives all the power to a Government agency and none to the people of the broadcast industry.

One thing I know: When you take choice out of the market, and when you impose the Government's will on an industry, that market and that industry will suffer, and that is exactly what Senator DURBIN's legislation attempts to accomplish. What was once the fairness doctrine has now become the Durbin doctrine.

What, I ask, does ''encourage and promote diversity in communication media ownership'' really mean? I certainly cannot tell you what it means, and that is what concerns me because it is up to someone else's interpretation. The legislation offers no words of clarification or specificity. If I were an FCC commissioner, I would not know what to do with this language, and in any other line of work, I would send it directly back with a little note attached asking to please be more specific. But Federal agencies love this kind of language because it gives them greater leeway to interpret it however they like—which could be interpreted differently by different governmental agencies—and impose their will upon the industry they regulate.

My Democratic colleagues who promoted this amendment like this type of language because it, first, means that they do not have to spend the time drafting quality legislation aimed at solving a specific problem, and, two, it means they can disavow their true intention of having greater Government regulation of the airwaves. Now, at the same time, they can say: Well, I voted for the DeMint amendment. So that offered cover for these individuals.

This legislation is so incredibly vague and so potentially far reaching that I cannot say with any certainty what the end result will be. This is not good governance, and it is not good legislative practice to cede such authority to any agency of our Government, especially when the right to speak freely over the airwaves will most certainly be impacted.

Another threat to our freedom of speech is a stealth proposal called ''localism,'' which could force local radio stations to regulate the content they broadcast. It is important to note that ''localism'' as FCC policy already exists, but new policies that have been proposed reach far beyond ensuring that broadcasters serve their local communities.

The FCC gave notice of proposed rulemaking. This was back on January 24, I believe it was, of 2008. While the regulations were ultimately dropped, they are indicative of future attempts to regulate the airwaves through localism and something about which all Americans need to know.

Among other things, the proposal would have required radio stations to, one, adhere to programming advice from community advisory boards; two, report every 3 months on the content

of their programming, the producers of their programming, and how their programming reflects community interests; and, three, meet burdensome license renewal requirements.

The localism rule, had it been promulgated, would have meant that radio stations would have to comply with blanket regulations and broadcast programming that may not be commercially viable, rather than taking into account the diverse needs of communities across the country.

One of my constituents, Dan Lawrie, who is vice president and manager of Cox Radio Tulsa, and president of the Oklahoma Association of Broadcasters, stated that:

> regulations requiring additional and unnecessary documentation of programming in order to show proof of broadcasting that we already provide to our local communities is entirely unnecessary. To burden our Tulsa radio group with this type of ascertainment documentation would cause us to lay off several staff members to offset the expense of completing the increased paperwork.

As you can see, this is a real threat to broadcast media as a whole.

Let's look at this from a market standpoint. I have often said: People who think maybe the content is too progressive or not progressive enough or too conservative—I have heard some pretty heated accusations made at various popular talk radio hosts—forget about the fact that this is market oriented. The market is determining how this should be. I can remember it was not too long ago—last year—I believe Senator HARKIN wanted to regulate the type of content that was going over the airwaves to our troops who were listening overseas, and we were able to stop that because they overwhelmingly wanted, in their eyes, conservative content to be broadcast. We won that one. But the effort is still out there.

Look at it from a market standpoint. Stations strive to endear themselves to the local community to be successful. It makes programming sense to cover local news and events because it increases the ratings. Why should Washington regulate what local stations are already doing? They are doing this now because people who listen to the radio may want to hear some talk show host, but you find right through intermingled within these comments, every 15 minutes or so, or every 10 minutes, they stop and tell what the local weather is, they tell of different activities, what is happening in the local community. They are doing this already. That is just good business sense, and that is why in the highly competitive environment we find our local radio stations, they have to do these things. They are already doing it.

The reason is this: These community advisory boards, or local content boards, coupled with the threat of license renewal requirements, are just one more way liberals can affect what is broadcast over the airwaves. They have created a regulatory avenue by which to accomplish their goal of silencing talk radio because they are incapable of competing in the broadcast radio market.

President Obama has expressed support for new localism regulations, and it is expected to come up again under his administration. All those who value their right to listen to the things that are important to them, and important to their community, must be aware of the great potential for infringement on free speech that localism will bring.

What is perhaps most concerning to me is the enforcement procedure for breaches of localism and diversity promotion. We simply do not know which pathway the FCC will choose when it comes time to enforce these nebulous regulations. License revocation is a real threat to the willingness of the broadcasters to appeal to their market rather than to conform to FCC regulations. Senator DURBIN's amendment requires affirmative action on the part of the FCC, stating: ''The Commission shall take actions to encourage and promote diversity.'' It doesn't stipulate what actions or to what degree but instead leaves the enforcement mechanism up to the determination of the FCC. I find this to be extremely dangerous.

Any enforcement of Government regulation of the airwaves could have a serious detrimental effect, not only on talk radio but also on the willingness of Christian broadcasters to air political and perhaps even religious messages. It is well known that the only radio station ever taken off the airwaves was a Christian radio station, WGCB in Red Lion, PA. In that particular instance, the supposed offense was a personal attack against the author of a political publication. The ACLU and other liberal organizations could attempt to file lawsuits against anyone who presents a message that they deem to be counter to Federal localism and diversity regulation, and though I believe these lawsuits would ultimately fail on first amendment grounds, the chilling effect that the mere threat of a lawsuit will have on religious broadcasters could be substantial.

Free speech is fundamental to what it means to be an American, and we must protect it. Reimposing any form of a fairness doctrine threatens first amendment rights. Some on the left of the political spectrum are frustrated that more talk show hosts have conservative political leanings than liberal political leanings. In response, I say the content is market driven. When the market is on the other side, they will do that. The market has worked well throughout the history of this country, and people listen to it.

I think we are also forgetting about the fact that the broadcasting industry is very competitive. We have companies that own broadcast media. They are not making a lot of money. It is competitive. A lot of them go broke every year. What they are trying to do is come up with something they know people want and is sellable. They depend on people buying advertisement for them to exist. So this is what this is all about. I believe there are two attacks out there. I applaud Senator DEMINT for the language he was able to get in, and I applaud all the Republicans and most of the Democrats for voting for it. But to turn around and pass something that undoes what he did with that amendment I think is something that needs to be looked at.

So I am concerned. I am concerned that so many of these stations out there that are right on the border of surviving in this very difficult economy we have are now looking at another threat, another bunch of regulations that are there, as well as the fear of the unknown, the nebulous language that says what a localism is, what power does the local community have. So that is a difficult thing.

I will only say to those individuals who think the problem of the fairness doctrine being reinvoked is not over: It is there, and our first amendment rights are threatened at this time.

I would anxiously pursue any effort we can that is going to preclude the fairness doctrine, and I think the first thing we should do would be to rename the fairness doctrine because it is certainly not fair and not fair to the people in the broadcast industry.

## SECRETARY OF STATE VISIT TO THE MIDDLE EAST

Mr. LIEBERMAN. Madam President, Secretary of State Hillary Clinton is in the Middle East this week on her first trip to the region as America's top diplomat. The Secretary traveled to Egypt earlier in the week to attend the international summit in Sharm El Sheikh, and she is now visiting Israel and the Palestinian Authority.

I rise to praise Secretary Clinton for the strong and principled diplomacy she has undertaken on America's behalf on this trip, that is as reflected in her comments, both prior to her departure from Washington and since arriving in the region.

Secretary Clinton is no stranger to the Middle East, having spent significant time there as First Lady and then as our colleague in the Senate. As a result, she brings a depth of familiarity with the Middle East's complexities and challenges, an appreciation for our friends and allies in the region, and a clear-eyed understanding of the interests and values that must guide American foreign policy there.

In particular, I believe Secretary Clinton deserves praise for her strong statements on this visit strengthening the forces of moderation in the Middle East and challenging the forces of extremism. Having recently returned from the region myself, I am convinced, with a clarity greater than ever before, that the true dividing line in the Middle East today is not between Arabs and Israelis or between Sunni Muslims and Shia Muslims. The true dividing line in the Middle East today is between moderates and extremists.

In every case, it is important to note, the extremist camp is sponsored and supported, often trained and equipped, by the Government of the Islamic Republic of Iran in Tehran.

Secretary Clinton deserves praise for her promise to vigorously promote peace between Israelis and Palestinians, as well as her recognition that success in this crucial effort is inseparably linked with strengthening the moderate forces among the Palestinians, in particular, the Secretary was absolutely correct to make clear that aid to the Palestinians should be directed toward bolstering the leaders of the Palestinian Authority, President Abbas and Prime Minister Fayyad, rather than directly or indirectly rewarding or supporting the extremist terrorist leaders of Hamas.

I am also pleased Secretary Clinton has made clear that any reconciliation between Hamas and Fatah must be contingent on Hamas accepting the conditions of the so-called Quartet; namely, that Hamas must renounce violence, recognize Israel's right to exist, and honor the agreements made by previous Palestinian Governments. There should be no compromise or confusion on this point by anyone. If the leaders of Hamas refuse to accept these conditions, they are dooming themselves to further isolation from the international community, and they are standing in the way of the aid that the world wants to provide the Palestinian people who live in Gaza.

Secretary Clinton, I believe, also deserves commendation for her realistic and hardheaded comments about the danger posed by the Government of the Islamic Republic of Iran. Our friends in the Middle East want to know that the U.S. Government understands this threat, that we are committed to taking the tough actions necessary to address it, and that whatever strategy we adopt, we will do so in real and close partnership with them.

What our friends and allies in the Middle East are asking of us is reasonable and very much in America's national security interest.

I will say that based on my recent visits to Saudi Arabia, Egypt, Israel, and the Palestinian Authority, I can attest that there is great anxiety in the region about Iran and its intentions, its aggressiveness, its extremism, its expansionism. But there is also some uncertainty about the direction of American policy toward the Government in Tehran.

The hard truth is that Iranians are determined to acquire nuclear weapons. Everything we know about what they are up to tells us that and, therefore, we must be even more determined than they if we are to stop them from obtaining nuclear weapons.

Our friends and allies in the Middle East are looking to the United States now for leadership and strength. President Obama and Secretary Clinton have been very clear that they are committed to preventing Iran from going nuclear on their watch. We in Congress have a responsibility in turn to work together with the administration to achieve this result, which is so critical to our national security and to the world's security in the years ahead.

Again, I thank Secretary Clinton for her leadership, for her words, for her outreach, for her representation of America's best interests on this, her first trip to the Middle East.

## SELECT COMMITTEE ON INTELLIGENCE RULES OF PROCEDURE

Mrs. FEINSTEIN. Madam President, paragraph 2 of Senate rule XXVI requires that not later than March 1 of the first year of each Congess, the rules of each committee shall be published in the RECORD.

In compliance with this provision, I ask that the rules of the Select Committee on Intelligence be printed in the RECORD.

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

### RULES OF PROCEDURE OF THE SELECT COMMITTEE ON INTELLIGENCE

#### RULE 1. CONVENING OF MEETINGS

1.1. The regular meeting day of the Select Committee on Intelligence for the transaction of Committee business shall be every other Tuesday of each month, unless otherwise directed by the Chairman.

1.2. The Chairman shall have authority, upon notice, to call such additional meetings of the Committee as the Chairman may deem necessary and may delegate such authority to any other member of the Committee.

1.3. A special meeting of the Committee may be called at any time upon the written request of five or more members of the Committee filed with the Clerk of the Committee.

1.4. In the case of any meeting of the Committee, other than a regularly scheduled meeting, the Clerk of the Committee shall notify every member of the Committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C. and at least 48 hours in the case of any meeting held outside Washington, D.C.

1.5. If five members of the Committee have made a request in writing to the Chairman to call a meeting of the Committee, and the Chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the Clerk of the Committee who shall promptly notify each member of the Committee in writing of the date and time of the meeting.

#### RULE 2. MEETING PROCEDURES

2.1. Meetings of the Committee shall be open to the public except as provided in paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate.

2.2. It shall be the duty of the Staff Director to keep or cause to be kept a record of all Committee proceedings.

2.3. The Chairman of the Committee, or if the Chairman is not present the Vice Chairman, shall preside over all meetings of the Committee. In the absence of the Chairman and the Vice Chairman at any meeting, the ranking majority member, or if no majority member is present the ranking minority member present, shall preside.

2.4. Except as otherwise provided in these Rules, decisions of the Committee shall be by a majority vote of the members present and voting. A quorum for the transaction of Committee business, including the conduct of executive sessions, shall consist of no less than one third of the Committee members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5. A vote by any member of the Committee with respect to any measure or matter being considered by the Committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the Committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6. Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee.

#### RULE 3. SUBCOMMITTEES

Creation of subcommittees shall be by majority vote of the Committee. Subcommittees shall deal with such legislation and oversight of programs and policies as the Committee may direct. The subcommittees shall be governed by the Rules of the Committee and by such other rules they may adopt which are consistent with the Rules of the Committee. Each subcommittee created shall have a chairman and a vice chairman who are selected by the Chairman and Vice Chairman, respectively.

#### RULE 4. REPORTING OF MEASURES OR RECOMMENDATIONS

4.1. No measures or recommendations shall be reported, favorably or unfavorably, from the Committee unless a majority of the Committee is actually present and a majority concur.

4.2. In any case in which the Committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the Committee.

4.3. A member of the Committee who gives notice of intention to file supplemental, minority, or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three working days in which to file such views, in writing with the Clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report.

4.4. Routine, non-legislative actions required of the Committee may be taken in accordance with procedures that have been approved by the Committee pursuant to these Committee Rules.

#### RULE 5. NOMINATIONS

5.1. Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least 14 days before being voted on by the Committee.

5.2. Each member of the Committee shall be promptly furnished a copy of all nominations referred to the Committee.

5.3. Nominees who are invited to appear before the Committee shall be heard in public session, except as provided in Rule 2.1.

5.4. No confirmation hearing shall be held sooner than seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the Committee.

5.5. The Committee vote on the confirmation shall not be sooner than 48 hours after the Committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the Committee.

5.6. No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the Committee.

RULE 6. INVESTIGATIONS

No investigation shall be initiated by the Committee unless at least five members of the Committee have specifically requested the Chairman or the Vice Chairman to authorize such an investigation. Authorized investigations may be conducted by members of the Committee and/or designated Committee staff members.

RULE 7. SUBPOENAS

Subpoenas authorized by the Committee for the attendance of witnesses or the production of memoranda, documents, records, or any other material may be issued by the Chairman, the Vice Chairman, or any member of the Committee designated by the Chairman, and may be served by any person designated by the Chairman, Vice Chairman or member issuing the subpoenas. Each subpoena shall have attached thereto a copy of S. Res. 400 of the 94th Congress, and a copy of these rules.

RULE 8. PROCEDURES RELATED TO THE TAKING OF TESTIMONY

8.1. NOTICE.—Witnesses required to appear before the Committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2. OATH OR AFFIRMATION.—At the direction of the Chairman or Vice Chairman, testimony of witnesses shall be given under oath or affirmation which may be administered by any member of the Committee.

8.3. INTERROGATION.—Committee interrogation shall be conducted by members of the Committee and such Committee staff as are authorized by the Chairman, Vice Chairman, or the presiding member.

8.4. COUNSEL FOR THE WITNESS.—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the Committee of such fact. If the witness informs the Committee of this fact at least 24 hours prior to his or her appearance before the Committee, the Committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warning, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit any question in writing to the Committee and request the Committee to propound such question to the counsel's client or to any other witness. The counsel also may suggest the presentation of other evidence or the calling of other witnesses. The Committee may use or dispose of such questions or suggestions as it deems appropriate.

8.5. STATEMENTS BY WITNESSES.—Witnesses may make brief and relevant statements at the beginning and conclusion of their testimony. Such statements shall not exceed a reasonable period of time as determined by the Chairman, or other presiding members. Any witness required or desiring to make a prepared or written statement for the record of the proceedings shall file a paper and electronic copy with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so at least 48 hours in advance of his or her appearance before the Committee.

8.6. OBJECTIONS AND RULINGS.—Any objection raised by a witness or counsel shall be ruled upon by the Chairman or other presiding member, and such ruling shall be the ruling of the Committee unless a majority of the Committee present overrules the ruling of the chair.

8.7. INSPECTION AND CORRECTION.—All witnesses testifying before the Committee shall be given a reasonable opportunity to inspect, in the office of the Committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the Committee within five days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the Chairman. Upon request, the Committee may provide to a witness those parts of testimony given by that witness in executive session which are subsequently quoted or made part of a public record, at the expense of the witness.

8.8. REQUESTS TO TESTIFY.—The Committee will consider requests to testify on any matter or measure pending before the Committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a Committee member or a member of the Committee staff, may tend to affect adversely that person's reputation, may request to appear personally before the Committee to testify or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the Chairman proposed questions in writing for the cross-examination of other witnesses. The Committee shall take such action as it deems appropriate.

8.9. CONTEMPT PROCEDURES.—No recommendation that a person be cited for contempt of Congress or that a subpoena be otherwise enforced shall be forwarded to the Senate unless and until the Committee has, upon notice to all its members, met and considered the recommendation, afforded the person an opportunity to oppose such contempt or subpoena enforcement proceeding either in writing or in person, and agreed by majority vote of the Committee to forward such recommendation to the Senate.

8.10. RELEASE OF NAME OF WITNESS.—Unless authorized by the Chairman, the name of any witness scheduled to be heard by the Committee shall not be released prior to, or after, appearing before the Committee. Upon authorization by the Chairman to release the name of a witness under this paragraph, the Vice Chairman shall be notified of such authorization as soon as practicable thereafter. No name of any witness shall be released if such release would disclose classified information, unless authorized under Section 8 of S. Res. 400 of the 94th Congress or Rule 9.7.

RULE 9. PROCEDURES FOR HANDLING CLASSIFIED OR COMMITTEE SENSITIVE MATERIAL

9.1. Committee staff offices shall operate under strict precautions. At least one United States Capitol Police Officer shall be on duty at all times at the entrance of the Committee to control entry. Before entering the Committee office space all persons shall identify themselves and provide identification as requested.

9.2. Classified documents and material shall be stored in authorized security containers located within the Committee's Sensitive Compartmented Information Facility (SCIF). Copying, duplicating, or removing from the Committee offices of such documents and other materials is prohibited except as is necessary for the conduct of Committee business, and in conformity with Rule 10.3 hereof. All classified documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's SCIF for overnight storage.

9.3. ''Committee sensitive'' means information or material that pertains to the confidential business or proceedings of the Select Committee on Intelligence, within the meaning of paragraph 5 of Rule XXIX of the Standing Rules of the Senate, and is: (1) in the possession or under the control of the Committee; (2) discussed or presented in an executive session of the Committee; (3) the work product of a Committee member or staff member; (4) properly identified or marked by a Committee member or staff member who authored the document; or (5) designated as such by the Chairman and Vice Chairman (or by the Staff Director and Minority Staff Director acting on their behalf). Committee sensitive documents and materials that are classified shall be handled in the same manner as classified documents and material in Rule 9.2. Unclassified committee sensitive documents and materials shall be stored in a manner to protect against unauthorized disclosure.

9.4. Each member of the Committee shall at all times have access to all papers and other material received from any source. The Staff Director shall be responsible for the maintenance, under appropriate security procedures, of a document control and accountability registry which will number and identify all classified papers and other classified materials in the possession of the Committee, and such registry shall be available to any member of the Committee.

9.5. Whenever the Select Committee on Intelligence makes classified material available to any other committee of the Senate or to any member of the Senate not a member of the Committee, such material shall be accompanied by a verbal or written notice to the recipients advising of their responsibility to protect such materials pursuant to section 8 of S. Res. 400 of the 94th Congress. The Security Director of the Committee shall ensure that such notice is provided and shall maintain a written record identifying the particular information transmitted and the committee or members of the Senate receiving such information.

9.6. Access to classified information supplied to the Committee shall be limited to those Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and, under the Committee's direction, the Staff Director and Minority Staff Director.

9.7. No member of the Committee or of the Committee staff shall disclose, in whole or in part or by way of summary, the contents of any classified or committee sensitive papers, materials, briefings, testimony, or other information in the possession of the Committee to any other person, except as specified in this rule. Committee members and staff do not need prior approval to disclose classified or committee sensitive information to persons in the Executive branch, the members and staff of the House Permanent Select Committee on Intelligence, and the members and staff of the Senate, provided that the following conditions are met: (1) for classified information, the recipients of the information must possess appropriate security clearances (or have access to the information by virtue of their office); (2) for all

information, the recipients of the information must have a need-to-know such information for an official governmental purpose; and (3) for all information, the Committee members and staff who provide the information must be engaged in the routine performance of Committee legislative or oversight duties. Otherwise, classified and committee sensitive information may only be disclosed to persons outside the Committee (to include any congressional committee, Member of Congress, congressional staff, or specified non-governmental persons who support intelligence activities) with the prior approval of the Chairman and Vice Chairman of the Committee, or the Staff Director and Minority Staff Director acting on their behalf, consistent with the requirements that classified information may only be disclosed to persons with appropriate security clearances and a need-to-know such information for an official governmental purpose. Public disclosure of classified information in the possession of the Committee may only be authorized in accordance with Section 8 of S. Res. 400 of the 94th Congress.

9.8. Failure to abide by Rule 9.7 shall constitute grounds for referral to the Select Committee on Ethics pursuant to Section 8 of S. Res. 400 of the 94th Congress. Prior to a referral to the Select Committee on Ethics pursuant to Section 8 of S. Res. 400, the Chairman and Vice Chairman shall notify the Majority Leader and Minority Leader.

9.9. Before the Committee makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the Committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the Committee or the Committee staff.

9.10. Attendance of persons outside the Committee at closed meetings of the Committee shall be kept at a minimum and shall be limited to persons with appropriate security clearance and a need-to-know the information under consideration for the execution of their official duties. The Security Director of the Committee may require that notes taken at such meetings by any person in attendance shall be returned to the secure storage area in the Committee's offices at the conclusion of such meetings, and may be made available to the department, agency, office, committee, or entity concerned only in accordance with the security procedures of the Committee.

RULE 10. STAFF

10.1. For purposes of these rules, Committee staff includes employees of the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable, the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform services for the Committee unless that individual holds appropriate security clearances.

10.2. The appointment of Committee staff shall be approved by the Chairman and Vice Chairman, acting jointly, or, at the initiative of both or either be confirmed by a majority vote of the Committee. After approval or confirmation, the Chairman shall certify Committee staff appointments to the Financial Clerk of the Senate in writing. No Committee staff shall be given access to any classified information or regular access to the Committee offices until such Committee staff has received an appropriate security clearance as described in Section 6 of S. Res. 400 of the 94th Congress.

10.3. The Committee staff works for the Committee as a whole, under the supervision of the Chairman and Vice Chairman of the Committee. The duties of the Committee staff shall be performed, and Committee staff personnel affairs and day-to-day operations, including security and control of classified documents and material, shall be administered under the direct supervision and control of the Staff Director. All Committee staff shall work exclusively on intelligence oversight issues for the Committee. The Minority Staff Director and the Minority Counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the Committee.

10.4. The Committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate, and minority views, to the end that all points of view may be fully considered by the Committee and the Senate.

10.5. The members of the Committee staff shall not discuss either the substance or procedure of the work of the Committee with any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, either during their tenure as a member of the Committee staff or at any time thereafter, except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate. The Chairman may authorize the Staff Director and the Staff Director's designee, and the Vice Chairman may authorize the Minority Staff Director and the Minority Staff Director's designee, to communicate with the media in a manner that does not divulge classified or committee sensitive information.

10.6. No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment, to abide by the conditions of the nondisclosure agreement promulgated by the Select Committee on Intelligence, pursuant to Section 6 of S. Res. 400 of the 94th Congress, and to abide by the Committee's code of conduct.

10.7. As a precondition for employment on the Committee staff, each member of the Committee staff must agree in writing to notify the Committee of any request for testimony, either during service as a member of the Committee staff or at any time thereafter with respect to information obtained by virtue of employment as a member of the Committee staff. Such information shall not be disclosed in response to such requests except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules or, in the event of the termination of the Committee, in such manner as may be determined by the Senate.

10.8. The Committee shall immediately consider action to be taken in the case of any member of the Committee staff who fails to conform to any of these Rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff.

10.9. Within the Committee staff shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards.

10.10. The workplace of the Committee shall be free from illegal use, possession, sale, or distribution of controlled substances by its employees. Any violation of such policy by any member of the Committee staff shall be grounds for termination of employment. Further, any illegal use of controlled substances by a member of the Committee staff, within the workplace or otherwise, shall result in reconsideration of the security clearance of any such staff member and may constitute grounds for termination of employment with the Committee.

10.11. All personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, handicap, or disability.

RULE 11. PREPARATION FOR COMMITTEE MEETINGS

11.1. Under direction of the Chairman and the Vice Chairman designated Committee staff members shall brief members of the Committee at a time sufficiently prior to any Committee meeting to assist the Committee members in preparation for such meeting and to determine any matter which the Committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the Committee that bear on matters to be considered at the meeting.

11.2. The Staff Director and/or Minority Staff Director shall recommend to the Chairman and the Vice Chairman the testimony, papers, and other materials to be presented to the Committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the Rules of the Senate and Rules of the Committee.

11.3. The Staff Director shall ensure that covert action programs of the U.S. Government receive appropriate consideration by the Committee no less frequently than once a quarter.

RULE 12. LEGISLATIVE CALENDAR

12.1. The Clerk of the Committee shall maintain a printed calendar for the information of each Committee member showing the measures introduced and referred to the Committee and the status of such measures; nominations referred to the Committee and their status; and such other matters as the Committee determines shall be included. The Calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the Committee.

12.2. Measures referred to the Committee may be referred by the Chairman and/or Vice Chairman to the appropriate department or agency of the Government for reports thereon.

RULE 13. COMMITTEE TRAVEL

13.1. No member of the Committee or Committee Staff shall travel abroad on Committee business unless specifically authorized by the Chairman and Vice Chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the Committee when travel is completed.

13.2. No member of the Committee staff shall travel within this country on Committee business unless specifically authorized by the Chairman and Vice Chairman.

RULE 14. CHANGES IN RULES

These Rules may be modified, amended, or repealed by the Committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

APPENDIX A

S. RES. 400, 94TH CONG., 2D SESS. (1976)

*Resolved*, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the ''select committee''). The select committee shall be composed of not to exceed fifteen Members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations;

(D) two members from the Committee on the Judiciary; and

(E) not to exceed seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Of any members appointed under paragraph (1)(E), the majority leader shall appoint the majority members and the minority leader shall appoint the minority members, with the majority having a one vote margin.

(3)(A) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.

(B) The Chairman and Ranking Member of the Committee on Armed Services (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.

(b) At the beginning of each Congress, the Majority Leader of the Senate shall select a chairman of the select Committee and the Minority Leader shall select a vice chairman for the select Committee. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the select committee shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 4(e)(1) of rule XXV of the Standing Rules of the Senate.

(c) The select Committee may be organized into subcommittees. Each subcommittee shall have a chairman and a vice chairman who are selected by the Chairman and Vice Chairman of the select Committee, respectively.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Office of the Director of National Intelligence and the Director of National Intelligence.

(2) The Central Intelligence Agency and the Director of the Central Intelligence Agency.

(3) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; the Department of Justice; and the Department of the Treasury.

(4) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

(5) Authorizations for appropriations, both direct and indirect, for the following:

(A) The Office of the Director of National Intelligence and the Director of National Intelligence.

(B) The Central Intelligence Agency and the Director of the Central Intelligence Agency.

(C) The Defense Intelligence Agency.

(D) The National Security Agency.

(E) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(F) The intelligence activities of the Department of State.

(G) The intelligence activities of the Federal Bureau of Investigation.

(H) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), (C) or (D); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (E), (F), or (G) to the extent that the activities of such successor department, agency, or subdivision are activities described in clause (E), (F), or (G).

(b)(1) Any proposed legislation reported by the select Committee except any legislation involving matters specified in clause (1), (2), (5)(A), or (5)(B) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such standing committee; and any proposed legislation reported by any committee, other than the select Committee, which contains any matter within the jurisdiction of the select Committee shall, at the request of the chairman of the select Committee, be referred to the select Committee for its consideration of such matter and be reported to the Senate by the select Committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such committee.

(2) In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed in this subsection, such Committee shall be automatically discharged from further consideration of such proposed legislation on the 10th day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise, or the Majority Leader or Minority Leader request, prior to that date, an additional 5 days on behalf of the Committee to which the proposed legislation was sequentially referred. At the end of that additional 5 day period, if the Committee fails to report the proposed legislation within that 5 day period, the Committee shall be automatically discharged from further consideration of such proposed legislation unless the Senate provides otherwise.

(3) In computing any 10 or 5 day period under this subsection there shall be excluded from such computation any days on which the Senate is not in session.

(4) The reporting and referral processes outlined in this subsection shall be conducted in strict accordance with the Standing Rules of the Senate. In accordance with such rules, committees to which legislation is referred are not permitted to make changes or alterations to the text of the referred bill and its annexes, but may propose changes or alterations to the same in the form of amendments.

(c) Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic, but not less than quarterly, reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such report, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report from the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interest. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5. (a) For the purposes of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and

adjourned periods of the Senate, (6) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpoenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpoenas.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Ethics) and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of National Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of National Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 8. (a) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the Executive branch, and which the Executive branch requests be kept secret, such committee shall—

(A) first, notify the Majority Leader and Minority Leader of the Senate of such vote; and

(B) second, consult with the Majority Leader and Minority Leader before notifying the President of such vote.

(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the Majority Leader and the Minority Leader and the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefore, and certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally, in writing, notifies the Majority Leader and Minority Leader of the Senate and the select Committee of his objections to the disclosure of such information as provided in paragraph (2), the Majority Leader and Minority Leader jointly or the select Committee, by majority vote, may refer the question of the disclosure of such information to the Senate for consideration.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the Chairman shall not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall publicly disclose the information ordered to be disclosed,

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the consideration of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Ethics to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Ethics shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Ethics determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the select committee.

SEC. 11. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency: *Provided,* That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence

activities should furnish any information or document in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Office of the Director of National Intelligence and the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency and the Director of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence activities of the Department of State.

(7) The intelligence activities of the Federal Bureau of Investigation.

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

(1) the quality of the analytical capabilities of United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the Executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the Executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(8) the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest; and

(9) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term ''intelligence activities'' includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

(b) As used in this resolution, the term ''department or agency'' includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 15. (a) In addition to other committee staff selected by the select Committee, the select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces. Designated personal representatives shall have the same access to Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.

(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee security clearance requirements for employment by the select Committee.

(d) Of the funds made available to the select Committee for personnel—

(1) not more than 60 percent shall be under the control of the Chairman; and

(2) not less than 40 percent shall be under the control of the Vice Chairman.

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

SEC. 17. (a)(1) Except as otherwise provided in subsection (b), the select Committee shall have jurisdiction for reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

(2) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.

(b)(1) With respect to the confirmation of the Assistant Attorney General for National Security, or any successor position, the nomination of any individual by the President to serve in such position shall be referred to the Committee on the Judiciary and, if and when reported, to the select Committee for not to exceed 20 calendar days, except that in cases when the 20-day period expires while the Senate is in recess, the select Committee shall have 5 additional calendar days after the Senate reconvenes to report the nomination.

(2) If, upon the expiration of the period described in paragraph (1), the select Committee has not reported the nomination, such nomination shall be automatically discharged from the select Committee and placed on the Executive Calendar.

APPENDIX B—INTELLIGENCE PROVISIONS IN S. RES. 445, 108TH CONG., 2D SESS. (2004) WHICH WERE NOT INCORPORATED IN S. RES. 400, 94TH CONG., 2D SESS. (1976)

TITLE III—COMMITTEE STATUS

* * * * *

SEC. 301(b) INTELLIGENCE.—The Select Committee on Intelligence shall be treated as a committee listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

TITLE IV—INTELLIGENCE-RELATED SUBCOMMITTEES

SEC. 401. SUBCOMMITTEE RELATED TO INTELLIGENCE OVERSIGHT.

(a) ESTABLISHMENT.—There is established in the Select Committee on Intelligence a Subcommittee on Oversight which shall be in addition to any other subcommittee established by the select Committee.

(b) RESPONSIBILITY.—The Subcommittee on Oversight shall be responsible for ongoing oversight of intelligence activities.

SEC. 402. SUBCOMMITTEE RELATED TO INTELLIGENCE APPROPRIATIONS.

(a) ESTABLISHMENT.—There is established in the Committee on Appropriations a Subcommittee on Intelligence. The Committee on Appropriations shall reorganize into 13 subcommittees as soon as possible after the convening of the 109th Congress.

(b) JURISDICTION.—The Subcommittee on Intelligence of the Committee on Appropriations shall have jurisdiction over funding for intelligence matters, as determined by the Senate Committee on Appropriations.

APPENDIX C—RULE 26.5(b) OF THE STANDING RULES OF THE SENATE (REFERRED TO IN COMMITTEE RULE 2.1)

Each meeting of a committee, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by a committee or a subcommittee thereof on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

## HONORING OUR ARMED FORCES

### CORPORAL ZACHARY RAY NORDMEYER

Mr. BAYH. Madam President, I rise today with a heavy heart to honor the life of CPL Zachary Ray Nordmeyer from Indianapolis, IN. Zachary was 21 years old when he lost his life on February 23, 2009, from injuries sustained when he and others came under attack from small-arms fire in Balad, Iraq. He was a member of the 5th Squadron, 1st Cavalry Regiment, 1st Stryker Brigade Combat Team, 25th Infantry Division of Fort Wainwright, AK.

Zachary, a graduate of the JROTC program at Ben Davis High School in Indianapolis, joined the Army in July 2007 and was sent to Iraq in September for a 12-month tour. He was an avid sports fan, playing football and baseball at Ben Davis and never missing an opportunity to watch his favorite NASCAR driver, Jeff Gordon, in action. He was a member of Lakeview Church and Harmony Baptist Church, and also enjoyed fishing, hunting, and spending time with his family and friends.

Today, I join Zachary's family and friends in mourning his death. Zachary will forever be remembered as a loving brother, son, grandson, and friend to many. Zachary is survived by his fiancée, Chrissy Purdy; father, Michael Nordmeyer; step-parents, Kevin and Cindy Bereman; brothers, Josh and David Nordmeyer; step-sisters, Rachel Klop, Kendra Gregg, and Karen Piehl; step-brother, Kristopher Bereman; grandparents, Nancy and Bill Harman, Tim and Susan Fair; grandfather, Paul Nordmeyer; grandmother, Marilyn Fair; great-grandparents, Herman and Evona Fair; aunts and uncles, Tom and Mindy Nordmeyer, Brian and Stephanie Nordmeyer, Brad and Kim Nordmeyer; uncles, Kevin and Brandon Fair and Steven Harman; aunt, Stephanie Harman; many nieces and nephews; and a host of other friends and relatives. Zachary was preceded in death by his mother, Kimberly Bereman; and great-grandparents, Lester and Elenor Baker, George and Eve Nordmeyer, and Paul and Dorothy Fisher.

While we struggle to express our sorrow over this loss, we can take pride in the example Zachary set as a soldier. Today and always, Zachary will be remembered by family, friends, and fellow Hoosiers as a true American hero, and we cherish the sacrifice he made while dutifully serving his country.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg:

> We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.

This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in knowing that Zachary's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of Zachary Nordmeyer in the official RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. I pray that Zachary's family can find comfort in the words of the prophet Isaiah who said:

> He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Zachary.

## PEACE CORPS ANNIVERSARY

Ms. MURKOWSKI. Madam President, Sunday marked the 48th anniversary of the Peace Corps. As we wrap up Peace Corps Week here in the United States, I would like take this opportunity to extend my heartfelt congratulations and appreciation to all current and former volunteers.

Since its creation in 1961, approximately 190,000 volunteers have served in 139 countries around the world. The fields Peace Corps volunteers work in are as varied as the countries in which they serve, but they offer us a snapshot of the breadth of global development challenges we face as a planet: HIV/AIDs; food security; environmental degradation; expanding the reach of technology; improving access to clean water and sanitation; and providing education and professional opportunities to those who might not otherwise have a chance to go to school or open a business.

Not only the host countries benefit from all the good work these volunteers do. Each of these volunteers gives the United States an opportunity to showcase our values and goals to the rest of the world in a grassroots way. The volunteers have the chance to learn foreign languages, live and work in new cultures, and develop skills which will aid them in their future careers. The skills these intrepid volunteers learn during their tours will also be a credit to the United States in the future as they return home and put their on-the-ground knowledge to work in the States.

I am delighted to see that the spirit of this movement is still strong with Alaskans. This year, 32 Alaskans are serving in 27 different countries on five different continents in fields ranging from health to education to agriculture to small business development. When they return to Alaska it will be with the knowledge that they can achieve any task set before them with innovation and hard work. I am excited to see what great things they will do next for our State and the Nation as a whole.

## IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Madam President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy

prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

You have asked for input as to helpful solutions regarding the energy crisis.

I am attaching three resolutions that came from a national committee that I chair—the Energy, Natural Resource & Agriculture Policy Committee for the National Foundation for Women Legislators (NFWL). These resolutions were passed by my Committee in October of 2007. Each ''Where As'' tells the story of why we are where we are today and then finally gives recommendations for solutions. Please submit these into the Congressional Record as you seek to tell stories about what Idahoans are doing to offer help and why energy solutions are needed.

Thank you for this opportunity to tell our story from the Energy, Natural Resource & Agriculture Committee to the U.S. Senate. And, thank you for all that you do.

ANN, *Idaho Falls.*

NFWL ENERGY, NATURAL RESOURCES & AGRICULTURE POLICY COMMITTEE

RESOLUTION ON A BALANCED PORTFOLIO OF ENERGY CHOICES

(Introduced October 12, 2007)

Whereas, the United States of America has become excessively dependent upon foreign sources of oil, and the dependence threatens the security of the American people and economy; and

Whereas, it is in the best interests of the United States to become as energy independent and diversified as possible to avoid economic dislocations instigated by foreign oil interests, markets and the effects of natural disasters; and

Whereas, comprehensive federal energy legislation signed into law in 2005 advocates the expansion of nuclear energy for the production of electrical power and hydrogen, as well as the development of bio-energy and other alternative fuels to reduce dependence on foreign sources of oil, a truly balanced portfolio of energy options; and

Whereas, the United States Department of Energy (DOE) is the federal agency that has primary responsibility for carrying out the directives of the President and the Congress relative to enabling and enhancing the energy security of the nation; and

Whereas, the DOE Laboratories and other Federal Laboratories are a key national research, development and demonstration resource wherein the federal government has invested significant tax dollars to establish such unique and globally important assets all of which demand continued, or even expanded, use to assure maximum return on tax dollar investment; and

Whereas, the Idaho National Laboratory has been designated as the lead DOE lab for nuclear energy technology and development and is expected to have a key role in an international initiative; and

Whereas, the Federal Laboratory Consortium (FLC) for Technology Transfer can assist in identifying federal labs with a variety of expertise to help states, including energy, through their website;

Be it resolved that the NFWL Energy, Natural Resource & Agriculture Policy Committee supports execution of an enhanced and balanced portfolio of nuclear, bio-energy, hydropower, fuel reforming and related alternative and renewable energy research, and hereby requests the DOE, the Administration and the Congress identify, commit and sustain the funding necessary to allow continued performance of this and other multi-program energy and national security enhancing work so critical to the long-term well-being of these United States.

Be it further resolved, that NFWL forward a copy of this resolution to the President of the United States, the Secretary of the U.S. Department of Energy, to the President of the Senate and the Speaker of the House of Representatives of Congress.

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NFWL ENERGY, NATURAL RESOURCES & AGRICULTURE POLICY COMMITTEE

RESOLUTION ON THE ENERGY POLICY ACT OF 2005 LOAN GUARANTEE PROGRAM

(Introduced October 12, 2007)

Whereas, the National Foundation for Women Legislators (NFWL) Energy, Natural Resource & Agriculture Policy Committee commends Congress and the Administration on passage of the EPAct05 (Energy Policy Act of 2005) that reaffirms the federal commitment to establish and maintain a national energy policy; and

Whereas, the EPAct05 authorizes the U.S. Department of Energy to issue loan guarantees to eligible projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases'' and ''employ new or significantly improved technologies as compared to technologies in service in the United States at the time the guarantee is issued''; and

Whereas, loan guarantees will be another tool that DOE will use to promote commercial use of innovative technologies; and

Whereas, a principal purpose of the Title XVII loan guarantee program is to encourage early commercial use in the United States of new or significantly improved technologies in energy projects; and

Whereas, this NFWL Policy Committee submits that energy independence must be a primary goal of the United States and that short- and long-term strategies that provide adequate energy supplies with efficient utilization and optimum cost effectiveness must be developed; and

Whereas, it is believed that accelerated commercial use of new or improved technologies will help to sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply; and

Whereas, the national energy policy and loan guarantee program should promote and provide incentives for the development and optimal use of all energy resources; and

Whereas, nuclear energy is not currently listed in FY 2008 House Energy & Water Appropriations legislation as an included technology area to participate in the loan guarantee program, and is a technology project that avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

Now, therefore be it resolved that the NFWL Energy, Natural Resource & Agriculture Policy Committee requests the DOE, the Administration and the Congress to include nuclear energy in the projects for the loan guarantee program.

Be it further resolved, that NFWL forward a copy of this resolution to the President of the United States, the Secretary of the U.S. Department of Energy, to the President of the Senate and the Speaker of the House of Representatives of Congress as well as appropriate House and Senate Committees.

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NFWL ENERGY, NATURAL RESOURCES & AGRICULTURE POLICY COMMITTEE

RESOLUTION ON NATIONAL ENERGY POLICY

(Introduced October 12, 2007)

Whereas, the National Foundation for Women Legislators (NFWL) Energy, Natural Resource & Agriculture Policy Committee commends Congress and the Administration on passage of the Energy Policy Act of 2005 that reaffirms the federal commitment to establish and maintain a national energy policy; and

Whereas, the primary goals of a national energy policy should develop a comprehensive energy conservation strategy, with the most efficient use of energy, promote reliable sources of domestic energy supplies as well as develop and promote the use of alternative, renewable and non-renewable energy sources; and

Whereas, a national energy policy should ensure affordable priced energy with an adequate supply available, and ensure an efficient and environmentally-sound manner so that the needs of all citizens, economy and national security interests are met and be a balanced portfolio of energy options; and

Whereas, this NFWL Policy Committee submits that energy independence must be a primary goal of the United States and that short and long-term strategies that provide adequate energy supplies with efficient utilization and optimum cost effectiveness must be developed; and

Whereas, a comprehensive strategy is needed to increase U.S. and global energy security, encourage clean development around the world, recycle nuclear fuel using new proliferation-resistant technologies to recover more energy and reduce waste, and improve the environment; and

Whereas, the national energy policy should promote and provide incentives for the development and optimal use of all energy resources and new facility infrastructure which assures that various domestic energy sources are continually developed, maintained and stored to prevent supply emergencies and to promote energy independence; and

Now, therefore be it resolved that the NFWL Energy, Natural Resource & Agriculture Policy Committee encourages the DOE, the Administration and the Congress to develop a balanced portfolio of energy choices, implement and maintain an expansive, cost-effective, environmentally-sensitive national energy policy.

Be it further resolved, that NFWL forward a copy of this resolution to the President of the United States, the Secretary of the U.S. Department of Energy, to the President of the Senate and the Speaker of the House of Representatives of Congress.

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I am a little more than concerned about the rising costs of fuel. It hits every economic level of income but mostly the middle to low incomes. We are in the $50,000 income range. I own a small business and my husband works for the State. Increase in the price of fuel is directly felt every time a person drives a vehicle. It is double what it was last year. I drive a 2000 Nissan Sentra. It is a little car. We live on a budget. A paycheck only stretches so far. For a small business this means an increase in freight costs. Some

of those costs are passed to the consumer and some are absorbed. A small business is the least likely to be able to handle this. The costs passed to the consumer are on top of the gas prices they are already paying. I live in a small rural community. Because in the past so many people have done their shopping out of town, our town has less to offer which in turn makes going out of town to shop a very costly experience. The whole situation is a catch-22.

America needs to use its own resources and not let foreign companies do it (drilling for oil off the coast). We also need to be responsible for our overindulgences and use smaller more economical vehicles. We are paying for our gluttony. We do need to explore alternative energy also. We also need to curb our spending in congress. Our country is broke and nobody wants to fix it. Pork barrel spending is breaking this country. Why are we attaching appropriations to bills that have nothing to do with the original bill? Please start making upright and morally responsible decisions. I think Congress is totally out of control.

A desperate citizen,

SUE, Grangeville.

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I appreciate your interest in this issue. I must say I am quite fortunate that my 94 Ford escort gets 37 MPG and suits most my needs quite adequately. In addition, I live just a few miles from work in Boise, so I usually ride my bicycle to work. I do recognize that this is not an option for many Idahoans, such as my mom who lives 10 miles outside of Blackfoot.

Frankly, as far as this last e-mail you sent me goes, it sounds like you are listening too much to lobbyists from the energy industries. More gas exploration is not a long term solution—I cannot imagine that new finds are going to even come close to offsetting increased demand from Asia. (If you have numbers that suggest otherwise, I would love to see them.) More exploration is a mere band-aid that just kicks the problem down the road to whomever gets your seat next. To me, it sounds almost as pointless as Senator Clinton's gas tax holiday she was talking about.

Instead of typical Washington [solutions], Senator, we need real leadership. We need to be pouring our resources into building alternative modes of transit that can aid this inevitable transition from cheap fossil fuels. We need to bring rail transit back to Southern Idaho. We need a rural bus system with park-and-ride spots along state highways (much like the system used for the buses that run to INL). We need higher fuel-efficiency standards from Detroit. (You may have to tell some industry folks to jump in a lake—that is what we pay you for.) As far as helping people cope with this transition, perhaps you could give tax cuts to small farmers and people who live more than 15 miles from a bus or train stop. But basically any incentives should go towards helping people use less fossil fuel, not more.

ALEX, Boise.

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First off I want to state that I do not consider this fuel problem to be as big of a crisis as it was when we had the fuel shortages back a few decades. This is becoming more of an issue because the dollar is so weak right now, and it does not seem to be getting any better. With that said, my family and I have noticed the problems with fuel prices across the board. I am in the process of trying to make a choice in a new job that would put me back in the classroom doing what I really love, but with gas prices and me riding the ACHD van that is a big cost change for us. I am amazed that with all of the possibilities out there that our energy and gas prices are going up. Why are we not building more wind power plants like California to produce endless power that is also very expandable? Why are we not taking advantage of the man who invented the super fuel efficient engine right here in Idaho who resides in Weiser? There are answers besides drilling right here and we seem to overlook them. I am not against more nuclear power, but the hazards really do not justify those means of power any more. I really hope that we can see some changes soon with the addition of a transit system from Caldwell to Boise or maybe even Weiser. I do know that something has to change or the US will have too many poor people to help. Thank you for your time.

RICHARD, Boise.

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You asked for and so here goes. I am so upset with all of the members of Congress and our Government in general for not having an energy plan already in place in the United States. Not only should we not be dependent on foreign countries for our oil sources but we should most definitely have invested in other sources of energy long before now. Off-shore drilling and massacring the Alaskan Wilderness is not the answer. There is absolutely no reason for us not to have automobiles running on other sources of power other than to line the pockets of the oil industry and those ''in the trough''. The technology is there and I think we need government mandates and incentives in place now to force (if necessary) people to create and use these alternative sources. We should reward those companies and those people who produce and use hybrid and other alternative energy-sourced vehicles and mass transit and severely tax those people who insist on driving the big SUVs and Hummers in the U.S. as well as those who are the big wasters of energy. ''Going Green'' should not only be the right thing to do for us and the world (and the U.S. should be leading the world as the ''example'') but should be the most economical thing to do and we need to reward those who do and assess those who do not. If companies are not going to take the initiative to make this happen on their own, then the government has to give the free enterprise system and the general public incentives to make it happen.

There is no one person in the U.S. who is not feeling the effects of the high prices. Whether it be gas, food or other products we buy and use in our life activities, they are all affected by the high gas prices. Those with high incomes can most likely absorb these increased costs but those on fixed incomes and the low- and middle-income cannot sustain these high prices for long. We are in a crisis situation here and I only see it getting worse. And I blame all of you in Congress for not addressing it much sooner (like some 10–20 years ago) and I blame John Q. Public for re-electing all of you time and again. It seems to me that Congress is completely out of touch not only with John Q. Public but with reality. Let me reiterate, more drilling in our own country is not the answer. We must use other alternative energy sources be it electric, wind, nuclear, etc. What kind of country are we leaving for our grandkids? Not a very good one at this rate—if we even have one left!

MELODIE.

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You write that my country is too dependent on foreign oil and we must develop alternate energy sources. You, your party, and many of the Democrats have voted consistently against all such alternatives for one reason or another. It is of no use to write about my experience with the rise in gas prices. If Congress and this Administration need stories, then it further proves that our elected government does not give a damn about the citizens—an expansion of Katrina/New Orleans. You have held hearings with the oil representatives which resulted in the usual shameful display of sucking-up to the industry. Thank you for your inattention to this response.

HARRY.

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Does anyone in Washington remember the huge deal it was when gasoline broke $2/gallon about 4 years ago? How about when it reached $3/gallon briefly in 2005 and caused a minor panic about skyrocketing prices? I remember newspaper articles asking ''Will we ever see $2/gallon gasoline again?'' and we wondered if that time had passed. Then prices came back down and did a bit of an up-down over the next couple of years. Through all of that, combatting high oil prices was a top priority for Congress and the White House, which led to the ethanol debacle.

Now, the Democrat powers-that-be in Washington and around the country have seemingly embraced $4/gallon gasoline as the impetus to make us explore ''alternate energy sources,'' while completely ignoring the agonizing inflationary pressure these price increases are causing. Now we hear, ''Blame Bush!'' ''No war for oil!'' ''Save the polar bears!'' How in the world do we expect to be able to maintain our economic strength while we simultaneously insist on crippling the economy?

I would urge you, Senator, to work to allow us to pursue oil reserves wherever they might be found in our country. We should seek to be wise stewards of the land, but also acknowledge that if we do not do it here, it will be done elsewhere by people who do not seem to care as much about the environment. ''Not in my backyard'' is the most environmentally irresponsible decision we could possibly make.

DAVID, *Boise.*

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Gas prices are outrageous. If it does cost that much for the oil, why not get out of there and drill on our own grounds, or even Canada? What is happening is someone is making a lot of money off this, and they know that they can keep raising the price and people will pay it, people have to pay it.

CJ.

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We appreciate your interest in the high cost of gasoline and energy, but even if the government started drilling today, we do not have refineries up and running nor do we have enough of them to process the gas we discover. So who and where will we have to transport this ''new gas'' to, to make it useable for the people of the U.S.? Obama stated he wished the price would have increased a little more slowly so this sounds like it is been planned a looong time in Congress.

Who has got the truth on any of our economy and energy issues?

Thanks for your efforts.

CHUCK.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations

which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGE FROM THE HOUSE

At 2:27 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 81. An act to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

H.R. 326. An act to direct the Secretary of the Interior to take lands in Yuma County, Arizona, into trust as part of the reservation of the Cocopah Tribe of Arizona, and for other purposes.

H.R. 844. An act to amend the provisions of law relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

## MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 81. An act to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks; to the Committee on Commerce, Science, and Transportation.

H.R. 326. An act to direct the Secretary of the Interior to take lands in Yuma County, Arizona, into trust as part of the reservation of the Cocopah Tribe of Arizona, and for other purposes; to the Committee on Indian Affairs.

H.R. 844. An act to amend the provisions of law relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEVIN, from the Committee on Armed Services:

Special Report entitled ''Report on the Activities of the Committee on Armed Services, 110th Congress, First and Second Sessions'' (Rept. No. 111–5).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself, Mr. GREGG, Mr. KENNEDY, Mr. BURR, Mr. DODD, Mr. ALEXANDER, and Mr. ISAKSON):

S. 510. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself and Mr. TESTER):

S. 511. A bill to amend part B of title XVIII of the Social Security Act to provide for an exemption of pharmacies and pharmacists from certain Medicare accreditation requirements in the same manner as such exemption applies to certain professionals; to the Committee on Finance.

By Mr. MARTINEZ (for himself, Mr. KOHL, Mr. DURBIN, and Mr. FEINGOLD):

S. 512. A bill to amend chapter 1 of title 9, of United States Code with respect to arbitration; to the Committee on the Judiciary.

By Mr. SANDERS:

S. 513. A bill to require the Board of Governors of the Federal Reserve System to publish information on financial assistance provided to various entities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA:

S. 514. A bill to amend title 38, United States Code, to enhance vocational rehabilitation benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. SCHUMER, Mr. CRAPO, Mr. WHITEHOUSE, Mr. RISCH, and Mrs. GILLIBRAND):

S. 515. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

By Mr. DODD:

S. 516. A bill for the relief of Majan Jean; to the Committee on the Judiciary.

By Mr. DODD:

S. 517. A bill for the relief of Alejandro Gomez and Juan Sebastian Gomez; to the Committee on the Judiciary.

By Mr. CARDIN (for himself, Ms. MIKULSKI, Mr. REED, Mr. CASEY, and Mr. LEVIN):

S. 518. A bill to establish the Star-Spangled Banner and War of 1812 Bicentennial Commission, and for other purposes; to the Committee on the Judiciary.

By Mr. HARKIN (for himself and Mr. CHAMBLISS):

S. 519. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention and the LRTAP POPs Protocol; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURBIN:

S. 520. A bill to designate the United States Courthouse under construction at 327 South Church Street, Rockford, Illinois, as the ''Stanley J. Roszkowski United States Courthouse''; considered and passed.

By Mr. INHOFE:

S. 521. A bill to enhance the oversight authority of the Comptroller General of the United States with respect to certain expenditures by financial institutions participating in the Troubled Asset Relief Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. VITTER:

S.J. Res. 13. A joint resolution proposing an amendment to the Constitution of the United States relative to parental rights; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself and Mr. MCCAIN):

S. Res. 62. A bill establishing a select committee of the Senate to make a thorough and complete study and investigation of the facts and circumstances giving rise to the economic crisis facing the United States and to make recommendations to prevent a future recurrence of such a crisis; to the Committee on Rules and Administration.

## ADDITIONAL COSPONSORS

S. 46

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 46, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 321

At the request of Mr. VOINOVICH, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 321, a bill to require the Secretary of Homeland Security and the Secretary of State to accept passport cards at air ports of entry and for other purposes.

S. 345

At the request of Mr. LUGAR, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 345, a bill to reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2012, to rename the Tropical Forest Conservation Act of 1998 as the ''Tropical Forest and Coral Conservation Act of 2009'', and for other purposes.

S. 416

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 416, a bill to limit the use of cluster munitions.

S. 422

At the request of Ms. STABENOW, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Montana (Mr. TESTER) were added as cosponsors of S. 422, a bill to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diesases in women.

S. 423

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 423, a bill to amend title 38, United States Code, to authorize advance appropriations for certain medical care accounts of the Department of Veterans Affairs by providing two-fiscal year budget authority, and for other purposes.

S. 428

At the request of Mr. DORGAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 442

At the request of Mr. DORGAN, the name of the Senator from Rhode Island

(Mr. WHITEHOUSE) was added as a cosponsor of S. 442, a bill to impose a limitation on lifetime aggregate limits imposed by health plans.

S. 450

At the request of Mr. BAUCUS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 450, a bill to understand and comprehensively address the oral health problems associated with methamphetamine use.

S. 475

At the request of Mr. BURR, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 475, a bill to amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes.

S. 478

At the request of Mr. DEMINT, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 478, a bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

S. 487

At the request of Mr. HARKIN, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 487, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 491

At the request of Mr. WEBB, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 491, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 495

At the request of Mr. CARDIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 495, a bill to increase public confidence in the justice system and address any unwarranted racial and ethnic disparities in the criminal process.

S. 496

At the request of Ms. CANTWELL, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 496, a bill to provide duty-free treatment for certain goods from designated Reconstruction Opportunity Zones in Afghanistan and Pakistan, and for other purposes.

S. 501

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 501, a bill to amend the Federal Food, Drug, and Cosmetic Act to prohibit the marketing of authorized generic drugs.

S. RES. 57

At the request of Mr. BAUCUS, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 57, a resolution designating the first week of April 2009 as ''National Asbestos Awareness Week''.

AMENDMENT NO. 592

At the request of Mr. MCCAIN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 592 proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 596

At the request of Mr. COBURN, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of amendment No. 596 proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 601

At the request of Mr. VITTER, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from South Carolina (Mr. DEMINT) were added as cosponsors of amendment No. 601 intended to be proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 607

At the request of Mr. WICKER, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. INHOFE), the Senator from Oklahoma (Mr. COBURN), the Senator from Louisiana (Mr. VITTER), the Senator from Iowa (Mr. GRASSLEY), the Senator from South Dakota (Mr. THUNE), the Senator from Kansas (Mr. ROBERTS) and the Senator from South Carolina (Mr. DEMINT) were added as cosponsors of amendment No. 607 proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 608

At the request of Mr. COBURN, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of amendment No. 608 proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 610

At the request of Mr. COBURN, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of amendment No. 610 proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

AMENDMENT NO. 611

At the request of Mr. THUNE, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of amendment No. 611 intended to be proposed to H.R. 1105, a bill making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Mr. GREGG, Mr. KENNEDY, Mr. BURR, Mr. DODD, Mr. ALEXANDER, and Mr. ISAKSON):

S. 510. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, today I rise to introduce the FDA Food Safety Modernization Act.

When I introduced this bill in the last Congress, we were in the middle of one of the largest food-borne illness outbreaks in the history of our country. Nearly 1500 people fell sick last spring and summer because of Salmonella Saintpaul, leading to a Government investigation that pointed the finger first at tomatoes and then at jalapeno peppers in Texas before settling on Serrano peppers in Mexico. In the meantime, more people got sick and the tomato industry lost up to hundreds of millions of dollars.

Less than a year later, we find ourselves in the middle of yet another nationwide outbreak: peanut butter tainted with Salmonella, the second case of its kind in 2 years. There is not a day that goes by that we don't hear about another recalled peanut butter product or another person sick with Salmonella. More than 660 people have been sickened, half of them children. At least nine people are dead. Over 2,600 products have been recalled, in a recall that goes back to March 2005 and could continue for at least another couple of years, making this one of the biggest food recalls in our Nation's history.

Unfortunately, these problems seem to be par for the course. In the last couple of years we have seen Salmonella in our peppers and peanut butter and E. coli in our spinach. Our food safety problems do not just start and stop at home: we have also seen chemically tainted pet food, milk products, and seafood from China.

These problems are only the tip of the iceberg. Every year, more than 76 million Americans become sick because of a food-borne illness, 325,000 are hospitalized, and 5,000 die.

It is clear that the Food and Drug Administration, who regulates these foods and 80 percent of our food supply, including virtually all food imports, can not keep up. The agency is underfunded and overwhelmed. It operates under an obsolete, largely reactive 1938 law. Its food safety program has not kept up with the dramatic changes in our food system, and it does a poor job of preventing and responding to food safety problems. As a result, consumers suffer and so do businesses something we can never afford, but especially in these trying economic times.

Our food safety system is in crisis and it is time that we act. That's why Senator GREGG and I are introducing

the FDA Food Safety Modernization Act, a bipartisan bill that gives the FDA the new authorities and resources it needs to stop food safety problems before they start.

For the first time in history, our bill gives the FDA a mandate to inspect: to increase the inspections at all food facilities, including annual inspections of high risk facilities. It requires the food industry to have in place plans that address identified hazards with the right preventive measures. It requires all testing and sampling for regulatory purposes to be done by labs accredited by the FDA, and requires those results to be sent to the agency. It also enables the FDA to more effectively respond to an outbreak by giving the agency new authorities to order recalls, shut down tainted facilities, and access records.

This bill is proof that food safety is not a Democratic issue or a Republican one. Everyone eats. All Americans have a right to know that the food we buy for our families and our pets is safe. We should not have to worry about getting sick, or worse. If there's a problem, our Government should be able to catch it and fix it before people die.

I thank Senators KENNEDY, DODD, KLOBUCHAR, BURR, ALEXANDER, and CHAMBLISS for joining me in this effort. I also want to thank the consumer, public health, and industry groups who have helped us craft a strong bill for their support: Consumer Federation of America, Center for Science in the Public Interest, Consumers Union, Trust for America's Health, Grocery Manufacturers of America, American Feed Industry Association, American Frozen Food Institute, Food Marketing Institute, National Fisheries Institute, and American Spice Trade Association.

This bill is a comprehensive, bipartisan effort that improves the FDA's ability to prevent, detect, and respond to food safety problems, whether this means Salmonella-tainted peanut butter from Georgia or melamine-spiked candy from China. It's the first step towards building a food safety system that is science and risk-based, accountable to consumers, more transparent, and focused on prevention. I urge my colleagues to support this bill.

Mr. President, 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 placed in the RECORD, as follows:

S. 510

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

**SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''FDA Food Safety Modernization Act''.

(b) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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



## TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

**SEC. 101. INSPECTIONS OF RECORDS.**

(a) IN GENERAL.—Section 414(a) (21 U.S.C. 350c(a)) is amended—

(1) by striking the heading and all follows through ''of food is'' and inserting the following: ''RECORDS INSPECTION.—

''(1) ADULTERATED FOOD.—If the Secretary has a reasonable belief that an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, is'';

(2) by inserting '', and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner,'' after ''relating to such article'';

(3) by striking the last sentence; and

(4) by inserting at the end the following:

''(2) USE OF OR EXPOSURE TO FOOD OF CONCERN.—If the Secretary believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, that are needed to assist the Secretary in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals.

''(3) APPLICATION.—The requirement under paragraphs (1) and (2) applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.''.

(b) CONFORMING AMENDMENT.—Section 704(a)(1)(B) (21 U.S.C. 374(a)(1)(B)) is amended by striking ''section 414 when'' and all that follows through ''subject to'' and inserting ''section 414, when the standard for record inspection under paragraph (1) or (2) of section 414(a) applies, subject to''.

**SEC. 102. REGISTRATION OF FOOD FACILITIES.**

(a) UPDATING OF FOOD CATEGORY REGULATIONS; BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(1) in paragraph (2), by—

(A) striking ''conducts business and'' and inserting ''conducts business, the e-mail address for the contact person of the facility or, in the case of a foreign facility, the United States agent for the facility, and''; and

(B) inserting '', or any other food categories as determined appropriate by the Secretary, including by guidance)'' after ''Code of Federal Regulations'';

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

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

''(3) BIENNIAL REGISTRATION RENEWAL.—During the period beginning on October 1 and ending on December 31 of each even-numbered year, a registrant that has submitted a registration under paragraph (1) shall submit to the Secretary a renewal registration containing the information described in paragraph (2). The Secretary shall provide for an abbreviated registration renewal process for any registrant that has not had any changes to such information since the registrant submitted the preceding registration or registration renewal for the facility involved.''.

(b) SUSPENSION OF REGISTRATION.—

(1) IN GENERAL.—Section 415 (21 U.S.C. 350d) is amended—

(A) in subsection (a)(2), by inserting after the first sentence the following: ''The registration shall contain an assurance that the Secretary will be permitted to inspect such facility at the times and in the manner permitted by this Act.'';

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following:

''(b) SUSPENSION OF REGISTRATION.—

''(1) IN GENERAL.—If the Secretary determines that food manufactured, processed, packed, or held by a facility registered under this section has a reasonable probability of causing serious adverse health consequences or death to humans or animals, the Secretary may by order suspend the registration of the facility under this section in accordance with this subsection.

''(2) HEARING ON SUSPENSION.—The Secretary shall provide the registrant subject to an order under paragraph (1) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 days after the issuance of the order, on the actions required for reinstatement of registration and why the registration that is subject to suspension should be reinstated. The Secretary shall reinstate a registration if the Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

''(3) POST-HEARING CORRECTIVE ACTION PLAN; VACATING OF ORDER.—

''(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan in a timely manner.

''(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

''(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, such facility shall not import food or offer to import food into the United States, or otherwise introduce food into interstate commerce in the United States.

''(5) REGULATIONS.—The Secretary shall promulgate regulations that describe the standards officials will use in making a determination to suspend a registration, and the format such officials will use to explain to the registrant the conditions found at the facility.

''(6) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner.''.

(2) IMPORTED FOOD.—Section 801(l) (21 U.S.C. 381(l)) is amended by inserting ''(or for which a registration has been suspended under such section)'' after ''section 415''.

(c) CONFORMING AMENDMENTS.—

(1) Section 301(d) (21 U.S.C. 331(d)) is amended by inserting ''415,'' after ''404,''.

(2) Section 415(d), as redesignated by subsection (b), is amended by adding at the end before the period ''for a facility to be registered, except with respect to the reinstatement of a registration that is suspended under subsection (b)''.

**SEC. 103. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

**''SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.**

''(a) IN GENERAL.—Each owner, operator, or agent in charge of a facility shall, in accordance with this section, evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent their occurrence and provide assurances that such food is not adulterated under section 402 or misbranded under section 403(w), monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

''(b) HAZARD ANALYSIS.—The owner, operator, or agent in charge of a facility shall—

''(1) identify and evaluate known or reasonably foreseeable hazards that may be associated with the facility, including—

''(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, allergens, and unapproved food and color additives; and

''(B) hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism; and

''(2) develop a written analysis of the hazards.

''(c) PREVENTIVE CONTROLS.—The owner, operator, or agent in charge of a facility shall identify and implement preventive controls, including at critical control points, if any, to provide assurances that—

''(1) hazards identified in the hazard analysis conducted under subsection (b) will be significantly minimized or prevented; and

''(2) the food manufactured, processed, packed, or held by such facility will not be adulterated under section 402 or misbranded under section 403(w).

''(d) MONITORING OF EFFECTIVENESS.—The owner, operator, or agent in charge of a facility shall monitor the effectiveness of the preventive controls implemented under subsection (c) to provide assurances that the outcomes described in subsection (c) shall be achieved.

''(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures that a facility will implement if the preventive controls implemented under subsection (c) are found to be ineffective through monitoring under subsection (d).

''(f) VERIFICATION.—The owner, operator, or agent in charge of a facility shall verify that—

''(1) the preventive controls implemented under subsection (c) are adequate to control the hazards identified under subsection (b);

''(2) the owner, operator, or agent is conducting monitoring in accordance with subsection (d);

''(3) the owner, operator, or agent is making appropriate decisions about corrective actions taken under subsection (e); and

''(4) there is documented, periodic reanalysis of the plan under subsection (i) to ensure that the plan is still relevant to the raw materials, as well as to conditions and processes in the facility, and to new and emerging threats.

''(g) RECORDKEEPING.—The owner, operator, or agent in charge of a facility shall maintain, for not less than 2 years, records documenting the monitoring of the preventive controls implemented under subsection (c), instances of nonconformance material to food safety, instances when corrective actions were implemented, and the efficacy of preventive controls and corrective actions.

''(h) WRITTEN PLAN AND DOCUMENTATION.—Each owner, operator, or agent in charge of a facility shall prepare a written plan that documents and describes the procedures used by the facility to comply with the requirements of this section, including analyzing the hazards under subsection (b) and identifying the preventive controls adopted to address those hazards under subsection (c). Such written plan, together with documentation that the plan is being implemented, shall be made promptly available to a duly authorized representative of the Secretary upon oral or written request.

''(i) REQUIREMENT TO REANALYZE.—Each owner, operator, or agent in charge of a facility shall conduct a reanalysis under subsection (b) whenever a significant change is made in the activities conducted at a facility operated by such owner, operator, or agent if the change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard or not less frequently than once every 3 years, whichever is earlier. Such reanalysis shall be completed and additional preventive controls needed to address the hazard identified, if any, shall be implemented before the change in activities at the facility is commenced. Such owner, operator, or agent shall revise the written plan required under subsection (h) if such a significant change is made or document the basis for the conclusion that no additional or revised preventive controls are needed. The Secretary may require a reanalysis under this section to respond to new hazards and developments in scientific understanding.

''(j) DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—An owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section, with respect to such facility:

''(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

''(k) EXCEPTION FOR FACILITIES IN COMPLIANCE WITH SECTION 419.—This section shall not apply to a facility that is subject to section 419.

''(l) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the production of food for animals other than man or the storage of packaged foods that are not exposed to the environment.

''(m) DEFINITIONS.—For purposes of this section:

''(1) CRITICAL CONTROL POINT.—The term 'critical control point' means a point, step, or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level.

''(2) FACILITY.—The term 'facility' means a domestic facility or a foreign facility that is required to register under section 415.

''(3) PREVENTIVE CONTROLS.—The term 'preventive controls' means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would have employed to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (a) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

''(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

''(B) Supervisor, manager, and employee hygiene training.

''(C) An environmental monitoring program to verify the effectiveness of pathogen controls.

''(D) An allergen control program.

''(E) A recall contingency plan.

''(F) Good Manufacturing Practices (GMPs).

''(G) Supplier verification activities.''.

(b) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall promulgate regulations to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(2) CONTENT.—The regulations promulgated under paragraph (1) shall provide sufficient flexibility to be applicable in all situations, including in the operations of small businesses.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to apply specific technologies, practices, or critical controls to an individual facility.

(4) REVIEW.—In promulgating the regulations under paragraph (1), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of this Act to ensure that the program under such section 418 is consistent, to the extent practicable, with applicable internationally recognized standards in existence on such date.

(c) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to hazard analysis and preventive controls required under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

''(oo) The operation of a facility that manufacturers, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418.''.

(e) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(f) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

(2) EXCEPTIONS.—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined by the Secretary) after the date that is 2 years after the date of enactment of this Act; and

(B) the amendments made by this section shall apply to a very small business (as defined by the Secretary) after the date that is 3 years after the date of enactment of this Act.

**SEC. 104. PERFORMANCE STANDARDS.**

The Secretary shall, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, to determine the most significant food-borne contaminants and, when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent the adulteration of the food under section 402 of the Federal Food, Drug, or Cosmetic Act, (21 U.S.C. 342) or to prevent the spread of communicable disease under section 361 of the Public Health Service Act (42 U.S.C. 264), shall issue contaminant-specific and science-based guidance documents, actions levels, or regulations. Such guidance, action levels, or regulations shall apply to products or product classes and shall not be written to be facility-specific.

**SEC. 105. STANDARDS FOR PRODUCE SAFETY.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

**''SEC. 419. STANDARDS FOR PRODUCE SAFETY.**

''(a) PROPOSED RULEMAKING.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in consultation with the Secretary of Agriculture and representatives of State departments of agriculture, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

''(2) PUBLIC INPUT.—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

''(3) CONTENT.—The proposed rulemaking under paragraph (1) shall—

''(A) include, with respect to growing, harvesting, sorting, and storage operations, minimum standards related to soil amendments, hygiene, packaging, temperature controls, animal encroachment, and water; and

''(B) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism.

''(4) PRIORITIZATION.—The Secretary shall prioritize the implementation of the regulations for specific fruits and vegetables that are raw agricultural commodities that have been associated with food-borne illness outbreaks.

''(b) FINAL REGULATION.—

''(1) IN GENERAL.—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum standards for those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

''(2) FINAL REGULATION.—The final regulation shall—

''(A) provide a reasonable period of time for compliance, taking into account the needs of small businesses for additional time to comply;

''(B) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States; and

''(C) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

''(c) CRITERIA.—

''(1) IN GENERAL.—The regulations adopted under subsection (b) shall—

''(A) set forth those procedures, processes, and practices as the Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402; and

''(B) permit States and foreign countries from which food is imported into the United States, subject to paragraph (2), to request from the Secretary variances from the requirements of the regulations, where upon approval of the Secretary, the variance is considered permissible under the requirements of the regulations adopted under subsection (b)(2)(C) and where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

''(2) APPROVAL OF VARIANCES.—A State or foreign country from which food is imported into the United States shall request a variance from the Secretary in writing. The Secretary may deny such a request as not reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

''(d) ENFORCEMENT.—The Secretary may coordinate with the Secretary of Agriculture and shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

''(e) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture and representatives of State departments of agriculture, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce.

''(f) EXCEPTION FOR FACILITIES IN COMPLIANCE WITH SECTION 418.—This section shall not apply to a facility that is subject to section 418.''.

(b) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following:

''(pp) The production or harvesting of produce not in accordance with minimum standards as provided by regulation under section 419(b) or a variance issued under section 419(c).''.

(c) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

**SEC. 106. PROTECTION AGAINST INTENTIONAL ADULTERATION.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 105, is amended by adding at the end the following:

**''SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERATION.**

''(a) IN GENERAL.—Not later than 24 months after the date of enactment of the FDA Food Safety Modernization Act, the

Secretary, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act.

''(b) CONTENT OF REGULATIONS.—Regulations under subsection (a) shall only apply to food—

''(1) for which the Secretary has identified clear vulnerabilities (such as short shelf-life or susceptibility to intentional contamination at critical control points);

''(2) in bulk or batch form, prior to being packaged for the final consumer; and

''(3) for which there is a high risk of intentional contamination, as determined by the Secretary, that could cause serious adverse health consequences or death to humans or animals.

''(c) DETERMINATIONS.—In making the determination under subsection (b)(3), the Secretary shall—

''(1) conduct vulnerability assessments of the food system;

''(2) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration at vulnerable points; and

''(3) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

''(d) EXCEPTION.—This section shall not apply to food produced on farms, except for milk.

''(e) DEFINITION.—For purposes of this section, the term 'farm' has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).''.

(b) GUIDANCE DOCUMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) CONTENT.—The guidance document issued under paragraph (1) shall—

(A) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food;

(B) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate;

(C) include a model assessment for a person to use under subparagraph (A);

(D) include examples of mitigation strategies or measures described in subparagraph (B); and

(E) specify situations in which the examples of mitigation strategies or measures described in subparagraph (D) are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time and manner in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

(c) PERIODIC REVIEW.—The Secretary shall periodically review and, as appropriate, update the regulation under subsection (a) and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 105, is amended by adding at the end the following:

''(qq) The failure to comply with section 420.''.

**SEC. 107. AUTHORITY TO COLLECT FEES.**

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by inserting after section 740 the following:

**''PART 5—FEES RELATED TO FOOD**

**''SEC. 740A. AUTHORITY TO COLLECT AND USE FEES.**

''(a) IN GENERAL.—

''(1) PURPOSE AND AUTHORITY.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

''(A) each domestic facility (as defined in section 415(b)) subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year;

''(B) each domestic facility (as defined in section 415(b)) and importer subject to a food recall in such fiscal year, to cover food recall activities performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for such year;

''(C) each importer participating in the voluntary qualified importer program under section 806 in such year, to cover the administrative costs such program for such year; and

''(D) each importer subject to a reinspection in such fiscal year at a port of entry, to cover reinspection-related costs at ports of entry for such year.

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

''(A) the term 'reinspection' means—

''(i) with respect to domestic facilities (as defined in section 415(b)), 1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction; and

''(ii) with respect to importers, 1 or more examinations conducted under section 801 subsequent to an examination conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction; and

''(B) the term 'reinspection-related costs' means all expenses, including administrative expenses, incurred in connection with—

''(i) arranging, conducting, and evaluating the results of reinspections; and

''(ii) assessing and collecting reinspection fees under this section.

''(b) ESTABLISHMENT OF FEES.—

''(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

''(2) FEE METHODOLOGY.—

''(A) FEES.—Fees amounts established for collection—

''(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

''(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

''(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

''(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

''(B) OTHER CONSIDERATIONS.—

''(i) VOLUNTARY QUALIFIED IMPORTER PROGRAM.—

''(I) PARTICIPATION.—In establishing the fee amounts under subparagraph (A)(iii) for a fiscal year, the Secretary shall provide for the number of importers who have submitted to the Secretary a notice under section 806(e) informing the Secretary of the intent of such importer to participate in the program under section 806 in such fiscal year.

''(II) RECOUPMENT.—In establishing the fee amounts under subparagraph (A)(iii) for the first 5 fiscal years after the date of enactment of this section, the Secretary shall include in such fee a reasonable surcharge that provides a recoupment of the costs expended by the Secretary to establish and implement the first year of the program under section 806.

''(ii) CREDITING OF FEES.—In establishing the fee amounts under subparagraph (A) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

''(3) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clause (i), (ii), (iii), and (iv) of paragraph (2)(A) available solely to pay for the costs referred to in such clause (i), (ii), (iii), and (iv) of paragraph (2)(A), respectively.

''(4) COMPLIANCE WITH INTERNATIONAL AGREEMENTS.—Nothing in this section shall be construed to authorize the assessment of any fee inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless appropriations for the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine and related activities of the Office of Regulatory Affairs at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine and related activities of the Office of Regulatory Affairs at the Food and Drug Administration for the preceding fiscal year (excluding the amount of fees appropriated for such fiscal year) multiplied by 1 plus 4.5 percent.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, under subsection (a), notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''(3) LIMITATION ON AMOUNT OF CERTAIN FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section and subject to

subparagraph (B), the Secretary may not collect fees in a fiscal year such that the amount collected—

''(i) under subparagraph (B) of subsection (a)(1) exceeds $20,000,000; and

''(ii) under subparagraphs (A) and (D) of subsection (a)(1) exceeds $25,000,000 combined.

''(B) EXCEPTION.—If a domestic facility (as defined in section 415(b)) or an importer becomes subject to a fee described in subparagraph (A), (B), or (D) of subsection (a)(1) after the maximum amount of fees has been collected by the Secretary under subparagraph (A), the Secretary may collect a fee from such facility or importer.

''(d) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

''(e) COLLECTION OF FEES.—

''(1) IN GENERAL.—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time and manner in which fees assessed under this section shall be collected.

''(2) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

''(f) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2010 and each fiscal year thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or otherwise affected under the other provisions of this section.''.

(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—

(1) AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking ''a drug'' and inserting ''a food, drug'';

(B) in clause (i) by striking ''exported drug'' and inserting ''exported food, drug''; and

(C) in clause (ii) by striking ''the drug'' each place it appears and inserting ''the food, drug''.

(2) CLARIFICATION OF CERTIFICATION.—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

''(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.''.

**SEC. 108. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.**

(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) IMPLEMENTATION PLAN.—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) RESEARCH.—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) REVISIONS.—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) CONSISTENCY WITH EXISTING PLANS.—The strategy described in paragraph (1) shall be consistent with—

(A) the National Incident Management System;

(B) the National Response Framework;

(C) the National Infrastructure Protection Plan;

(D) the National Preparedness Goals; and

(E) other relevant national strategies.

(b) COMPONENTS.—

(1) IN GENERAL.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) GOALS.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) PREPAREDNESS GOAL.—Enhance the preparedness of the agriculture and food system by—

(i) conducting vulnerability assessments of the agriculture and food system;

(ii) mitigating vulnerabilities of the system;

(iii) improving communication and training relating to the system;

(iv) developing and conducting exercises to test decontamination and disposal plans;

(v) developing modeling tools to improve event consequence assessment and decision support; and

(vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) DETECTION GOAL.—Improve agriculture and food system detection capabilities by—

(i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) EMERGENCY RESPONSE GOAL.—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) RECOVERY GOAL.—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture and food production;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

**SEC. 109. FOOD AND AGRICULTURE COORDINATING COUNCILS.**

The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help unify and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

**SEC. 110. BUILDING DOMESTIC CAPACITY.**

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and security of food and to prevent outbreaks of food-borne illness and other food-related hazards that can be addressed through preventive activities. Such

report shall include a description of the following:

(A) Analysis of the need for regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 109, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to food-borne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 108 and 205.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (G) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including techniques that can be employed at ports of entry and through Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities.

(d) INFORMATION TECHNOLOGY.—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) AUTOMATED RISK ASSESSMENT.—The report developed under subsection (a)(1) shall include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) TRACEBACK AND SURVEILLANCE REPORT.—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in food-borne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, outbreak identification, and traceback.

(g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.—The Secretary and the Secretary of Agriculture shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of food-borne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the following 2-year period.

**SEC. 111. FINAL RULE FOR PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a final rule based on the proposed rule issued by the Commissioner of Food and Drugs entitled ''Prevention of Salmonella Enteritidis in Shell Eggs During Production'', 69 Fed. Reg. 56824, (September 22, 2004).

**SEC. 112. SANITARY TRANSPORTATION OF FOOD.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

**SEC. 113. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.**

(a) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term ''early childhood education program'' means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA DEFINITIONS.—The terms ''local educational agency'', ''secondary school'', ''elementary school'', and ''parent'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SCHOOL.—The term ''school'' includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) APPLICABILITY OF FERPA.—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g).

(2) CONTENTS.—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following, and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child's physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child's readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual plan for food allergy management

that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early child education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) RELATION TO STATE LAW.—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.—

(1) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

(IV) any other activities that the Secretary determines appropriate;

(iii) an itemization of how grant funds received under this subsection will be expended;

(iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

(v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) USE OF FUNDS.—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) DURATION OF AWARDS.—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A grant awarded under this subsection may not be made in an amount that is more than $50,000 annually.

(7) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) MATCHING FUNDS.—

(A) IN GENERAL.—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $30,000,000 for fiscal year 2010 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

## TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

**SEC. 201. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.**

(a) TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

**"SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.**

''(a) IDENTIFICATION AND INSPECTION OF FACILITIES.—

''(1) IDENTIFICATION.—The Secretary shall allocate resources to inspect facilities according to the risk profile of the facilities, which shall be based on the following factors:

''(A) The risk profile of the food manufactured, processed, packed, or held at the facility.

''(B) The facility's history of food recalls, outbreaks, and violations of food safety standards.

''(C) The rigor of the facility's hazard analysis and risk-based preventive controls.

''(D) Whether the food manufactured, processed, packed, handled, prepared, treated, distributed, or stored at the facility meets the criteria for priority under section 801(h)(1).

''(E) Whether the facility has received a certificate as described in section 809(b).

''(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

''(2) INSPECTIONS.—

''(A) IN GENERAL.—Beginning on the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall increase the frequency of inspection of all facilities.

''(B) HIGH-RISK FACILITIES.—The Secretary shall increase the frequency of inspection of facilities identified under paragraph (1) as high-risk facilities such that—

''(i) for the first 2 years after the date of enactment of the FDA Food Safety Modernization Act, each high-risk facility is inspected not less often than once every 2 years; and

''(ii) for each succeeding year, each high-risk facility is inspected not less often than once each year.

''(C) NON-HIGH-RISK FACILITIES.—The Secretary shall ensure that each facility that is not identified under paragraph (1) as a high-risk facility is inspected not less often than once every 4 years.

''(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect articles of food imported into the United States according to the risk profile of the article of food, which shall be based on the following factors:

''(1) The risk profile of the food imported.

''(2) The risk profile of the countries of origin and countries of transport of the food imported.

''(3) The history of food recalls, outbreaks, and violations of food safety standards of the food importer.

''(4) The rigor of the foreign supplier verification program under section 805.

''(5) Whether the food importer participates in the voluntary qualified importer program under section 806.

''(6) Whether the food meets the criteria for priority under section 801(h)(1).

''(7) Whether the food is from a facility that has received a certificate as described in section 809(b).

''(8) Any other criteria deemed appropriate by the Secretary for purposes of allocating inspection resources.

''(c) COORDINATION.—The Secretary shall improve coordination and cooperation with the Secretary of Agriculture to target food inspection resources.

''(d) FACILITY.—For purposes of this section, the term 'facility' means a domestic facility or a foreign facility that is required to register under section 415.''.

(b) ANNUAL REPORT.—Section 903 (21 U.S.C. 393) is amended by adding at the end the following:

''(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report regarding—

''(1) information about food facilities including—

''(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

''(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

''(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

''(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary did not inspect in the previous fiscal year;

''(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

''(F) the number of high-risk facilities identified pursuant to section 421 that the Secretary did not inspect in the previous fiscal year;

''(2) information about food imports including—

''(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

''(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

''(C) the average cost of physically inspecting or sampling a food line subject to this Act that is imported or offered for import into the United States; and

''(3) information on the foreign offices established under section 309 of the FDA Food Safety Modernization Act including—

''(A) the number of foreign offices established; and

''(B) the number of personnel permanently stationed in each foreign office.

''(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.''.

**SEC. 202. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 201, is amended by adding at the end the following:

**''SEC. 422. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.**

''(a) RECOGNITION OF LABORATORY ACCREDITATION.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(A) provide for the recognition of accreditation bodies that accredit laboratories, including laboratories run and operated by a State or locality, with a demonstrated capability to conduct analytical testing of food products; and

''(B) establish a publicly available registry of accreditation bodies, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies.

''(2) FOREIGN LABORATORIES.—Accreditation bodies may accredit laboratories that operate outside the United States, so long as such laboratories meet the accreditation standards applicable to domestic laboratories accredited under this section.

''(3) MODEL ACCREDITATION STANDARDS.—The Secretary shall develop model standards that an accreditation body shall require laboratories to meet in order to be included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall look to existing standards for guidance. The model standards shall include methods to ensure that—

''(A) appropriate sampling and analytical procedures are followed and reports of analyses are certified as true and accurate;

''(B) internal quality systems are established and maintained;

''(C) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is recognized;

''(D) individuals who conduct the analyses are qualified by training and experience to do so; and

''(E) any other criteria determined appropriate by the Secretary.

''(4) REVIEW OF ACCREDITATION.—To assure compliance with the requirements of this section, the Secretary shall—

''(A) periodically, or at least every 5 years, reevaluate accreditation bodies recognized under paragraph (1); and

''(B) promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

''(b) TESTING PROCEDURES.—

''(1) IN GENERAL.—Food testing shall be conducted by either Federal laboratories or non-Federal laboratories that have been accredited by an accreditation body on the registry established by the Secretary under subsection (a) whenever such testing is either conducted by or on behalf of an owner or consignee—

''(A) in support of admission of an article of food under section 801(a);

''(B) due to a specific testing requirement in this Act or implementing regulations, when applied to address an identified or suspected food safety problem;

''(C) under an Import Alert that requires successful consecutive tests; or

''(D) is so required by the Secretary as the Secretary deems appropriate to address an identified or suspected food safety problem.

''(2) RESULTS OF TESTING.—The results of any such testing shall be sent directly to the Food and Drug Administration. Such results may be submitted to the Food and Drug Administration through electronic means.

''(c) REVIEW BY SECRETARY.—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by an accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing results for the purpose of determining the need for a national recall or other compliance and enforcement activities.

''(d) NO LIMIT ON SECRETARIAL AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Secretary to review and act upon information from food testing, including determining the sufficiency of such information and testing.''.

(b) FOOD EMERGENCY RESPONSE NETWORK.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State food laboratories, including the sharing of data between State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

**SEC. 203. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.**

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify the means by which each laboratory network member could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) REPORTING REQUIREMENT.—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

**SEC. 204. ENHANCING TRACEBACK AND RECORDKEEPING.**

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Agriculture and representatives of State departments of health and agriculture, shall improve the capacity of the Secretary to effectively and rapidly track and trace, in the event of an outbreak, fruits and vegetables that are raw agricultural commodities.

(b) PILOT PROJECT.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Secretary shall establish a pilot project in coordination with the produce industry to explore and evaluate methods for rapidly and effectively tracking and tracing fruits and

vegetables that are raw agricultural commodities so that, if an outbreak occurs involving such a fruit or vegetable, the Secretary may quickly identify the source of the outbreak and the recipients of the contaminated food.

(2) CONTENT.—The Secretary shall select participants from the produce industry to run projects which overall shall include at least 3 different types of fruits or vegetables that have been the subject of outbreaks during the 5-year period preceding the date of enactment of this Act, and shall be selected in order to develop and demonstrate—

(A) methods that are applicable and appropriate for small businesses; and

(B) technologies, including existing technologies, that enhance traceback and trace forward.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot project under subsection (b) together with recommendations for establishing more effective traceback and trace forward procedures for fruits and vegetables that are raw agricultural commodities.

(d) TRACEBACK PERFORMANCE REQUIREMENTS.—Not later than 24 months after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish standards for the type of information, format, and timeframe for persons to submit records to aid the Secretary in effectively and rapidly tracking and tracing, in the event of an outbreak, fruits and vegetables that are raw agricultural commodities. Nothing in this section shall be construed as giving the Secretary the authority to prescribe specific technologies for the maintenance of records.

(e) PUBLIC INPUT.—During the comment period in the notice of proposed rulemaking under subsection (d), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(f) RAW AGRICULTURAL COMMODITY.—In this section, the term ''raw agricultural commodity'' has the meaning given that term in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)).

**SEC. 205. SURVEILLANCE.**

(a) DEFINITION OF FOOD-BORNE ILLNESS OUTBREAK.—In this section, the term ''food-borne illness outbreak'' means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a food.

(b) FOOD-BORNE ILLNESS SURVEILLANCE SYSTEMS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance food-borne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on food-borne illnesses by—

(A) coordinating Federal, State and local food-borne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of findings on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data, and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a food-borne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of fingerprinting strategies for food-borne infectious agents, in order to identify new or rarely documented causes of food-borne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating food-borne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels; and

(J) other activities as determined appropriate by the Secretary.

(2) PARTNERSHIPS.—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food industry, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of food-borne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on food-borne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to food-borne illness surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers to improvement in food-borne illness surveillance and its utility for preventing food-borne illness at Federal, State, and local levels;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group's recommendations, and achieve the purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(c) IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.—

(1) IN GENERAL.—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve food-borne illness outbreak response and containment.

(B) Accelerate food-borne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of food-borne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 108.

(2) REVIEW.—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) FOOD SAFETY CAPACITY BUILDING GRANTS.—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b–20(b)) is amended—

(1) by striking ''2002'' and inserting ''2010''; and

(2) by striking ''2003 through 2006'' and inserting ''2011 through 2014''.

**SEC. 206. MANDATORY RECALL AUTHORITY.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 202, is amended by adding at the end the following:

**''SEC. 423. MANDATORY RECALL AUTHORITY.**

''(a) VOLUNTARY PROCEDURES.—If the Secretary determines, based on information gathered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

''(b) PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order require, as the Secretary deems necessary, such person to—

''(1) immediately cease distribution of such article; or

''(2) immediately notify all persons—

''(A) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

''(B) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

''(c) HEARING ON ORDER.—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 days after the issuance of the order, on the actions required by the order and on why the article that is the subject of the order should not be recalled.

''(d) POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.—

''(1) AMENDMENT OF ORDER.—If, after providing opportunity for an informal hearing

under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

''(A) amend the order to require recall of such article or other appropriate action;

''(B) specify a timetable in which the recall shall occur;

''(C) require periodic reports to the Secretary describing the progress of the recall; and

''(D) provide notice to consumers to whom such article was, or may have been, distributed.

''(2) VACATING OF ORDER.—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

''(e) COOPERATION AND CONSULTATION.—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

''(f) PUBLIC NOTIFICATION.—In conducting a recall under this section, the Secretary shall—

''(1) ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification—

''(A) of the recall to consumers and retailers to whom such article was, or may have been, distributed; and

''(B) that includes, at a minimum—

''(i) the name of the article of food subject to the recall; and

''(ii) a description of the risk associated with such article; and

''(2) consult the policies of the Department of Agriculture regarding providing to the public a list of retail consignees receiving products involved in a Class I recall and shall consider providing such a list to the public, as determined appropriate by the Secretary.

''(g) NO DELEGATION.—The authority conferred by this section to order a recall or vacate a recall order shall not be delegated to any officer or employee other than the Commissioner.

''(h) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall.''.

(b) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting ''or any person who does not comply with a recall order under section 423'' after ''section 402(a)(2)(B)''.

(c) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

''(rr) The refusal or failure to follow an order under section 423.''.

**SEC. 207. ADMINISTRATIVE DETENTION OF FOOD.**

(a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking ''credible evidence or information indicating'' and inserting ''reason to believe''; and

(2) striking ''presents a threat of serious adverse health consequences or death to humans or animals'' and inserting ''is adulterated or misbranded''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 208. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.**

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator''), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

(b) DEVELOPMENT OF STANDARDS.—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) DEVELOPMENT OF MODEL PLANS.—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) EXERCISES.—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

(e) MODIFICATIONS.—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) PRIORITIZATION.—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

## TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

**SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

**''SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

''(a) IN GENERAL.—

''(1) VERIFICATION REQUIREMENT.—Each United States importer shall perform risk-based foreign supplier verification activities in accordance with regulations promulgated under subsection (c) for the purpose of verifying that the food imported by the importer or its agent is—

''(A) produced in compliance with the requirements of section 418 or 419, as appropriate; and

''(B) is not adulterated under section 402 or misbranded under section 403(w).

''(2) IMPORTER DEFINED.—For purposes of this section, the term 'importer' means, with respect to an article of food—

''(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

''(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

''(b) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist United States importers in developing foreign supplier verification programs.

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a). Such regulations shall, as appropriate, include a process for verification by a United States importer, with respect to each foreign supplier from which it obtains food, that the imported food is produced in compliance with the requirements of section 418 or 419, as appropriate, and is not adulterated under section 402 or misbranded under section 403(w).

''(2) VERIFICATION.—The regulations under paragraph (1) shall require that the foreign supplier verification program of each importer be adequate to provide assurances that each foreign supplier to the importer produces the imported food employing processes and procedures, including risk-based reasonably appropriate preventive controls, equivalent in preventing adulteration and reducing hazards as those required by section 418 or section 419, as appropriate.

''(3) ACTIVITIES.—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

''(d) RECORD MAINTENANCE AND ACCESS.—Records of a United States importer related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

''(e) DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—An owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section with respect to such facility:

''(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

''(f) PUBLICATION OF LIST OF PARTICIPANTS.—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.''.

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 206, is amended by adding at the end the following:

''(ss) The importation or offering for importation of a food if the importer (as defined in section 805) does not have in place a foreign supplier verification program in compliance with such section 805.''.

(c) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is amended by adding ''or the importer (as defined in section 805) is in violation of such section 805'' after ''or in violation of section 505''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

**SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

**''SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

''(a) IN GENERAL.—Beginning not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(1) establish a program, in consultation with the Department of Homeland Security, to provide for the expedited review and importation of food offered for importation by United States importers who have voluntarily agreed to participate in such program; and

''(2) issue a guidance document related to participation and compliance with such program.

''(b) VOLUNTARY PARTICIPATION.—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program procedures established by the Secretary.

''(c) ELIGIBILITY.—In order to be eligible, an importer shall be offering food for importation from a facility that has a certification described in section 809(b). In reviewing the applications and making determinations on such requests, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

''(1) The nature of the food to be imported.

''(2) The compliance history of the foreign supplier.

''(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards.

''(4) The compliance of the importer with the requirements of section 805.

''(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

''(6) The potential risk for intentional adulteration of the food.

''(7) Any other factor that the Secretary determines appropriate.

''(d) REVIEW AND REVOCATION.—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

''(e) NOTICE OF INTENT TO PARTICIPATE.—An importer that intends to participate in the program under this section in a fiscal year shall submit a notice to the Secretary of such intent at time and in a manner established by the Secretary.

''(f) FALSE STATEMENTS.—Any statement or representation made by an importer to the Secretary shall be subject to section 1001 of title 18, United States Code.

''(g) DEFINITION.—For purposes of this section, the term 'importer' means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.''.

**SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.**

(a) IN GENERAL.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: ''With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (p) that such food be accompanied by a certification or other assurance that the food meets some or all applicable requirements of this Act, then such article shall be refused admission.''.

(b) ADDITION OF CERTIFICATION REQUIREMENT.—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

''(p) CERTIFICATIONS CONCERNING IMPORTED FOODS.—

''(1) IN GENERAL.—The Secretary, based on public health considerations, including risks associated with the food or its place of origin, may require as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity specified in paragraph (2) provide a certification or such other assurances as the Secretary determines appropriate that the article of food complies with some or all applicable requirements of this Act, as specified by the Secretary. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of certified entities, or in such other form as the Secretary may specify. Such certification shall be used for designated food imported from countries with which the Food and Drug Administration has an agreement to establish a certification program.

''(2) CERTIFYING ENTITIES.—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

''(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by such government or the Secretary; or

''(B) such other persons or entities accredited pursuant to section 809 to provide such certification or assurance.

''(3) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary may—

''(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

''(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is no longer valid or reliable.

''(4) ELECTRONIC SUBMISSION.—The Secretary shall provide for the electronic submission of certifications under this subsection.

''(5) FALSE STATEMENTS.—Any statement or representation made by an entity described in paragraph (2) to the Secretary shall be subject to section 1001 of title 18, United States Code.''.

(c) CONFORMING TECHNICAL AMENDMENT.—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking ''with respect to an article included within the provision of the fourth sentence of subsection (a)'' and inserting ''with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761,''.

(d) NO LIMIT ON AUTHORITY.—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct random inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

**SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.**

(a) IN GENERAL.—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting ''any country to which the article has been refused entry;'' after ''the country from which the article is shipped;''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart I of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 305. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by adding at the end the following:

**''SEC. 807. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.**

''The Secretary may review information from a country outlining the statutes, regulations, standards, and controls of such country, and conduct on-site audits in such country to verify the implementation of those statutes, regulations, standards, and controls. Based on such review, the Secretary shall determine whether such country can provide reasonable assurances that the food supply of the country is equivalent in safety to food manufactured, processed, packed, or held in the United States.''.

**SEC. 306. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD.**

(a) IN GENERAL.—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) CONSULTATION.—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, and nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) PLAN.—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and detection techniques.

**SEC. 307. INSPECTION OF FOREIGN FOOD FACILITIES.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 305, is amended by inserting at the end the following:

**''SEC. 808. INSPECTION OF FOREIGN FOOD FACILITIES.**

''(a) INSPECTION.—The Secretary—

''(1) may enter into arrangements and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

''(2) shall direct resources to inspections of foreign facilities, suppliers, and food types,

especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

''(b) EFFECT OF INABILITY TO INSPECT.—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign facility registered under section 415 of which the owner, operator, or agent in charge of the facility, or the government of the foreign country, refuses to permit entry of United States inspectors, upon request, to inspect such facility. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge refuses such a request to inspect a facility more than 48 hours after such request is submitted.''.

**SEC. 308. ACCREDITATION OF THIRD-PARTY AUDITORS AND AUDIT AGENTS.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 307, is amended by adding at the end the following:

**''SEC. 809. ACCREDITATION OF THIRD-PARTY AUDITORS AND AUDIT AGENTS.**

''(a) DEFINITIONS.—In this section:

''(1) ACCREDITED AUDIT AGENT.—The term 'accredited audit agent' means an audit agent accredited by an accreditation body under this section.

''(2) AUDIT AGENT.—The term 'audit agent' means an individual who is qualified to conduct food safety audits, and who may be an employee or an agent of a third-party auditor.

''(3) ACCREDITATION BODY.—The term 'accreditation body' means a recognized authority that performs accreditation of third-party auditors and audit agents.

''(4) ACCREDITED THIRD-PARTY AUDITOR.—The term 'accredited third-party auditor' means a third-party auditor accredited by an accreditation body under this section.

''(5) CONSULTATIVE AUDIT.—The term 'consultative audit' means an audit of an eligible entity—

''(A) to determine whether such entity is in compliance with the provisions of this Act and with applicable industry standards and practices; and

''(B) the results of which are for internal facility purposes only.

''(6) ELIGIBLE ENTITY.—The term 'eligible entity' means a foreign entity, including foreign facilities registered under section 415, in the food import supply chain that chooses to be audited by an accredited third-party auditor or audit agent.

''(7) REGULATORY AUDIT.—The term 'regulatory audit' means an audit of an eligible entity—

''(A) to determine whether such entity is in compliance with the provisions of this Act; and

''(B) the results of which determine—

''(i) whether an entity is eligible to receive a certification under section 801(p); and

''(ii) whether the entity is eligible to participate in the voluntary qualified importer program under section 806.

''(8) THIRD-PARTY AUDITOR.—The term 'third-party auditor' means a foreign government, foreign cooperative, or any other qualified third party, as the Secretary determines appropriate, that conducts audits of eligible entities to certify that such eligible entities meet the applicable requirements of this section.

''(b) ACCREDITATION SYSTEM.—

''(1) ACCREDITATION BODIES.—

''(A) RECOGNITION OF ACCREDITATION BODIES.—Beginning not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors and audit agents to certify that eligible entities meet the applicable requirements of this Act.

''(B) NOTIFICATION.—Each accreditation body recognized by the Secretary shall submit to the Secretary a list of all accredited third-party auditors and audit agents accredited by such body.

''(C) REVOCATION OF RECOGNITION AS AN ACCREDITATION BODY.—The Secretary shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

''(2) MODEL ACCREDITATION STANDARDS.—The Secretary shall develop model standards, including audit report requirements, and each recognized accreditation body shall ensure that third-party auditors and audit agents meet such standards in order to qualify as an accredited third-party auditor or audit agent under this section. In developing the model standards, the Secretary shall look to standards in place on the date of the enactment of this section for guidance, to avoid unnecessary duplication of efforts and costs.

''(c) THIRD-PARTY AUDITORS AND AUDIT AGENCIES.—

''(1) REQUIREMENTS FOR ACCREDITATION AS A THIRD-PARTY AUDITOR OR AUDIT AGENT.—

''(A) FOREIGN GOVERNMENTS.—Prior to accrediting a foreign government as an accredited third-party auditor, the accreditation body shall perform such reviews and audits of food safety programs, systems, and standards of the government as the Secretary deems necessary to determine that the foreign government is capable of adequately ensuring that eligible entities certified by such government meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import to the United States.

''(B) FOREIGN COOPERATIVES AND OTHER THIRD PARTIES.—Prior to accrediting a foreign cooperative that aggregates the products of growers or processors, or any other third party that the Secretary determines appropriate to be an accredited third-party auditor or audit agent, the accreditation body shall perform such reviews and audits of the training and qualifications of auditors used by that cooperative or party and conduct such reviews of internal systems and such other investigation of the cooperative or party as the Secretary deems necessary to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity meets the requirements of this Act.

''(2) REQUIREMENT TO ISSUE CERTIFICATION OF ELIGIBLE ENTITIES.—

''(A) IN GENERAL.—An accreditation body may not accredit a third-party auditor or audit agent unless such third-party auditor or audit agent agrees to issue a written and electronic certification to accompany each food shipment for import into the United States from an eligible entity certified by the third-party auditor or audit agent, subject to requirements set forth by the Secretary. The Secretary shall consider such certificates when targeting inspection resources under section 421.

''(B) PURPOSE OF CERTIFICATION.—The Secretary shall use evidence of certification provided by accredited third-party auditors and audit agents—

''(i) to determined the eligibility of an importer to receive a certification under section 801(p); and

''(ii) determine the eligibility of an importer to participate in the voluntary qualified importer program under section 806.

''(3) AUDIT REPORT REQUIREMENTS.—

''(A) REQUIREMENTS IN GENERAL.—As a condition of accreditation, an accredited third-party auditor or audit agent shall prepare the audit report for an audit, in a form and manner designated by the Secretary, which shall include—

''(i) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

''(ii) the dates of the audit;

''(iii) the scope of the audit; and

''(iv) any other info required by the Secretary that relate to or may influence an assessment of compliance with this Act.

''(B) SUBMISSION OF REPORTS TO THE SECRETARY.—

''(i) IN GENERAL.—Following any accreditation of a third-party auditor or audit agent, the Secretary may, at any time, require the accredited third-party auditor or audit agent to submit to the Secretary an onsite audit report and such other reports or documents required as part of the audit process, for any eligible entity certified by the third-party auditor or audit agent. Such report may include documentation that the eligible entity is in compliance with any applicable registration requirements.

''(ii) LIMITATION.—The requirement under clause (i) shall not include any report or other documents resulting from a consultative audit by the accredited third-party auditor or audit agent, except that the Secretary may access the results of a consultative audit in accordance with section 414.

''(4) REQUIREMENTS OF AUDIT AGENTS.—

''(A) RISKS TO PUBLIC HEALTH.—If, at any time during an audit, an accredited audit agent discovers a condition that could cause or contribute to a serious risk to the public health, the audit agent shall immediately notify the Secretary of—

''(i) the identification of the eligible entity subject to the audit; and

''(ii) such condition.

''(B) TYPES OF AUDITS.—An accredited audit agent may perform consultative and regulatory audits of eligible entities.

''(C) LIMITATIONS.—An accredited audit agent may not perform a regulatory audit of an eligible entity if such agent has performed a consultative audit or a regulatory audit of such eligible entity during the previous 24-month period.

''(5) CONFLICTS OF INTEREST.—

''(A) THIRD-PARTY AUDITORS.—An accredited third-party auditor shall—

''(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

''(ii) in carrying out audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

''(iii) annually make available to the Secretary disclosures of the extent to which such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

''(B) AUDIT AGENTS.—An accredited audit agent shall—

''(i) not own or operate an eligible entity to be certified by such agent;

''(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be certified by such agent; and

''(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

''(C) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to ensure that there are protections against conflicts of interest between an accredited third-party auditor or audit agent and the eligible entity to be certified by such auditor or audit agent. Such regulations shall include—

''(i) requiring that audits performed under this section be unannounced;

''(ii) a structure, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors or audit agents to decrease the potential for conflicts of interest; and

''(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agent and any person that owns or operates an eligible entity to be certified by such auditor or audit agent.

''(6) WITHDRAWAL OF ACCREDITATION.—The Secretary shall withdraw accreditation from an accredited third-party auditor or audit agent—

''(A) if food from an eligible entity certified by such third-party auditor or audit agent is linked to an outbreak of human or animal illness;

''(B) following a performance audit and finding by the Secretary that the third-party auditor or audit agent no longer meets the requirements for accreditation; or

''(C) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.

''(7) NEUTRALIZING COSTS.—The Secretary shall establish a method, similar to the method used by the Department of Agriculture, by which accredited third-party auditors and audit agents reimburse the Food and Drug Administration for the work performed to establish and administer the accreditation system under this section. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism.

''(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—An eligible entity shall apply for annual recertification by an accredited third-party auditor or audit agent if such entity—

''(1) intends to participate in voluntary qualified importer program under section 806; or

''(2) must provide to the Secretary a certification under section 801(p) for any food from such entity.

''(e) FALSE STATEMENTS.—Any statement or representation made—

''(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

''(2) by an accredited third-party auditor or an audit agent to the Secretary,

shall be subject to section 1001 of title 18, United States Code.

''(f) MONITORING.—To ensure compliance with the requirements of this section, the Secretary shall—

''(1) periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

''(2) periodically, or at least once every 4 years, audit the performance of each accredited third-party auditor and audit agent, through the review of audit reports by such auditors and audit agents, the compliance history as available of eligible entities certified by such auditors and audit agents, and any other measures deemed necessary by the Secretary;

''(3) at any time, conduct an onsite audit of any eligible entity certified by an accredited third-party auditor or audit agent, with or without the auditor or audit agent present; and

''(4) take any other measures deemed necessary by the Secretary.

''(g) PUBLICLY AVAILABLE REGISTRY.—The Secretary shall establish a publicly available registry of accreditation bodies and of accredited third-party auditors and audit agents, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies, auditors, and agents.

''(h) LIMITATIONS.—

''(1) NO EFFECT ON SECTION 704 INSPECTIONS.—The audits performed under this section shall not be considered inspections under section 704.

''(2) NO EFFECT ON INSPECTION AUTHORITY.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.''.

**SEC. 309. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall by October 1, 2010, establish an office of the Food and Drug Administration in not less than 5 foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

(b) CONSULTATION.—In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State and the United States Trade Representative.

(c) REPORT.—Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices under subsection (a), the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

**TITLE IV—MISCELLANEOUS PROVISIONS**

**SEC. 401. FUNDING FOR FOOD SAFETY.**

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration—

(1) $825,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for fiscal years 2011 through 2014.

(b) INCREASED NUMBER OF FIELD STAFF.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(1) 3,800 staff members in fiscal year 2010;

(2) 4,000 staff members in fiscal year 2011;

(3) 4,200 staff members in fiscal year 2012;

(4) 4,600 staff members in fiscal year 2013; and

(5) 5,000 staff members in fiscal year 2014.

**SEC. 402. JURISDICTION; AUTHORITIES.**

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes and regulations;

(2) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(3) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency involving products regulated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act.

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By Mr. AKAKA:

S. 514. A bill to amend title 38, United States Code, to enhance vocational rehabilitation benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I am introducing today the proposed Veterans Rehabilitation and Training Improvements Act of 2009. This measure would improve the program of rehabilitation and training for veterans who suffer from service-connected disabilities by offering an increase in the amount of subsistence allowances, reimbursing certain incidental costs, and repealing the limit on the number of individuals who may be enrolled in a program of Independent Living services.

Under current law, veterans who are enrolled in a program of rehabilitation under Chapter 31 receive a monthly subsistence allowance. This, in addition to the payment of the costs of the program of rehabilitation, is intended to offer the veteran a means of paying for basic living expenses while pursuing their training or education.

With the enactment of the new Post 9–11 GI Bill last year, P.L. 110–323, which adopted a tuition-and-fees plus a living allowance approach to the payment of benefits under the educational assistance program, I am concerned that there may be an inequity between the vocational rehabilitation and education programs and that individuals who would truly benefit from enrollment in a program of rehabilitation and employment under Chapter 31 will be tempted to enroll in the Chapter 33 education program in order to take advantage of the higher living allowance. Those who would make such an election might forgo valuable counseling, employment and placement, and other assistance from which they might benefit.

To address this concern, the measure I am introducing today would modify the Chapter 31 program by offering a subsistence allowance to enrollees equal to the national average for the Department of Defense's Basic Allowance for Housing, BAH, for members of the military at the E–5 level, adjusted for marital status. This is similar, although not identical to, the approach of the new chapter 33 program which

adopted a regionalized BAH approach based on the address of the institution.

This is intended to help ensure that individuals who could best benefit from enrollment in the Chapter 31 program are not faced with a disincentive to do so.

With regard to the second issue, VA is permitted to pay certain costs associated with enrollment of an individual in a program of rehabilitation—for example, fees, equipment, and supplies. However, there are other costs that an individual might incur that are not covered by VA and these costs could represent a substantial barrier to the successful completion of a program. An example could be that of a single young mother with young children who—in order to attend classes—needs child care. Another example might be a veteran who lost both legs in service and needs a new suit in order to make the most favorable impression at the interview with a prospective employer.

The legislation I am introducing today would require VA to issue regulations providing for the reimbursement of incidental costs associated with obstacles that pose substantial barriers to successful completion of a program. I believe that this will substantially increase the ability of many individuals to finish their rehabilitation programs and be placed in rewarding jobs.

I also believe we need to repeal the cap on the number of individuals who may be enrolled in a program of Independent Living services under the Chapter 31 program. Current law provides that individuals for whom a determination is made that a program of rehabilitation leading to employment is not reasonably feasible may be eligible for enrollment in a program of independent living services which is designed to help the individual achieve a maximum level of independence in daily life. However, the number of veterans who in any one year may enroll in these programs is capped at 2,600.

Even though the VA has testified in the past that this enrollment cap does not present any problem for the effective conduct of the program, I remain concerned—despite the fact that last year Congress raised the cap from 2,500 to 2,600 in P.L. 110–389—that the effect of the cap is to put downward pressure on VA's enrollment of eligible veterans in this very important program. This is of particular concern when so many of today's returning servicemembers suffer from disabilities that may require extensive periods of rehabilitation and assistance in achieving independence in their daily lives that can result from such conditions as traumatic brain injury or PTSD.

Disabled veterans are transitioning from military service into an economy that is changing, challenging, and contracting at historic rates. My bill will give these veterans more of the help they need by increasing program flexibility and boosting the living stipend for disabled veterans undergoing rehabilitation.

While there will be costs associated with this legislation, the veterans who are served by the chapter 31 rehabilitation and employment program are the highest priority for our Nation—individuals who have incurred service-connected disabilities in service to the country. This truly is one of the costs of war that must be borne.

I look forward to working with my colleagues in moving this legislation through the Congress.

Mr. President, 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 placed in the RECORD, as follows:

S. 514

*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 ''Veterans Rehabilitation and Training Improvements Act of 2009''

**SEC. 2. SUBSISTENCE ALLOWANCE FOR VETERANS PARTICIPATING IN A PROGRAM OF REHABILITATION.**

(a) MODIFICATION OF AMOUNT OF SUBSISTENCE ALLOWANCE.—Subsection (b) of section 3108 of title 38, United States Code, is amended to read as follows:

''(b) Except as otherwise provided in this section, the amount of the subsistence allowance to be paid to a veteran under this chapter for a month during which the veteran participates in a rehabilitation program under this chapter shall be the amount equal to the national average of the amount of basic allowance for housing payable under section 403 of title 37 for that month for a member of the uniformed services in pay grade E–5 with or without dependents, as applicable.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2009, and shall apply with respect to subsistence allowances payable under chapter 31 of title 38, United States Code, for months beginning on or after that date.

**SEC. 3. REIMBURSEMENT FOR COSTS OF PARTICIPATION IN A PROGRAM OF REHABILITATION FOLLOWING SUCCESSFUL COMPLETION OF PROGRAM OF REHABILITATION.**

Section 3108 of title 38, United States Code, is amended by adding at the end the following new subsection:

''(j)(1) The Secretary may, under such regulations as the Secretary shall prescribe for purposes of this subsection, pay to each veteran who successfully completes participation in a rehabilitation program under this chapter an amount to reimburse the veteran for costs incurred by veteran as a direct consequence of participation in the program. The costs for which payment may be made under this subsection may include child care expenses, costs for clothing for interviews for employment, and such other costs as the Secretary may prescribe in such regulations. The amounts payable in reimbursement for any such costs shall be the amounts determined in accordance with such regulations.

''(2) Any payment of costs in reimbursement of a veteran under this subsection is in addition to the subsistence allowance payable to the veteran under this section.''.

**SEC. 4. REPEAL OF LIMITATION ON NUMBER OF VETERANS ENROLLED IN PROGRAMS OF INDEPENDENT LIVING SERVICES AND ASSISTANCE.**

Section 3120 of title 38, United States Code, is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

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By Mr. LEAHY (for himself, Mr. HATCH, Mr. SCHUMER, Mr. CRAPO, Mr. WHITEHOUSE, Mr. RISCH, and Mrs. GILLIBRAND):

S. 515. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, ingenuity and innovation have been a cornerstone of the American economy from the time Thomas Jefferson issued the first patent to today.

The Founding Fathers recognized the importance of promoting innovation, and the Constitution explicitly grants Congress the power to ''promote the progress and science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.'' The discoveries made by American inventors and research institutions, commercialized by our companies, and protected and promoted by our patent laws have made our system the envy of the world.

The legislation I introduce today with Senator HATCH, and many others and from across the political spectrum, will keep America in its longstanding position at the pinnacle of innovation. This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party's access to court is denied.

Innovation and economic development are not uniquely Democratic or Republican objectives. I have been working on the Patent Reform Act on a bipartisan basis with Senator HATCH and others for several years—and Senator HATCH and I worked on various patent issues for many years before that.

Last Congress, I introduced, along with Senator HATCH, the Patent Reform Act of 2007, which is the precursor to the legislation we introduce today. That bill was the subject of consideration and amendments over four weeks of mark-up sessions in the Senate Judiciary Committee. After the Judiciary Committee voted to approve the bill in July 2007, we continued to hold numerous meetings, briefings, and stakeholder roundtables—again, on a bipartisan basis.

The legislation we introduce today picks up where we left off in those discussions. We have made some changes from the Committee-approved bill in response to concerns we heard from groups ranging from labor unions to small inventors to manufacturers. We have removed the requirement that all patent applications be published 18 months after they are filed and we have removed the requirement for Applicant Quality Submissions. We have also adopted the House approach to improving the current inter partes reexamination process, rather than creating a new second window post-grant review.

Perhaps the most hotly debated topic in the patent reform debate last Congress was the damages provision. The reasonable royalty language in the bill we introduce today is identical to the language approved by the Judiciary Committee last Congress. While I strongly support this language, I am prepared to continue the conversation and debate from the last Congress in order to find the best language we can.

There have been several positive developments since the Committee voted to report the legislation in July 2007. Senator SPECTER has made constructive suggestions about a ''gate keeping'' role for the court in damage calculations. The Supreme Court's Quanta decision may offer a useful way of describing the truly inventive feature of a patent. There is much work to do on this provision and I am optimistic that by continuing to work together, we will find the right language.

During consideration of the Patent Reform Act of 2007 in Committee last Congress, I offered an amendment, which was adopted, to codify the inequitable conduct doctrine. Senator HATCH has asked that the provision be removed on introduction this year. I understand that the issue of inequitable conduct is very important to Senator HATCH, and I will work with him to address any statutory changes.

It has been more than 50 years since Congress significantly updated the patent system. In the decades since, our economy has changed dramatically. No longer is the economy defined only by assembly lines and brick-and-mortar production. We are living in the Information Age, and the products and processes that are being patented are changing as quickly as the times themselves.

A patent system developed for a 1952 economy, needs to be reconsidered in light of 21st century realities, while staying true to our constitutional imperative. The patent laws that were sufficiently robust for promoting innovation and economic development are now actually impeding growth, harming innovators and raising prices on consumers.

The array of voices heard in this debate—representing virtually all sectors of the economy and all interests in the patent system—have certainly not been uniform, but three major areas of concern with the current patent system can be distilled from their discussions.

First, there is significant concern that the U.S. Patent and Trademark Office, PTO, is issuing low quality patents. Patent examiners are facing a difficult task given the explosion in the number of applications and the increasing complexity of those applications. When Congress last overhauled the patent system in 1952, the PTO received approximately 60,000 patent applications; in 2006, it received 440,000. Clearly, this puts a strain on the system and understandably affects the quality of patents issued.

Second, the costs and uncertainty associated with patent litigation have escalated in recent years, and are creating an unbearable drag on innovation. Damage awards are inconsistent and too often fail to focus on the value of the invention to the infringing product. This disconnect and uncertainty is a problem that also leads to unreasonable posturing during licensing negotiations.

Third, as business and competition become more global, patent applicants are increasingly filing patent applications in other countries for protection of their inventions. The filing system in the United States, known as ''first-to-invent,'' differs from that in other patent-issuing jurisdictions, which have ''first-to-file'' systems. This causes confusion and inefficiencies for American companies and innovators.

The Patent Reform Act of 2009 promotes innovation, and will improve our economy, by addressing these impediments to growth. As the administration endeavors to guide the economy out of the recession, as payrolls shrink and the jobless rate rises, Congress cannot afford to sit idly by while innovation—the engine of our economy—is impeded by outdated laws.

Our legislation ensures that, in the Information Age, we have the legal landscape necessary for our innovators to flourish. It will improve the quality of patents and remove the ambiguity from the process of litigating patent claims, which will promote innovation stifled by the current system. As innovation is encouraged, and excessive litigation costs are removed, competition will increase and the consumer cost of products will fall. In this way, the bill directly benefits both creators and consumers of inventive products.

Patent reform is ultimately about economic development. It is about jobs, it is about innovation, and it is about consumers. All benefit under a patent system that reduces unnecessary costs, removes inefficiencies, and holds true to the vision of our Founders that Congress should establish a national policy that promotes the progress of science and the useful arts.

When Thomas Jefferson issued that first patent in 1790—a patent that went to a Vermonter—no one could have predicted how the American economy would develop and what changes would be needed for the law to keep pace, but the purpose then remains the purpose today—promoting progress.

As I said when I introduced the Patent Reform Act last Congress: If we are to maintain our position at the forefront of the world's economy, if we are to continue to lead the world in innovation and production, if we are to continue to benefit from the ideas of the most creative citizens, then we must have a patent system that produces high quality patents, that limits counterproductive litigation over those patents, and that makes the entire system more streamlined and efficient.

Now is the time to bolster our role as the world leader in innovation. Now is the time to create jobs at home. Now is the time for Congress to act on patent reform.

Mr. President, 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. 515

*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 ''Patent Reform Act of 2009''.

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



**SEC. 2. RIGHT OF THE FIRST INVENTOR TO FILE.**

(a) DEFINITIONS.—Section 100 of title 35, United States Code, is amended by adding at the end the following:

''(f) The term 'inventor' means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

''(g) The terms 'joint inventor' and 'co-inventor' mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

''(h) The 'effective filing date of a claimed invention' is—

''(1) the filing date of the patent or the application for the patent containing the claim to the invention; or

''(2) if the patent or application for patent is entitled to a right of priority of any other application under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c), the filing date of the earliest such application in which the claimed invention is disclosed in the manner provided by the first paragraph of section 112.

''(i) The term 'claimed invention' means the subject matter defined by a claim in a patent or an application for a patent.

''(j) The term 'joint invention' means an invention resulting from the collaboration of inventive endeavors of 2 or more persons working toward the same end and producing an invention by their collective efforts.''.

(b) CONDITIONS FOR PATENTABILITY.—

(1) IN GENERAL.—Section 102 of title 35, United States Code, is amended to read as follows:

**''§ 102. Conditions for patentability; novelty**

''(a) NOVELTY; PRIOR ART.—A patent for a claimed invention may not be obtained if—

''(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public—

''(A) more than 1 year before the effective filing date of the claimed invention; or

''(B) 1 year or less before the effective filing date of the claimed invention, other than

through disclosures made by the inventor or a joint inventor or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

''(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

''(b) EXCEPTIONS.—

''(1) PRIOR INVENTOR DISCLOSURE EXCEPTION.—Subject matter that would otherwise qualify as prior art based upon a disclosure under subparagraph (B) of subsection (a)(1) shall not be prior art to a claimed invention under that subparagraph if the subject matter had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

''(2) DERIVATION, PRIOR DISCLOSURE, AND COMMON ASSIGNMENT EXCEPTIONS.—Subject matter that would otherwise qualify as prior art only under subsection (a)(2), after taking into account the exception under paragraph (1), shall not be prior art to a claimed invention if—

''(A) the subject matter was obtained directly or indirectly from the inventor or a joint inventor;

''(B) the subject matter had been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed, directly or indirectly, from the inventor or a joint inventor before the effective filing date of the application or patent set forth under subsection (a)(2); or

''(C) the subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

''(3) JOINT RESEARCH AGREEMENT EXCEPTION.—

''(A) IN GENERAL.—Subject matter and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of paragraph (2) if—

''(i) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

''(ii) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

''(iii) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

''(B) For purposes of subparagraph (A), the term 'joint research agreement' means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

''(4) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVELY FILED.—A patent or application for patent is effectively filed under subsection (a)(2) with respect to any subject matter described in the patent or application—

''(A) as of the filing date of the patent or the application for patent; or

''(B) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b) or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.''.

(2) CONFORMING AMENDMENT.—The item relating to section 102 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

''102. Conditions for patentability; novelty.''.

(c) CONDITIONS FOR PATENTABILITY; NON-OBVIOUS SUBJECT MATTER.—Section 103 of title 35, United States Code, is amended to read as follows:

**''§ 103. Conditions for patentability; non-obvious subject matter**

''A patent for a claimed invention may not be obtained though the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.''.

(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 104 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 10 of title 35, United States Code, are repealed.

(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—

(1) IN GENERAL.—Section 157 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 14 of title 35, United States Code, are repealed.

(2) REMOVAL OF CROSS REFERENCES.—Section 111(b)(8) of title 35, United States Code, is amended by striking ''sections 115, 131, 135, and 157'' and inserting ''sections 131 and 135''.

(f) EARLIER FILING DATE FOR INVENTOR AND JOINT INVENTOR.—Section 120 of title 35, United States Code, is amended by striking ''which is filed by an inventor or inventors named'' and inserting ''which names an inventor or joint inventor''.

(g) CONFORMING AMENDMENTS.—

(1) RIGHT OF PRIORITY.—Section 172 of title 35, United States Code, is amended by striking ''and the time specified in section 102(d)''.

(2) LIMITATION ON REMEDIES.—Section 287(c)(4) of title 35, United States Code, is amended by striking ''the earliest effective filing date of which is prior to'' and inserting ''which has an effective filing date before''.

(3) INTERNATIONAL APPLICATION DESIGNATING THE UNITED STATES: EFFECT.—Section 363 of title 35, United States Code, is amended by striking ''except as otherwise provided in section 102(e) of this title''.

(4) PUBLICATION OF INTERNATIONAL APPLICATION: EFFECT.—Section 374 of title 35, United States Code, is amended by striking ''sections 102(e) and 154(d)'' and inserting ''section 154(d)''.

(5) PATENT ISSUED ON INTERNATIONAL APPLICATION: EFFECT.—The second sentence of section 375(a) of title 35, United States Code, is amended by striking ''Subject to section 102(e) of this title, such'' and inserting ''Such''.

(6) LIMIT ON RIGHT OF PRIORITY.—Section 119(a) of title 35, United States Code, is amended by striking ''; but no patent shall be granted'' and all that follows through ''one year prior to such filing''.

(7) INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Section 202(c) of title 35, United States Code, is amended—

(A) in paragraph (2)—

(i) by striking ''publication, on sale, or public use,'' and all that follows through ''obtained in the United States'' and inserting ''the 1-year period referred to in section 102(a) would end before the end of that 2-year period''; and

(ii) by striking ''the statutory'' and inserting ''that 1-year''; and

(B) in paragraph (3), by striking ''any statutory bar date that may occur under this title due to publication, on sale, or public use'' and inserting ''the expiration of the 1-year period referred to in section 102(a)''.

(h) REPEAL OF INTERFERING PATENT REMEDIES.—Section 291 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 29 of title 35, United States Code, are repealed.

(i) ACTION FOR CLAIM TO PATENT ON DERIVED INVENTION.—Section 135 of title 35, United States Code, is amended to read as follows:

''(a) DISPUTE OVER RIGHT TO PATENT.—

''(1) INSTITUTION OF DERIVATION PROCEEDING.—An applicant may request initiation of a derivation proceeding to determine the right of the applicant to a patent by filing a request which sets forth with particularity the basis for finding that an earlier applicant derived the claimed invention from the applicant requesting the proceeding and, without authorization, filed an application claiming such invention. Any such request may only be made within 12 months after the date of first publication of an application containing a claim that is the same or is substantially the same as the claimed invention, must be made under oath, and must be supported by substantial evidence. Whenever the Director determines that patents or applications for patent naming different individuals as the inventor interfere with one another because of a dispute over the right to patent under section 101, the Director shall institute a derivation proceeding for the purpose of determining which applicant is entitled to a patent.

''(2) DETERMINATION BY PATENT TRIAL AND APPEAL BOARD.—In any proceeding under this subsection, the Patent Trial and Appeal Board—

''(A) shall determine the question of the right to patent;

''(B) in appropriate circumstances, may correct the naming of the inventor in any application or patent at issue; and

''(C) shall issue a final decision on the right to patent.

''(3) DERIVATION PROCEEDING.—The Board may defer action on a request to initiate a derivation proceeding until 3 months after the date on which the Director issues a patent to the applicant that filed the earlier application.

''(4) EFFECT OF FINAL DECISION.—The final decision of the Patent Trial and Appeal Board, if adverse to the claim of an applicant, shall constitute the final refusal by the United States Patent and Trademark Office on the claims involved. The Director may issue a patent to an applicant who is determined by the Patent Trial and Appeal Board to have the right to patent. The final decision of the Board, if adverse to a patentee, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the United States Patent and Trademark Office.

''(b) SETTLEMENT.—Parties to a derivation proceeding may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. Unless the Patent Trial and Appeal Board finds the agreement to be inconsistent with the evidence of record, it shall take action consistent with the agreement. Any written settlement or understanding of the parties

shall be filed with the Director. At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents or applications, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

''(c) ARBITRATION.—Parties to a derivation proceeding, within such time as may be specified by the Director by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Director from determining patentability of the invention involved in the derivation proceeding.''.

(j) ELIMINATION OF REFERENCES TO INTERFERENCES.—(1) Sections 6, 41, 134, 141, 145, 146, 154, 305, and 314 of title 35, United States Code, are each amended by striking ''Board of Patent Appeals and Interferences'' each place it appears and inserting ''Patent Trial and Appeal Board''.

(2) Sections 141, 146, and 154 of title 35, United States Code, are each amended—

(A) by striking ''an interference'' each place it appears and inserting ''a derivation proceeding''; and

(B) by striking ''interference'' each additional place it appears and inserting ''derivation proceeding''.

(3) The section heading for section 134 of title 35, United States Code, is amended to read as follows:

**''§ 134. Appeal to the Patent Trial and Appeal Board''.**

(4) The section heading for section 135 of title 35, United States Code, is amended to read as follows:

**''§ 135. Derivation proceedings''.**

(5) The section heading for section 146 of title 35, United States Code, is amended to read as follows:

**''§ 146. Civil action in case of derivation proceeding''.**

(6) Section 154(b)(1)(C) of title 35, United States Code, is amended by striking ''INTERFERENCES'' and inserting ''DERIVATION PROCEEDINGS''.

(7) The item relating to section 6 in the table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

''6. Patent Trial and Appeal Board.''.

(8) The items relating to sections 134 and 135 in the table of sections for chapter 12 of title 35, United States Code, are amended to read as follows:

''134. Appeal to the Patent Trial and Appeal Board.
''135. Derivation proceedings.''.

(9) The item relating to section 146 in the table of sections for chapter 13 of title 35, United States Code, is amended to read as follows:

''146. Civil action in case of derivation proceeding.''.

(10) CERTAIN APPEALS.—Section 1295(a)(4)(A) of title 28, United States Code, is amended to read as follows:

''(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to patent applications, interference proceedings (commenced before the date of enactment of the Patent Reform Act of 2009), derivation proceedings, and post-grant review proceedings, at the instance of an applicant for a patent or any party to a patent interference (commenced before the effective date of the Patent Reform Act of 2009), derivation proceeding, or post-grant review proceeding, and any such appeal shall waive any right of such applicant or party to proceed under section 145 or 146 of title 35;''.

(k) SEARCH AND EXAMINATION FUNCTIONS.—Section 131 of title 35, United States Code, is amended by—

(1) by striking ''The Director shall cause'' and inserting ''(a) IN GENERAL.—The Director shall cause''; and

(2) by adding at the end the following:

''(b) SEARCH AND EXAMINATION FUNCTIONS.—To the extent consistent with United States obligations under international agreements, examination and search duties for the grant of a United States patent are sovereign functions which shall be performed within the United States by United States citizens who are employees of the United States Government.''.

**SEC. 3. INVENTOR'S OATH OR DECLARATION.**

(a) INVENTOR'S OATH OR DECLARATION.—

(1) IN GENERAL.—Section 115 of title 35, United States Code, is amended to read as follows:

**''§ 115. Inventor's oath or declaration**

''(a) NAMING THE INVENTOR; INVENTOR'S OATH OR DECLARATION.—An application for patent that is filed under section 111(a), that commences the national stage under section 363, or that is filed by an inventor for an invention for which an application has previously been filed under this title by that inventor shall include, or be amended to include, the name of the inventor of any claimed invention in the application. Except as otherwise provided in this section, an individual who is the inventor or a joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.

''(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

''(1) the application was made or was authorized to be made by the affiant or declarant; and

''(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

''(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

''(d) SUBSTITUTE STATEMENT.—

''(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

''(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

''(A) is unable to file the oath or declaration under subsection (a) because the individual—

''(i) is deceased;

''(ii) is under legal incapacity; or

''(iii) cannot be found or reached after diligent effort; or

''(B) is under an obligation to assign the invention but has refused to make the oath or declaration required under subsection (a).

''(3) CONTENTS.—A substitute statement under this subsection shall—

''(A) identify the individual with respect to whom the statement applies;

''(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

''(C) contain any additional information, including any showing, required by the Director.

''(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation of assignment of an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, in lieu of filing such statements separately.

''(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).

''(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and that claims the benefit under section 120 or 365(c) of the filing of an earlier-filed application, if—

''(1) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

''(2) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or

''(3) an assignment meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

''(h) SUPPLEMENTAL AND CORRECTED STATEMENTS; FILING ADDITIONAL STATEMENTS.—

''(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time. If a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish regulations under which such additional statements may be filed.

''(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration under subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the Director may not thereafter require that individual to make any additional oath, declaration, or other statement equivalent to those required by this section in connection with the application for patent or any patent issuing thereon.

''(3) SAVINGS CLAUSE.—No patent shall be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under paragraph (1).

''(i) ACKNOWLEDGMENT OF PENALTIES.—Any declaration or statement filed pursuant to this section shall contain an acknowledgment that any willful false statement made in such declaration or statement is punishable under section 1001 of title 18 by fine or imprisonment of not more than 5 years, or both.''.

(2) RELATIONSHIP TO DIVISIONAL APPLICATIONS.—Section 121 of title 35, United States Code, is amended by striking ''If a divisional application'' and all that follows through ''inventor.''.

(3) REQUIREMENTS FOR NONPROVISIONAL APPLICATIONS.—Section 111(a) of title 35, United States Code, is amended—

(A) in paragraph (2)(C), by striking ''by the applicant'' and inserting ''or declaration'';

(B) in the heading for paragraph (3), by striking ''AND OATH''; and

(C) by striking ''and oath'' each place it appears.

(4) CONFORMING AMENDMENT.—The item relating to section 115 in the table of sections for chapter 11 of title 35, United States Code, is amended to read as follows:

''115. Inventor's oath or declaration.''.

(b) FILING BY OTHER THAN INVENTOR.—Section 118 of title 35, United States Code, is amended to read as follows:

**''§ 118. Filing by other than inventor**

''A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.''.

(c) SPECIFICATION.—Section 112 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''The specification'' and inserting ''(a) IN GENERAL.—The specification''; and

(B) by striking ''of carrying out his invention'' and inserting ''or joint inventor of carrying out the invention''; and

(2) in the second paragraph—

(A) by striking ''The specifications'' and inserting ''(b) CONCLUSION.—The specifications''; and

(B) by striking ''applicant regards as his invention'' and inserting ''inventor or a joint inventor regards as the invention'';

(3) in the third paragraph, by striking ''A claim'' and inserting ''(c) FORM.—A claim'';

(4) in the fourth paragraph, by striking ''Subject to the following paragraph,'' and inserting ''(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e),'';

(5) in the fifth paragraph, by striking ''A claim'' and inserting ''(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim''; and

(6) in the last paragraph, by striking ''An element'' and inserting ''(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element''.

**SEC. 4. RIGHT OF THE INVENTOR TO OBTAIN DAMAGES.**

(a) DAMAGES.—Section 284 of title 35, United States Code, is amended to read as follows:

**''§ 284. Damages**

''(a) IN GENERAL.—Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court, subject to the provisions of this section.

''(b) DETERMINATION OF DAMAGES; EVIDENCE CONSIDERED; PROCEDURE.—The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances. The admissibility of such testimony shall be governed by the rules of evidence governing expert testimony. When the damages are not found by a jury, the court shall assess them.

''(c) STANDARD FOR CALCULATING REASONABLE ROYALTY.—

''(1) IN GENERAL.—The court shall determine, based on the facts of the case and after adducing any further evidence the court deems necessary, which of the following methods shall be used by the court or the jury in calculating a reasonable royalty pursuant to subsection (a). The court shall also identify the factors that are relevant to the determination of a reasonable royalty, and the court or jury, as the case may be, shall consider only those factors in making such determination.

''(A) ENTIRE MARKET VALUE.—Upon a showing to the satisfaction of the court that the claimed invention's specific contribution over the prior art is the predominant basis for market demand for an infringing product or process, damages may be based upon the entire market value of that infringing product or process.

''(B) ESTABLISHED ROYALTY BASED ON MARKETPLACE LICENSING.—Upon a showing to the satisfaction of the court that the claimed invention has been the subject of a nonexclusive license for the use made of the invention by the infringer, to a number of persons sufficient to indicate a general marketplace recognition of the reasonableness of the licensing terms, if the license was secured prior to the filing of the case before the court, and the court determines that the infringer's use is of substantially the same scope, volume, and benefit of the rights granted under such license, damages may be determined on the basis of the terms of such license. Upon a showing to the satisfaction of the court that the claimed invention has sufficiently similar noninfringing substitutes in the relevant market, which have themselves been the subject of such nonexclusive licenses, and the court determines that the infringer's use is of substantially the same scope, volume, and benefit of the rights granted under such licenses, damages may be determined on the basis of the terms of such licenses.

''(C) VALUATION CALCULATION.—Upon a determination by the court that the showings required under subparagraphs (A) and (B) have not been made, the court shall conduct an analysis to ensure that a reasonable royalty is applied only to the portion of the economic value of the infringing product or process properly attributable to the claimed invention's specific contribution over the prior art. In the case of a combination invention whose elements are present individually in the prior art, the contribution over the prior art may include the value of the additional function resulting from the combination, as well as the enhanced value, if any, of some or all of the prior art elements as part of the combination, if the patentee demonstrates that value.

''(2) ADDITIONAL FACTORS.—Where the court determines it to be appropriate in determining a reasonable royalty under paragraph (1), the court may also consider, or direct the jury to consider, any other relevant factors under applicable law.

''(d) INAPPLICABILITY TO OTHER DAMAGES ANALYSIS.—The methods for calculating a reasonable royalty described in subsection (c) shall have no application to the calculation of an award of damages that does not necessitate the determination of a reasonable royalty as a basis for monetary relief sought by the claimant.

''(e) WILLFUL INFRINGEMENT.—

''(1) INCREASED DAMAGES.—A court that has determined that an infringer has willfully infringed a patent or patents may increase damages up to 3 times the amount of the damages found or assessed under subsection (a), except that increased damages under this paragraph shall not apply to provisional rights under section 154(d).

''(2) PERMITTED GROUNDS FOR WILLFULNESS.—A court may find that an infringer has willfully infringed a patent only if the patent owner presents clear and convincing evidence that acting with objective recklessness—

''(A) after receiving written notice from the patentee—

''(i) alleging acts of infringement in a manner sufficient to give the infringer an objectively reasonable apprehension of suit on such patent, and

''(ii) identifying with particularity each claim of the patent, each product or process that the patent owner alleges infringes the patent, and the relationship of such product or process to such claim,

the infringer, after a reasonable opportunity to investigate, thereafter performed 1 or more of the alleged acts of infringement;

''(B) the infringer intentionally copied the patented invention with knowledge that it was patented; or

''(C) after having been found by a court to have infringed that patent, the infringer engaged in conduct that was not colorably different from the conduct previously found to have infringed the patent, and which resulted in a separate finding of infringement of the same patent.

''(3) LIMITATIONS ON WILLFULNESS.—

''(A) IN GENERAL.—A court may not find that an infringer has willfully infringed a patent under paragraph (2) for any period of time during which the infringer had an informed good faith belief that the patent was invalid or unenforceable, or would not be infringed by the conduct later shown to constitute infringement of the patent.

''(B) GOOD FAITH ESTABLISHED.—An informed good faith belief within the meaning of subparagraph (A) may be established by—

''(i) reasonable reliance on advice of counsel;

''(ii) evidence that the infringer sought to modify its conduct to avoid infringement once it had discovered the patent; or

''(iii) other evidence a court may find sufficient to establish such good faith belief.

''(C) RELEVANCE OF NOT PRESENTING CERTAIN EVIDENCE.—The decision of the infringer not to present evidence of advice of counsel is not relevant to a determination of willful infringement under paragraph (2).

''(4) LIMITATION ON PLEADING.—Before the date on which a court determines that the patent in suit is not invalid, is enforceable, and has been infringed by the infringer, a patentee may not plead and a court may not determine that an infringer has willfully infringed a patent. The court's determination of an infringer's willfulness shall be made without a jury.''.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, the findings and recommendations of the Director on the operation of prior user rights in selected countries in the industrialized world. The report shall include the following:

(A) A comparison between patent laws of the United States and the laws of other industrialized countries, including the European Union, Japan, Canada, and Australia.

(B) An analysis of the effect of prior user rights on innovation rates in the selected countries.

(C) An analysis of the correlation, if any, between prior user rights and start-up enterprises and the ability to attract venture capital to start new companies.

(D) An analysis of the effect of prior user rights, if any, on small businesses, universities, and individual inventors.

(E) An analysis of legal and constitutional issues, if any, that arise from placing trade secret law in patent law.

(2) CONSULTATION WITH OTHER AGENCIES.—In preparing the report required under paragraph (1), the Director shall consult with the Secretary of State and the Attorney General.

(c) DEFENSE TO INFRINGEMENT BASED ON EARLIER INVENTOR.—Section 273(b)(6) of title 35, United States Code, is amended to read as follows:

''(6) PERSONAL DEFENSE.—The defense under this section may be asserted only by the person who performed or caused the performance of the acts necessary to establish the defense as well as any other entity that controls, is controlled by, or is under common control with such person and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except as an ancillary and subordinate part of a good faith assignment or transfer for other reasons of the entire enterprise or line of business to which the defense relates. Notwithstanding the preceding sentence, any person may, on its own behalf, assert a defense based on the exhaustion of rights provided under paragraph (3), including any necessary elements thereof.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any civil action commenced on or after the date of enactment of this Act.

**SEC. 5. POST-GRANT PROCEDURES AND OTHER QUALITY ENHANCEMENTS.**

(a) CITATION OF PRIOR ART.—Section 301 of title 35, United States Code, is amended to read as follows:

**''§ 301. Citation of prior art**

''(a) IN GENERAL.—Any person at any time may cite to the Office in writing—

''(1) prior art consisting of patents, printed publications, or evidence that the claimed invention was in public use or sale in the United States more than 1 year prior to the date of the application for patent in the United States, which that person believes to have a bearing on the patentability of any claim of a particular patent; or

''(2) written statements of the patent owner filed in a proceeding before a Federal court or the Patent and Trademark Office in which the patent owner takes a position on the scope of one or more patent claims.

''(b) SUBMISSIONS PART OF OFFICIAL FILE.—If the person citing prior art or written submissions under subsection (a) explains in writing the pertinence and manner of applying the prior art or written submission to at least one claim of the patent, the citation of the prior art or documentary evidence (as the case may be) and the explanation thereof shall become a part of the official file of the patent.

''(c) PROCEDURES FOR WRITTEN STATEMENTS.—

''(1) SUBMISSION OF ADDITIONAL MATERIALS.—A party that submits written statements under subsection (a)(2) in a proceeding shall include any other documents, pleadings, or evidence from the proceeding that address the patent owner's statements or the claims addressed by the written statements.

''(2) LIMITATION ON USE OF STATEMENTS.—Written statements submitted under subsection (a)(2) shall not be considered for any purpose other than to determine the proper meaning of the claims that are the subject of the request in a proceeding ordered pursuant to section 304 or 313. Any such written statements, and any materials submitted under paragraph (1), that are subject to an applicable protective order shall be redacted to exclude information subject to the order.

''(d) IDENTITY WITHHELD.—Upon the written request of the person making the citation under subsection (a), the person's identity shall be excluded from the patent file and kept confidential.''.

(b) REQUEST FOR REEXAMINATION.—The first sentence of section 302 of title 35, United States Code, is amended to read as follows: ''Any person at any time may file a request for reexamination by the Office of any claim on a patent on the basis of any prior art or documentary evidence cited under paragraph (1) or (3) of subsection (a) of section 301 of this title.''.

(c) REEXAMINATION.—Section 303(a) of title 35, United States Code, is amended to read as follows:

''(a) Within three months following the filing of a request for reexamination under section 302, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Director's own initiative, and at any time, the Director may determine whether a substantial new question of patentability is raised by patents, publications, or other evidence discovered by the Director, is cited under section 301, or is cited by any person other than the owner of the patent under section 302 or section 311. The existence of a substantial new question of patentability is not precluded by the fact that a patent, printed publication, or other evidence was previously considered by the Office.''.

(d) REQUEST FOR INTER PARTES REEXAMINATION.—Section 311(a) of title 35, United States Code, is amended to read as follows:

''(a) IN GENERAL.—Any third-party requester at any time may file a request for inter partes reexamination by the Office of a patent on the basis of any prior art or documentary evidence cited under paragraph (1) or (3) of subsection (a) of section 301 of this title.''.

(e) CONDUCT OF INTER PARTES PROCEEDINGS.—Section 314 of title 35, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking ''conducted according to the procedures established for initial examination under the provisions of sections 132 and 133'' and inserting ''heard by an administrative patent judge in accordance with procedures which the Director shall establish'';

(2) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) The third-party requester shall have the opportunity to file written comments on any action on the merits by the Office in the inter partes reexamination proceeding, and on any response that the patent owner files to such an action, if those written comments are received by the Office within 60 days after the date of service on the third-party requester of the Office action or patent owner response, as the case may be.''; and

(3) by adding at the end the following:

''(d) ORAL HEARING.—At the request of a third party requestor or the patent owner, the administrative patent judge shall conduct an oral hearing, unless the judge finds cause lacking for such hearing.''.

(f) ESTOPPEL.—Section 315(c) of title 35, United States Code, is amended by striking ''or could have raised''.

(g) REEXAMINATION PROHIBITED AFTER DISTRICT COURT DECISION.—Section 317(b) of title 35, United States Code, is amended—

(1) in the subsection heading, by striking ''FINAL DECISION'' and inserting ''DISTRICT COURT DECISION''; and

(2) by striking ''Once a final decision has been entered'' and inserting ''Once the judgment of the district court has been entered''.

(h) POST-GRANT OPPOSITION PROCEDURES.—

(1) IN GENERAL.—Part III of title 35, United States Code, is amended by adding at the end the following new chapter:

**''CHAPTER 32—POST-GRANT REVIEW PROCEDURES**



**''§ 321. Petition for post-grant review**

''Subject to sections 322, 324, 332, and 333, a person who is not the patent owner may file with the Office a petition for cancellation seeking to institute a post-grant review proceeding to cancel as unpatentable any claim of a patent on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim). The Director shall establish, by regulation, fees to be paid by the person requesting the proceeding, in such amounts as the Director determines to be reasonable.

**''§ 322. Timing and bases of petition**

''A post-grant proceeding may be instituted under this chapter pursuant to a cancellation petition filed under section 321 only if—

''(1) the petition is filed not later than 12 months after the issuance of the patent or a reissue patent, as the case may be; or

''(2) the patent owner consents in writing to the proceeding.

**''§ 323. Requirements of petition**

''A cancellation petition filed under section 321 may be considered only if—

''(1) the petition is accompanied by payment of the fee established by the Director under section 321;

''(2) the petition identifies the cancellation petitioner;

''(3) for each claim sought to be canceled, the petition sets forth in writing the basis for cancellation and provides the evidence in support thereof, including copies of patents and printed publications, or written testimony of a witness attested to under oath or declaration by the witness, or any other information that the Director may require by regulation; and

''(4) the petitioner provides copies of the petition, including any evidence submitted with the petition and any other information submitted under paragraph (3), to the patent owner or, if applicable, the designated representative of the patent owner.

**''§ 324. Prohibited filings**

''A post-grant review proceeding may not be instituted under section 322 if the petition for cancellation requesting the proceeding—

''(1) identifies the same cancellation petitioner and the same patent as a previous petition for cancellation filed under such section; or

''(2) is based on the best mode requirement contained in section 112.

**''§ 325. Submission of additional information; showing of sufficient grounds**

''(a) IN GENERAL.—The cancellation petitioner shall file such additional information

with respect to the petition as the Director may require. For each petition submitted under section 321, the Director shall determine if the written statement, and any evidence submitted with the request, establish that a substantial question of patentability exists for at least one claim in the patent. The Director may initiate a post-grant review proceeding if the Director determines that the information presented provides sufficient grounds to believe that there is a substantial question of patentability concerning one or more claims of the patent at issue.

''(b) NOTIFICATION; DETERMINATIONS NOT REVIEWABLE.—The Director shall notify the patent owner and each petitioner in writing of the Director's determination under subsection (a), including a determination to deny the petition. The Director shall make that determination in writing not later than 60 days after receiving the petition. Any determination made by the Director under subsection (a), including whether or not to institute a post-grant review proceeding or to deny the petition, shall not be reviewable.

**''§ 326. Conduct of post-grant review proceedings**

''(a) IN GENERAL.—The Director shall prescribe regulations, in accordance with section 2(b)(2)—

''(1) establishing and governing post-grant review proceedings under this chapter and their relationship to other proceedings under this title;

''(2) establishing procedures for the submission of supplemental information after the petition for cancellation is filed; and

''(3) setting forth procedures for discovery of relevant evidence, including that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding, and the procedures for obtaining such evidence shall be consistent with the purpose and nature of the proceeding.

In carrying out paragraph (3), the Director shall bear in mind that discovery must be in the interests of justice.

''(b) POST-GRANT REGULATIONS.—Regulations under subsection (a)(1)—

''(1) shall require that the final determination in a post-grant proceeding issue not later than one year after the date on which the post-grant review proceeding is instituted under this chapter, except that, for good cause shown, the Director may extend the 1-year period by not more than six months;

''(2) shall provide for discovery upon order of the Director;

''(3) shall provide for publication of notice in the Federal Register of the filing of a petition for post-grant review under this chapter, for publication of the petition, and documents, orders, and decisions relating to the petition, on the website of the Patent and Trademark Office, and for filings under seal exempt from publication requirements;

''(4) shall prescribe sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or unnecessary increase in the cost of the proceeding;

''(5) may provide for protective orders governing the exchange and submission of confidential information; and

''(6) shall ensure that any information submitted by the patent owner in support of any amendment entered under section 329 is made available to the public as part of the prosecution history of the patent.

''(c) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect on the economy, the integrity of the patent system, and the efficient administration of the Office.

''(d) CONDUCT OF PROCEEDING.—The Patent Trial and Appeal Board shall, in accordance with section 6(b), conduct each post-grant review proceeding authorized by the Director.

**''§ 327. Patent owner response**

''After a post-grant proceeding under this chapter has been instituted with respect to a patent, the patent owner shall have the right to file, within a time period set by the Director, a response to the cancellation petition. The patent owner shall file with the response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response.

**''§ 328. Proof and evidentiary standards**

''(a) IN GENERAL.—The presumption of validity set forth in section 282 shall not apply in a challenge to any patent claim under this chapter.

''(b) BURDEN OF PROOF.—The party advancing a proposition under this chapter shall have the burden of proving that proposition by a preponderance of the evidence.

**''§ 329. Amendment of the patent**

''(a) IN GENERAL.—In response to a challenge in a petition for cancellation, the patent owner may file one motion to amend the patent in one or more of the following ways:

''(1) Cancel any challenged patent claim.

''(2) For each challenged claim, propose a substitute claim.

''(3) Amend the patent drawings or otherwise amend the patent other than the claims.

''(b) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted only for good cause shown.

''(c) SCOPE OF CLAIMS.—An amendment under this section may not enlarge the scope of the claims of the patent or introduce new matter.

**''§ 330. Decision of the Board**

''If the post-grant review proceeding is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision addressing the patentability of any patent claim challenged and any new claim added under section 329.

**''§ 331. Effect of decision**

''(a) IN GENERAL.—If the Patent Trial and Appeal Board issues a final decision under section 330 and the time for appeal has expired or any appeal proceeding has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable and incorporating in the patent by operation of the certificate any new claim determined to be patentable.

''(b) NEW CLAIMS.—Any new claim held to be patentable and incorporated into a patent in a post-grant review proceeding shall have the same effect as that specified in section 252 for reissued patents on the right of any person who made, purchased, offered to sell, or used within the United States, or imported into the United States, anything patented by such new claim, or who made substantial preparations therefor, before a certificate under subsection (a) of this section is issued.

**''§ 332. Settlement**

''(a) IN GENERAL.—A post-grant review proceeding shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Patent Trial and Appeal Board has issued a written decision before the request for termination is filed. If the post-grant review proceeding is terminated with respect to a petitioner under this paragraph, no estoppel shall apply to that petitioner. If no petitioner remains in the proceeding, the panel of administrative patent judges assigned to the proceeding shall terminate the proceeding.

''(b) AGREEMENT IN WRITING.—Any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in the agreement or understanding, that is made in connection with or in contemplation of the termination of a post-grant review proceeding, must be in writing. A post-grant review proceeding as between the parties to the agreement or understanding may not be terminated until a copy of the agreement or understanding, including any such collateral agreements, has been filed in the Office. If any party filing such an agreement or understanding requests, the agreement or understanding shall be kept separate from the file of the post-grant review proceeding, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

**''§ 333. Relationship to other proceedings**

''(a) IN GENERAL.—Notwithstanding subsection 135(a), sections 251 and 252, and chapter 30, the Director may determine the manner in which any reexamination proceeding, reissue proceeding, interference proceeding (commenced with respect to an application for patent filed before the effective date provided in section 3(k) of the Patent Reform Act of 2009), derivation proceeding, or post-grant review proceeding, that is pending during a post-grant review proceeding, may proceed, including providing for stay, transfer, consolidation, or termination of any such proceeding.

''(b) STAYS.—The Director may stay a post-grant review proceeding if a pending civil action for infringement of a patent addresses the same or substantially the same questions of patentability raised against the patent in a petition for the post-grant review proceeding.

''(c) EFFECT OF COMMENCEMENT OF PROCEEDING.—The commencement of a post-grant review proceeding—

''(1) shall not limit in any way the right of the patent owner to commence an action for infringement of the patent; and

''(2) shall not be cited as evidence relating to the validity of any claim of the patent in any proceeding before a court or the International Trade Commission concerning the patent.

**''§ 334. Effect of decisions rendered in civil action on post-grant review proceedings**

''If a final decision is entered against a party in a civil action arising in whole or in part under section 1338 of title 28 establishing that the party has not sustained its burden of proving the invalidity of any patent claim—

''(1) that party to the civil action and the privies of that party may not thereafter request a post-grant review proceeding on that patent claim on the basis of any grounds, under the provisions of section 321, which that party or the privies of that party raised or could have raised; and

''(2) the Director may not thereafter maintain a post-grant review proceeding that was requested, before the final decision was so entered, by that party or the privies of that party on the basis of such grounds.

**''§ 335. Effect of final decision on future proceedings**

''If a final decision under section 330 is favorable to the patentability of any original or new claim of the patent challenged by the cancellation petitioner, the cancellation petitioner may not thereafter, based on any ground that the cancellation petitioner raised during the post-grant review proceeding—

''(1) request or pursue a reexamination of such claim under chapter 31;

''(2) request or pursue a derivation proceeding with respect to such claim;

''(3) request or pursue a post-grant review proceeding under this chapter with respect to such claim;

''(4) assert the invalidity of any such claim in any civil action arising in whole or in part under section 1338 of title 28; or

''(5) assert the invalidity of any such claim in defense to an action brought under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

**''§ 336. Appeal**

''A party dissatisfied with the final determination of the Patent Trial and Appeal Board in a post-grant proceeding under this chapter may appeal the determination under sections 141 through 144. Any party to the post-grant proceeding shall have the right to be a party to the appeal.''.

(i) CONFORMING AMENDMENT.—The table of chapters for part III of title 35, United States Code, is amended by adding at the end the following:

**''32. Post-Grant Review Proceedings .. 321''.**

(j) REPEAL.—Section 4607 of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, is repealed.

(k) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments and repeal made by this section shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

(2) APPLICABILITY TO EX PARTE AND INTER PARTES PROCEEDINGS.—Notwithstanding any other provision of law, sections 301 and 311 through 318 of title 35, United States Code, as amended by this section, shall apply to any patent that issues before, on, or after the effective date under paragraph (1) from an original application filed on any date.

(3) APPLICABILITY TO POST-GRANT PROCEEDINGS.—The amendments made by subsections (h) and (i) shall apply to patents issued on or after the effective date under paragraph (1).

(l) REGULATIONS.—The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by subsection (h) of this section.

**SEC. 6. DEFINITIONS; PATENT TRIAL AND APPEAL BOARD.**

(a) DEFINITIONS.—Section 100 of title 35, United States Code, (as amended by section 2 of this Act) is further amended—

(1) in subsection (e), by striking ''or inter partes reexamination under section 311''; and

(2) by adding at the end the following:

''(k) The term 'cancellation petitioner' means the real party in interest requesting cancellation of any claim of a patent under chapter 31 of this title and the privies of the real party in interest.''.

(b) PATENT TRIAL AND APPEAL BOARD.—Section 6 of title 35, United States Code, is amended to read as follows:

**''§ 6. Patent Trial and Appeal Board**

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary of Commerce. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

''(b) DUTIES.—The Patent Trial and Appeal Board shall—

''(1) on written appeal of an applicant, review adverse decisions of examiners upon application for patents;

''(2) on written appeal of a patent owner, review adverse decisions of examiners upon patents in reexamination proceedings under chapter 30;

''(3) conduct derivation proceedings under subsection 135(a); and

''(4) conduct post-grant opposition proceedings under chapter 32.

Each appeal and derivation proceeding shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings. The Director shall assign each post-grant review proceeding to a panel of 3 administrative patent judges. Once assigned, each such panel of administrative patent judges shall have the responsibilities under chapter 32 in connection with post-grant review proceedings.''.

**SEC. 7. PREISSUANCE SUBMISSIONS BY THIRD PARTIES.**

Section 122 of title 35, United States Code, is amended by adding at the end the following:

''(e) PREISSUANCE SUBMISSIONS BY THIRD PARTIES.—

''(1) IN GENERAL.—Any person may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other publication of potential relevance to the examination of the application, if such submission is made in writing before the earlier of—

''(A) the date a notice of allowance under section 151 is mailed in the application for patent; or

''(B) either—

''(i) 6 months after the date on which the application for patent is published under section 122, or

''(ii) the date of the first rejection under section 132 of any claim by the examiner during the examination of the application for patent,

whichever occurs later.

''(2) OTHER REQUIREMENTS.—Any submission under paragraph (1) shall—

''(A) set forth a concise description of the asserted relevance of each submitted document;

''(B) be accompanied by such fee as the Director may prescribe; and

''(C) include a statement by the person making such submission affirming that the submission was made in compliance with this section.''.

**SEC. 8. VENUE AND JURISDICTION.**

(a) VENUE FOR PATENT CASES.—Section 1400 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Notwithstanding section 1391 of this title, in any civil action arising under any Act of Congress relating to patents, a party shall not manufacture venue by assignment, incorporation, or otherwise to invoke the venue of a specific district court.

''(c) Notwithstanding section 1391 of this title, any civil action for patent infringement or any action for declaratory judgment may be brought only in a judicial district—

''(1) where the defendant has its principal place of business or in the location or place in which the defendant is incorporated or formed, or, for foreign corporations with a United States subsidiary, where the defendant's primary United States subsidiary has its principal place of business or is incorporated or formed;

''(2) where the defendant has committed substantial acts of infringement and has a regular and established physical facility that the defendant controls and that constitutes a substantial portion of the operations of the defendant;

''(3) where the primary plaintiff resides, if the primary plaintiff in the action is—

''(A) an institution of higher education as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

''(B) a nonprofit organization that—

''(i) qualifies for treatment under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3));

''(ii) is exempt from taxation under section 501(a) of such Code; and

''(iii) serves as the patent and licensing organization for an institution of higher education as defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

''(4) where the plaintiff resides, if the sole plaintiff in the action is an individual inventor who is a natural person and who qualifies at the time such action is filed as a micro-entity pursuant to section 123 of title 35.

''(d) If a plaintiff brings a civil action for patent infringement or declaratory judgment relief under subsection (c), then the defendant may request the district court to transfer that action to another district or division where, in the court's determination—

''(1) any of the parties has substantial evidence or witnesses that otherwise would present considerable evidentiary burdens to the defendant if such transfer were not granted;

''(2) such transfer would not cause undue hardship to the plaintiff; and

''(3) venue would be otherwise appropriate under section 1391 of this title.''.

(b) INTERLOCUTORY APPEALS.—Subsection (c)(2) of section 1292 of title 28, United States Code, is amended by adding at the end the following:

''(3) of an appeal from an interlocutory order or decree determining construction of claims in a civil action for patent infringement under section 271 of title 35.

Application for an appeal under paragraph (3) shall be made to the court within 10 days after entry of the order or decree. The district court shall have discretion whether to approve the application and, if so, whether to stay proceedings in the district court during the pendency of such appeal.''.

(c) TECHNICAL AMENDMENTS RELATING TO VENUE.—Sections 32, 145, 146, 154(b)(4)(A), and 293 of title 35, United States Code, and section 21(b)(4) of the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act''; 15 U.S.C. 1071(b)(4)), are each amended by striking ''United States District Court for the District of Columbia'' each place that term appears and inserting ''United States District Court for the Eastern District of Virginia''.

**SEC. 9. PATENT AND TRADEMARK OFFICE REGULATORY AUTHORITY.**

(a) FEE SETTING.—

(1) IN GENERAL.—The Director shall have authority to set or adjust by rule any fee established or charged by the Office under sections 41 and 376 of title 35, United States Code or under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) for the filing or processing of any submission to, and for all other services performed by or materials furnished by, the Office, provided that such fee amounts are set to reasonably compensate the Office for the services performed.

(2) REDUCTION OF FEES IN CERTAIN FISCAL YEARS.—In any fiscal year, the Director—

(A) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in paragraph (1); and

(B) after that consultation may reduce such fees.

(3) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—The Director shall—

(A) submit to the Patent or Trademark Public Advisory Committee, or both, as appropriate, any proposed fee under paragraph (1) not less than 45 days before publishing any proposed fee in the Federal Register;

(B) provide the relevant advisory committee described in subparagraph (A) a 30-day period following the submission of any proposed fee, on which to deliberate, consider, and comment on such proposal, and require that—

(i) during such 30-day period, the relevant advisory committee hold a public hearing related to such proposal; and

(ii) the Director shall assist the relevant advisory committee in carrying out such public hearing, including by offering the use of Office resources to notify and promote the hearing to the public and interested stakeholders;

(C) require the relevant advisory committee to make available to the public a written report detailing the comments, advice, and recommendations of the committee regarding any proposed fee;

(D) consider and analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting any fee; and

(E) notify, through the Chair and Ranking Member of the Senate and House Judiciary Committees, the Congress of any final decision regarding proposed fees.

(4) PUBLICATION IN THE FEDERAL REGISTER.—

(A) IN GENERAL.—Any rules prescribed under this subsection shall be published in the Federal Register.

(B) RATIONALE.—Any proposal for a change in fees under this section shall—

(i) be published in the Federal Register; and

(ii) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change.

(C) PUBLIC COMMENT PERIOD.—Following the publication of any proposed fee in the Federal Register pursuant to subparagraph (A), the Director shall seek public comment for a period of not less than 45 days.

(5) CONGRESSIONAL COMMENT PERIOD.—Following the notification described in paragraph (3)(E), Congress shall have not more than 45 days to consider and comment on any proposed fee under paragraph (1). No proposed fee shall be effective prior to the end of such 45-day comment period.

(6) RULE OF CONSTRUCTION.—No rules prescribed under this subsection may diminish—

(A) an applicant's rights under this title or the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(b) FEES FOR PATENT SERVICES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2005, in section 801(a) by striking ''During fiscal years 2005, 2006 and 2007'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(c) ADJUSTMENT OF TRADEMARK FEES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 802(a) by striking ''During fiscal years 2005, 2006 and 2007'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(d) EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ''and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007.''.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any other provision of Division B of Public Law 108–447, including section 801(c) of title VII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005.

(f) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(3) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946 or the Lanham Act).

**SEC. 10. RESIDENCY OF FEDERAL CIRCUIT JUDGES.**

(a) RESIDENCY.—The second sentence of section 44(c) of title 28, United States Code, is repealed.

(b) FACILITIES.—Section 44 of title 28, United States Code, is amended by adding at the end the following:

''(e)(1) The Director of the Administrative Office of the United States Courts shall provide—

''(A) a judge of the Federal judicial circuit who lives within 50 miles of the District of Columbia with appropriate facilities and administrative support services in the District of the District of Columbia; and

''(B) a judge of the Federal judicial circuit who does not live within 50 miles of the District of Columbia with appropriate facilities and administrative support services—

''(i) in the district and division in which that judge resides; or

''(ii) if appropriate facilities are not available in the district and division in which that judge resides, in the district and division closest to the residence of that judge in which such facilities are available, as determined by the Director.

''(2) Nothing in this subsection may be construed to authorize or require the construction of new facilities.''.

**SEC. 11. MICRO-ENTITY DEFINED.**

Chapter 11 of title 35, United States Code, is amended by adding at the end the following new section:

**''§ 123. Micro-entity defined**

''(a) IN GENERAL.—For purposes of this title, the term 'micro-entity' means an applicant who makes a certification under either subsections (b) or (c).

''(b) UNASSIGNED APPLICATION.—For an unassigned application, each applicant shall certify that the applicant—

''(1) qualifies as a small entity, as defined in regulations issued by the Director;

''(2) has not been named on 5 or more previously filed patent applications;

''(3) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or any other ownership interest in the particular application; and

''(4) does not have a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), exceeding 2.5 times the average gross income, as reported by the Department of Labor, in the calendar year immediately preceding the calendar year in which the examination fee is being paid.

''(c) ASSIGNED APPLICATION.—For an assigned application, each applicant shall certify that the applicant—

''(1) qualifies as a small entity, as defined in regulations issued by the Director, and meets the requirements of subsection (b)(4);

''(2) has not been named on 5 or more previously filed patent applications; and

''(3) has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the particular application to an entity that has 5 or fewer employees and that such entity has a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), that does not exceed 2.5 times the average gross income, as reported by the Department of Labor, in the calendar year immediately preceding the calendar year in which the examination fee is being paid.

''(d) INCOME LEVEL ADJUSTMENT.—The gross income levels established under subsections (b) and (c) shall be adjusted by the Director on October 1, 2009, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor.''.

**SEC. 12. TECHNICAL AMENDMENTS.**

(a) JOINT INVENTIONS.—Section 116 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''When'' and inserting ''(a) JOINT INVENTIONS.—When'';

(2) in the second paragraph, by striking ''If a joint inventor'' and inserting ''(b) OMITTED INVENTOR.—If a joint inventor''; and

(3) in the third paragraph, by striking ''Whenever'' and inserting ''(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever''.

(b) FILING OF APPLICATION IN FOREIGN COUNTRY.—Section 184 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Except when'' and inserting ''(a) FILING IN FOREIGN COUNTRY.—Except when'';

(2) in the second paragraph, by striking ''The term'' and inserting ''(b) APPLICATION.—The term''; and

(3) in the third paragraph, by striking ''The scope'' and inserting ''(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope''.

(c) REISSUE OF DEFECTIVE PATENTS.—Section 251 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever'';

(2) in the second paragraph, by striking ''The Director'' and inserting ''(b) MULTIPLE REISSUED PATENTS.—The Director'';

(3) in the third paragraph, by striking ''The provision'' and inserting ''(c) APPLICABILITY OF THIS TITLE.—The provisions''; and

(4) in the last paragraph, by striking ''No reissued patent'' and inserting ''(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent''.

(d) EFFECT OF REISSUE.—Section 253 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever''; and

(2) in the second paragraph, by striking ''in like manner'' and inserting ''(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a),''.

(e) CORRECTION OF NAMED INVENTOR.—Section 256 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) CORRECTION.—Whenever''; and

(2) in the second paragraph, by striking ''The error'' and inserting ''(b) PATENT VALID IF ERROR CORRECTED.—The error''.

(f) PRESUMPTION OF VALIDITY.—Section 282 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph, by striking ''A patent'' and inserting ''(a) IN GENERAL.—A patent'';

(2) in the second undesignated paragraph, by striking ''The following'' and inserting ''(b) DEFENSES.—The following''; and

(3) in the third undesignated paragraph, by striking ''In actions'' and inserting ''(c) NOTICE OF ACTIONS; ACTIONS DURING EXTENSION OF PATENT TERM.—In actions''.

**SEC. 13. EFFECTIVE DATE; RULE OF CONSTRUCTION.**

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, the provisions of this Act shall take effect 12 months after the date of the enactment of this Act and shall apply to any patent issued on or after that effective date.

(b) CONTINUITY OF INTENT UNDER THE CREATE ACT.—The enactment of section 102(b)(3) of title 35, United States Code, under section (2)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ''CREATE Act''), the amendments of which are stricken by section 2(c) of this Act. The United States Patent and Trademark Office shall administer section 102(b)(3) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.

**SEC. 14. SEVERABILITY.**

If any provision of this Act or of any amendment or repeals made by this Act, or the application of such a provision to any person or circumstance, is held to be invalid or unenforceable, the remainder of this Act and the amendments and repeals made by this Act, and the application of this Act and such amendments and repeals to any other person or circumstance, shall not be affected by such holding.

Mr. HATCH. Mr. President, I rise to introduce with Senate Judiciary Committee chairman PATRICK LEAHY the Patent Reform Act of 2009, S. 515. I consider introduction of this bill to be a milestone in the progress we have made so far in the effort to reform our patent system—a system that has not been updated significantly since 1952. There is no doubt we have come a long way in our pursuit to accomplish comprehensive patent law reform. Reform is so vitally necessary to keep our nation competitive in our technologically advanced global economy, especially during these difficult economic times.

I have always believed that passing patent reform legislation would be a multi-Congress endeavor. The Hatch-Leahy patent bill, S. 3818, formally started the legislative process in 2006. We continued the momentum in the 110th Congress by introducing S. 1145, the Patent Reform Act of 2007. In June 2007, my colleagues and I on the Senate Judiciary Committee approved S. 1145 by a vote of 13–5. While I would have liked to see S. 1145 pass the full Senate, I believe the process already provided makes passage of the Patent Reform Act of 2009 even more likely this Congress.

S. 515 represents a bipartisan and bicameral commitment to streamline our nation's patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.

House Judiciary chairman JOHN CONYERS and ranking minority member LAMAR SMITH are true partners in this important legislation. For those who might say nothing has changed, I can attest that it has. Just look at the bill. We have listened to many of the concerns raised by stakeholders and have changed the legislative text accordingly.

Let me highlight some of the significant changes we have made to the bill.

For example, S. 515 does not contain an applicant quality submissions provision due to near uniform opposition we heard from the patent community about the burdens this would place on applicants.

Additionally, the Patent Reform Act of 2007 would have eliminated the current opt-out provision for publication of patent applications. Current law permits applicants to request upon filing that their application not be published at 18 months if a certification is made that the invention disclosed in the application has not and will not be the subject of an application filed in another country. Because of serious concerns raised by independent inventors and small entities, we have removed this provision from S. 515.

Patents may be challenged either in court or at the U.S. Patent and Trademark Office, USPTO. The current administrative review process at the USPTO is widely viewed as ineffective and inefficient. Accordingly, last year's bills proposed a process more like a court proceeding than the current reexamination process. Both bills had a 1-year window for challenges during which patents would not be presumed valid, and a patent could be invalidated by a ''preponderance of evidence'' against it. However, the Senate bill, S. 1145, added a second window during the life of the patent where only ''clear and convincing'' evidence could invalidate the patent. Most in the patent community prefer the post-grant review language as passed in the House because, instead of creating a ''second window,'' it improved upon the existing interpartes reexamination. As such, S. 515 adopts the House approach to expanding interpartes, but includes ''public use or sale in the United States'' as a basis for challenging a patent. Further, our bill ensures that ex parte reexamination proceedings are maintained, which is an important tool for challenging patents that should not have issued.

With patent litigation costs escalating, the threat of enhanced damages can be quite substantial. For this reason, the Senate and House bills introduced in the 110th Congress narrowed the circumstances under which treble damages could be awarded for willful infringement of a patent. After introduction of the Patent Reform Act of 2007, the Federal Circuit issued an in banc decision, In re Seagate, which instituted an objective recklessness standard to prove willfulness. After considerable discussion with stakeholders in the patent community, we believe the Seagate decision is a positive improvement to the law and, therefore, have sought to incorporate correlating language into S. 515.

There are other changes we made to the Patent Reform Act of 2009, but I want to focus my remaining remarks on two key issues: how damages are awarded in infringement lawsuits and inequitable conduct reform.

I am aware of the concerns that some have raised about the damages provision contained in S. 1145. I have heard from some who are concerned that courts have allowed damages for infringement to be based on the market for an entire product, when all that was infringed is a minor component of the product. I have also heard from some who argue that the current language will severely limit the amount of damages an infringer has to pay, thereby encouraging infringing behavior.

The sponsors of the Patent Reform Act of 2009 all agree that we need to improve the damages provision. In crafting a fair damages provision, we can rely upon well-reasoned and persuasive case law, scholarship, and other texts. I am confident that we will achieve consensus language in this area, but make no mistake: it will take willing partners to craft a compromise that will not have deleterious affects on any one sector of our economy.

For years I have been arguing if we are serious about enacting comprehensive patent law reform then we must take steps to ensure that the inequitable conduct doctrine is applied in a manner consistent with its original purpose: to sanction true misconduct and to do so in a proportional and fair manner. Inequitable conduct reform is core to this bill, as it dictates how patents are prosecuted years before litigation. The inequitable conduct defense is frequently pled, rarely proven, and always drives up the cost of litigation tremendously.

Under current law, any perceived transgression of the patent owner is being painted as ''fraud.'' If an inequitable conduct claim wins, a valid patent will be held entirely void, and the infringer walks away without any liability. There is virtually no downside for the infringer to raise this type of attack. This is why inequitable conduct challenges are raised in nearly every patent case. It has become, in the words of the Federal Circuit, a ''plague'' on the patent system.

The development of a more objective and clearer inequitable conduct standard will remove the uncertainty and confusion that defines current patent litigation. We cannot settle for mere

codification of current practices. Chairman LEAHY and Chairman CONYERS both know of my strong interest in this area and have agreed to incorporate changes to the law. There is no doubt that inequitable conduct reform has the potential to single-handedly revolutionize the manner in which patent applications are prosecuted. Arguably, reform in this area will have the most favorable impact on patent quality and the ability for the USPTO to reduce its pendency—thereby fostering a strong and vibrant environment for all innovation and entrepreneurship.

Now more than ever, our industries need reassurance and predictability in order to move forward in these challenging times. I believe the Patent Reform Act of 2009 has the potential to complement all of the stimulatory efforts currently under way. Now is the time to act.

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By Mr. DODD:

S. 517. A bill for the relief of Alejandro Gomez and Juan Sebastian Gomez; to the Committee on the Judiciary.

Mr. DODD. Mr. President, today I send to the desk a private relief bill to provide permanent resident status to Juan and Alejandro Gomez, and ask that it be appropriately referred.

Juan, 20, and Alejandro, 21, are natives of Colombia who came to the U.S. with their parents in August 1990 on B–2 visitors visas and reside in Miami, FL. Their parents were deported on October 30, 2007. Their initial departure date was September 14, 2007, but because of legislation introduced last Congress that date was extended. However, now they have been ordered to report for deportation on March 15, 2009. Juan and Alejandro have lived continuously in the U.S. for the last 18 years. They have both graduated from Miami Killian High School. Juan is a student at Georgetown University in Washington, D.C. Alejandro is a student at Miami Dade Community College and works at the Biltmore Hotel in Miami. They have the strong support of their community. It would be an extreme hardship to uproot Juan and Alejandro from their community, which has wholeheartedly embraced them, to send them back to Colombia where there lives could be in serious danger.

We all know that the circumstances of Juan and Alejandro are not unique. Just like many other children here illegally, they had no control over their parents' decision to overstay their visas a number of years ago. Most of these young people work hard to complete school and contribute to their communities. Cases like Juan's and Alejandro's are the reason why the so called DREAM Act was attached to the comprehensive immigration reform legislation that the Senate attempted to pass last Congress, only to face a filibuster from opponents of any comprehensive immigration reform proposal.

The DREAM Act has broad partisan support and is not the reason that the immigration bill stalled in the Senate. I would hope that consideration could be given to delinking the DREAM Act from the larger bill so that we can put in place a legal framework for dealing with young people similar in circumstances to Juan and Alejandro who are caught in this unfortunate immigration status. But that is not likely to happen soon enough to address the problems confronting Juan and Alejandro.

That is why I have decided to reintroduce a private bill on their behalf. I will also be writing to Senator CHARLES SCHUMER, Chairman of the Subcommittee on Immigration to request, pursuant to the Subcommittee's Rules of Procedure, that the Subcommittee formally request an expedited departmental report from the Bureau of Citizenship and Immigration Services regarding the Gomez brothers so that the Subcommittee can then move forward to give consideration to this bill as soon as possible.

I have had the opportunity to meet Juan and Alejandro. They believe that America is their home. They love our country and want to have an opportunity to fulfill their dreams of becoming full participants in this country. Passage of the private bill would give them that opportunity. I look forward to working with the Subcommittee to facilitate its passage.

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By Mr. DURBIN:

S. 520. A bill to designate the United States Courthouse under construction at 327 South Church Street, Rockford, Illinois, as the ''Stanley J. Roszkowski United States Courthouse''; considered and passed.

Mr. DURBIN. Mr. President, 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 placed in the RECORD, as follows:

S. 520

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

**SECTION 1. STANLEY J. ROSZKOWSKI UNITED STATES COURTHOUSE.**

(a) DESIGNATION.—The United States courthouse under construction, as of the date of enactment of this Act, at 327 South Church Street, Rockford, Illinois, shall be known and designated as the ''Stanley J. Roszkowski United States Courthouse''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the ''Stanley J. Roszkowski United States Courthouse''.

## SUBMITTED RESOLUTIONS

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## SENATE RESOLUTION 62—A BILL ESTABLISHING A SELECT COMMITTEE OF THE SENATE TO MAKE A THOROUGH AND COMPLETE STUDY AND INVESTIGATION OF THE FACTS AND CIRCUMSTANCES GIVING RISE TO THE ECONOMIC CRISIS FACING THE UNITED STATES AND TO MAKE RECOMMENDATIONS TO PREVENT A FUTURE RECURRENCE OF SUCH A CRISIS

Mr. DORGAN (for himself and Mr. MCCAIN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 62

Whereas the United States is currently facing an unprecedented economic crisis, with massive losses of jobs in the United States and an alarming contraction of economic activity in the United States;

Whereas the United States Government has pledged, committed, or loaned more than $9,000,000,000,000 as of February 2009 in an attempt to mitigate and resolve the economic crisis and trillions of dollars more may well be necessary before the crisis is over;

Whereas the economic crisis reaches into, and has impacted, almost every aspect of the United States economy and significant parts of the international economy;

Whereas any thorough and complete study and investigation of this complex and far-reaching economic crisis will require sustained and singular focus for many months;

Whereas a study and investigation of this size and scope implicates the jurisdiction of several Standing Committees of the Senate and, if it is to be done correctly and timely, will require a degree of undivided attention and resources beyond the capacity of the Standing Committees of the Senate, which are already over-burdened;

Whereas adding such a significant study and investigation to the duties of the existing Standing Committees of the Senate would make it difficult for such committees to get their regular required work accomplished, particularly when so much attention and so many resources are appropriately devoted to responding to the ongoing economic crisis;

Whereas dozens of important investigations have been conducted with the creation of a select committee of the Senate for a specific purpose and a set time; and

Whereas the American public has a right to get straight answers on how this economic crisis developed and what steps should be taken to make sure that nothing like it happens again: Now therefore be it

*Resolved,*

**SECTION 1. SELECT COMMITTEE ON INVESTIGATION OF THE ECONOMIC CRISIS.**

There is established a select committee of the Senate to be known as the Select Committee on Investigation of the Economic Crisis (hereafter in this resolution referred to as the ''Select Committee'').

**SEC. 2. PURPOSE AND DUTIES.**

(a) PURPOSE.—The purpose of the Select Committee is to study and investigate the facts and circumstances giving rise to the current economic crisis facing the United States and to recommend actions to be taken to prevent a future recurrence of such a crisis.

(b) DUTIES.—The Select Committee is authorized and directed to do everything necessary or appropriate to conduct the study

and investigation specified in subsection (a). Without restricting in any way the authority conferred on the Select Committee by the preceding sentence, the Senate further expressly authorizes and directs the Select Committee to examine the facts and circumstances giving rise to the current economic crisis facing the United States, and report on such examination, regarding the following:

(1) The causes of the current economic crisis.

(2) Lessons learned from the current economic crisis.

(3) Actions to prevent a recurrence of an economic crisis such as the current economic crisis.

**SEC. 3. COMPOSITION OF SELECT COMMITTEE.**

(a) MEMBERSHIP.—

(1) IN GENERAL.—The Select Committee shall consist of 7 members of the Senate of whom—

(A) 4 members shall be appointed by the majority leader of the Senate; and

(B) 3 members shall be appointed by the minority leader of the Senate.

(2) DATE.—The appointments of the members of the Select Committee shall be made not later than 30 days after the date of the adoption of this resolution.

(b) VACANCIES.—Any vacancy in the Select Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) SERVICE.—Service of a Senator as a member, Chair, or Vice Chair of the Select Committee shall not be taken into account for the purposes of paragraph (4) of rule XXV of the Standing Rules of the Senate.

(d) CHAIR AND VICE CHAIR.—The Chair of the Select Committee shall be designated by the majority leader of the Senate, and the Vice Chair of the Select Committee shall be designated by the minority leader of the Senate.

(e) QUORUM.—

(1) REPORTS AND RECOMMENDATIONS.—A majority of the members of the Select Committee shall constitute a quorum for the purpose of reporting a matter or recommendation to the Senate.

(2) TESTIMONY.—One member of the Select Committee shall constitute a quorum for the purpose of taking testimony.

(3) OTHER BUSINESS.—A majority of the members of the Select Committee, or ⅓ of the members of the Select Committee if at least one member of the minority party is present, shall constitute a quorum for the purpose of conducting any other business of the Select Committee.

**SEC. 4. RULES AND PROCEDURES.**

(a) GOVERNANCE UNDER STANDING RULES OF SENATE.—Except as otherwise specifically provided in this resolution, the investigation, study, and hearings conducted by the Select Committee shall be governed by the Standing Rules of the Senate.

(b) ADDITIONAL RULES AND PROCEDURES.—In addition to the provisions of section 7(h), the Select Committee may adopt additional rules or procedures if the Chair and the Vice Chair of the Select Committee agree, or if the Select Committee by majority vote so decides, that such additional rules or procedures are necessary or advisable to enable the Select Committee to conduct the investigation, study, and hearings authorized by this resolution. Any such additional rules and procedures—

(1) shall not be inconsistent with this resolution or the Standing Rules of the Senate; and

(2) shall become effective upon publication in the Congressional Record.

**SEC. 5. AUTHORITY OF SELECT COMMITTEE.**

(a) IN GENERAL.—The Select Committee may exercise all of the powers and responsibilities of a committee under rule XXVI of the Standing Rules of the Senate.

(b) POWERS.—The Select Committee or, at its direction, any subcommittee or member of the Select Committee, may, for the purpose of carrying out this resolution—

(1) hold hearings;

(2) administer oaths;

(3) sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate;

(4) authorize and require, by issuance of subpoena or otherwise, the attendance and testimony of witnesses and the preservation and production of books, records, correspondence, memoranda, papers, documents, tapes, and any other materials in whatever form the Select Committee considers advisable;

(5) take testimony, orally, by sworn statement, by sworn written interrogatory, or by deposition, and authorize staff members to do the same; and

(6) issue letters rogatory and requests, through appropriate channels, for any other means of international assistance.

(c) AUTHORIZATION, ISSUANCE, AND ENFORCEMENT OF SUBPOENAS.—

(1) AUTHORIZATION AND ISSUANCE.—Subpoenas authorized and issued under this section—

(A) may be done only with the joint concurrence of the Chair and the Vice Chair of the Select Committee;

(B) shall bear the signature of the Chair or the designee of the Chair; and

(C) shall be served by any person or class of persons designated by the Chair for that purpose anywhere within or without the borders of the United States to the full extent provided by law.

(2) ENFORCEMENT.—The Select Committee may make to the Senate by report or resolution any recommendation, including a recommendation for criminal or civil enforcement, that the Select Committee considers appropriate with respect to—

(A) the failure or refusal of any person to appear at a hearing or deposition or to produce or preserve documents or materials described in subsection (b)(4) in obedience to a subpoena or order of the Select Committee;

(B) the failure or refusal of any person to answer questions truthfully and completely during the person's appearance as a witness at a hearing or deposition of the Select Committee; or

(C) the failure or refusal of any person to comply with any subpoena or order issued under the authority of subsection (b).

(d) AVOIDANCE OF DUPLICATION.—

(1) IN GENERAL.—To expedite the study and investigation, avoid duplication, and promote efficiency under this resolution, the Select Committee shall seek to—

(A) confer with other investigations into the matters set forth in section 2(a); and

(B) access all information and materials acquired or developed in such other investigations.

(2) ACCESS TO INFORMATION AND MATERIALS.—The Select Committee shall have, to the fullest extent permitted by law, access to any such information or materials obtained by any other governmental department, agency, or body investigating the matters set forth in section 2(a).

**SEC. 6. REPORTS.**

(a) INITIAL REPORT.—The Select Committee shall submit to the Senate a report on the study and investigation conducted pursuant to section 2 not later than one year after the appointment of all of the members of the Select Committee.

(b) UPDATED REPORT.—The Select Committee shall submit an updated report on such investigation not later than 180 days after the submittal of the report under subsection (a).

(c) FINAL REPORT.—The Select Committee shall submit a final report on such investigation not later than two years after the appointment of all of the members of the Select Committee.

(d) ADDITIONAL REPORTS.—The Select Committee may submit any additional report or reports that the Select Committee considers appropriate.

(e) FINDINGS AND RECOMMENDATIONS.—The reports under this section shall include findings and recommendations of the Select Committee regarding the matters considered under section 2.

(f) DISPOSITION OF REPORTS.—All reports made by the Select Committee shall be submitted to the Secretary of the Senate. All reports made by the Select Committee shall be referred to the committee or committees that have jurisdiction over the subject matter of the report.

**SEC. 7. ADMINISTRATIVE PROVISIONS.**

(a) STAFF.—

(1) IN GENERAL.—The Select Committee may employ in accordance with paragraph (2) a staff composed of such clerical, investigatory, legal, technical, and other personnel as the Select Committee, or the Chair and the Vice Chair of the Select Committee considers necessary or appropriate.

(2) APPOINTMENT OF STAFF.—The staff of the Select Committee shall consist of such personnel as the Chair and the Vice Chair shall jointly appoint. Such staff may be removed jointly by the Chair and the Vice Chair, and shall work under the joint general supervision and direction of the Chair and the Vice Chair.

(b) COMPENSATION.—The Chair and the Vice Chair of the Select Committee shall jointly fix the compensation of all personnel of the staff of the Select Committee.

(c) REIMBURSEMENT OF EXPENSES.—The Select Committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by such staff members in the performance of their functions for the Select Committee.

(d) SERVICES OF SENATE STAFF.—The Select Committee may use, with the prior consent of the chair of any other committee of the Senate or the chair of any subcommittee of any committee of the Senate, the facilities of any other committee of the Senate, or the services of any members of the staff of such committee or subcommittee, whenever the Select Committee or the Chair of the Select Committee considers that such action is necessary or appropriate to enable the Select Committee to carry out its responsibilities, duties, or functions under this resolution.

(e) DETAIL OF EMPLOYEES.—The Select Committee may use on a reimbursable basis, with the prior consent of the head of the department or agency of Government concerned and the approval of the Committee on Rules and Administration of the Senate, the services of personnel of such department or agency.

(f) TEMPORARY AND INTERMITTENT SERVICES.—The Select Committee may procure the temporary or intermittent services of individual consultants, or organizations thereof.

(g) PAYMENT OF EXPENSES.—There shall be paid out of the applicable accounts of the Senate such sums as may be necessary for the expenses of the Select Committee. Such payments shall be made on vouchers signed by the Chair of the Select Committee and approved in the manner directed by the Committee on Rules and Administration of the Senate. Amounts made available under this subsection shall be expended in accordance with regulations prescribed by the Committee on Rules and Administration of the Senate.

(h) CONFLICTS OF INTEREST.—The Select Committee shall issue rules to prohibit or minimize any conflicts of interest involving its members, staff, detailed personnel, consultants, and any others providing assistance to the Select Committee. Such rules shall not be inconsistent with the Code of Official Conduct of the Senate or applicable Federal law.

**SEC. 8. EFFECTIVE DATE; TERMINATION.**

(a) EFFECTIVE DATE.—This resolution shall take effect on the date of the adoption of this resolution.

(b) TERMINATION.—The Select Committee shall terminate three months after the submittal of the report required by section 6(c).

## AMENDMENTS SUBMITTED AND PROPOSED

SA 613. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table.

SA 614. Mrs. MCCASKILL (for herself and Mr. BOND) submitted an amendment intended to be proposed by her to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 615. Mr. ENSIGN (for himself, Mr. VOINOVICH, Mr. KYL, Mr. DEMINT, Mr. BROWNBACK, Mr. CORNYN, Mr. LIEBERMAN, Mr. GREGG, Mr. ALEXANDER, Mr. MCCAIN, and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 616. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 617. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 618. Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 619. Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 620. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 621. Mr. VITTER (for himself, Mr. FEINGOLD, Mr. GRASSLEY, and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 622. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 623. Mr. COBURN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra.

SA 624. Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 625. Mr. JOHNSON (for himself and Mr. THUNE) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 626. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 627. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 628. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 629. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 630. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 631. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 632. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 633. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 634. Mr. KYL (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 635. Mr. THUNE proposed an amendment to the bill H.R. 1105, supra.

SA 636. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 637. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 638. Mr. CRAPO (for himself, Mr. VITTER, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 639. Mr. UDALL of New Mexico submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 613.** Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 942, between lines 14 and 15, insert the following:

RESTRICTION ON ASSESSED CONTRIBUTIONS AND VOLUNTARY PAYMENTS TO UNITED NATIONS

SEC. 7093. None of the funds appropriated or otherwise made available under any title of this Act may be made available to make any assessed contribution or voluntary payment of the United States to the United Nations if the United Nations implements or imposes any taxation on any United States persons.

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**SA 614.** Mrs. MCCASKILL (for herself and Mr. BOND) submitted an amendment intended to be proposed by her to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

In title I of division C, strike section 108.

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**SA 615.** Mr. ENSIGN (for himself, Mr. VOINOVICH, Mr. KYL, Mr. DEMINT, Mr. BROWNBACK, Mr. CORNYN, Mr. LIEBERMAN, Mr. GREGG, Mr. ALEXANDER, Mr. MCCAIN, and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 308, line 2, strike beginning with ''; Provided'' through line 8 and insert a period.

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**SA 616.** Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, between lines 5 and 6, insert the following:

**SEC. 4. REPORT ON CONFERENCES BY FEDERAL AGENCIES.**

(a) DEFINITION.—In this section the term ''agency'' has the meaning given under section 551(1) of title 5, United States Code.

(b) REPORTS.—

(1) IN GENERAL.—The head of each agency for which appropriations are made available under this Act, shall submit quarterly reports as provided under paragraph (2) regarding the costs and contracting procedures relating to each conference held by that agency during fiscal year 2009 for which the cost to the Government was more than $20,000.

(2) SUBMISSION OF REPORTS.—Each report under paragraph (1) shall be submitted to—

(A) the Inspector General of that agency; or

(B) in the case of an agency for which there is no Inspector General, the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(3) CONTENTS OF REPORTS.—Each report submitted under this subsection shall include for each conference described under paragraph (1) held during the applicable quarter—

(A) a description of the subject of and number of participants attending that conference;

(B) a detailed statement of the costs to the Government relating to that conference, including—

(i) the cost of any food or beverages;

(ii) the cost of any audio-visual services; and

(iii) a discussion of the methodology used to determine which costs relate to that conference; and

(C) a description of the contracting procedures relating to that conference, including—

(i) whether contracts were awarded on a competitive basis for that conference; and

(ii) a discussion of any cost comparison conducted by the agency in evaluating potential contractors for that conference.

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**SA 617.** Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 1122, after line 10, insert the following:

SEC. 103. STUDY ON VALIDITY OF DIGITAL FLOOD INSURANCE RATE MAPS.—

(a) IN GENERAL.—The Administrator of the Federal Emergency Management Agency and the Corps of Engineers, in conjunction with

the State of Louisiana, shall conduct a study on the validity of digital flood insurance rate maps.

(b) TERMS OF ANALYSIS.—In conducting the study required under subsection (a), the Administrator and the Corps of Engineers shall—

(1) use the best and most current—

(A) geodetic reference;

(B) topographic data and features; and

(C) updated circulation and flood models available;

(2) fully analyze and identify the effect of roadways, levees, and natural ridges that are particular to the area being mapped;

(3) consider more recent bathymetric and topographic data, particularly from light detection and ranging technology, referenced to the most recent vertical benchmarks;

(4) further analyze the effects of various vegetation in storm surge; and

(5) collaborate closely with State and local governments who may have data and information described in paragraph (1) that may produce more accurate maps or enhanced models.

(c) NO UPDATE OF FLOODMAPS UNTIL STUDY COMPLETED.—During the period beginning on the date of the enactment of this Act and ending 90 days after the date on which the study required under subsection (a) is completed, the Administrator may not issue any updated flood insurance rate maps for the State of Louisiana.

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**SA 618.** Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TREATMENT AS ACTIVE SERVICE FOR RETIRED PAY PURPOSES OF SERVICE AS A MEMBER OF THE ALASKA TERRITORIAL GUARD DURING WORLD WAR II

SEC. _____. (a) IN GENERAL.—Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001 (Public Law 106–259; 114 Stat. 705) shall be treated as active service for purposes of the computation under chapter 71, 371, or 1223 of title 10, United States Code, as applicable, of the retired pay to which such individual may be entitled under title 10, United States Code.

(b) APPLICABILITY.—Subsection (a) shall apply with respect to amounts of retired pay payable under title 10, United States Code, for months beginning on or after August 9, 2000. No retired pay shall be paid to any individual by reason of subsection (a) for any period before that date.

(c) WORLD WAR II DEFINED.—In this section, the term ''World War II'' has the meaning given that term in section 101(8) of title 38, United States Code.

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**SA 619.** Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

CONTINUATION OF POLICY OF TREATING SERVICE IN THE ALASKA TERRITORIAL GUARD DURING WORLD WAR II AS ACTIVE SERVICE FOR PURPOSES OF THE COMPUTATION OF RETIRED PAY OF RETIRED MEMBERS OF THE ARMY

SEC. ____. (a) IN GENERAL.—The Secretary of Defense shall, during the period beginning on April 1, 2009, and ending on September 30, 2009, treat service in the Alaska Territorial Guard during World War II as active service for purposes of the computation of retired pay of retired members of the Army under title 10, United States Code.

(b) PROHIBITION ON RECOUPMENT OF RETIRED PAY.—The Secretary of Defense may not recoup any retired pay paid on account of service described in subsection (a).

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**SA 620.** Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 956, between lines 7 and 8, insert the following:

NEXTGEN ACCELERATION

For grants or other agreements to accelerate the transition to the Next Generation Air Transportation System by accelerating deployment of ground infrastructure for Automatic Dependent Surveillance-Broadcast, by accelerating development of procedures and routes that support performance-based air navigation, to incentivize aircraft equipage to use such infrastructure, procedures, and routes, and for additional agency administrative costs associated with the certification and oversight of the deployment of such systems, $165,000,000, to remain available until September 30, 2010: *Provided,* That the Administrator of the Federal Aviation Administration shall use the authority under section 106(l)(6) of title 49, United States Code, to make such grants or agreements: *Provided further,* That, with respect to any incentives for equipage, the Federal share of the costs shall not exceed 50 percent.

On page 991, line 20, strike ''$550,000,000'' and insert ''$475,000,000''.

On page 995, line 13, strike ''$940,000,000'' and insert ''$850,000,000''.

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**SA 621.** Mr. VITTER (for himself, Mr. FEINGOLD, Mr. GRASSLEY, and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. _____. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.**

(a) IN GENERAL.—Paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 601(a)(1) of such Act is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)'';

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking ''as adjusted by paragraph (2) of this subsection'' and inserting ''adjusted as provided by law''.

(c) EFFECTIVE DATE.—This section shall take effect on December 31, 2010.

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**SA 622.** Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title V of division F, insert the following:

SEC. ____. None of the funds appropriated in this Act shall be expended or obligated by the Commissioner of Social Security, for purposes of administering Social Security benefit payments under title II of the Social Security Act, to process claims for credit for quarters of coverage based on work performed under a social security account number that was not the claimant's number which is an offense prohibited under section 208 of the Social Security Act (42 U.S.C. 408).

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**SA 623.** Mr. COBURN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, none of the funds made available under this Act may be obligated or otherwise expended for any congressionally directed spending item for—

(1) DIRECT Methanol Fuel Cell (IN);

(2) Solar Energy Windows and Smart IR Switchable Building Technologies (PA);

(3) Adaptive Liquid Crystal Windows (OH);

(4) Anti-idling Lithium Ion Battery Program, California (CA) ;

(5) Advanced Engineering Environment for Sandia National Lab (MA);

(6) Multi-Disciplined Integrated Collaborative Environment (MDICE) (MO);

(7) Hydrogen Optical Fiber Sensors (CA);

(8) Flexible Thin-Film Silicon Solar Cells (OH);

(9) CATALYST: Explorations in Aerospace and Innovation education program;

(10) Carnegie Mellon University, Pittsburgh, PA, for renovation and equipment;

(11) Mount Aloysius College, Cresson, PA, for college preparation programs;

(12) Washington & Jefferson College, Washington, PA, for science education outreach programs;

(13) DePaul University, Chicago, IL, for math and science teacher education in Chicago Public Schools; and

(14) Nazareth Hospital, Philadelphia, PA, for renovation and equipment.

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**SA 624.** Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 117 of title I of division C.

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**SA 625.** Mr. JOHNSON (for himself and Mr. THUNE) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 254, between lines 5 and 6, insert the following:

**SEC. 5____. BIG SIOUX RIVER AND SKUNK CREEK, SIOUX FALLS, SOUTH DAKOTA.**

The project for flood control, Big Sioux River and Skunk Creek, Sioux Falls, South

Dakota, authorized by section 101(a)(28) of the Water Resources Development Act of 1996 (110 Stat. 3666), is modified to authorize the Secretary of the Army to construct the project at an estimated total cost of $51,000,000, of which—

(1) the Federal share of the estimated total cost shall be approximately $38,250,000; and

(2) the non-Federal share of the estimated total cost shall be approximately $12,750,000.

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**SA 626.** Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 363, strike line 13 and all that follows through page 364, line 11, and insert the following:

SEC. 620. None of the funds made available in this Act may be used to administer, implement, or enforce the amendments made to section 515.560 and section 515.561 of title 31, Code of Federal Regulations, related to travel to visit relatives in Cuba, that were published in the Federal Register on June 16, 2004.

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**SA 627.** Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 942, between lines 14 and 15, insert the following:

UNITED NATIONS INVESTIGATION OF HAMAS ACTIVITIES DURING JANUARY 2009 ISRAELI OPERATIONS IN GAZA

SEC. 7093. (a) Congress makes the following findings:

(1) During the January 2009 operations conducted by the Government of Israel in Gaza, a United Nations building in Gaza suffered damage.

(2) According to a February 10, 2009, statement from United Nations Secretary-General Ban-Ki Moon, the United Nations has dispatched a team to Gaza to investigate damage done to ''United Nations premises''.

(3) No similar investigation has been initiated by the United Nations Secretariat with respect to Hamas activities during the Gaza operations.

(b) Of the amount appropriated or otherwise made available by title I under the heading ''CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS'' and available for contributions to the United Nations, $382,350,000 may not be made available until the Secretary of State certifies that—

(1) the United Nations has dispatched a team to Gaza to investigate attacks on the people and territory of Israel since Israel completed its unilateral withdrawal from Gaza; and

(2) the United Nations investigation of damage done to United Nations premises in Gaza includes an inquiry into allegations that Hamas was using territory near such premises to take actions hostile to the Israeli Defense Forces or the people or territory of Israel.

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**SA 628.** Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

In title I of division D, strike section 106.

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**SA 629.** Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 942, between lines 14 and 15, insert the following:

PROHIBITION ON USE OF FUNDS FOR RESETTLEMENT INTO UNITED STATES OF PALESTINIANS FROM GAZA

SEC. 7093. None of the funds appropriated or otherwise made available by this Act may be made available to resettle Palestinians from Gaza into the United States.

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**SA 630.** Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 942, between lines 14 and 15, insert the following:

REPORT ON COUNTER-SMUGGLING EFFORTS IN GAZA

SEC. 7093. Not later than 90 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Director of National Intelligence, shall submit to Congress a report on whether additional funds from Foreign Military Financing assistance provided annually to the Government of Egypt could be expended—

(1) to improve efforts by the Government of Egypt to counter illicit smuggling, including arms smuggling, across the Egypt-Gaza border; and

(2) to intercept weapons originating in other countries in the region and smuggled into Gaza through Egypt.

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**SA 631.** Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 942, between lines 14 and 15, insert the following:

GAZA RECONSTRUCTION

SEC. 7093. None of the funds appropriated or otherwise made available by this Act may be made available to aid reconstruction efforts in Gaza until the Secretary of State certifies that none of such funds will be diverted to Hamas or entities controlled by Hamas.

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**SA 632.** Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, between lines 11 and 12, insert the following:

**SEC. 112. ADDITIONAL AMOUNT FOR BUREAU OF INDUSTRY AND SECURITY.**

(a) IN GENERAL.—The amount appropriated or otherwise made available by this title for the Department of Commerce under the heading ''OPERATIONS AND ADMINISTRATION'' under the heading ''BUREAU OF INDUSTRY AND SECURITY'' is hereby increased by $23,800,000.

(b) OFFSET.—The amount appropriated or otherwise made available by this title for the Department of Commerce under the heading ''OPERATIONS, RESEARCH, AND FACILITIES'' under the heading ''NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'' is hereby decreased by $23,800,000.

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**SA 633.** Mr. KYL proposed an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 751, line 7, insert after ''$698,187,000: *Provided*,'' the following: ''That of the total amount made available under this heading, $96,454,000 may be made available for Radio Free Europe/Radio Liberty: *Provided further*,''.

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**SA 634.** Mr. KYL (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. (a) Except as provided under subsection (b), none of the funds made available under this Act may be spent by a Federal agency in a new contract or other expenditure of Federal funds with a company identified by the Department of the Treasury Office of Foreign Assets Control (OFAC) as having a business presence in Iran's energy sector, including Iran's refineries, refined petroleum products, and oil and natural gas fields.

(b) The President may waive the application of subsection (a), on a case-by-case basis, if the President—

(1) determines that such waiver is necessary for the national security interests of the United States; and

(2) submits an unclassified report to Congress, with a classified annex if necessary, that describes the reasons such waiver is necessary.

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**SA 635.** Mr. THUNE proposed an amendment to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; as follows:

On page 458, after line 25, insert the following:

EMERGENCY FUND FOR INDIAN SAFETY AND HEALTH

For deposit in the Emergency Fund for Indian Safety and Health established by subsection (a) of section 601 of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c), for use by the Attorney General, the Secretary of Health and Human Services, and the Secretary of the Interior in accordance with that section, $400,000,000, to be derived by transfer of an equal percentage from each other program and project for which funds are made available by this Act.

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**SA 636.** Mr. VITTER proposed an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 83, after line 24, insert the following:

SEC. 740. None of the funds appropriated in this Act may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g)) from importing a prescription drug from Canada that complies with sections 501, 502, and 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, and 355) and is not—

(1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

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**SA 637.** Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 426, lines 18 through 22, strike ''to be reduced'' and all that follows through ''each new application,''.

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**SA 638.** Mr. CRAPO (for himself, Mr. VITTER, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 626 of title VI, of Division D.

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**SA 639.** Mr. UDALL of New Mexico submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table; as follows:

On page 720, between lines 5 and 6, insert the following:

**SEC. 1103. PROHIBITION ON USE OF COAL FOR CAPITOL POWER PLANT.**

(a) IN GENERAL.—The Architect of the Capitol shall ensure that any electricity generated by or otherwise used by the Capitol Power Plant is not derived from coal.

(b) EFFECTIVE DATE.—This section shall take effect on October 1, 2009, and apply to fiscal year 2010 and each fiscal year thereafter.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. INOUYE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 3, 2009, at 9:30 a.m.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INOUYE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 3, 2009 at 10 a.m., to conduct a hearing entitled ''Consumer Protections in Financial Services: Past Problems, Future Solutions.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. INOUYE. Mr. President, I would like to ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, March 3, 2009, at 10 a.m., in room SD–106 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. INOUYE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 3, 2009, at 10 a.m., to hold a hearing entitled ''Iranian Political and Nuclear Realities and U.S. Policy Options.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. INOUYE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 3, 2009 at 2:30 p.m.

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

## DESIGNATING THE ''STANLEY J. ROSZKOWSKI UNITED STATES COURTHOUSE''

Mr. REID. Madam President, I ask unanimous consent to proceed to S. 520.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 520), to designate the United States courthouse under construction at 327 South Church Street, Rockford, Illinois, as the ''Stanley J. Roszkowski United States Courthouse.''

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to this matter be printed in the RECORD.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 520

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

**SECTION 1. STANLEY J. ROSZKOWSKI UNITED STATES COURTHOUSE.**

(a) DESIGNATION.—The United States courthouse under construction, as of the date of enactment of this Act, at 327 South Church Street, Rockford, Illinois, shall be known and designated as the ''Stanley J. Roszkowski United States Courthouse''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the ''Stanley J. Roszkowski United States Courthouse''.

## ORDERS FOR WEDNESDAY, MARCH 4, 2009

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Wednesday, March 4; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 1150, the Omnibus appropriations bill; further that the Senate recess at 10:40 a.m. until 12 noon for the joint meeting of Congress.

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

## PROGRAM

Mr. REID. Madam President, at 11 a.m. tomorrow, as I announced, there will be a joint meeting of Congress with British Prime Minister Gordon Brown. Senators attending the joint meeting should gather in the Chamber at 10:30 a.m. to proceed as a body to the Hall of the House of Representatives.

Due to the joint meeting and other Member meetings, Senators should expect votes early tomorrow afternoon. We are not going to be able to get any votes out of the way in the morning because we come in at 9:30 and leave at 10:30.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:24 p.m., adjourned until Wednesday, March 4, 2009, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF LABOR

SETH DAVID HARRIS, OF NEW JERSEY, TO BE DEPUTY SECRETARY OF LABOR, VICE HOWARD RADZELY, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. DEBRA A. SCULLARY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIGADIER GENERAL ROGER A. BINDER
BRIGADIER GENERAL DAVID L. COMMONS
BRIGADIER GENERAL ANITA R. GALLENTINE
BRIGADIER GENERAL CARL M. SKINNER
BRIGADIER GENERAL HOWARD N. THOMPSON

BRIGADIER GENERAL PAUL M. VAN SICKLE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COLONEL WILLIAM B. BINGER
COLONEL CATHERINE A. CHILTON
COLONEL JAMES A. FIRTH
COLONEL ROBERT M. HAIRE
COLONEL STAYCE D. HARRIS
COLONEL THOMAS P. HARWOOD III
COLONEL MARYANNE MILLER
COLONEL PAMELA K. MILLIGAN
COLONEL ROBERT K. MILLMANN, JR.
COLONEL JAMES J. MUSCATELL, JR.
COLONEL DENNIS P. PLOYER
COLONEL KEVIN E. POTTINGER
COLONEL DEREK P. RYDHOLM
COLONEL GEORGE F. WILLIAMS

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. PAUL W. BRIER
COL. FRANS J. COETZEE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIGADIER GENERAL GEORGE J. ALLEN
BRIGADIER GENERAL RAYMOND C. FOX
BRIGADIER GENERAL CHARLES M. GURGANUS
BRIGADIER GENERAL DAVID R. HEINZ
BRIGADIER GENERAL STEVEN A. HUMMER
BRIGADIER GENERAL DAVID G. REIST
BRIGADIER GENERAL JOHN A. TOOLAN, JR.
BRIGADIER GENERAL JOHN E. WISSLER