

they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. McCAIN. Mr. President, for the Committee on Commerce, Science, and Transportation, I report favorably nomination lists which were printed in the RECORDS of the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of October 12, 1999 and October 27, 1999, at the end of the Senate proceedings.)

In the Coast Guard, 1 nomination of Richard B. Gaines, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of October 12, 1999.

In the Coast Guard, 96 nominations beginning Peter K. Oittinen, and ending Joseph P. Sargent, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 27, 1999.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CAMPBELL:

S. 1921. A bill to authorize the placement within the site of the Vietnam Veterans Memorial of a plaque to honor Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service; to the Committee on Energy and Natural Resources.

By Mr. KERREY (for himself and Mr. GRASSLEY):

S. 1922. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for modifications to inter-city buses required under the Americans with Disabilities Act of 1990; to the Committee on Finance.

By Mr. BROWNEBACK:

S. 1923. A bill to prohibit the Federal Communications Commission from applying spectrum aggregation limits to spectrum assigned by auction after 1999; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. BRYAN, Mr. HARKIN, Mr. DURBIN, Mr. FEINGOLD, and Mr. ROBB):

S. 1924. A bill to ensure personal privacy with respect to financial information, to provide customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, to provide for strong enforcement of these rights, and to protect States' rights; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. FEINSTEIN (for herself, Mr. REID, Mrs. BOXER, and Mr. BRYAN):

S. 1925. A bill to promote environmental restoration around the Lake Tahoe basin; to the Committee on Energy and Natural Resources.

By Mrs. MURRAY:

S. 1926. A bill to amend the Elementary and Secondary Education Act of 1965 to im-

prove student achievement by helping local educational agencies improve the quality of, and technology training for, teachers, to improve teacher accountability, and to enhance the leadership skills of principals; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BREAUX:

S. 1927. A bill to establish the National Recording Registry in the Library of Congress to maintain and preserve recordings that are culturally, historically, or aesthetically significant, and for other purposes; to the Committee on Rules and Administration.

By Mr. ROTH:

S. 1928. A bill to amend title XVIII of the Social Security Act to establish a medicare subvention demonstration project for veterans, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 1929. A bill to amend the Native Hawaiian Health Care Improvement Act to revise and extend such Act; to the Committee on Indian Affairs.

By Mr. GRAMS:

S. 1930. A bill to amend the Agricultural Adjustment Act to provide for the termination of milk marketing orders; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1931. A bill to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes; to the Committee on the Judiciary.

By Mr. JEFFORDS:

S. 1932. A bill to amend the Ricky Ray Hemophilia Relief Fund Act of 1998 to revise and extend certain provisions; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THOMPSON:

S. 1933. A bill to amend the Internal Revenue Code of 1986 to permit the consolidation of life insurance companies with other companies; to the Committee on Finance.

By Mr. DODD (for himself and Mr. BENNETT):

S. 1934. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for business-provided student education and training; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. SPECTER):

S. 1935. A bill to amend title XIX of the Social Security Act to provide for coverage of community attendant services and supports under the Medicaid Program; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 1936. A bill to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other National Forest System land in the State of Oregon and use the proceeds derived from the sale or exchange for National Forest System purposes; to the Committee on Energy and Natural Resources.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CAMPBELL:

S. 1921. A bill to authorize the placement within the site of the Vietnam Veterans Memorial of a plaque to honor Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service; to the

Committee on Energy and Natural Resources.

THE VIETNAM VETERANS RECOGNITION ACT OF 1999

Mr. CAMPBELL. Mr. President, today I am introducing legislation which would create a plaque honoring those Vietnam veterans who died as a result of the war but who are not eligible to have their names placed on the Vietnam Veterans Memorial. The "Vietnam Veterans Recognition Act of 1999" would authorize the placement of a plaque within the sight of the Vietnam Veterans Memorial to honor those Vietnam veterans who died after their service in the Vietnam War, but as a direct result of that service. This bill is similar to H.R. 3293, which was introduced by my colleague in the House of Representatives, Congressman GALLEGLY.

Deadly war wounds do not always kill right away. Sometimes these fatal war wounds may linger on for many years after the fighting is done. Sometimes these wounds are clearly evident from the time they are inflicted, sometimes they are not. The terrible toll that Agent Orange has taken on our Vietnam veterans stands as one stark example. What we do know is that all too often these war wounds eventually take the lives of many of our brave Vietnam veterans.

Even though these veterans may not have been killed in action while they served in the tropical jungles of Vietnam, in the end they too made the ultimate sacrifice for their country. Like their brothers and sisters who died on the field of battle, they too deserve to be duly recognized and honored.

Mr. President, duly honoring the men and women who made the ultimate sacrifice for our country should always be a priority. Unfortunately, the service and sacrifices made by some Vietnam veterans is still not being fully recognized since their names are not included on the Vietnam Veterans Memorial Wall.

This bill recognizes the sacrifices made by these Vietnam veterans by authorizing a plaque that will be engraved with an appropriate inscription honoring these fallen veterans.

Since no federal funds will be used for the plaque, it will be up to our nation's leading veteran's organizations and individual Americans to demonstrate their commitment to honoring these fallen veterans through charitable giving to help make it a reality. The American Battle Monument Commission will lead the effort in collecting the private funds necessary.

It is vital for us to have a place to honor all the men and women who have served and died for their country. It is also important for the families of these fallen heroes to have a place in our nation's capital where their loved one's sacrifice is honored and recognized for future generations.

I urge my colleagues to join me in supporting this important bill. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1921

*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 "Vietnam Veterans Recognition Act of 1999".

**SEC. 2. ADDITION OF A COMMEMORATIVE PLAQUE ON THE SITE OF THE VIETNAM VETERANS MEMORIAL.**

Public Law 96-297 (16 U.S.C. 431 note), which authorized the establishment of the Vietnam Veterans Memorial, is amended by adding at the end the following:

**"SEC. 5. PLAQUE TO HONOR OTHER VIETNAM VETERANS WHO DIED AS A RESULT OF SERVICE IN THE VIETNAM WAR.**

"(a) Plaque Authorized.—The American Battle Monuments Commission is authorized to place within the Vietnam Veterans Memorial a suitable plaque containing an inscription intended to honor Vietnam veterans—

"(1) who died after their service in the Vietnam war, but as a direct result of that service; and

"(2) whose names are not otherwise eligible for placement on the Vietnam Veterans Memorial wall.

"(b) SPECIFICATIONS.—The plaque shall be at least 6 square feet in size and not larger than 18 square feet in size, and of whatever shape as the American American Battle Monuments Commission determines to be appropriate for the site. The plaque shall bear an inscription prepared by the American Battle Monuments Commission.

"(c) RELATION TO COMMEMORATIVE WORKS ACT.—Except as provided in subsection (a), the Commemorative Works Act (40 U.S.C. 1001 et seq.) shall apply to the design and placement of the plaque within the site of the Vietnam Veterans Memorial.

"(d) CONSULTATION.—In designing the plaque, preparing the inscription, and selecting the specific location for the plaque within the Vietnam Veterans Memorial, the American Battle Monuments Commission shall consult with the architects of the Vietnam Veterans Memorial Fund, Inc.

"(e) FUNDS FOR PLAQUE.—Federal funds may not be used to design, procure, or install the plaque.

"(f) VIETNAM VETERANS MEMORIAL DEFINED.—In this section, the term 'Vietnam Veterans Memorial' means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue 200 feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting pool walkway). This is the same definition used by the National Park Service as of the date of the enactment of this section, as contained in section 7.96(g)(1)(x) of title 36, Code of Federal Regulations."

By Mr. KERREY (for himself and Mr. GRASSLEY):

S. 1922. A bill to amend the Internal Revenue Code of 1986 to provide a tax

credit for modifications to intercity buses required under the Americans with Disabilities Act of 1990; to the Committee on Finance.

**TAX CREDIT FOR MODIFICATIONS TO INTERCITY BUSES REQUIRED UNDER THE AMERICANS WITH DISABILITIES ACT**

• Mr. KERREY. Mr. President, today I am introducing legislation to give privately owned, over-the-road bus operators, the assistance they need to equip their buses with wheelchair lifts. These operators provide vital intercity bus services to millions of Americans who have access to no other form of public transportation, most particularly in rural areas. The legislation I am introducing today passed the Senate earlier this year as part of a larger tax bill and enjoyed bipartisan support. Indeed I am delighted that Senator GRASSLEY has agreed to join me as a cosponsor of this bill.

In keeping with the Americans with Disabilities Act, the Department of Transportation (DOT) is requiring that a wheelchair lift be installed on every new over-the-road bus operating intercity bus service. In addition, comparable requirements are being imposed on over the road buses providing charter service. This largely unfunded mandate is estimated to cost the industry \$25 million a year in acquisition and training costs alone. In some years, that \$25 million figure is expected to exceed the entire profit for the industry.

DOT's new requirement serves the important public purpose of ensuring that disabled persons in wheelchairs will have access to over-the-road buses. Yet the cost of this requirement poses a significant threat to the continuation of this service for millions of rural and low-income Americans. Over-the-road buses serve roughly 4,000 communities that have no other form of intercity public transportation. Additionally, with an average fare of \$34, they are the only form of affordable transportation available for millions of passengers.

The legislation we are introducing today provides over-the-road bus operators with a 50-percent tax credit for the unsubsidized costs of complying with the DOT requirement. This tax credit gives them the support that they need to ensure both that disabled people in wheelchairs have access to over-the-road bus service and that that service remains available to the millions of passengers who rely on that service.

I urge my colleagues to join us in supporting this legislation.●

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By Mr. BROWNBACK.

S. 1923. A bill to prohibit the Federal Communications Commission from applying spectrum aggregation limits to spectrum assigned by auction after 1999; to the Committee on Commerce, Science, and Transportation.

**THE THIRD-GENERATION WIRELESS INTERNET ACT**

Mr. BROWNBACK. Mr. President, I rise today to introduce the Third-Generation Wireless Internet Act of 1999, a bill to prevent the FCC from applying the current spectrum cap imposed upon commercial mobile wireless services to new spectrum auctions.

Mr. President, the popularity of wireless services has far exceeded expectations. More people purchase wireless phones every month, and the duration of calls is growing rapidly as per-minute rates decline.

Mr. President, while the popularity of wireless has increased, the Internet has become a mass-market phenomenon. Flat-rate Internet-usage plans have lured millions of Americans online. Broadband services have increased the Internet applications available to consumers and drastically reduced the amount of time necessary to access information online.

Now, we are witnessing the marriage of the wireless and Internet crazes. Wireless Internet access presents consumers with the opportunity to access the Internet anywhere and anytime.

With wireless access, consumers will no longer be dependent upon personal computers to reach the Internet. However, wireless Internet access will only become a mass-market phenomenon when consumers can obtain wireless broadband services that provide the bandwidth necessary to download information from the Internet on a handheld device at reasonable speeds.

Third-generation wireless services represent the first wave of truly broadband mobile services. Third-generation services should enable wireless users to achieve speeds of up to 384 kilobits per second. But, Mr. President, to ensure the rapid deployment of third-generation services, Congress needs to provide wireless carriers with the ability to purchase additional spectrum at future FCC auctions, which many carriers cannot do under the current FCC policy.

Manufacturers are hesitant to produce equipment for third-generation applications, and wireless carriers are unable to roll out third-generation services, because wireless carriers do not have enough spectrum to offer true third-generation services. Consumers have an opportunity to have wireless high-speed access to the Internet. But until there is regulatory certainty that carriers will be able to obtain the spectrum necessary to offer third-generation services, consumers will have to wait before they can have a mobile on-ramp to the information superhighway.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1923

*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 "Third-Generation Wireless Internet Act."

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) Mobile telephony has been one of the fastest growing industries of the telecommunications sector, offering consumers innovative services at affordable rates.

(2) Demand for mobile telecommunications services has greatly exceeded industry expectations.

(3) Mobile carriers are poised to bring high-speed Internet access to consumers through wireless telecommunications devices.

(4) Third Generation mobile systems (hereinafter referred to as "3G") are capable of delivering high-speed data services for Internet access and other multimedia applications.

(5) Advanced wireless services such as 3G may be the most efficient and economic way to provide high-speed Internet access to rural areas of the United States.

(6) Under the current Federal Communications Commission rules, commercial mobile service providers may not use more than 45 megahertz of combined cellular, broadband Personal Communications Service, and Specialized Mobile Radio spectrum within any geographic area.

(7) Assignments of additional spectrum may be needed to enable mobile operators to keep pace with the demand for 3G services.

(8) The application of the current Commission spectrum cap rules to new spectrum auctioned by the FCC would greatly impede the deployment of 3G services.

**SEC. 3. WIRELESS TELECOMMUNICATIONS SERVICES.**

Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by adding at the end thereof the following:

**"(9) NON-APPLICATION OF SPECTRUM AGGREGATION LIMITS TO NEW AUCTIONS.—**

"(A) The Commission may not apply section 20.6(a) of its regulations (47 C.F.R. 20.6(a)) to a license for spectrum assigned by initial auction held for after December 31, 1999.

"(B) The Commission may relax or eliminate the spectrum aggregation limits of section 20.6 of its regulations (47 C.F.R. 20.6), but may not lower these limits."

By Mr. LEAHY (for himself, Mr. BRYAN, Mr. HARKIN, Mr. DURBIN, Mr. FEINGOLD, and Mr. ROBB):

S. 1924. A bill to ensure personal privacy with respect to financial information, to provide customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, to provide for strong enforcement of these rights, and to protect States' rights; to the Committee on Banking, Housing, and Urban Affairs.

**THE FINANCIAL INFORMATION PRIVACY AND SECURITY ACT**

Mr. LEAHY. Mr. President, I rise today to introduce the Financial Information Privacy and Security Act of 1999. I am pleased that Senators BRYAN, HARKIN, DURBIN, and FEINGOLD are original cosponsors of this legislation to protect the financial privacy of all Americans.

The right of privacy is a personal and fundamental right protected by the Constitution of the United States. But today, the American people are growing more and more concerned over encroachments on their personal privacy.

New technologies, new communications media, and new business services created with the best of intentions and highest of expectations also pose a threat to our ability to keep our lives to ourselves, and to live, work and think without having personal information about us collected without our knowledge or consent.

This incremental invasion of our privacy has happened through the lack of safeguards on personal, financial and medical information, which can be stolen, sold or mishandled and find its way into the wrong hands with the push of a button or click of a mouse.

Our right of privacy has become one of the most vulnerable rights in the information age. The digitalization of information and the explosion in the growth of computing and electronic networking offer tremendous potential benefits to the way Americans live, work, conduct commerce, and interact with their government.

It makes it possible for me, sitting in my farmhouse in Vermont, to connect with any Member of Congress or friends around the world, to get information with the click of a mouse on my computer.

But the new technology also presents new threats to our individual privacy and security, in particular, our ability to control the terms under which our personal information is acquired, disclosed, and used.

Just last week, President Clinton signed into law the landmark Financial Modernization Act of 1999, which updates our financial laws and opens up the financial services industry to become more competitive, both at home and abroad. I supported this legislation because I believe it will benefit businesses and consumers. It will make it easier for banking, securities, and insurance firms to consolidate their services, cut expenses and offer more products at a lower cost to all. But it also raises new concerns about our financial privacy.

New conglomerates in the financial services industry may now offer a widening variety of services, each of which may require a customer to provide financial, medical or other personal information. Nothing in the new law prevents these new subsidiaries or affiliates of financial conglomerates from sharing this information for uses beyond those the customer thought he or she was providing it.

For example, the new law has no requirement for the consumer to consent before these new financial subsidiaries or affiliates sell, share, or publish information on savings account balances, certificates of deposit maturity dates

and balances, stock and mutual fund purchases and sales, life insurance payouts or health insurance claims.

That is wrong. You shouldn't be able to have that information and go around to anybody who wants to use it to pitch you some new product or scare you into cashing in life savings or anything else.

As President Clinton recently warned:

Although consumers put a great value on privacy of their financial records, our laws have not caught up to technological developments that make it possible and potentially profitable for companies to share financial data in new ways. Consumers who undergo physical exams to obtain insurance, for example, should not have to fear the information will be used to lower their credit card limits or deny them mortgages.

I strongly agree. If we had this information in a desk drawer at home, nobody could come in and just take it. Instead, it is in the electronic desk drawer of one of the companies we have given it to, and they can share it with anybody they want within their organization.

Mr. President, the Financial Information Privacy and Security Act of 1999 offers this Congress the historic opportunity to provide fundamental privacy of every American's personal financial information. This bill would protect the privacy of this financial information by directing the Federal Reserve Board, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Securities and Exchange Commission jointly to promulgate rules requiring the financial institutions they regulate to: (1) inform their customers about what information may be disclosed, and under what circumstances, including when, to whom and for what purposes; (2) allow customers to review the information for accuracy; (3) establish safeguards to protect the confidentiality of personally identifiable customer information and records to prevent unauthorized disclosure; and (4) for new customers, obtain the customers' consent to disclosure, and for existing customers, give the customers a reasonable opportunity to object to disclosure. These financial institutions could use confidential customer information from other entities only if the entities provide their customers with similar privacy protections.

In addition, this bill provides individuals the civil right of action to enforce their financial privacy rights and to recover punitive damages, reasonable attorneys fees, and other litigation costs. Privacy rights must be enforceable in a court of law to be truly effective.

To be sure, this legislation would not affect any state law which provides greater financial privacy protections to its citizens. Some states have already recognized the growing need for financial privacy protections. For example, I am proud to say that Vermont

instituted cutting edge financial privacy laws five years ago. This bill is intended to provide the most basic rights of financial privacy to all American consumers. They deserve nothing less.

When President Clinton signed the financial modernization bill last week, he directed the National Economic Council to work with the Treasury Department and Office of Management and Budget to craft legislative proposals to forward to Congress next year to protect financial privacy in the new financial services marketplace. I believe the Financial Information Privacy and Security Act of 1999, which we are introducing today, should serve as the foundation for the Administration's financial privacy bill.

Americans ought to be able to enjoy the exciting innovations of this burgeoning information era without losing control over the use of their financial information.

The Financial Information Privacy and Security Act updates United States privacy laws to provide these fundamental protections of personal financial information in the evolving financial services industry.

I urge my colleagues to support it.

On privacy, in Vermont we care greatly about this. I have been in public life for a long time. During that time, I have only clipped and actually saved and framed a couple articles about me from the press.

My distinguished friend from Nevada, who is on the floor, like me lives in a rural area—he in Searchlight, I in Middlesex, VT. I live on this dirt road. I look down this valley, 35 miles down a valley, mountains on either side. I literally cannot see another house from my front yard. It is a beautiful spot, this place my parents got when I was a teenager just for a summer home. Marcelle and I have made a year-round place out of it. There is a neighboring farm family who, for 40 years, have hayed the fields and done work around there. They have known me since I was a teenager. The article I cut from the papers was from one of our largest newspapers. It was a sidebar. Here is almost verbatim the way it went.

The out-of-State reporter drives up to a farmer who is sitting on his porch along the dirt road. He says to the farmer, "Does Senator LEAHY live up this road?" The farmer said, "You a relative of his?" He said, "No, I am not." He says, "You a friend of his?" He said, "Not really." He says, "Is he expecting you?" The reporter says, "No." The farmer looks him right in the eye and says, "Never heard of him."

Now, we Vermonters like our privacy. This was a Saturday, and the farmer wasn't about to tell somebody where I lived and direct him down the dirt road to it. It is a humorous story, but I kept that over the years because it reminds me of other ways to protect

our privacy. By the same token, I would not want—whether it is that reporter or somebody I never met—to go onto a computer and find my bank statements, my medical records, my children's medical records, or my spouse's, and find out whether we have applied for a mortgage or not, or find out whether we have bought life insurance or cashed in life insurance. So I think we have to ask ourselves as we go into the new millennium, one where information will flow quicker and in more detail than could have even been conceived a generation ago—it could not have been conceived at the time my parents purchased that beautiful spot in Vermont. Ten years from now, we will move faster and with more complexity than we could even think of today.

So I think the Congress, if it is going to fulfill its responsibility to the American people, has to do more and more to protect our privacy and allow technology to move as fast as it can, but not at the price of our individual privacy. We all know basically what we, our friends, neighbors, families, would want to give up of their personal privacy—not very much. Think to yourself, if this was something you had in the top drawer of your desk at home, knowing nobody could get it, they would need search warrants or they would break the law by coming in and taking it. That is all the more reason why on somebody's computer they should not be allowed to take it.

By Mrs. FEINSTEIN (for herself, Mr. REID, Mrs. BOXER, and Mr. BRYAN):

S. 1192. A bill to promote environmental restoration around the Lake Tahoe basin; to the Committee on Energy and Natural Resources.

THE LAKE TAHOE RESTORATION ACT

Mrs. FEINSTEIN. Mr. President, in June, joined by Senators REID, BOXER, and BRYAN, I introduced the Lake Tahoe Restoration Act (S. 1192) which would jump start the process of cleaning up Lake Tahoe.

Lake Tahoe, one of the largest, deepest, clearest lakes in the world is in the midst of an economic crisis. Water clarity is declining at the rate of more than 1 foot each year; more than 1/3 of the trees in the forest are either dead or dying; and sediment and algae-nourishing phosphorus and nitrogen continue to flow into the lake from a variety of sources.

Over the last few months, I worked with the Congressmen from the Tahoe areas, Representative DOOLITTLE and Representative GIBBONS to craft a House version of the Lake Tahoe Restoration Act that could garner bipartisan support. I am pleased that we've been able to build on S. 1192 and develop a compromise bill which I am introducing today.

Like S. 1192, this bill first and foremost authorizes the necessary funding

to clean up and restore Lake Tahoe. This bill includes two major changes:

First, to address the problem of MTBE in the Lake Tahoe basin, I added a section that provides \$1 million to the Tahoe Regional Planning Agency and local utility districts to clean up contaminated wells and surface water.

Second, to help local governments who would otherwise be burdened by relocation costs that may be needed to clean up the basin, this bill promises that the federal government will pay 2/3 of any needed relocation costs.

I believe these provisions improve on the original bill and increase the breadth of support for this bill.

The bill requires the Forest Service to develop an annual priority list of environmental restoration projects and authorizes \$200 million dollars over 10 years to the forest service to implement these projects on federal lands. The list must include projects that will improve water quality, forest health, soil conservation, air quality, and fish and wildlife habitat around the lake.

In developing the environmental restoration priority list, the Forest Service must rely on the best available science, and consider projects that local governments, businesses, and environmental groups have targeted as top priorities. The Forest Service also must consult with local community leaders.

The bill requires the Forest Service to give special attention on its priority list to five key activities: acquisition of environmentally sensitive land from willing sellers, erosion and sediment control, fire risk reduction, cleaning up MTBE contamination, and traffic and parking management, including promotion of public transportation.

The Lake Tahoe Restoration Act also requires that an additional \$100 million be authorized over 10 years be as payments to local governments for erosion control activities on non-federal lands. These payments will help local governments conduct soil conservation and erosion mitigation projects, restore wetlands and stream environmental zones, and plant native vegetation to filter out sediment and debris.

I spent my childhood at Lake Tahoe, but I had not been back for a number of years until I returned for the 1997 Presidential summit with President Clinton. I saw things I had never seen before at Lake Tahoe.

I saw the penetration of MTBE in the water and learned that 30 percent of the South Lake Tahoe water supply has been eliminated by MTBE. I observed gasoline spread over the water surface. I noticed that a third of the magnificent forest that surrounds the lake was dead or dying. I saw major land erosion problems that were bringing all kinds of sediment into the lake and which had effectively cut the lake's clarity by thirty feet since the last time I had visited. And then I

learned that the experts believe that in 10 years the clouding of the amazing crystal water clarity would be impossible to reverse and in 30 years it would be lost forever.

The Tahoe Regional Planning Agency estimates that it will cost \$900 million over the next 10 years to restore the Lake.

For me, that was a call to action and prompted me to sponsor this bill which will authorize \$300 million of Federal moneys on a matching basis over 10 years for environmental restoration projects at Lake Tahoe to preserve the region's water quality and forest health. Put simply, this crown jewel deserves the attention, and the fact that the federal government owns 77 percent of that troubled area makes the responsibility all so clear.

Through funding over the past few years we have already begun to make some early strides such as the purchase of important pieces of land like the Sunset Ranch and the planning for a Coordinated Transit System.

Already, California and Nevada have begun contributing their portion of the restoration efforts.

California is in the second year of a ten year \$275 million commitment through the California Tahoe Conservancy, Caltrans, and the Parks Service.

Nevada has authorized the issuance of bonds that will constitute an \$82 million contribution over an 8-year period.

Local governments and private industry have also agreed to commit \$300 million. The Tahoe Transportation and Water Quality Coalition, a coalition of 18 businesses and environmental groups, including Placer County, El Dorado County, the city of South Lake Tahoe, Douglass County in Nevada, and Washoe County in Nevada have all agreed. This is an extraordinary commitment for a region with only 50,000 year-round residents.

President Clinton took an important first step in 1997 when he held an environmental summit at Lake Tahoe and promised \$50 million over 2 years for restoration activities around the lake. Unfortunately, the President's commitments lasted for only 2 years, so important areas like land acquisition and road decommissioning were not funded at the levels the President tried to accomplish. What is needed is a more sustained, long-term effort, and one that will meet the federal government's \$300 million responsibility to save the environment at Lake Tahoe.

The Lake Tahoe Restoration Act will build upon the President's commitment to Lake Tahoe and authorize full funding for a new environmental restoration program at the lake.

I am also grateful to the Lake Tahoe Transportation and Water Quality Coalition, a local consensus group of 18 businesses and environmental groups, who has worked extremely hard on this bill.

Thanks in large part to their work, the bill has strong, bipartisan support from nearly every major group in the Tahoe Basin.

The bottom line is that time is running out for Lake Tahoe. We have 10 years to do something major or the water quality deterioration is irreversible.

I am hopeful that Congress will move quickly to consider the Lake Tahoe Restoration Act. I urge my colleagues to join Senator REID, Senator BOXER, Senator BRYAN, Congressman DOOLITTLE, Congressman GIBBONS, Congresswoman ESHOO, and me in preserving this national treasure for generations to come.

By Mrs. MURRAY:

S. 1926. A bill to amend the Elementary and Secondary Education Act of 1965 to improve student achievement by helping local educational agencies improve the quality of, and technology training for, teachers, to improve teacher accountability, and to enhance the leadership skills of principals; to the Committee on Health, Education, Labor, and Pensions.

QUALITY AND ACCOUNTABILITY ARE BEST FOR CHILDREN ACT (QUALITY ABCS ACT)

• Mrs. MURRAY. Mr. President, today I introduce a bill entitled the "Quality and Accountability Are Best for Children Act." Every child in every classroom in America deserves to have a fully-qualified teacher; this legislation takes a comprehensive approach to helping communities make that a reality. The bill should be seen as complementary to the professional development sections of last year's Higher Education Act, and to the professional development sections of S. 7, the Public Schools Excellence Act. It should also be seen as part of a comprehensive strategy to forge a strong partnership on education between the Congress and the teachers, families, and students in communities across America which it serves.

While my efforts today are to address educator quality issues, I also recently introduced S. 1773, the Youth and Adult School Partnership Act of 1999, and S. 1772, the Family and School Partnership Act of 1999. In addition, I have been working for some time to pass S. 1304, the Time for Schools Act. All these efforts work in concert, to address the very real needs of our local schools when it comes to investing in the strategies that work, and in making it possible to involve all the necessary members of our local school communities in the decisions that affect them.

I have spoken before about what I have heard from the literally thousands of families and students and educators and community leaders I have met. I have spoken about how most Americans want an increased but appropriate federal role in education.

They want decisions about how to help students achieve at higher levels to be made in the local school, but they also want increased federal funds—help where help is needed—to support their local efforts. Most people are shocked to learn that their federal government only devotes 1.6 percent of overall spending to education.

I have spoken before about how the federal class size reduction initiative has at its core a streamlined funding mechanism that targets funds to a goal and then holds the school accountable to the local community for making progress toward that goal. I have talked about how important I feel this funding mechanism can be as a way for us to look at other federal programs in education. I have spoken about the importance of keeping the federal role firmly in mind: to ensure opportunity on the one hand, and to fund shared national priorities on the other. In addition, we must ensure accountability for results at every step along the way.

We need to remember that what families and students and educators and community leaders have asked us for is targeted help and support, to fund such efforts as reducing class size, and providing for special education students, and after-school programs, and school modernization, and education technology, and school safety and other efforts. Our responsibility is to give them the help they have sought, and no topic is more important to them than funding the necessary steps it will take to help local schools improve the quality of their corps of educators. We must rethink how educators are taught, and how we support their learning of the new skills it takes to teach students the basics and "new basics" that it will take for them to succeed in today's complex world.

In addition, we must fund local schools' efforts to recruit, retain and reward the world's finest corps of educators. And assure that their local communities can hold them accountable for doing so.

Today I introduce the Quality and Accountability are Best for Children Act, or Quality ABCs Act. This bill will help school districts improve the quality of their educator corps, and help communities hold schools accountable for results. Since all communities are struggling to improve the quality of their teaching force, funds are provided at a level that allow all school districts to participate. It will authorize an additional formula grant, based on enrollment, in the amount of \$2 billion per year for teacher quality improvement, plus \$100 million per year for principal professional development. Funds will supplement current federal, state, and local professional development efforts, and school districts are encouraged to use existing law, waivers, of Ed Flex authority to coordinate activities at the local level.

With the goal of reducing paperwork and avoiding lengthy program descriptions, my legislation is based on the bipartisan mechanism agreed to under the fiscal year 1999 Appropriations Class Size Reduction Initiative. Applications are streamlined, school districts can use money flexibly at the local level, as long as they target funds to improving educator quality in at least one of three subject areas (recruitment, retention, and rewards) and school districts are accountable to the local community in the form of a report card describing district efforts to improve teacher quality.

School districts are required to use funds to improve educator quality, but have a broad range of options to do so.

To recruit new teachers, school districts may use tools such as the following:

Establishing or expanding teacher academies, teachers-recruiting-future-teacher programs, and programs to encourage high school and middle school students to pursue a career in teaching;

Establishing or expanding para-professional training programs, para-educator-to-teacher career ladders or other efforts to improve the training and supervision of para-educators;

Establishing or expanding programs for mid-career professionals to become certificated teachers;

Reaching out to communities of color or other special populations to make the teaching corps more reflective of current and future student demographics;

Placing advertisements, attending college job fairs, offering signing bonuses, and other recruitment efforts;

Embarking on and coordinating with other activities to help recruit the best quality teaching corps, such as: offering forgivable loans; assisting new hires to reach higher levels of state certification or to become national board certified teachers; recruiting new teachers in specific disciplines including math and science;

In addition, the Secretary of Education will be authorized directly, or by creating programs at the state or local level to:

Offer incentives for teachers to achieve national board certification;

Create forgivable loan programs under the current student aid programs;

Report on successful efforts and take part in dissemination activities;

Provide technical assistance to states and school districts to assist them to use technology in recruitment, processing, hiring, and placement of qualified teaching candidates.

To retain teachers, school districts may:

Use funds to offer or stipends or bonuses to educators to seek further subject matter endorsements, advanced levels of state certification or national

board certification. These retention efforts can also fund other local initiatives specifically designed, such as mentor teacher programs, to retain teachers in the first 5 years of teaching;

Local education agencies can use funds, within district criteria for mentor or master teacher criteria, for a range of retention activities: mentor and/or master teacher job classification/career ladders; sabbatical/research activities such as the Fulbright program, or working in industry/non-profit world to improve teacher education; or other activities that keep teachers fresh while preserving their job slot/pay/benefits. These retention efforts can also fund other local initiatives specifically designed to retain experienced teachers, beyond the first five years of teaching;

To reward teachers:

School districts can reward elementary and secondary schools, based on improvement in the proportion of highly qualified teachers or other measures of teacher quality—improved recruiting, retention, improved “in endorsement” ratio, higher percentage of certificated staff, higher levels of certification, professional development curricular improvement;

School districts can provide teachers with a one-time bonus/reward of \$5,000 for achieving national board certification;

Each state will receive \$100,000 to support the McAuliffe awards and National Teacher of the year awards to create additional forms of conferring respect and recognition upon distinguished educators.

The bill requires school district report cards to contain information about efforts they have undertaken to improve the recruiting, retention, rewarding, and accountability for teachers. Reports include which programs were offered locally, how much of the funding was spent on which efforts, and what results were achieved in terms of measurable improvements to teacher quality and student achievement.

Each report card shall include information about how parents and other community members can access processes under school district policies regarding teacher accountability.

The bill includes an effort to provide, on a statewide basis, professional development services for public elementary school and secondary school principals designed to enhance the principals' educational leadership skills.

The programs will provide principals with:

Knowledge of effective instructional leadership skills and practices;

Comprehensive whole-school approaches and programs that improve teaching and learning;

Improved understanding of the effective uses of educational technology, including best practices for incor-

porating technology into the instructional program and management of the school;

Increased knowledge of State content and performance standards, and appropriate related curriculum;

Assistance in the development of effective programs, and strategies for assessing the effectiveness of such programs;

Training in effective, fair evaluation and supervision of school staff, and training in improvement of instruction;

Assistance in the enhancement and development of the principals' overall school management and business skills;

Knowledge of school safety and discipline practices, school law, and school funding issues.

The bill also includes the K-12 school sections of my teacher Technology Training Act. Last year, I included in the Higher Education Act provisions to improve pre-service teacher training offered by universities, by including technology in teacher training. The Quality ABCs Act will take the relevant steps to integrate technology into the professional development offered by school districts.

This bill is only one step but it is a necessary one. We cannot succeed in improving student learning if we do not also invest in the quality of our educators. We must assure that schools can use all the tools at their disposal to do what's necessary, and the Quality ABCs Act funds the recruitment, retention, rewards and accountability measures essential to their success.

In all these pieces of legislation, whether I am a sponsor or a cosponsor, my approach is to offer help where help is needed. Schools face increasing challenges and higher expectations from their communities and from all Americans.

Now is not the time for easy answers. Too many have suggested that it's all about paperwork or all about trust or all about bureaucracy. We must take steps to squeeze the most out of every dollar, and make things more efficient, but, as we've seen with the funding mechanism under the class size reduction initiative, local flexibility, targeted to a specific purpose, with local accountability built in, can work very well.

But even that approach is only a partial answer. Helping all our schools perform for all students now and into the next century is a monumental task. None of these challenges is easy. The kind of student success we are hoping for will not happen without an actual, working partnership among local schools and school districts, state and regional education agencies, and the federal government. The success will not happen without a partnership between educators and families and young people and community leaders.

No person, school, or government entity has the resources, the research, the leadership, the experience, or the capability to go it alone. People cannot succeed in a global economy without an education that is world-class, relevant, and sufficiently funded. We all must work together as a nation if we want to succeed as a nation in a complex world. We owe this kind of perspective to our children and to our future. We must all strive to find the areas where we agree. Only a shared vision of the future of education will help us all to move toward our destination. Let us take that first step together.

Mr. President, the drafting of these bills would have been impossible without the efforts of two legislative fellows in my office, Ann Mary Ifekwunigwe and Peter Hatch. I thank them for their work.

Mr. President, I ask that the text of the bill be printed in the RECORD.

The bill follows:

S. 1926

*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 "Quality and Accountability are Best for Children Act".

#### SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

#### SEC. 3. FINDINGS.

Congress makes the following findings:

(1) Academically qualified, highly trained and professional teachers are a critical component in children's educational success.

(2) The Department of Education has reported that our Nation will need to hire 2,200,000 more teachers during the 10-year period beginning in fiscal year 2000.

(3) Newspaper accounts from the 18th century described teachers as well-respected, but ill-rewarded.

(4) In 1999, because many individuals view teaching as a thankless profession which garners little respect, little support, and little money, nearly 50 percent of those who enter teaching leave the profession within 5 years.

(5) Sixty-three percent of parents and teachers believe that accountability systems with financial rewards are a good idea, and would motivate teachers to work harder to improve student achievement.

(6) Paying professional salaries is integral to teacher retention. The State of Connecticut, for example, has been able to improve student achievement, eliminate its teacher shortage, and retain highly qualified teachers by offering the highest salaries in the Nation (an average of \$51,727 per year).

(7) Dissemination of information regarding the teacher corps working at individual elementary schools and secondary schools, and accountability procedures enforced by the local educational agency can provide an important tool for parents and taxpayers to measure the quality of the elementary schools or secondary schools and to hold the schools and teachers accountable for improving student performance.

(8) Although elementary school and secondary school teachers need the most up-to-date skills possible to ensure that students are equipped to deal with a complex economy and society, less than 50 percent of such teachers report that they are competent in using technology effectively in the classroom.

(9) Although principals and other administrators are the educational leaders and chief executive officers of our Nation's elementary schools and secondary schools, and research strongly suggests that strong leadership from the principal is the single most important factor in effective schools, research also has revealed that the characteristics of a good principal are not necessarily those things for which principals are trained and rewarded.

#### SEC. 4. PURPOSES.

The purposes of this Act are—

(1) to recruit the best and the brightest candidates to teach in public elementary schools and secondary schools by looking to young people, people from special populations, mid-career professionals, and others as potential new teachers;

(2) to offer retention incentives to highly qualified teachers to keep the teachers in the classroom;

(3) to reward elementary schools and secondary schools that, and teachers in such schools who, succeed in improving student achievement;

(4) to hold elementary school and secondary school teachers accountable for achieving high levels of professionalism, including possessing expert knowledge and skills in the subject areas in which the teachers teach, being actively involved in all aspects of the school community, and being committed to the academic success of students, by providing parents and the school community with specific information about the qualifications of the local teaching corps;

(5) to improve teacher professional development in the uses of technology in teaching and learning and in the study of technology, and to help local communities to use technology as a vehicle to improve teacher professional development; and

(6) to improve the professional development of elementary school and secondary school principals and other administrators to ensure that the principals and administrators are the community's educational leaders, and have sophisticated knowledge about student achievement, school safety, management, evaluation, and community outreach.

#### SEC. 5. IMPROVING TEACHER RECRUITMENT, RETENTION, REWARDS, AND ACCOUNTABILITY.

Title II (20 U.S.C. 6601 et seq.) is amended—

(1) by redesignating part E as part G;

(2) by redesignating sections 2401 and 2402 (20 U.S.C. 6701, 6702) as sections 2601 and 2602, respectively; and

(3) by inserting after part D the following:

#### PART E—IMPROVING TEACHER RECRUITMENT, RETENTION, REWARDS, AND ACCOUNTABILITY;

##### SEC. 2401. DEFINITIONS.

"For purposes of this part:

"(1) OUTLYING AREAS.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(2) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### SEC. 2402. PROGRAM AUTHORIZED.

"(a) GRANTS AUTHORIZED.—The Secretary shall award a grant, from allotments under subsection (b), to each State to enable the State to provide grants to local educational agencies to carry out activities consistent with section 2404.

##### "(b) RESERVATIONS AND ALLOTMENTS.

"(1) RESERVATIONS.—From the amount appropriated under section 2406 to carry out this part for each fiscal year, the Secretary shall reserve—

"(A) a total of 1 percent of such amount for payments to—

"(i) the Secretary of the Interior for activities, that are approved by the Secretary and consistent with this part, in schools operated or supported by the Bureau of Indian Affairs, on the basis of the schools' respective needs for assistance under this part; and

"(ii) the outlying areas, to be allotted in accordance with their respective needs for assistance under this part as determined by the Secretary, for activities that are approved by the Secretary and consistent with this part; and

"(B) 0.5 percent to enable the Secretary directly or through programs with State educational agencies and local educational agencies—

"(i) to offer incentives to teachers to obtain certification from the National Board for Professional Teaching Standards;

"(ii) to create student loan forgiveness programs;

"(iii) to report on and disseminate successful activities assisted under this part; and

"(iv) to provide technical assistance to States and local educational agencies to assist the States and agencies in using technology in the recruitment, processing, hiring, and placement of qualified teaching candidates.

"(2) ALLOTMENTS TO STATES.—From the amount appropriated under section 2406 for any fiscal year that remains after making the reservations under paragraph (1), the Secretary shall allot to each State an amount that bears the same relationship to the remainder as the number of children, aged 5 to 17, enrolled in the public and private nonprofit elementary schools and secondary schools in the State bears to the number of such children enrolled in such schools in all States.

"(c) WITHIN-STATE ALLOCATIONS.—Each State receiving an allotment under subsection (b)(2)—

"(1) shall reserve \$100,000 of the allotment for a fiscal year—

"(A) to support the Christa McAuliffe awards, the National Teacher of the Year awards, and other awards that confer respect and recognition upon outstanding teachers; and

"(B) to establish other forms of conferring respect and recognition upon distinguished teachers;

"(2) shall reserve not more than 1/2 of 1 percent of the grant funds for a fiscal year, or \$50,000, whichever is greater, for the administrative costs of carrying out this part; and

"(3) shall allocate the amount that remains after reserving funds under paragraphs (1) and (2) among local educational agencies in the State by allocating to each local educational agency in the State submitting an application that is consistent with section 2403 an amount that bears the same relationship to the remainder as the number of children, aged 5 to 17, enrolled in the public and private nonprofit elementary schools and secondary schools served by the local educational agency bears to the number of such children enrolled in such schools

served by all local educational agencies in the State.

**“SEC. 2403. LOCAL APPLICATIONS.**

Each local educational agency desiring assistance under section 2402(c)(3) shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require. At a minimum, the application shall contain a description of the programs to be assisted under this part consistent with section 2404.

**“SEC. 2404. USE OF FUNDS.**

“(a) IN GENERAL.—Each local educational agency receiving funds under this part shall use the funds to carry out activities described in subsections (b) and (c) that are designed to improve student achievement by improving the quality of the local teacher corps, including improving recruitment and retention of highly qualified new teachers, offering rewards to teachers based on teachers' successes, and holding teachers accountable for the results attained by the teachers by notifying the community in the school district served by the local educational agency about the local educational agency's efforts to improve teacher quality.

**“(b) RECRUITMENT, RETENTION, AND REWARDS.**

“(1) TEACHER RECRUITMENT.—A local educational agency may support teacher recruitment activities by—

“(A) establishing or expanding teacher academies, teachers-recruiting-future-teachers programs, and programs designed to encourage secondary school students to pursue a career in teaching;

“(B) establishing or expanding paraprofessional training programs, paraprofessional-to-teacher career ladders, and other programs designed to improve the training and supervision of paraprofessionals;

“(C) establishing or expanding programs designed to assist mid-career professionals to become certificated teachers;

“(D) reaching out to communities of color or other special populations to make teachers teaching in the elementary schools and secondary schools served by the local educational agency more reflective of the student demographics (at the time of the outreach and as anticipated in the future) in such schools;

“(E) placing advertisements, attending college job fairs, offering signing bonuses, or engaging in other efforts designed to recruit highly qualified new teachers; and

“(F) establishing activities, and coordinating with existing activities, designed to help recruit the highest quality new teachers, such as—

“(i) offering student loan forgiveness;

“(ii) offering assistance for newly hired teachers to reach higher levels of State certification or certification from the National Board for Professional Teaching Standards; and

“(iii) recruiting new teachers in specific disciplines, including mathematics and science.

“(2) TEACHER RETENTION.—A local educational agency may support teacher retention activities by—

“(A) offering stipends or bonuses to teachers who seek further subject matter endorsements and advanced levels of State certification or certification from the National Board for Professional Teaching Standards;

“(B) establishing or expanding local initiatives, such as mentor teacher programs, that are specifically designed to retain teachers during the teachers' first 5 years of teaching;

“(C) supporting other teacher retention activities that are consistent with local edu-

cational agency criteria for mentor teacher job classifications or master teacher job classifications, including—

“(i) establishing such classifications;

“(ii) establishing career ladders for mentor teachers or master teachers; and

“(iii) providing teachers with time outside the classroom to improve the teachers' teaching skills while preserving the teachers' job, pay, and benefits, including providing sabbaticals, research opportunities, such as the Fulbright Academic Exchange Programs, and the opportunity to work in an industry or a not-for-profit organization; and

“(D) supporting local initiatives specifically designed to retain experienced teachers beyond the teacher's first 5 years of teaching.

“(3) REWARDS.—A local educational agency may reward—

(A) elementary schools and secondary schools by providing bonuses or financial awards to the schools, with priority given to financially needy schools, based on—

“(i) the school's increased percentage of highly qualified teachers teaching in the school; or

“(ii) other measures demonstrating an improvement in the quality of teachers teaching in the school, including an improvement in the school's recruitment and retention of teachers, a reduction in out-of-field placement of teachers, an increased percentage of certificated staff teaching in the school, an increase in the number of teachers in the school attaining higher levels of certification, and a school's adoption of professional development programs that improve curricula; and

“(B) highly qualified elementary school and secondary school teachers by offering a 1-time bonus, reward, or stipend of not more than \$5,000 to teachers who are certified by the National Board for Professional Teaching Standards.

“(C) ACCOUNTABILITY.—An elementary school or secondary school receiving assistance under this part, and the local educational agency serving that school, shall provide an annual report to parents, the general public, and the State educational agency, in easily understandable language, containing—

(1) information regarding—

“(A) the demographic makeup and professional credentials of the agency's teacher corps;

“(B) efforts to increase student achievement by improving the recruitment, retention, and rewarding of teachers, and improving accountability for teachers; and

“(C) local programs assisted, expenditures made, and results achieved under this part in terms of measurable improvements in teacher quality and student achievement; and

“(2) notification of the community served by the local educational agency with respect to local educational agency policies regarding teacher accountability.

**“SEC. 2405. GENERAL PROVISIONS.**

“(a) SUPPLEMENT NOT SUPPLANT.—A local educational agency shall use funds under this part to supplement, and not to supplant, State and local funds that, in the absence of funds provided under this part, would otherwise be spent for activities under this part.

“(b) PROHIBITION.—No local educational agency shall use funds provided under this part to increase the salaries of or to provide benefits to teachers, other than providing professional development programs, bonuses, and enrichment programs described in section 2404.

“(c) PROFESSIONAL DEVELOPMENT.—If a local educational agency uses funds made

available under this part for professional development activities, the local educational agency shall ensure the equitable participation of private nonprofit elementary schools and secondary schools in such activities.

“(d) COORDINATION.—A local educational agency shall coordinate any professional development activities carried out under this part with activities carried out under title II of the Higher Education Act of 1965, if the local educational agency is participating in programs funded under such title.

“(e) ADMINISTRATIVE EXPENSES.—A local educational agency receiving grant funds under this part may use not more than 3 percent of the grant funds for any fiscal year for the cost of administering this part.

“(f) REPORT.—Each State receiving funds under this part shall submit an annual report to the Secretary containing information regarding activities assisted under this part.

**“SEC. 2406. AUTHORIZATION OF APPROPRIATIONS.**

“For the purpose of carrying out this part, there are authorized to be appropriated \$2,100,000,000 for fiscal year 2001 and such sums as may be necessary for each of the 4 succeeding fiscal years.

**“PART F—EXCELLENT PRINCIPALS CHALLENGE GRANT**

**“SEC. 2501. GRANTS TO STATES FOR THE TRAINING OF ELEMENTARY SCHOOL AND SECONDARY SCHOOL PRINCIPALS.**

“(a) GRANTS AUTHORIZED.—From amounts appropriated under section 2504, the Secretary shall award grants to State educational agencies or consortia of State educational agencies that submit applications consistent with subsection (d), to enable such agencies or consortia to provide, on a statewide basis, professional development services for elementary school and secondary school principals designed to enhance the principals' leadership skills.

**“(b) RESERVATIONS AND AWARDS.**

“(1) RESERVATIONS.—From the amount appropriated under section 2503 to carry out this part for each fiscal year, the Secretary may reserve not more than 2 percent to develop model national programs, in accordance with section 2502, that provide activities described in subsection (e) for elementary school and secondary school principals.

“(2) AWARDS TO STATES.—From the amount appropriated under section 2504 for a fiscal year and remaining after the Secretary makes the reservation under paragraph (1), the Secretary shall award grants, in an amount determined by the Secretary, to State educational agencies and consortia of State educational agencies on the basis of—

“(A) the quality of the proposed uses of the grant funds; and

“(B) the educational needs of the State or States.

**“(c) MATCHING REQUIREMENT.**

“(1) IN GENERAL.—The amount provided to a State educational agency or consortia under subsection (b)(2) shall not exceed 75 percent of the cost of the program described in the application submitted pursuant to subsection (d).

“(2) NON-FEDERAL CONTRIBUTIONS.—The non-Federal share of payments under this section may be in cash or in kind, fairly evaluated, including planned 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 the non-Federal share.

“(3) WAIVER.—The Secretary shall promulgate regulations to waive the matching requirement of paragraph (1) with respect to

State educational agencies or consortia of State educational agencies that the Secretary determines serve low-income areas.

“(d) APPLICATION REQUIRED.—Each State educational agency or consortium of State educational agencies desiring a grant under subsection (b)(2) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall reasonably require. At a minimum, the application shall contain—

“(1) a description of the activities to be assisted under this section consistent with subsection (e); and

“(2) an assurance that—

“(A) matching funds will be provided in accordance with subsection (c); and

“(B) elementary school and secondary school principals in the State were involved in developing the application and the proposed uses of grant funds.

“(e) USE OF FUNDS.—A State educational agency or consortium of State educational agencies receiving a grant under this part shall use the grant funds to provide, on a statewide basis, professional development services and training to increase the instructional leadership and other skills of principals in elementary schools and secondary schools. Such activities may include activities—

“(1) to provide principals with knowledge of—

“(A) effective instructional leadership skills and practices; and

“(B) comprehensive whole-school approaches and programs that improve teaching and learning;

“(2) to provide training in effective, fair evaluation and supervision of school staff, and to provide training in improvement of instruction; and

“(3) to improve understanding of the effective uses of educational technology, and to incorporate technology into the instructional program and the operation and management of the school;

“(4) to improve knowledge of State content and performance standards and appropriate related curriculum;

“(5) to improve the development of effective programs, the assessment of program effectiveness, and other related programs;

“(6) to enhance and develop school management and business skills;

“(7) to improve training in school safety and discipline;

“(8) to improve training in school finance, grant-writing and fund-raising; and

“(9) to improve training regarding school legal requirements.

“(f) DEFINITION.—For purposes of this section, the term ‘State’ means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### SEC. 2502. MODEL NATIONAL PROGRAMS.

“(a) IN GENERAL.—From the amounts reserved under section 2501(b)(1), the Secretary, in consultation with the Commission described in subsection (b), shall develop model national programs to provide activities described in section 2501(e) for elementary school and secondary school principals.

“(b) COMMISSION.—

“(1) IN GENERAL.—The Secretary shall appoint a Commission—

“(A) to examine existing professional development programs for elementary school and secondary school principals; and

“(B) to provide, not later than 1 year after the date of enactment of the Quality and Accountability are Best for Children Act, a report regarding the best practices to help ele-

mentary school and secondary school principals in multiple education environments across our Nation.

“(2) MEMBERSHIP.—The Commission shall consist of representatives of local educational agencies, State educational agencies, departments of education within institutions of higher education, elementary school and secondary school principals, education organizations, community and business groups, and labor organizations.

#### “SEC. 2503. GENERAL PROVISIONS.

“(a) SUPPLEMENT NOT SUPPLANT.—A State educational agency or consortium of State educational agencies shall use funds under this part to supplement, and not to supplant, State and local funds that, in the absence of funds provided under this part, would otherwise be spent for activities under this part.

“(b) PROFESSIONAL DEVELOPMENT.—If a State educational agency or consortium of State educational agencies uses funds made available under this part for professional development activities, the State educational agency or consortium of State educational agencies shall ensure the equitable participation of private nonprofit elementary schools and secondary schools in such activities.

#### “SEC. 2504. AUTHORIZATION OF APPROPRIATIONS; SUPPLEMENT NOT SUPPLANT.

“For the purpose of carrying out this part, there are authorized to be appropriated, \$100,000,000 for each of the fiscal years 2001 through 2004 to carry out this part.

#### SEC. 6. AMENDMENTS REGARDING IMPROVING TEACHER TECHNOLOGY TRAINING.

(a) STATEMENT OF PURPOSE FOR TITLE I.—Section 1001(d)(4) (20 U.S.C. 6301(d)(4)) is amended by inserting “, giving particular attention to the role technology can play in professional development and improved teaching and learning” before the semicolon.

(b) SCHOOL IMPROVEMENT.—Section 1116(c)(3) (20 U.S.C. 6317(c)(3)) is amended by adding at the end the following:

“(D) In carrying out professional development under this paragraph an elementary school or secondary school shall give particular attention to professional development that incorporates technology used to improve teaching and learning.”.

(c) PROFESSIONAL DEVELOPMENT.—Section 1119(b) (20 U.S.C. 6320(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking “and” after the semicolon;

(B) in subparagraph (E), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(F) include instruction in the use of technology.”; and

(2) in paragraph (2)—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraphs (E) through (I) as subparagraphs (D) through (H), respectively.

(d) PURPOSES FOR TITLE II.—Section 2002(2) (20 U.S.C. 6602(2)) is amended—

(1) in subparagraph (E), by striking “and” after the semicolon;

(2) in subparagraph (F), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(G) uses technology to enhance the teaching and learning process.”.

(e) NATIONAL TEACHER TRAINING PROJECT.—Section 2103(b)(2) (20 U.S.C. 6623(b)(2)) is amended by adding at the end the following:

“(J) Technology.”.

(f) LOCAL PLAN FOR IMPROVING TEACHING AND LEARNING.—Section 2208(d)(1)(F) (20 U.S.C. 6648(d)(1)(F)) is amended by inserting “, technologies,” after “strategies”.

(g) AUTHORIZED ACTIVITIES.—Section 2210(b)(2)(C) (20 U.S.C. 6650(b)(2)(C)) is amended by inserting “, and in particular technology,” after “practices”.

(h) HIGHER EDUCATION ACTIVITIES.—Section 2211(a)(1)(C) (20 U.S.C. 6651(a)(1)(C)) is amended by inserting “, including technological innovation,” after “innovation”.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 1929. A bill to amend the Native Hawaiian Health Care Improvement Act to revise and extend such Act; to the Committee on Indian Affairs.

#### NATIVE HAWAIIAN HEALTH CARE IMPROVEMENT ACT REAUTHORIZATION OF 1999

Mr. INOUYE. Mr. President, I rise today to introduce a bill to reauthorize and extend the provisions of the Native Hawaiian Health Care Act. I am joined in the sponsorship of this measure by my esteemed colleague, Senator DANIEL AKAKA.

Although the act was enacted into law in 1988, appropriations to implement these critically-needed health care programs and services were not forthcoming for several years. As a result, the Native Hawaiian Health care Systems are still struggling to address the overwhelming need for health care services that are designed to improve the health status of the native people of Hawaii.

Native Hawaiians have the highest cancer mortality rates in the State of Hawaii, as well as the highest years of productive life lost from cancer. Native Hawaiians also have the highest mortality rates in the State of Hawaii from diabetes mellitus—130 percent higher than the statewide rate for all other races. The death rate from heart disease is 66 percent higher amongst Native Hawaiians than for the entire State of Hawaii. The Native Hawaiian mortality rate associated with hypertension is 84 percent higher than that for the rest of the State. These are just a few of the health status indicators at which the health care programs and services authorized by the Native Hawaiian Health Care Improvement Act are targeted.

Through the training of Native Hawaiian health care professionals, and the assignment of physicians, nurses, allied health professionals, and traditional healers to serve the needs of the Native Hawaiian community, we anticipate that the objectives established by the Surgeon General—the Healthy People 2010 goals—as well as kanaka maoli health objectives—will be attained. But to do so will require a sustained effort and a continuity of authorization and support for health care services provided to our most needy population.

Mr. President, I ask unanimous consent that the text of this measure be printed in the RECORD.

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

S. 1929

*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 “Native Hawaiian Health Care Improvement Act Reauthorization of 1999”.

**SEC. 2. AMENDMENT TO THE NATIVE HAWAIIAN HEALTH CARE IMPROVEMENT ACT.**

The Native Hawaiian Health Care Improvement Act (42 U.S.C. 11701 et seq.) is amended to read as follows:

**“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

“(a) SHORT TITLE.—This Act may be cited as the ‘Native Hawaiian Health Care Improvement Act’.

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

- “Sec. 1. Short title; table of contents.
- “Sec. 2. Findings.
- “Sec. 3. Definitions.
- “Sec. 4. Declaration of policy.
- “Sec. 5. Comprehensive health care master plan for Native Hawaiians.
- “Sec. 6. Functions of Papa Ola Lokahi.
- “Sec. 7. Native Hawaiian Health Care Systems.
- “Sec. 8. Administrative grant for Papa Ola Lokahi.
- “Sec. 9. Administration of grants and contracts.
- “Sec. 10. Assignment of personnel.
- “Sec. 11. Native Hawaiian health scholarships and fellowships.
- “Sec. 12. Report.
- “Sec. 13. Demonstration projects of national significance.
- “Sec. 14. National Bipartisan Commission on Native Hawaiian Health Care Entitlement.
- “Sec. 15. Rule of construction.
- “Sec. 16. Compliance with Budget Act.
- “Sec. 17. Severability.

**“SEC. 2. FINDINGS.**

“(a) GENERAL FINDINGS.—Congress makes the following findings:

“(1) Native Hawaiians begin their story with the Kumulipo which details the creation and inter-relationship of all things, including their evolution as healthy and well people.

“(2) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago and have a distinct society organized almost 2,000 years ago.

“(3) Native Hawaiians have never directly relinquished to the United States their claims to their inherent sovereignty as a people or over their national lands, either through their monarchy or through a plebiscite or referendum.

“(4) The health and well-being of Native Hawaiians are intrinsically tied to their deep feelings and attachment to their lands and seas.

“(5) The long-range economic and social changes in Hawaii over the 19th and early 20th centuries have been devastating to the health and well-being of Native Hawaiians.

“(6) The Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions. In referring to themselves, Native Hawaiians use the term “Kanaka Maoli”, a term frequently used in the 19th century to describe the native people of Hawaii.

“(7) The constitution and statutes of the State of Hawaii—

“(A) acknowledge the distinct land rights of Native Hawaiian people as beneficiaries of the public lands trust; and

“(B) reaffirm and protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.

“(8) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion.

“(9) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

“(10) Throughout the 19th century and until 1893, the United States—

“(A) recognized the independence of the Hawaiian Nation;

“(B) extended full and complete diplomatic recognition to the Hawaiian Government; and

“(C) entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875 and 1887.

“(11) In 1893, John L. Stevens, the United States Minister assigned to the sovereign and independent Kingdom of Hawaii, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful government of Hawaii.

“(12) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful Government of Hawaii and the United States Minister thereupon extended diplomatic recognition of a provisional government formed by the conspirators without the consent of the native people of Hawaii or the lawful Government of Hawaii in violation of treaties between the 2 nations and of international law.

“(13) In a message to Congress on December 18, 1893, then President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and the President concluded that a “substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people required that we should endeavor to repair”.

“(14) Queen Lili‘ukalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

“(15) Further, the United States has acknowledged the significance of these events and has apologized to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii with the participation of agents and citizens of the United States, and the resulting deprivation of the rights of Native Hawaiians to self-determination in legislation in 1993 (Public Law 103-150; 107 Stat. 1510).

“(16) In 1898, the United States annexed Hawaii through the Newlands Resolution without the consent of or compensation to the indigenous people of Hawaii or their sovereign

government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands and ocean resources.

“(17) Through the Newlands Resolution and the 1900 Organic Act, the Congress received 1,750,000 acres of lands formerly owned by the Crown and Government of the Hawaiian Kingdom and exempted the lands from then existing public land laws of the United States by mandating that the revenue and proceeds from these lands be “used solely for the benefit of the inhabitants of the Hawaiian Islands for education and other public purposes”, thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

“(18) In 1921, Congress enacted the Hawaiian Homes Commission Act, 1920 which designated 200,000 acres of the ceded public lands for exclusive homesteading by Native Hawaiians, thereby affirming the trust relationship between the United States and the Native Hawaiians, as expressed by then Secretary of the Interior Franklin K. Lane who was cited in the Committee Report of the Committee on Territories of the House of Representatives as stating, “One thing that impressed me . . . was the fact that the natives of the islands . . . for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.”

“(19) In 1938, Congress again acknowledged the unique status of the Native Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781 et seq.), a provision to lease lands within the extension to Native Hawaiians and to permit fishing in the area “only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance”.

“(20) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Native Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act.

“(21) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for administration over portions of the ceded public lands trust not retained by the United States to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Native Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of such Act.

“(22) The authority of the Congress under the Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.

“(23) Further, the United States has recognized the authority of the Native Hawaiian people to continue to work towards an appropriate form of sovereignty as defined by the Native Hawaiian people themselves in provisions set forth in legislation returning the Hawaiian Island of Kaho‘olawe to custodial management by the State of Hawaii in 1994.

“(24) In furtherance of the trust responsibility for the betterment of the conditions of

Native Hawaiians, the United States has established a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people. This program is conducted by the Native Hawaiian Health Care Systems, the Native Hawaiian Health Scholarship Program and Papa Ola Lokahi. Health initiatives from these and other health institutions and agencies using Federal assistance have begun to lower the century-old morbidity and mortality rates of Native Hawaiian people by providing comprehensive disease prevention, health promotion activities and increasing the number of Native Hawaiians in the health and allied health professions. This has been accomplished through the Native Hawaiian Health Care Act of 1988 (Public Law 100-579) and its reauthorization in section 9168 of Public Law 102-396 (106 Stat. 1948).

“(25) This historical and unique legal relationship has been consistently recognized and affirmed by Congress through the enactment of Federal laws which extend to the Native Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities, including the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.), the American Indian Religious Freedom Act (42 U.S.C. 1996), the National Museum of the American Indian Act (20 U.S.C. 80q et seq.), and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

“(26) The United States has also recognized and reaffirmed the trust relationship to the Native Hawaiian people through legislation which authorizes the provision of services to Native Hawaiians, specifically, the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Veterans’ Benefits and Services Act of 1988, the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Native Hawaiian Health Care Act of 1988 (Public Law 100-579), the Health Professions Reauthorization Act of 1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Handicapped Programs Technical Amendments Act of 1988, the Indian Health Care Amendments of 1988, and the Disadvantaged Minority Health Improvement Act of 1990.

“(27) The United States has also affirmed the historical and unique legal relationship to the Hawaiian people by authorizing the provision of services to Native Hawaiians to address problems of alcohol and drug abuse under the Anti-Drug Abuse Act of 1986 (Public Law 99-570).

“(28) Further, the United States has recognized that Native Hawaiians, as aboriginal, indigenous, native peoples of Hawaii, are a unique population group in Hawaii and in the continental United States and has so declared in Office of Management and Budget Circular 15 in 1997 and Presidential Executive Order No. 13125, dated June 7, 1999.

“(29) Despite the United States having expressed its commitment to a policy of reconciliation with the Native Hawaiian people for past grievances in Public Law 103-150 (107 Stat. 1510) the unmet health needs of the Native Hawaiian people remain severe and their health status continues to be far below that of the general population of the United States.

“(b) UNMET NEEDS AND HEALTH DISPARITIES.—Congress finds that the unmet needs and serious health disparities that adversely affect the Native Hawaiian people include the following:

“(1) CHRONIC DISEASE AND ILLNESS.—

“(A) CANCER.—

“(i) IN GENERAL.—With respect to all cancer—

“(I) Native Hawaiians have the highest cancer mortality rates in the State of Hawaii (231.0 out of every 100,000 residents), 45 percent higher than that for the total State population (159.7 out of every 100,000 residents);

“(II) Native Hawaiian males have the highest cancer mortality rates in the State of Hawaii for cancers of the lung, liver and pancreas and for all cancers combined;

“(III) Native Hawaiian females ranked highest in the State of Hawaii for cancers of the lung, liver, pancreas, breast, cervix uteri, corpus uteri, stomach, and rectum, and for all cancers combined;

“(IV) Native Hawaiian males have the highest years of productive life lost from cancer in the State of Hawaii with 8.7 years compared to 6.4 years for other males; and

“(V) Native Hawaiian females have 8.2 years of productive life lost from cancer in the State of Hawaii as compared to 6.4 years for other females in the State of Hawaii;

“(ii) BREAST CANCER.—With respect to breast cancer—

“(I) Native Hawaiians have the highest mortality rates in the State of Hawaii from breast cancer (37.96 out of every 100,000 residents), which is 25 percent higher than that for Caucasian Americans (30.25 out of every 100,000 residents) and 106 percent higher than that for Chinese Americans (18.39 out of every 100,000 residents); and

“(II) nationally, Native Hawaiians have the third highest mortality rates due to breast cancer (25.0 out of every 100,000 residents) following African Americans (31.4 out of every 100,000 residents) and Caucasian Americans (27.0 out of every 100,000 residents).

“(iii) CANCER OF THE CERVIX.—Native Hawaiians have the highest mortality rates from cancer of the cervix in the State of Hawaii (3.82 out of every 100,000 residents) followed by Filipino Americans (3.33 out of every 100,000 residents) and Caucasian Americans (2.61 out of every 100,000 residents).

“(iv) LUNG CANCER.—Native Hawaiians have the highest mortality rates from lung cancer in the State of Hawaii (90.70 out of every 100,000 residents), which is 61 percent higher than Caucasian Americans, who rank second and 161 percent higher than Japanese Americans, who rank third.

“(v) PROSTATE CANCER.—Native Hawaiian males have the second highest mortality rates due to prostate cancer in the State of Hawaii (25.80 out of every 100,000 residents) with Caucasian Americans having the highest mortality rate from prostate cancer (30.55 out of every 100,000 residents).

“(B) DIABETES.—With respect to diabetes, for the years 1989 through 1991—

“(i) Native Hawaiians had the highest mortality rate due to diabetes mellitus (34.7 out of every 100,000 residents) in the State of Hawaii which is 130 percent higher than the statewide rate for all other races (15.1 out of every 100,000 residents);

“(ii) full-blood Hawaiians had a mortality rate of 93.8 out of every 100,000 residents, which is 518 percent higher than the rate for the statewide population of all other races; and

“(iii) Native Hawaiians who are less than full-blood had a mortality rate of 27.1 out of every 100,000 residents, which is 79 percent higher than the rate for the statewide population of all other races.

“(C) ASTHMA.—With respect to asthma—

“(i) in 1990, Native Hawaiians comprised 44 percent of all asthma cases in the State of

Hawaii for those 18 years of age and younger, and 35 percent of all asthma cases reported; and

“(ii) in 1992, the Native Hawaiian rate for asthma was 81.7 out of every 1000 residents, which was 73 percent higher than the rate for the total statewide population of 47.3 out of every 1000 residents.

“(D) CIRCULATORY DISEASES.—

“(i) HEART DISEASE.—With respect to heart disease—

“(I) the death rate for Native Hawaiians from heart disease (333.4 out of every 100,000 residents) is 66 percent higher than for the entire State of Hawaii (201.1 out of every 100,000 residents); and

“(II) Native Hawaiian males have the greatest years of productive life lost in the State of Hawaii where Native Hawaiian males lose an average of 15.5 years and Native Hawaiian females lose an average of 8.2 years due to heart disease, as compared to 7.5 years for all males in the State of Hawaii and 6.4 years for all females.

“(ii) HYPERTENSION.—The death rate for Native Hawaiians from hypertension (3.5 out of every 100,000 residents) is 84 percent higher than that for the entire State (1.9 out of every 100,000 residents).

“(iii) STROKE.—The death rate for Native Hawaiians from stroke (58.3 out of every 100,000 residents) is 13 percent higher than that for the entire State (51.8 out of every 100,000 residents).

“(2) INFECTIOUS DISEASE AND ILLNESS.—The incidence of AIDS for Native Hawaiians is at least twice as high per 100,000 residents (10.5 percent) than that for any other non-Caucasian group in the State of Hawaii.

“(3) ACCIDENTS.—With respect to accidents—

“(A) the death rate for Native Hawaiians from accidents (38.8 out of every 100,000 residents) is 45 percent higher than that for the entire State (26.8 out of every 100,000 residents);

“(B) Native Hawaiian males lose an average of 14 years of productive life lost from accidents as compared to 9.8 years for all other males in Hawaii; and

“(C) Native Hawaiian females lose an average of 4 years of productive life lost from accidents but this rate is the highest rate among all females in the State of Hawaii.

“(4) DENTAL HEALTH.—With respect to dental health—

“(A) Native Hawaiian children exhibit among the highest rates of dental caries in the nation, and the highest in the State of Hawaii as compared to the 5 other major ethnic groups in the State;

“(B) the average number of decayed or filled primary teeth for Native Hawaiian children ages 5 through 9 years was 4.3 as compared with 3.7 for the entire State of Hawaii and 1.9 for the United States; and

“(C) the proportion of Native Hawaiian children ages 5 through 12 years with unmet treatment needs (defined as having active dental caries requiring treatment) is 40 percent as compared with 33 percent for all other races in the State of Hawaii.

“(5) LIFE EXPECTANCY.—With respect to life expectancy—

“(A) Native Hawaiians have the lowest life expectancy of all population groups in the State of Hawaii;

“(B) between 1910 and 1980, the life expectancy of Native Hawaiians from birth has ranged from 5 to 10 years less than that of the overall State population average; and

“(C) the most recent tables for 1990 show Native Hawaiian life expectancy at birth (74.27 years) to be about 5 years less than

that of the total State population (78.85 years).

“(6) MATERNAL AND CHILD HEALTH.—

“(A) PRENATAL CARE.—With respect to prenatal care—

“(i) as of 1996, Native Hawaiian women have the highest prevalence (21 percent) of having had no prenatal care during their first trimester of pregnancy when compared to the 5 largest ethnic groups in the State of Hawaii;

“(ii) of the mothers in the State of Hawaii who received no prenatal care throughout their pregnancy in 1996, 44 percent were Native Hawaiian;

“(iii) over 65 percent of the referrals to Healthy Start in fiscal years 1996 and 1997 were Native Hawaiian newborns; and

“(iv) in every region of the State of Hawaii, many Native Hawaiian newborns begin life in a potentially hazardous circumstance, far higher than any other racial group.

“(B) BIRTHS.—With respect to births—

“(i) in 1996, 45 percent of the live births to Native Hawaiian mothers were infants born to single mothers which statistics indicate put infants at higher risk of low birth weight and infant mortality;

“(ii) in 1996, of the births to Native Hawaiian single mothers, 8 percent were low birth weight (under 2500 grams); and

“(iii) of all low birth weight babies born to single mothers in the State of Hawaii, 44 percent were Native Hawaiian.

“(C) TEEN PREGNANCIES.—With respect to births—

“(i) in 1993 and 1994, Native Hawaiians had the highest percentage of teen (individuals who were less than 18 years of age) births (8.1 percent) compared to the rate for all other races in the State of Hawaii (3.6 percent);

“(ii) in 1996, nearly 53 percent of all mothers in Hawaii under 18 years of age were Native Hawaiian;

“(iii) lower rates of abortion (a third lower than for the statewide population) among Hawaiian women may account in part, for the higher percentage of live births;

“(iv) in 1995, of the births to mothers age 14 years and younger in Hawaii, 66 percent were Native Hawaiian; and

“(v) in 1996, of the births in this same group, 48 percent were Native Hawaiian.

“(D) FETAL MORTALITY.—In 1996, Native Hawaiian fetal mortality rates comprised 15 percent of all fetal deaths for the State of Hawaii. However, for fetal deaths occurring in mothers under the age of 18 years, 32 percent were Native Hawaiian, and for mothers 18 through 24 years of age, 28 percent were Native Hawaiians.

“(7) MENTAL HEALTH.—

“(A) ALCOHOL AND DRUG ABUSE.—With respect to alcohol and drug abuse—

“(i) Native Hawaiians represent 38 percent of the total admissions to Department of Health, Alcohol, Drugs and Other Drugs, funded substance abuse treatment programs;

“(ii) in 1997, the prevalence of smoking by Native Hawaiians was 28.5 percent, a rate that is 53 percent higher than that for all other races in the State of Hawaii which is 18.6 percent;

“(iii) Native Hawaiians have the highest prevalence rates of acute drinking (81 percent), a rate that is 79 percent higher than that for all other races in the State of Hawaii;

“(iv) the chronic drinking rate among Native Hawaiians is 54 percent higher than that for all other races in the State of Hawaii;

“(v) in 1991, 40 percent of the Native Hawaiian adults surveyed reported having used marijuana compared with 30 percent for all other races in the State of Hawaii; and

“(vi) nine percent of the Native Hawaiian adults surveyed reported that they are current users (within the past year) of marijuana, compared with 6 percent for all other races in the State of Hawaii.

“(B) CRIME.—With respect to crime—

“(i) in 1996, of the 5,944 arrests that were made for property crimes in the State of Hawaii, arrests of Native Hawaiians comprised 20 percent of that total;

“(ii) Native Hawaiian juveniles comprised a third of all juvenile arrests in 1996;

“(iii) In 1996, Native Hawaiians represented 21 percent of the 8,000 adults arrested for violent crimes in the State of Hawaii, and 38 percent of the 4,066 juvenile arrests;

“(iv) Native Hawaiians are over-represented in the prison population in Hawaii;

“(v) in 1995 and 1996 Native Hawaiians comprised 36.5 percent of the sentenced felon prison population in Hawaii, as compared to 20.5 percent for Caucasian Americans, 3.7 percent for Japanese Americans, and 6 percent for Chinese Americans;

“(vi) in 1995 and 1996 Native Hawaiians made up 45.4 percent of the technical violator population, and at the Hawaii Youth Correctional Facility, Native Hawaiians constituted 51.6 percent of all detainees in fiscal year 1997; and

“(vii) based on anecdotal information from inmates at the Halawa Correction Facilities, Native Hawaiians are estimated to comprise between 60 and 70 percent of all inmates.

“(8) HEALTH PROFESSIONS EDUCATION AND TRAINING.—With respect to health professions education and training—

“(A) Native Hawaiians age 25 years and older have a comparable rate of high school completion, however, the rates of baccalaureate degree achievement amongst Native Hawaiians are less than the norm in the State of Hawaii (6.9 percent and 15.76 percent respectively);

“(B) Native Hawaiian physicians make up 4 percent of the total physician workforce in the State of Hawaii; and

“(C) in fiscal year 1997, Native Hawaiians comprised 8 percent of those individuals who earned Bachelor's Degrees, 14 percent of those individuals who earned professional diplomas, 6 percent of those individuals who earned Master's Degrees, and less than 1 percent of individuals who earned doctoral degrees at the University of Hawaii.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) DISEASE PREVENTION.—The term ‘disease prevention’ includes—

“(A) immunizations;

“(B) control of high blood pressure;

“(C) control of sexually transmittable diseases;

“(D) prevention and control of diabetes;

“(E) control of toxic agents;

“(F) occupational safety and health;

“(G) accident prevention;

“(H) fluoridation of water;

“(I) control of infectious agents; and

“(J) provision of mental health care.

“(2) HEALTH PROMOTION.—The term ‘health promotion’ includes—

“(A) pregnancy and infant care, including prevention of fetal alcohol syndrome;

“(B) cessation of tobacco smoking;

“(C) reduction in the misuse of alcohol and drugs;

“(D) improvement of nutrition;

“(E) improvement in physical fitness;

“(F) family planning;

“(G) control of stress;

“(H) reduction of major behavioral risk factors and promotion of healthy lifestyle practices; and

“(I) integration of cultural approaches to health and well-being, including traditional practices relating to the land (‘aina), water (wai), and ocean (kai).

“(3) NATIVE HAWAIIAN.—The term ‘Native Hawaiian’ means any individual who is Kanaka Maoli (a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii) as evidenced by—

“(A) genealogical records,

“(B) Kupuna (elders) or Kama‘aina (long-term community residents) verification; or

“(C) birth records of the State of Hawaii.

“(4) NATIVE HAWAIIAN HEALTH CARE SYSTEM.—The term ‘Native Hawaiian health care system’ means an entity—

“(A) which is organized under the laws of the State of Hawaii;

“(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable;

“(C) which is a public or nonprofit private entity;

“(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services;

“(E) which may be composed of as many as 8 Native Hawaiian health care systems as necessary to meet the health care needs of each island’s Native Hawaiians; and

“(F) which is—

“(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by this chapter for the benefit of Native Hawaiians; and

“(ii) certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the contract the Native Hawaiian health care system enters into with the Secretary or the grant the Native Hawaiian health care system receives from the Secretary pursuant to this Act.

“(5) NATIVE HAWAIIAN ORGANIZATION.—The term ‘Native Hawaiian organization’ means any organization—

“(A) which serves the interests of Native Hawaiians; and

“(B) which is—

“(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this Act for the benefit of Native Hawaiians; and

“(ii) a public or nonprofit private entity.

“(6) PAPA OLA LOKAHI.—

“(A) IN GENERAL.—The term ‘Papa Ola Lokahi’ means an organization that is composed of public agencies and private organizations focusing on improving the health status of Native Hawaiians. Board members of such organization may include representation from—

“(i) E Ola Mau;

“(ii) the Office of Hawaiian Affairs of the State of Hawaii;

“(iii) Alu Like Inc.;

“(iv) the University of Hawaii;

“(v) the Hawaii State Department of Health;

“(vi) the Kamehameha Schools Bishop Estate, or other Native Hawaiian organization responsible for the administration of the Native Hawaiian Health Scholarship Program;

“(vii) the Hawaii State Primary Care Association, or other organizations responsible for the placement of scholars from the Native Hawaiian Health Scholarship Program;

“(viii) Ahahui O Na Kauka, the Native Hawaiian Physicians Association;

“(ix) Ho‘ola Lahui Hawaii, or a health care system serving Kaua‘i or Ni‘ihau, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

“(x) Ke Ola Mamo, or a health care system serving the island of O‘ahu and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

“(xi) Na Pu‘uwai or a health care system serving Moloka‘i or Lana‘i, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

“(xii) Hui No Ke Ola Pono, or a health care system serving the island of Maui, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

“(xiii) Hui Malama Ola Ha ‘Owi, or a health care system serving the island of Hawaii, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

“(xiv) other Native Hawaiian health care systems as certified and recognized by Papa Ola Lokahi in accordance with this Act; and

“(xv) such other member organizations as the Board of Papa Ola Lokahi may admit from time to time, based upon satisfactory demonstration of a record of contribution to the health and well-being of Native Hawaiians.

“(B) LIMITATION.—Such term does not include any organization described in subparagraph (A) if the Secretary determines that such organization has not developed a mission statement with clearly defined goals and objectives for the contributions the organization will make to the Native Hawaiian health care systems, and an action plan for carrying out those goals and objectives.

“(7) PRIMARY HEALTH SERVICES.—The term ‘primary health services’ means—

“(A) services of physicians, physicians’ assistants, nurse practitioners, and other health professionals;

“(B) diagnostic laboratory and radiologic services;

“(C) preventive health services including perinatal services, well child services, family planning services, nutrition services, home health services, and, generally, all those services associated with enhanced health and wellness.

“(D) emergency medical services;

“(E) transportation services as required for adequate patient care;

“(F) preventive dental services; and

“(G) pharmaceutical and nutraceutical services.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.

“(9) TRADITIONAL NATIVE HAWAIIAN HEALER.—The term ‘traditional Native Hawaiian healer’ means a practitioner—

“(A) who—

“(i) is of Native Hawaiian ancestry; and

“(ii) has the knowledge, skills, and experience in direct personal health care of individuals; and

“(B) whose knowledge, skills, and experience are based on demonstrated learning of Native Hawaiian healing practices acquired by—

“(i) direct practical association with Native Hawaiian elders; and

“(ii) oral traditions transmitted from generation to generation.

#### “SEC. 4. DECLARATION OF POLICY.

“(a) CONGRESS.—Congress hereby declares that it is the policy of the United States in fulfillment of its special responsibilities and legal obligations to the indigenous people of Hawaii resulting from the unique and historical relationship between the United States and the indigenous people of Hawaii—

“(1) to raise the health status of Native Hawaiians to the highest possible health level; and

“(2) to provide existing Native Hawaiian health care programs with all resources necessary to effectuate this policy.

#### “(b) INTENT OF CONGRESS.—

“(1) IN GENERAL.—It is the intent of the Congress that—

“(A) health care programs having a demonstrated effect of substantially reducing or eliminating the over-representation of Native Hawaiians among those suffering from chronic and acute disease and illness and addressing the health needs of Native Hawaiians shall be established and implemented; and

“(B) the Nation meet the Healthy People 2010 and Kanaka Maoli health objectives described in paragraph (2) by the year 2010.

“(2) HEALTHY PEOPLE AND KANAKA MAOLI HEALTH OBJECTIVES.—The Healthy People 2010 and Kanaka Maoli health objectives described in this paragraph are the following:

#### “(A) CHRONIC DISEASE AND ILLNESS.—

“(i) CARDIOVASCULAR DISEASE.—With respect to cardiovascular disease—

“(I) to increase to 75 percent the proportion of females who are aware that cardiovascular disease (heart disease and stroke) is the leading cause of death for all females.

“(II) to increase to at least 95 percent the proportion of adults who have had their blood pressure measured within the preceding 2 years and can state whether their blood pressure was normal or high; and

“(III) to increase to at least 75 percent the proportion of adults who have had their blood cholesterol checked within the preceding 5 years.

#### “(ii) DIABETES.—With respect to diabetes—

“(I) to increase to 80 percent the proportion of persons with diabetes whose condition has been diagnosed;

“(II) to increase to at least 20 percent the proportion of patients with diabetes who annually obtain lipid assessment (total cholesterol, LDL cholesterol, HDL cholesterol, triglyceride); and

“(III) to increase to 52 percent the proportion of persons with diabetes who have received formal diabetes education.

#### “(iii) CANCER.—With respect to cancer—

“(I) to increase to at least 95 percent the proportion of women age 18 and older who have ever received a Pap test and to at least 85 percent those who have received a Pap test within the preceding 3 years; and

“(II) to increase to at least 40 percent the proportion of women age 40 and older who have received a breast examination and a mammogram within the preceding 2 years.

#### “(iv) DENTAL HEALTH.—With respect to dental health—

“(I) to reduce untreated cavities in the primary and permanent teeth (mixed dentition) so that the proportion of children with decayed teeth not filled is not more than 12 percent among children ages 2 through 4, 22 percent among children ages 6 through 8, and 15 percent among adolescents ages 8 through 15;

“(II) to increase to at least 70 percent the proportion of children ages 8 through 14 who have received protective sealants in permanent molar teeth; and

“(III) to increase to at least 70 percent the proportion of adults age 18 and older using the oral health care system each year.

#### “(v) MENTAL HEALTH.—With respect to mental health—

“(I) to incorporate or support land(‘aina)-based, water(wai)-based, or the ocean(kai)-based programs within the context of mental health activities; and

“(II) to reduce the anger and frustration levels within ‘ohana focusing on building positive relationships and striving for balance in living (lokahi) and achieving a sense of contentment (pono).

#### “(vi) ASTHMA.—With respect to asthma—

“(I) to increase to at least 40 percent the proportion of people with asthma who receive formal patient education, including information about community and self-help resources, as an integral part of the management of their condition;

“(II) to increase to at least 75 percent the proportion of patients who receive counseling from health care providers on how to recognize early signs of worsening asthma and how to respond appropriately; and

“(III) to increase to at least 75 percent the proportion of primary care providers who are trained to provide culturally competent care to ethnic minorities (Native Hawaiians) seeking health care for chronic obstructive pulmonary disease.

#### “(B) INFECTIOUS DISEASE AND ILLNESS.—

“(i) IMMUNIZATIONS.—With respect to immunizations—

“(I) to reduce indigenous cases of vaccine-preventable disease;

“(II) to achieve immunization coverage of at least 90 percent among children between 19 and 35 months of age; and

“(III) to increase to 90 percent the rate of immunization coverage among adults 65 years of age or older, and 60 percent for high-risk adults between 18 and 64 years of age.

“(ii) SEXUALLY TRANSMITTED DISEASES, HIV; AIDS.—To increase the number of HIV-infected adolescents and adults in care who receive treatment consistent with current public health treatment guidelines.

#### “(C) WELLNESS.—

##### “(i) EXERCISE.—With respect to exercise—

“(I) to increase to 85 percent the proportion of people ages 18 and older who engage in any leisure time physical activity; and

“(II) to increase to at least 30 percent the proportion of people ages 18 and older who engage regularly, preferably daily, in sustained physical activity for at least 30 minutes per day.

“(ii) NUTRITION.—With respect to nutrition—

“(I) to increase to at least 60 percent the prevalence of healthy weight (defined as body mass index equal to or greater than 19.0 and less than 25.0) among all people age 20 and older;

“(II) to increase to at least 75 percent the proportion of people age 2 and older who meet the dietary guidelines’ minimum average daily goal of at least 5 servings of vegetables and fruits; and

“(III) to increase the use of traditional Native Hawaiian foods in all peoples’ diets and dietary preferences.

“(iii) LIFESTYLE.—With respect to lifestyle—

“(I) to reduce cigarette smoking among pregnant women to a prevalence of not more than 2 percent;

“(II) to reduce the prevalence of respiratory disease, cardiovascular disease, and cancer resulting from exposure to tobacco smoke;

“(III) to increase to at least 70 percent the proportion of all pregnancies among women

between the ages of 15 and 44 that are planned (intended); and

“(IV) to reduce deaths caused by unintentional injuries to not more than 25.9 per 100,000.

“(iv) CULTURE.—With respect to culture—

“(I) to develop and implement cultural values within the context of the corporate cultures of the Native Hawaiian health care systems, the Native Hawaiian Health Scholar-ship Program, and Papa Ola Lokahi; and

“(II) to facilitate the provision of Native Hawaiian healing practices by Native Hawaiian healers for those clients desiring such assistance.

“(D) ACCESS.—With respect to access—

“(i) to increase the proportion of patients who have coverage for clinical preventive services as part of their health insurance; and

“(ii) to reduce to not more than 7 percent the proportion of individuals and families who report that they did not obtain all the health care that they needed.

“(E) HEALTH PROFESSIONS TRAINING AND EDUCATION.—With respect to health profes-sions training and education—

“(i) to increase the proportion of all de-grees in the health professions and allied and associated health professions fields awarded to members of underrepresented racial and ethnic minority groups; and

“(ii) to support training activities and pro-grams in traditional Native Hawaiian healing practices by Native Hawaiian healers.

“(c) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to Congress under section 11, a report on the progress made in each toward meeting each of the objectives described in subsection (b)(2).

#### “SEC. 5. COMPREHENSIVE HEALTH CARE MASTER PLAN FOR NATIVE HAWAIIANS.

“(a) DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of co-ordinating, implementing and updating a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians, and to support community-based initiatives that are reflective of holistic approaches to health.

“(2) COLLABORATION.—The Papa Ola Lokahi shall collaborate with the Office of Hawaiian Affairs in carrying out this section.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out sub-section (a).

#### “SEC. 6. FUNCTIONS OF PAPA OLA LOKAHI.

“(a) RESPONSIBILITY.—Papa Ola Lokahi shall be responsible for the—

“(1) coordination, implementation, and up-dating, as appropriate, of the comprehensive health care master plan developed pursuant to section 5;

“(2) training for the persons described in subparagraphs (B) and (C) of section 7(c)(1);

“(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, bio-medical, epidemiological, and health ser-vices; and

“(4) the development of an action plan out-lining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this Act.

“(b) SPECIAL PROJECT FUNDS.—Papa Ola Lokahi may receive special project funds that may be appropriated for the purpose of

research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

“(c) CLEARINGHOUSE.—

“(1) IN GENERAL.—Papa Ola Lokahi shall serve as a clearinghouse for—

“(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

“(B) the identification and research into diseases affecting Native Hawaiians;

“(C) the availability of Native Hawaiian project funds, research projects and publica-tions;

“(D) the collaboration of research in the area of Native Hawaiian health; and

“(E) the timely dissemination of information pertinent to the Native Hawaiian health care systems.

“(2) CONSULTATION.—The Secretary shall consult periodically with Papa Ola Lokahi for the purposes of maintaining the clearing-house under paragraph (1) and providing infor-mation about programs in the Department that specifically address Native Hawaiian issues and concerns.

“(d) FISCAL ALLOCATION AND COORDINA-TION OF PROGRAMS AND SERVICES.—

“(1) RECOMMENDATIONS.—Papa Ola Lokahi shall provide annual recommendations to the Secretary with respect to the allocation of all amounts appropriated under this Act.

“(2) COORDINATION.—Papa Ola Lokahi shall, to the maximum extent possible, co-ordinate and assist the health care programs and services provided to Native Hawaiians.

“(3) REPRESENTATION ON COMMISSION.—The Secretary, in consultation with Papa Ola Lokahi, shall make recommendations for Native Hawaiian representation on the President’s Advisory Commission on Asian Americans and Pacific Islanders.

“(e) TECHNICAL SUPPORT.—Papa Ola Lokahi shall act as a statewide infrastructure to provide technical support and coordination of training and technical assistance to the Native Hawaiian health care systems.

“(f) RELATIONSHIPS WITH OTHER AGEN-CIES.—

“(1) AUTHORITY.—Papa Ola Lokahi may enter into agreements or memoranda of un-derstanding with relevant agencies or orga-nizations that are capable of providing re-sources or services to the Native Hawaiian health care systems.

“(2) MEDICARE, MEDICAID, SCHIP.—Papa Ola Lokahi shall develop or make every reasonable effort to—

“(A) develop a contractual or other ar-angement, through memoranda of under-standing or agreement, with the Health Care Financing Administration or the agency of the State which administers or supervises the administration of a State plan or waiver approved under title XVIII, XIX or title XXI of the Social Security Act for payment of all or a part of the health care services to per-sons who are eligible for medical assistance under such a State plan or waiver; and

“(B) assist in the collection of appropriate reimbursement for health care services to persons who are entitled to insurance under title XVIII of the Social Security Act.

#### “SEC. 7. NATIVE HAWAIIAN HEALTH CARE SYS-TEMS.

“(a) COMPREHENSIVE HEALTH PROMOTION, DISEASE PREVENTION, AND PRIMARY HEALTH SERVICES.—

“(1) GRANTS AND CONTRACTS.—The Secre-tary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services,

as well as primary health services, to Native Hawaiians who desire and are committed to bettering their own health.

“(2) PREFERENCE.—In making grants and entering into contracts under this sub-section, the Secretary shall give preference to Native Hawaiian health care systems and Native Hawaiian organizations and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health care sys-tems.

“(3) QUALIFIED ENTITY.—An entity is a qualified entity for purposes of paragraph (1) if the entity is a Native Hawaiian health care system.

“(4) LIMITATION ON NUMBER OF ENTITIES.—The Secretary may make a grant to, or enter into a contract with, not more than 8 Native Hawaiian health care systems under this subsection during any fiscal year.

“(b) PLANNING GRANT OR CONTRACT.—In ad-dition to grants and contracts under sub-section (a), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health care systems to serve the health needs of Native Hawaiian communi-ties on each of the islands of O’ahu, Moloka’i, Maui, Hawai’i, Lana’i, Kaua’i, and Ni’ihau in the State of Hawaii.

“(c) SERVICES TO BE PROVIDED.—

“(1) IN GENERAL.—Each recipient of funds under subsection (a) shall ensure that the following services either are provided or ar-ranged for:

“(A) Outreach services to inform Native Hawaiians of the availability of health ser-vices.

“(B) Education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators.

“(C) Services of physicians, physicians’assistants, nurse practitioners or other health and allied-health professionals.

“(D) Immunizations.

“(E) Prevention and control of diabetes, high blood pressure, and otitis media.

“(F) Pregnancy and infant care.

“(G) Improvement of nutrition.

“(H) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians.

“(I) Collection of data related to the pre-vention of diseases and illnesses among Native Hawaiians.

“(J) Services within the meaning of the terms ‘health promotion’, ‘disease preven-tion’, and ‘primary health services’, as such terms are defined in section 3, which are not specifically referred to in subsection (a).

“(K) Support of culturally appropriate ac-tivities enhancing health and wellness in-cluding land-based, water-based, ocean-based, and spiritually-based projects and pro-grams.

“(2) TRADITIONAL HEALERS.—The health care services referred to in paragraph (1) which are provided under grants or contracts under subsection (a) may be provided by tra-ditional Native Hawaiian healers.

“(d) FEDERAL TORT CLAIMS ACT.—Individ-uals that provide medical, dental, or other services referred to in subsection (a)(1) for Native Hawaiian health care systems, in-cluding providers of traditional Native Ha-waiian healing services, shall be treated as if such individuals were members of the Public Health Service and shall be covered under the provisions of section 224 of the Public Health Service Act.

“(e) SITE FOR OTHER FEDERAL PAYMENTS.—A Native Hawaiian health care system that receives funds under subsection (a) shall provide a designated area and appropriate staff to serve as a Federal loan repayment facility. Such facility shall be designed to enable health and allied-health professionals to remit payments with respect to loans provided to such professionals under any Federal loan program.

“(f) RESTRICTION ON USE OF GRANT AND CONTRACT FUNDS.—The Secretary may not make a grant to, or enter into a contract with, an entity under subsection (a) unless the entity agrees that amounts received under such grant or contract will not, directly or through contract, be expended—

“(1) for any services other than the services described in subsection (c)(1);

“(2) to provide inpatient services;

“(3) to make cash payments to intended recipients of health services; or

“(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

“(g) LIMITATION ON CHARGES FOR SERVICES.—The Secretary may not make a grant to, or enter into a contract with, an entity under subsection (a) unless the entity agrees that, whether health services are provided directly or through contract—

“(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

“(2) the entity will impose a charge for the delivery of health services, and such charge—

“(A) will be made according to a schedule of charges that is made available to the public; and

“(B) will be adjusted to reflect the income of the individual involved.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) GENERAL GRANTS.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2000 through 2010 to carry out subsection (a).

“(2) PLANNING GRANTS.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2000 through 2010 to carry out subsection (b).

#### “SEC. 8. ADMINISTRATIVE GRANT FOR PAPA OLA LOKAHI.

“(a) IN GENERAL.—In addition to any other grant or contract under this Act, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

“(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 5;

“(2) training for the persons described in subparagraphs (B) and (C) of section 7(c)(1);

“(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services;

“(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this Act;

“(5) a clearinghouse function for—

“(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

“(B) the identification and research into diseases affecting Native Hawaiians; and

“(C) the availability of Native Hawaiian project funds, research projects and publications;

“(6) the coordination of the health care programs and services provided to Native Hawaiians; and

“(7) the administration of special project funds.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2000 through 2010 to carry out subsection (a).

#### “SEC. 9. ADMINISTRATION OF GRANTS AND CONTRACTS.

“(a) TERMS AND CONDITIONS.—The Secretary shall include in any grant made or contract entered into under this Act such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

“(b) PERIODIC REVIEW.—The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this Act.

“(c) ADMINISTRATIVE REQUIREMENTS.—The Secretary may not make a grant or enter into a contract under this Act with an entity unless the entity—

“(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

“(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

“(3) with respect to providing health services to any population of Native Hawaiians, a substantial portion of which has a limited ability to speak the English language—

“(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

“(B) has designated at least 1 individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

“(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—

“(A) if the entity will provide under the grant or contract any such health services directly—

“(i) the entity has entered into a participation agreement under such plan; and

“(ii) the entity is qualified to receive payments under such plan; and

“(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

“(i) the organization has entered into a participation agreement under such plan; and

“(ii) the organization is qualified to receive payments under such plan; and

“(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the use and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

#### “(d) CONTRACT EVALUATION.

“(1) DETERMINATION OF NONCOMPLIANCE.—If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 7, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance.

“(2) NONRENEWAL.—If the Secretary determines that the noncompliance or unsatisfactory performance described in paragraph (1) with respect to an entity cannot be resolved and prevented in the future, the Secretary shall not renew the contract with such entity and may enter into a contract under section 7 with another entity referred to in subsection (a)(3) of such section that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this paragraph.

“(3) CONSIDERATION OF RESULTS.—In determining whether to renew a contract entered into with an entity under this Act, the Secretary shall consider the results of the evaluations conducted under this section.

“(4) APPLICATION OF FEDERAL LAWS.—All contracts entered into by the Secretary under this Act shall be in accordance with all Federal contracting laws and regulations, except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of the Act of August 24, 1935 (40 U.S.C. 270a et seq.).

“(5) PAYMENTS.—Payments made under any contract entered into under this Act may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this Act.

“(e) LIMITATION ON USE OF FUNDS FOR ADMINISTRATIVE EXPENSES.—Except with respect to grants and contracts under section 8, the Secretary may not make a grant to, or enter into a contract with, an entity under this Act unless the entity agrees that the entity will not expend more than 15 percent of the amounts received pursuant to this Act for the purpose of administering the grant or contract.

#### “(f) REPORT.

“(1) IN GENERAL.—For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this Act, such entity shall submit to the Secretary and to Papa Ola Lokahi an annual report—

“(A) on the activities conducted by the entity under the grant or contract;

“(B) on the amounts and purposes for which Federal funds were expended; and

“(C) containing such other information as the Secretary may request.

“(2) AUDITS.—The reports and records of any entity concerning any grant or contract under this Act shall be subject to audit by the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General of the United States.

“(g) ANNUAL PRIVATE AUDIT.—The Secretary shall allow as a cost of any grant made or contract entered into under this Act the cost of an annual private audit conducted by a certified public accountant.

#### “SEC. 10. ASSIGNMENT OF PERSONNEL.

“(a) IN GENERAL.—The Secretary may enter into an agreement with any entity under which the Secretary may assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

“(b) APPLICABLE FEDERAL PERSONNEL PROVISIONS.—Any assignment of personnel made by the Secretary under any agreement entered into under subsection (a) shall be treated as an assignment of Federal personnel to a local government that is made in

accordance with subchapter VI of chapter 33 of title 5, United States Code.

**“SEC. 11. NATIVE HAWAIIAN HEALTH SCHOLARSHIPS AND FELLOWSHIPS.**

“(a) ELIGIBILITY.—Subject to the availability of amounts appropriated under subsection (c), the Secretary shall provide funds through a direct grant or a cooperative agreement to Kamehameha Schools, Bishop Estate or another Native Hawaiian organization or health care organization with experience in the administration of educational scholarships or placement services for the purpose of providing scholarship assistance to students who—

“(1) meet the requirements of section 338A of the Public Health Service Act, except for assistance as provided for under subsection (b)(2); and

“(2) are Native Hawaiians.

**“(b) TERMS AND CONDITIONS.**—

“(1) IN GENERAL.—The scholarship assistance under subsection (a) shall be provided under the same terms and subject to the same conditions, regulations, and rules as apply to scholarship assistance provided under section 338A of the Public Health Service Act (except as provided for in paragraph (2)), except that—

“(A) the provision of scholarships in each type of health care profession training shall correspond to the need for each type of health care professional to serve the Native Hawaiian health care systems identified by Papa Ola Lokahi;

“(B) to the maximum extent practicable, the Secretary shall select scholarship recipients from a list of eligible applicants submitted by the Kamehameha Schools, Bishop Estate or the Native Hawaiian organization administering the program;

“(C) the obligated service requirement for each scholarship recipient (except for those receiving assistance under paragraph (2)) shall be fulfilled through service, in order of priority, in—

“(i) any one of the Native Hawaiian health care systems; or

“(ii) health professions shortage areas, medically underserved areas, or geographic areas or facilities similarly designated by the United States Public Health Service in the State of Hawaii;

“(D) the provision of counseling, retention and other support services shall not be limited to scholarship recipients, but shall also include recipients of other scholarship and financial aid programs enrolled in appropriate health professions training programs.

“(E) financial assistance may be provided to scholarship recipients in those health professions designated in such section 338A while they are fulfilling their service requirement in any one of the Native Hawaiian health care systems or community health centers.

“(2) FELLOWSHIPS.—Financial assistance through fellowships may be provided to Native Hawaiian applicants accepted and participating in a certificated program provided by a traditional Native Hawaiian healer in traditional Native Hawaiian healing practices including lomi-lomi, la’au lapa’au, and ho’oponopono. Such assistance may include a stipend or reimbursement for costs associated with participation in the program.

“(3) RIGHTS AND BENEFITS.—Scholarship recipients in health professions designated in section 338A of the Public Health Service Act while fulfilling their service requirements shall have all the same rights and benefits of members of the National Health Service Corps during their period of service.

“(4) NO INCLUSION OF ASSISTANCE IN GROSS INCOME.—Financial assistance provided to

scholarship recipients for tuition, books and other school-related expenditures under this section shall not be included in gross income for purposes of the Internal Revenue Code of 1986.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2000 through 2010 for the purpose of funding the scholarship assistance program under subsection (a).

**“SEC. 12. REPORT.**

“The President shall, at the time the budget is submitted under section 1105 of title 31, United States Code, for each fiscal year transmit to Congress a report on the progress made in meeting the objectives of this Act, including a review of programs established or assisted pursuant to this Act and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Native Hawaiians, and ensure a health status for Native Hawaiians, which are at a parity with the health services available to, and the health status of, the general population.

**“SEC. 13. DEMONSTRATION PROJECTS OF NATIONAL SIGNIFICANCE.**

“(a) AUTHORITY AND AREAS OF INTEREST.—The Secretary, in consultation with Papa Ola Lokahi, may allocate amounts appropriated under this Act, or any other Act, to carry out Native Hawaiian demonstration projects of national significance. The areas of interest of such projects may include—

“(1) the education of health professionals, and other individuals in institutions of higher learning, in health and allied health programs in complementary healing practices, including Native Hawaiian healing practices;

“(2) the integration of Western medicine with complementary healing practices including traditional Native Hawaiian healing practices;

“(3) the use of tele-wellness and telecommunications in chronic disease management and health promotion and disease prevention;

“(4) the development of appropriate models of health care for Native Hawaiians and other indigenous people including the provision of culturally competent health services, related activities focusing on wellness concepts, the development of appropriate kupuna care programs, and the development of financial mechanisms and collaborative relationships leading to universal access to health care;

“(5) the development of a centralized database and information system relating to the health care status, health care needs, and wellness of Native Hawaiians; and

“(6) the establishment of a Native Hawaiian Center of Excellence for Nursing at the University of Hawaii at Hilo, a Native Hawaiian Center of Excellence for Mental Health at the University of Hawaii at Manoa, a Native Hawaiian Center of Excellence for Maternal Health and Nutrition at the Waimanalo Health Center, and a Native Hawaiian Center of Excellence for Research, Training, and Integrated Medicine at Molokai General Hospital.

“(b) NONREDUCTION IN OTHER FUNDING.—The allocation of funds for demonstration projects under subsection (a) shall not result in a reduction in funds required by the Native Hawaiian health care systems, the Native Hawaiian Health Scholarship Program, or Papa Ola Lokahi to carry out their respective responsibilities under this Act.

**“SEC. 14. NATIONAL BIPARTISAN COMMISSION ON NATIVE HAWAIIAN HEALTH CARE ENTITLEMENT.**

“(a) ESTABLISHMENT.—There is hereby established a National Bipartisan Native Hawaiian Health Care Entitlement Commission (referred to in this Act as the ‘Commission’).

“(b) MEMBERSHIP.—The Commission shall be composed of 21 members to be appointed as follows:

“(1) CONGRESSIONAL MEMBERS.—

“(A) APPOINTMENT.—Eight members of the Commission shall be members of Congress, of which—

“(i) two members shall be from the House of Representatives and shall be appointed by the Majority Leader;

“(ii) two members shall be from the House of Representatives and shall be appointed by the Minority Leader;

“(iii) two members shall be from the Senate and shall be appointed by the Majority Leader; and

“(iv) two members shall be from the Senate and shall be appointed by the Minority Leader.

“(B) RELEVANT COMMITTEE MEMBERSHIP.—The members of the Commission appointed under subparagraph (A) shall each be members of the committees of Congress that consider legislation affecting the provision of health care to Native Hawaiians and other Native American.

“(C) CHAIRPERSON.—The members of the Commission appointed under subparagraph (A) shall elect the chairperson and vice-chairperson of the Commission.

“(2) HAWAIIAN HEALTH MEMBERS.—Eleven members of the Commission shall be appointed by Hawaiian health entities, of which—

“(A) five members shall be appointed by the Native Hawaiian Health Care Systems;

“(B) one member shall be appointed by the Hawaii State Primary Care Association;

“(C) one member shall be appointed by Papa Ola Lokahi;

“(D) one member shall be appointed by the State Council of Hawaiian Homestead Associations;

“(E) one member shall be appointed by the Office of Hawaiian Affairs; and

“(F) two members shall be appointed by the Association of Hawaiian Civic Clubs and shall represent Native Hawaiian populations on the United States continent.

“(3) SECRETARIAL MEMBERS.—Two members of the Commission shall be appointed by the Secretary and shall possess knowledge of the health concerns and wellness issues facing Native Hawaiians.

“(c) TERMS.—

“(1) IN GENERAL.—The members of the Commission shall serve for the life of the Commission.

“(2) INITIAL APPOINTMENT OF MEMBERS.—The members of the Commission shall be appointed under subsection (b)(1) not later than 90 days after the date of enactment of this Act, and the remaining members of the Commission shall be appointed not later than 60 days after the date on which the members are appointed under such subsection (b)(1).

“(3) VACANCIES.—A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

“(d) DUTIES OF THE COMMISSION.—The Commission shall carry out the following duties and functions:

“(1) Review and analyze the recommendations of the report of the study committee established under paragraph (3).

“(2) Make recommendations to Congress for the provision of health services to Native Hawaiian individuals as an entitlement, giving due regard to the effects of a program on existing health care delivery systems for Native Hawaiians and the effect of such programs on self-determination and their reconciliation.

“(3) Establish a study committee to be composed of at least 10 members from the Commission, including 4 members of the members appointed under subsection (b)(1), 5 of the members appointed under subsection (b)(2), and 1 of the members appointed by the Secretary under subsection (b)(3), which shall—

“(A) to the extent necessary to carry out its duties, collect and compile data necessary to understand the extent of Native Hawaiian needs with regards to the provision of health services, including holding hearings and soliciting the views of Native Hawaiians and Native Hawaiian organizations, and which may include authorizing and funding feasibility studies of various models for all Native Hawaiian beneficiaries and their families, including those that live on the United States continent;

“(B) make recommendations to the Commission for legislation that will provide for the culturally-competent and appropriate provision of health services for Native Hawaiians as an entitlement, which shall, at a minimum, address issues of eligibility and benefits to be provided, including recommendations regarding from whom such health services are to be provided and the cost and mechanisms for funding of the health services to be provided;

“(C) determine the effect of the enactment of such recommendations on the existing system of delivery of health services for Native Hawaiians;

“(D) determine the effect of a health service entitlement program for Native Hawaiian individuals on their self-determination and the reconciliation of their relationship with the United States;

“(E) not later than 12 months after the date of the appointment of all members of the Commission, make a written report of its findings and recommendations to the Commission, which report shall include a statement of the minority and majority position of the committee and which shall be disseminated, at a minimum, to Native Hawaiian organizations and agencies and health organizations referred to in subsection (b)(2) for comment to the Commission; and

“(F) report regularly to the full Commission regarding the findings and recommendations developed by the committee in the course of carrying out its duties under this section.

“(4) Not later than 18 months after the date of the appointment of all members of the Commission, submit a written report to Congress containing a recommendation of policies and legislation to implement a policy that would establish a health care system for Native Hawaiians, grounded in their culture, and based on the delivery of health services as an entitlement, together with a determination of the implications of such an entitlement system on existing health care delivery systems for Native Hawaiians and their self-determination and the reconciliation of their relationship with the United States.

“(e) ADMINISTRATIVE PROVISIONS.—

“(1) COMPENSATION AND EXPENSES.—

“(A) CONGRESSIONAL MEMBERS.—Each member of the Commission appointed under subsection (b)(1) shall not receive any addi-

tional compensation, allowances, or benefits by reason of their service on the Commission. Such members shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

“(B) OTHER MEMBERS.—The members of the Commission appointed under paragraphs (2) and (3) of subsection (b) shall, while serving on the business of the Commission (including travel time), receive compensation at the per diem equivalent of the rate provided for individuals under level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while serving away from their home or regular place of business, be allowed travel expenses, as authorized by the chairperson of the Commission.

“(C) OTHER PERSONNEL.—For purposes of compensation (other than compensation of the members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the Senate.

“(2) MEETINGS AND QUORUM.—

“(A) MEETINGS.—The Commission shall meet at the call of the chairperson.

“(B) QUORUM.—A quorum of the Commission shall consist of not less than 12 members, of which—

“(i) not less than 4 of such members shall be appointees under subsection (b)(1);

“(ii) not less than 7 of such members shall be appointees under subsection (b)(2); and

“(iii) not less than 1 of such members shall be an appointee under subsection (b)(3).

“(3) DIRECTOR AND STAFF.—

“(A) EXECUTIVE DIRECTOR.—The members of the Commission shall appoint an executive director of the Commission. The executive director shall be paid the rate of basic pay equal to that under level V of the Executive Schedule under section 5316 of title 5, United States Code.

“(B) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director deems appropriate.

“(C) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

“(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

“(E) FACILITIES.—The Administrator of the General Services Administration shall locate suitable office space for the operations of the Commission in the State of Hawaii. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

“(F) POWERS.—

“(1) HEARINGS AND OTHER ACTIVITIES.—For purposes of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties, except that at least 8 hearings shall be held on each of the Hawaiian Islands and 3 hearings in the continental United States in areas where large numbers of Native Hawaiians are present. Such hearings shall be held to solicit the views of Native Hawaiians regarding the delivery of health care services to such individuals. To constitute a hearing

under this paragraph, at least 4 members of the Commission, including at least 1 member of Congress, must be present. Hearings held by the study committee established under subsection (d)(3) may be counted towards the number of hearings required under this paragraph.

“(2) STUDIES BY THE GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

“(3) COST ESTIMATES.—

“(A) IN GENERAL.—The Director of the Congressional Budget Office or the Chief Actuary of the Health Care Financing Administration, or both, shall provide to the Commission, upon the request of the Commission, such cost estimates as the Commission determines to be necessary to carry out its duties.

“(B) REIMBURSEMENTS.—The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

“(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employees.

“(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of any Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

“(6) USE OF MAIls.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

“(7) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable the Commission to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

“(8) SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

“(9) PRINTING.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of Congress.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$1,500,000 to carry out this section. The amount appropriated under this subsection shall not result in a reduction in any other appropriation for health care or health services for Native Hawaiians.

**“SEC. 15. RULE OF CONSTRUCTION.**

“Nothing in this Act shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

**“SEC. 16. COMPLIANCE WITH BUDGET ACT.**

“Any new spending authority (described in subparagraph (A) of (B) of section 401(c)(2) of

the Congressional Budget Act of 1974 (2 U.S.C. 651(c)(2)(A) or (B)) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided for in appropriation Acts.

**“SEC. 17. SEVERABILITY.**

“If any provision of this Act, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.”

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1931. A bill to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes; to the Committee on the Judiciary.

**CIVIL ASSET FORFEITURE REFORM ACT**

Mr. HATCH. Mr. President, today Senator LEAHY and I are introducing a civil asset forfeiture reform bill.

First and foremost, I want to emphasize that civil asset forfeiture is an important tool in America's fight against crime and drugs. Last year, the federal government seized nearly \$500 million in assets. It is vitally important that the fruits of crime and the property used to commit crimes are forfeited to the government. In recent years, however, there have been numerous examples of civil asset forfeiture actions that should not have been taken. While the vast majority of civil asset forfeiture actions are justified, there have been cases in which government officials did not use good judgment. Some would even say that civil asset forfeiture has been abused in some instances by overzealous law enforcement officials.

I will mention just a few examples of such imprudent civil forfeiture actions. In *United States v. \$506,231*, 125 F.3d 442 (7th Cir. 1997), the court dismissed a forfeiture action involving \$506,231 and scolded the government for its conduct. In this case, state authorities obtained a warrant to search a pizzeria for stolen goods. During the search of the restaurant, authorities did not find any stolen goods, but they did discover a large amount of currency. Criminal charges were not filed against the owners of the restaurant. Nevertheless, alleging that the currency was related to narcotics, the federal government filed a civil complaint for forfeiture of the \$506,231.

Four years after the money was seized, the court dismissed the forfeiture complaint and returned the currency to its owner. The court found that the evidence “does not come close to showing any connection between the money and narcotics,” that “there is no evidence that drug trafficking was going on at the pizzeria,” and that “nothing ties this money to any narcotics activities that the government knew about or charged, or to any crime that was occurring when the govern-

ment attempted to seize the property.” At the conclusion of the case, the court stated that “we believe the government's conduct in forfeiture cases leaves much to be desired.”

Even more disturbing is *United States v. \$14,665*, 33 F. Supp. 2d 47 (D. Mass. 1998). In this case, airline officials informed the police that a passenger, Manuel Espinola, was carrying a large amount of currency in a briefcase. The police questioned Espinola about the \$14,665 in cash. Espinola, a 23-year-old man who purchased the plane ticket in his own name, told the police that he and his brother earned the money selling personal care products for a company called Equinox International. When the police asked Espinola what the money was going to be used for, he stated that he was planning to move to Las Vegas and intended to use the cash as a down payment on a home. Espinola told police that he did not deposit the currency in a bank because he was afraid that it might be attached due to a prior credit problem. Espinola also gave the police a pager number of a co-worker who he said could verify his employment and his plans in Las Vegas.

Based on Espinola's explanation, the police officer seized the money because the officer believed it was related to purchase narcotics. The officer did not arrest Espinola, who had no criminal record.

After the seizure, in an attempt to get his money back, Espinola submitted documents that largely confirmed his explanation of the currency, including receipts for personal care products from Equinox International and copies of a settlement check from a personal injury claim. By contrast, the government offered no additional evidence that the currency was related to drugs and was subject to forfeiture.

The court granted summary judgment to Espinola and, in its order, harshly criticized the forfeiture action. The court stated: “Even in the byzantine world of forfeiture law, this case is an example of overreaching. The government's showing of probable cause is completely inadequate, based on a troubling mix of baseless generalizations, leaps of logic or worse, blatant ethnic stereotyping.” Nearly two years after the police seized his money without any evidence it was related to narcotics, the court returned the currency to Espinola.

Other federal courts have also criticized federal civil forfeiture actions. For example, in 1992, the Second Circuit Court of Appeals stated: “We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.”

While I believe that these and other cases prove the need for some reform of civil asset forfeiture law, I want to

take this opportunity to praise federal law enforcement officials. Federal law enforcement does an outstanding job fighting crime under the most difficult circumstances. In short, Mr. President, I believe that the problems with civil asset forfeiture have much more to do with defects in the law than with the character or competency of federal law enforcement officials. Senator LEAHY and I drafted this bill to improve civil asset forfeiture law and ensure the continued use of civil asset forfeiture in appropriate cases.

The Hatch-Leahy bill makes important improvements to existing law. I will describe a few of these improvements today. The first major reform places the burden of proof in civil asset forfeiture cases on the government throughout the proceeding. Under current law, the government is only required to make an initial showing of probable cause that the property is connected to criminal activity and is thus subject to forfeiture. After the government makes this modest showing, the burden then shifts to the property owner to prove that the property was not involved in criminal activity. Not surprisingly, the fact that the property owner bears the burden of proving the property is not subject to forfeiture has been extensively criticized by the federal judiciary and numerous legal commentators. As one federal court that has been particularly critical of civil asset forfeiture noted, placing the burden of proof on the property owner is a “constitutional anomaly.” *United States v. \$49,576*, 116 F.3d 425 (9th Cir. 1997). The court in *\$49,576* even questioned whether requiring a property owner to bear the burden of proof in a civil forfeiture action is constitutional: “We would find it surprising were the Constitution to permit such an important decision to turn on a meager burden of proof like probable cause.”

I, too, believe that placing the burden of proof on the property owner contradicts our nation's traditional notions of justice and fairness. Under the Hatch-Leahy bill, the government will have the burden in civil forfeiture actions to prove by the preponderance of the evidence that the property is connected with criminal activity and is subject to forfeiture.

Another major reform in the Hatch-Leahy bill involves what is known as the cost bond. Under current civil forfeiture law, a property owner must post a cost bond of the lesser of \$5,000 or 10 percent of the value of the property seized in order to contest a seizure of property. It is important to note that the cost bond merely allows the property owner to contest the forfeiture. It does not entitle the property owner to the return of the property pending trial.

I believe that it is fundamentally unfair to require a person to post a bond

in order to be allowed to contest the seizure of property. For example, what if the government required persons who were indicted to post a bond to contest the indictment? Such a requirement would be unconstitutional under the Sixth Amendment. I believe that requiring a property owner to post a bond to contest the seizure of property is no less objectionable. Such a requirement, Mr. President, seems un-American. The framers of our Constitution would be appalled to know that the federal government, after seizing private property, required the property owner to post a bond in order to contest the seizure.

The Justice Department argues that the cost bond requirement reduces frivolous claims. To address this concern, the Hatch-Leahy bill requires that a person who challenges a forfeiture must file his claim to the property under oath, subject to penalty of perjury. I predict that eliminating the cost bond will produce, at most, minor inconveniences because persons who file frivolous claims will be deterred by the substantial legal fees and costs incurred in contesting the forfeiture. After all, who is willing to hire counsel and pay other expenses to litigate a frivolous claim, especially when subject to penalty of perjury?

Another reform in the Hatch-Leahy bill addresses the situation in which the government's possession of seized property pending trial causes hardship to the property owner. Under current law, the government maintains possession of seized property pending trial even if it causes hardship to the property owner. A common example of such hardship is where the government seizes an automobile, and the seizure prevents the property owner or members of the property owner's family from getting to and from work pending the forfeiture trial. The Hatch-Leahy bill changes current law to allow, but not require, the court to release property pending trial if the court determines that the hardship to the property owner of continued possession by the government outweighs the risk that the property will be damaged or lost. This is a common sense reform that allows the court to release property in appropriate cases.

Another reform in the Hatch-Leahy bill involves reimbursement of attorney fees. The Hatch-Leahy bill awards attorney fees and costs to property owners who prevail against the government in civil forfeiture cases. The costs of contesting a civil forfeiture of property can be substantial. The award of attorney fees and costs to property owners who prevail against the government in civil forfeiture cases is justified because unlike criminal forfeiture actions, the property owner is not charged with a crime. Instead, the government proceeds "in rem" against the property. Given that the government

does not sue or indict the property owner, it is unfair for the property owner to have to incur attorney fees and costs when the government does not prevail in civil forfeiture actions.

The award of attorney fees is also justified because the government only has to prove its case against the property by a preponderance of the evidence. By contrast, the government must prove beyond a reasonable doubt that property is subject to forfeiture in criminal forfeiture actions. If the government decides to pursue a civil forfeiture action instead of the more difficult to prove criminal forfeiture action, it should be obligated to pay the attorney fees and costs of the property owner when the property owner prevails.

Mr. President, I would like to emphasize that while the Hatch-Leahy Civil Asset Forfeiture Reform Act contains important reforms; it retains civil forfeiture as an important tool for law enforcement. In fact, the Hatch-Leahy bill is a cautious, responsible reform. Some would even argue that this bill is too modest.

A comparison of the reforms enacted by the State of California in 1993 is instructive. For example, California changed its civil forfeiture law to require the government to prove beyond a reasonable doubt and achieve a related criminal conviction in most civil asset forfeiture cases. The exception to this rule in California involves seizures of currency in excess of \$25,000. In these cases, the State must prove the currency is subject to forfeiture by clear and convincing evidence. Also, California abolished the cost bond in civil forfeiture cases.

In short, California's reforms go far beyond anything in the Hatch-Leahy bill, but these reforms have not undermined civil asset forfeiture as a law enforcement tool. The modest reforms in the Hatch-Leahy bill will add much needed protections for property owners at no significant costs to law enforcement. By making these needed reforms, the Hatch-Leahy bill will preserve civil forfeiture as a law enforcement tool for the future.

Lastly, I would like to thank Senator LEAHY and his staff for their tireless effort on this legislation. Senator LEAHY has been an advocate for civil asset forfeiture reform for many years. He is one of the leading champions of civil liberties in the Senate. This legislation would not have occurred without his interest and persistence, and I thank him for his efforts.

I ask unanimous consent that the bill and a section-by-section summary of the bill be included in the RECORD.

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

S. 1931

*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 "Civil Asset Forfeiture Reform Act".

#### SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 981 the following:

#### “§ 981A. General rules for civil forfeiture proceedings

“(a) NOTICE; CLAIM; COMPLAINT.—(1)(A)(i) Except as provided in clauses (ii) and (iii), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government must send written notice to interested parties, such notice shall be sent in a manner to achieve proper service as soon as practicable, and in no case more than 60 days after the date of the seizure.

“(ii) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent no more than 90 days after the date of seizure by the State or local law enforcement agency.

“(iii) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

“(B) A court shall extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days (which period may be further extended), if the court determines, based on a written *ex parte* certification of a supervisory official of the seizing agency, that there is reason to believe that notice may have an adverse result, including—

“(i) endangering the life or physical safety of an individual;

“(ii) flight from prosecution;

“(iii) destruction of or tampering with evidence;

“(iv) intimidation of potential witnesses; or

“(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

“(C) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

“(2)(A) Any person claiming property seized in a nonjudicial forfeiture proceeding may file a claim with the appropriate official after the seizure.

“(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter, except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

“(C) The claim shall state the claimant's interest in the property and be made under oath, subject to penalty of perjury. The seizing agency shall make claim forms generally available on request.

“(D) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

“(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a

complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

“(B) If the Government does not file a complaint for forfeiture or return the property, in accordance with subparagraph (A), it shall return the property and may not take any further action to effect the civil forfeiture of such property.

“(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. In such case, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

“(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property by a preponderance of the evidence.

“(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

“(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

“(b) APPOINTMENT OF COUNSEL.—(1) If—

“(A) a person in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel; and

“(B)(i) the property subject to forfeiture is real property that is being used by the person as a primary residence; or

“(ii) the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case; the court may appoint or authorize counsel to represent that person with respect to the claim, as appropriate.

“(2) In determining whether to appoint or authorize counsel to represent a person asserting a claim under this subsection, the court shall take into account such factors as—

“(A) the person's standing to contest the forfeiture; and

“(B) whether the claim appears to be made in good faith.

“(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

“(c) BURDEN OF PROOF.—In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture. The Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of

the evidence, that property is subject to forfeiture.

“(d) INNOCENT OWNER DEFENSE.—(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that he is an innocent owner by a preponderance of the evidence.

“(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

“(i) did not know of the conduct giving rise to forfeiture; or

“(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

“(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

“(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

“(II) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

“(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

“(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property—

“(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

“(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

“(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

“(i) the property is the primary residence of the claimant;

“(ii) depriving the claimant of the property would deprive the claimant of the claimant's only means of maintaining adequate shelter in the community for the claimant and all dependents residing with the claimant;

“(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

“(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate; except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain adequate shelter in the community for such claimant and all dependents residing with the claimant.

“(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

“(e) MOTION TO SET ASIDE FORFEITURE.—(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

“(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

“(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

“(2) If the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party, which proceeding shall be instituted within 60 days of the entry of the order granting the motion.

“(3) A motion under paragraph (1) may be filed not later than 6 years after the date that the claimant discovered or had reason to discover that the property was forfeited, subject to the doctrine of laches, except that no motion may be filed more than 11 years after the date that the Government's forfeiture cause of action accrued.

“(f) RELEASE OF SEIZED PROPERTY.—(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

“(A) the claimant has a possessory interest in the property;

“(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

“(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

“(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

“(E) none of the conditions set forth in paragraph (7) applies.

“(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

“(3) If not later than 10 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a motion or complaint in the district court in which the complaint has been filed or, if no complaint has been filed, any district court that would have jurisdiction of forfeiture proceedings relating to the property, setting forth—

“(A) the basis on which the requirements of paragraph (1) are met; and

“(B) the steps the claimant has taken to secure release of the property from the appropriate official.

“(4) The court shall render a decision on a motion or complaint filed under paragraph (3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

“(5) If—

“(A) a motion or complaint is filed under paragraph (3); and

“(B) the claimant demonstrates that the requirements of paragraph (1) have been met; the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

“(6) If the court grants a motion or complaint under paragraph (3)—

“(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

“(i) permitting the inspection, photographing, and inventory of the property;

“(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

“(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

“(B) the Government may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person.

“(7) This subsection shall not apply if the seized property—

“(A) is contraband, currency or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

“(B) is to be used as evidence of a violation of the law;

“(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

“(D) is likely to be used to commit additional criminal acts if returned to the claimant.

“(g) **PROPORTIONALITY.**—The claimant may petition the court to determine whether the forfeiture was constitutionally excessive. In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture. If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary. The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

“(h) **DEFINITIONS.**—In this section:

“(1)(A) Except as provided in subparagraph (B), the term ‘civil forfeiture statute’ means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

“(B) The term ‘civil forfeiture statute’ does not include—

“(i) the Tariff Act of 1930 or any other provision of law codified in title 19;

“(ii) the Internal Revenue Code of 1986;

“(iii) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

“(iv) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); or

“(v) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

“(2)(A) The term ‘owner’ means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest.

“(B) The term ‘owner’ does not include—

“(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

“(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

“(iii) a nominee who exercises no dominion or control over the property.”.

**(b) TECHNICAL AND CONFORMING AMENDMENT.**—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 981 the following:

“981A. General rules for civil forfeiture proceedings.”.

**SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.**

(a) **TORT CLAIMS ACT.**—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking “any goods or merchandise” and inserting “any goods, merchandise, or other property”;

(2) by striking “law-enforcement” and inserting “law enforcement”; and

(3) by inserting before the period at the end of the following: “, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

“(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

“(2) the interest of the claimant is not forfeited; and

“(3) the claimant is not convicted of a crime for which the interest of the claimant in the property would be subject to forfeiture under a Federal criminal forfeiture law.”.

(b) **DEPARTMENT OF JUSTICE.**—

(1) **IN GENERAL.**—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than \$50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) **LIMITATIONS.**—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the Federal Government and arose within the scope of employment.

**SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.**

(a) **IN GENERAL.**—Section 2465 of title 28, United States Code, is amended to read as follows:

**“2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest**

“(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

“(1) such property shall be returned forthwith to the claimant or his agent; and

“(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

“(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property

under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

“(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

“(B) post-judgment interest, as set forth in section 1961 of this title; and

“(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

“(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

“(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence).

“(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

“(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property would be subject to forfeiture under a Federal criminal forfeiture law.”.

**(b) TECHNICAL AND CONFORMING AMENDMENT.**—The analysis for chapter 163 of title 28, United States Code, is amended by striking the item relating to section 2465 and inserting following:

“2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.”.

**SEC. 5. SEIZURE WARRANT REQUIREMENT.**

(a) **IN GENERAL.**—Section 981(b) of title 18, United States Code, is amended to read as follows:

“(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

“(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

“(A) a complaint for forfeiture based on probable cause has been filed in the United States district court and the court has issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

“(B) there is probable cause to believe that the property is subject to forfeiture and—

“(i) the seizure is made pursuant to a lawful arrest or search; or

“(ii) another exception to the Fourth Amendment warrant requirement would apply; or

“(C) the property was lawfully seized by a State or local law enforcement agency and has been transferred to a Federal agency in accordance with State law.

“(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in

any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and executed in any district in which the property is found.”.

(b) DRUG FORFEITURES.—Section 511(b) of the Controlled Substances Act (21 U.S.C. 881(b)) is amended to read as follows:

“(b) SEIZURE PROCEDURES.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18, United States Code.”.

**SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS.**

Section 981(e) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

“(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or”.

**SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.**

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 984 the following:

**“§ 985. Civil forfeiture of real property**

“(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

“(b)(1) Except as provided in this section—

“(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

“(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

“(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

“(c)(1) The Government shall initiate a civil forfeiture action against real property by—

“(A) filing a complaint for forfeiture;

“(B) posting a notice of the complaint on the property; and

“(C) serving notice on the property owner, along with a copy of the complaint.

“(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

“(A) is a fugitive;

“(B) resides outside the United States and efforts at service pursuant to Rule 4 of the Federal Rules of Civil Procedure are unavailing; or

“(C) cannot be located despite the exercise of due diligence, constructive service may be made in accordance with the laws of the State in which the property is located.

“(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

“(d) Real property may be seized prior to the entry of an order of forfeiture if—

“(1) the Government notifies the court that it intends to seize the property before trial; and

“(2) the court—

“(A) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing to determine if there is probable cause for the forfeiture; or

“(B) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the government to seize the property without prior notice and an opportunity for the property owner to be heard. For purposes of paragraph (2)(B), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

“(e) If the court authorizes a seizure of real property under subsection (d)(2), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

“(f) This section—

“(1) applies only to civil forfeitures of real property and interests in real property;

“(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

“(3) shall not affect the authority of the court to enter a restraining order relating to real property.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

“985. Civil forfeiture of real property.”.

**SEC. 8. APPLICABILITY.**

This Act and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date of enactment of this Act.

**HATCH/LEAHY CIVIL ASSET FORFEITURE REFORM ACT—SECTION-BY-SECTION SUMMARY OVERVIEW**

The Hatch/Leahy Civil Asset Forfeiture Reform Act would provide a more uniform procedure for federal civil asset forfeitures while increasing the due process safeguards for property owners. Among other things, the bill (1) places the burden of proof in civil forfeiture proceedings upon the government, by a preponderance of the evidence; (2) allows for the provision of counsel to indigent claimants where the property at issue is the claimant's primary residence, and where the claimant is represented by court-appointed counsel in connection with a related criminal case; (3) requires the government to pay attorney fees, costs and interest in any civil forfeiture proceeding in which the claimant substantially prevails; (4) eliminates the cost bond requirement; (5) creates a uniform innocent owner defense; (6) allows property owners more time to challenge a seizure; (7) codifies existing practice with respect to Eighth Amendment proportionality review and seizures of real property; (8) permits the pre-adjudication return of property to owners upon a showing of hardship; and (9) allows property owners to sue the government for any damage to their property.

**SECTION-BY-SECTION SUMMARY**

**SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.**

Creates a new section in federal criminal code (18 U.S.C. §981A) that establishes general rules for virtually all proceedings under a federal civil forfeiture statute.

Notice; claim; complaint. Subsection (a) establishes general procedures and deadlines for initiating civil forfeiture proceedings.

Paragraph (1) provides that, in general, a Federal law enforcement agency has 60 days to send notice of a seizure of property. A court shall extend the period for sending notice for 60 days upon written ex parte certification by the seizing agency that notice may have an adverse result. If the government fails to send notice, it must return the property, without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

Paragraph (2) allows property owners more time to challenge a seizure. Any person claiming an interest in seized property may file a claim not later than the deadline set forth in a personal notice letter, except that if such letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure. Claims shall be made under oath, subject to penalty of perjury. No cost bond need be posted.

Paragraph (3) allows the government 90 days after a claim has been filed to file a complaint for forfeiture or return the property, except that a court may extend the time for filing a complaint for good cause shown or upon agreement of the parties. If the government does not comply with this rule, it may not take further action to effect forfeiture of the property.

Paragraph (4) provides that any person claiming an interest in seized property must file a claim in court not later than 30 days after service of the government's complaint or, where applicable, not later than 30 days after final publication of notice of seizure. A claimant must file an answer to the government's complaint within 20 days of the filing of such claim.

Appointment of counsel. Subsection (b) permits a court to appoint counsel to represent an indigent claimant in a judicial civil forfeiture proceeding if the property subject to forfeiture is real property used by the claimant as a primary residence, or the claimant is already represented by a court-appointed attorney in connection with a related Federal criminal case.

Burden of proof. Subsection (c) shifts the burden of proof in civil asset forfeiture cases to the government, by a preponderance of the evidence. It also makes clear that the government may use evidence gathered after the filing of a complaint to meet that burden of proof.

Innocent owner. Subsection (d) codifies a uniform innocent owner defense. With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, “innocent owner” means an owner who did not know of the conduct giving rise to forfeiture or who, upon learning of such conduct, did all that reasonably could be expected under the circumstances to terminate such use of the property. With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, “innocent owner” means a person who, at the time that person acquired the interest in property, was a bona fide purchaser or seller for value and reasonably without cause to believe that the property was subject to forfeiture or, in limited circumstances involving a principal residence, a spouse or legal dependent.

Motion to set aside declaration of forfeiture. Subsection (e) provides that a person who was entitled to notice of a nonjudicial civil forfeiture who did not receive such notice may file a motion to set aside a declaration of forfeiture with respect to his or her interest in the property. This subsection codifies current case law holding that such

motion must be filed not later than 6 years after the date that the claimant discovered or had reason to discover that the property was forfeited, but in no event more than 11 years after the government's cause of action in forfeiture accrued. The common law doctrine of laches applies to any motion made under this subsection. If such motion is granted, the government has 60 days to re-institute proceedings against the property.

Release of property to avoid hardship. Sub-section (f) entitles a claimant to immediate release of seized property in certain cases of hardship. Among other things, the claimant must have sufficient ties to the community to provide assurance that the property will be available at the time of the trial, the claimant's likely hardship from such continued possession outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the preceding. Hardship return of property does not apply to contraband, currency, electronic funds, property that is evidence of a crime, property that is specially designed to use in a crime, or any other item likely to be used to commit additional crimes if returned.

Proportionality review. Subsection (g) implements *United States v. Bajakajian*, 524 U.S. 321 (1998), which held that a punitive forfeiture violates the Excessive Fines Clause of the Eighth Amendment if it is grossly disproportionate to the gravity of the offense.

#### **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.**

Amends the federal Tort Claims Act to apply to claims based on injury or loss of property while in the possession of the government, if the property was seized for the purpose of forfeiture but the interest of the claimant was not forfeited.

#### **SEC. 4. ATTORNEY FEES, COSTS AND INTEREST.**

Amends 28 U.S.C. §2465 to provide that, with limited exceptions, in any civil proceeding to forfeit property in which the claimant substantially prevails, the United States shall be liable for (1) reasonable attorney fees and other litigation costs reasonably incurred by the claimant; (2) post-judgment interest; and (3) in cases involving currency, negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid to the United States, or imputed interest (except where the property was in use as evidence or for testing).

#### **SEC. 5. SEIZURE WARRANT REQUIREMENT.**

Amends 18 U.S.C. §981(b) to require that seizures be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, with limited exceptions.

#### **SEC. 6. CIVIL FORFEITURE OF REAL PROPERTY.**

Implements *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993), which held that real property may not be seized, except in exigent circumstances, without giving a property owner notice of the proposed seizure and an opportunity for an adversarial hearing. All forfeitures of real property must proceed as judicial forfeitures. Real property may be seized before entry of an order of forfeiture only if notice has been served on the property owner and the court determines that there is probable cause for the forfeiture, or if the court makes an ex parte determination that there is probable cause for the forfeiture and exigent circumstances justify immediate seizure without a pre-seizure hearing.

#### **SEC. 7. APPLICABILITY.**

Provides that all changes in the bill apply prospectively.

Mr. LEAHY. Mr. President, asset forfeiture is a powerful crime-fighting tool. It has been a particularly potent weapon in the war on drugs, allowing the government to take the cars and boats and stash houses amassed by drug dealers and put them to honest use. Last year alone, the government was able to seize nearly half a billion dollars worth of assets, cutting a big chunk out of criminals' profit stream and returning it to the law-abiding community.

Unfortunately, our nation's asset forfeiture is not fail-safe; it can be abused. In hearings on this issue, the Judiciary Committee has heard examples of what happens when prosecutorial zeal skirts the boundaries of due process, leading to the taking of private property regardless of whether the owner is innocent of, or even cognizant of, the property's use in an illegal act.

In recent years, our nation's asset forfeiture system has drawn increasing and exceedingly sharp criticism from scholars and commentators. Federal judges have also added their voices to the growing chorus of concern. In 1992, the Second Circuit Court of Appeals stated, "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes." Four years later, the Eighth Circuit rebuked the government for capitalizing on the claimants' confusion to forfeit over \$70,000 of their currency, and expressed alarm that:

the war on drugs has brought us to the point where the government may seize . . . a citizen's property without any initial showing of cause, and put the onus on the citizen to perfectly navigate the bureaucratic labyrinth in order to liberate what is presumably his or hers in the first place. . . . Should the citizen prove inept, the government may keep the property, without ever having to justify or explain its actions.

Similarly, the Seventh Circuit recently expressed its belief that "the government's conduct in forfeiture cases leaves much to be desired," and ordered the return of over \$500,000 in currency that had been improperly seized from a Chicago pizzeria.

Civil asset forfeiture rests upon the medieval notion that property is somehow guilty when it causes harm to another. The notion of "guilty property" is what enables the government to seize property regardless of the guilt or innocence of the property owner. In many asset forfeiture cases, the person whose property is taken is never charged with any crime.

The "guilty property" notion also explains the topsy-turvy nature of today's civil forfeiture proceedings, in which the property owner—not the government—bears the burden of proof. Under current law, all the government must do is make an initial showing of probable cause that the property is "guilty" and subject to forfeiture; it is

then up to the property owner to prove a negative—that the property was not involved in any wrongdoing.

It is time to reexamine the obsolete underpinnings of our civil forfeiture laws and bring these laws in line with more modern principles of due process and fair play. We must be especially careful to ensure that innocent property owners are adequately protected.

The Hatch-Leahy Civil Asset Forfeiture Reform Act provides greater safeguards for individuals whose property has been seized by the government. It incorporates all of the core reforms of H.R. 1658, which passed the House of Representatives in June by an overwhelming bipartisan majority. The Hatch-Leahy bill also includes a number of additional reforms which, among other things, establish a fair and uniform procedure for forfeiting real property, and entitle property owners to challenge a forfeiture as constitutionally excessive.

During our hearing this year on civil asset forfeiture reform, the Justice Department and other law enforcement organizations expressed concern that some of the reforms included in the House bill would interfere with the government's ability to combat crime. The bill we introduce today addresses the legitimate concerns of law enforcement. In particular, the bill puts the burden of proof on the government by a preponderance of the evidence, and not by clear and convincing evidence. The preponderance standard is used in virtually all other civil cases, and we believe it is sufficient to protect the interests of property owners.

We have also removed provisions in H.R. 1658 that would allow criminals to leave their ill-gotten gains to their heirs, and would bar the government from forfeiting property if it inadvertently sent notice of a seizure to the wrong address. These provisions did little more than create procedural "gotchas" for criminals and their heirs, and are neither necessary nor desirable as a matter of policy.

The Hatch-Leahy bill also differs from the House bill in its approach to the issue of appointed counsel. Under H.R. 1658, anyone asserting an interest in seized property could apply for a court-appointed lawyer. There is no demonstrated need for such an unprecedented extension of the right to counsel, nor is there any principled distinction between defendants in civil forfeiture actions and defendants in other federal enforcement actions who are not eligible for court-appointed counsel. Moreover, property owners who are indigent may be eligible to obtain representation through various legal aid clinics.

The Hatch-Leahy bill authorizes courts to appoint counsel for indigent claimants in just two limited circumstances. First, a court may appoint counsel in the handful of forfeiture

cases in which the property at issue is the claimant's primary residence. When a forfeiture action can result in a claimant's eviction and homelessness, there is more at stake than just a property interest, and it is fair and just that the claimant be provided with an attorney if she cannot otherwise afford one. Second, if a claimant is already represented by a court-appointed attorney in a related federal criminal case, the court may authorize that attorney to represent the claimant in the civil forfeiture action. This is both fair and efficient, and eliminates any appearance that the government chose to pursue the forfeiture in a civil proceeding rather than as part of the criminal case in order to deprive the claimant of his right to counsel.

For claimants who were not appointed counsel by the court, the Hatch-Leahy bill allows for the recovery of reasonable attorney fees and costs if they substantially prevail in court. The bill also makes the government liable for post-judgment interest on any money judgment, and imputed interest in certain cases involving currency or negotiable instruments.

Another core reform of the Hatch-Leahy bill is the elimination of the so-called "cost bond." Under current law, a property owner that seeks to recover his property after it has been seized by the government must pay for privilege by posting a bond with the court. The government has strongly defended the "cost bond," not as a device for ensuring that its court costs are covered, but as a way of deterring frivolous claims. Of course, we are all in favor of deterring frivolous claims, but there are ways to deter frivolous claims without offending the fundamental principle of equal and open access to the courts, a bedrock of our American system of justice. The Hatch-Leahy bill provides that a person who challenges a forfeiture must file his claim on oath, under penalty of perjury. Claimants also remain subject to the general sanctions for bad faith in instituting or conducting litigation. Further, most claimants will continue to bear the substantial costs of litigating their claims in court. The additional financial burden of the "cost bond" serves no legitimate purpose.

Under current law, a property owner has only 20 days from the date of first publication of the notice of seizure to file a claim challenging an administrative forfeiture, and only 10 days to file a claim challenging a judicial forfeiture. It is therefore unlikely that anyone who misses the first of three published notices will be able to file a timely claim. The Hatch-Leahy bill extends the property owner's time to file a claim following administrative and judicial forfeiture actions to 30 days. The bill also codifies current Department of Justice policy with respect to the time period for sending notice of

seizure, and establishes a 90-day period for filing a complaint. The bill leaves undisturbed current laws and procedures with respect to the proper form and content of notices, claims and complaints.

Finally, the Hatch-Leahy bill will allow property owners to hold on to their property while a case is in process, if they can show that continued possession of the government will cause substantial hardship to the owner, such as preventing him from working, and that this hardship outweighs the risk that the property will be destroyed or concealed if returned to the owner during the pendency of the case. Unlike H.R. 1658, the Hatch-Leahy bill adopts the primary safeguards that the Justice Department wanted added to the provision—that property owners must have sufficient ties to the community to provide assurance that the property will not disappear and that certain property, such as currency and property particularly suited for use in illegal activities, cannot be returned. As amended, the hardship provision in the Hatch-Leahy bill is substantially similar to the hardship provision in another civil asset forfeiture bill, S. 1701, which the Justice Department has endorsed.

The fact is, the Justice Department has endorsed most of the core reforms contained in the Hatch-Leahy bill. Indeed, the Department has already taken administrative steps to remedy many of the civil forfeiture abuses identified in recent years by the federal courts. For this, the Department is to be commended. But administrative policy can be modified on the whim of whoever is in charge, and the law remains susceptible to abuse.

It is time for Congress to catch up with the Justice Department and the courts on this important issue. Due to internecine fighting among law enforcement officials whose views Congress always wants to take into consideration, action on civil forfeiture reform has been delayed for far too long. The Hatch-Leahy bill strikes the appropriate middle ground between the House bill and S. 1701, providing comprehensive and meaningful reform while ensuring the continued potency of civil asset forfeiture in the war on crime.

Senator HATCH and I share a long-standing and deeply-held appreciation for law enforcement and the officers who work on the front lines to protect our families and communities, and we have worked together on a number of crime-related issues in the past. I want to commend him for his commitment, not just to law enforcement, but to the rights of all Americans. It has been my pleasure to work with him on this issue, to bring balance back in the relationship between our police forces and the citizens of this country.

By Mr. JEFFORDS:

S. 1932. A bill to amend the Ricky Ray Hemophilia Relief Fund Act of 1998 to revise and extend certain provisions; to the Committee on Health, Education, Labor, and Pensions.

THE RICKY RAY FAIRNESS ACT OF 1999

• Mr. JEFFORDS. Mr. President, last year Congress passed and the President signed a significant measure that will, as funds are provided, provide compassionate compensation payments to hundreds of individuals. Public Law 105-369, the Ricky Ray Hemophilia Relief Act of 1998, authorizes payments for hemophiliacs treated with blood products infected with HIV during the 1980s as well as their infected spouses and children. Last year, Mr. President, you and I, and all of our colleagues gave our unanimous consent to this measure because we all knew it was the right thing to do. But we accomplished only part of the job. We provided compassionate compensation to only a portion of the Americans who, through indecisiveness and inaction on the part of federal government, became infected with HIV. So today I am introducing legislation that will set the record straight and finish what needs to be done, and I hope that our colleagues will once again in the name of fairness and compassion give this measure their unanimous support.

I am on the floor today to introduce legislation that will bring much needed fairness to hundreds of our citizens. This bill, the Ricky Ray Fairness Act of 1999 will finally include those people, other than hemophiliacs, who were infected with HIV and contracted AIDS through HIV contaminated blood products or tissues.

The blood crisis of the 1980s resulted in the HIV infection of thousands of Americans who trusted that the blood or blood product with which they were treated was safe. The tragedy of the blood supply's contamination has brought unbearable pain to families all over the country. I have heard from dozens over the past months. These are people like any of us—like our children and our grandchildren—who went to hospitals for standard procedures, emergency care, or were transfused due to complications in childbirth. Many children and adults were secondarily infected: children through childbirth or HIV-infected breast milk and adults through their spouses. Lives were lost and futures were ruined. Not only were there physical and emotional costs, but there exists a tremendous drain on personal finances as a result of lost income and extreme medical expenses. In the minds of these and in the minds of members who advocated for the Ricky Ray bill, the federal government played the determining role in the tragedy.

Mr. President, these people were infected with HIV because the federal government failed to protect the blood supply during the mid-1980s when it did

not use its regulatory authority to implement a wide range of blood and blood-donor screening options recommended by the Centers for Disease Control and Prevention. Had the federal government taken the recommendations of the CDC, thousands of American men, women and children would not have contracted AIDS through HIV-contaminated blood and blood products.

Sadly, and unfairly, the Ricky Ray Hemophilia Relief Fund Act as passed last year does not include all victims of the blood supply crisis. I feel strongly that the Act must be amended to include compensation for not only hemophiliacs, but also people who received a blood transfusion or blood product in the course of medical treatment. Though it was right for us to pass the Ricky Ray Act last year, it remains an inequity and a tragedy that the federal government did so without including victims of transfusion-associated AIDS.

Unlike a few individuals, most people infected with HIV through blood and blood products have been unable to track the source of their infection; nor have they been able to obtain some judicial relief through the courts. The community hit by this tragedy has found it nearly impossible to make recovery through the courts because of blood shield laws in most states that raise the burden of proof for product liability claims for blood and blood products. In addition, all States have statutes of limitations that prohibit litigation if the suit was not filed within a certain period of time.

I am introducing today what can be the final chapter in our Country's responsibility for not adequately protecting the blood supply during the 1980s. The Ricky Ray Fairness Act of 1999 provides compassionate payments to those infected with HIV contaminated blood, blood components, or human tissues. While the change to include transfusion cases increases the cost of this bill, many have already noted that this bill is not about money, it's about fairness. I urge my colleagues to join me in recognizing the terrible tragedy the blood supply crisis of the 1980s cast upon all of its victims.●

By Mr. DODD (for himself and Mr. BENNETT):

S. 1934. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for business-provided student education and training; to the Committee on Finance.

THE BUSINESSES EDUCATING STUDENTS IN TECHNOLOGY (BEST) ACT

● Mr. DODD. Mr. President, today I rise to introduce legislation with my colleague from Utah, Senator BENNETT, that addresses the serious shortage of students graduating from our nation's colleges and universities with technology-based education and skills.

Technology is reshaping our world at a rapid pace. Competition to meet the needs, wants, and expectations of businesses and consumers has accelerated the rate of technological progress to a level inconceivable even a few years ago. Today, technology is playing an increasingly important role in the lives of every American and is a key ingredient in sustaining America's economic growth. It is the wellspring from which new businesses, high-wage jobs, and a rising quality of life will flow in the 21st century.

This profound technological change, coupled with a period of sustained fiscal discipline in the federal government, has led to an unprecedented period of economic growth in our nation. For the first time in three decades, we are enjoying the prospect of budget surpluses that could total one trillion dollars over the next ten years. We have the lowest unemployment in 29 years. Inflation has fallen to its lowest rate in almost 30 years. Our economy has created 20 million new jobs in the last seven years.

If we want to build on this progress, we must encourage people to develop and use emerging technologies. Technological progress has become the single most important determining factor in sustaining economic growth in our economy. It is estimated that technological innovation has accounted for as much as half the nation's long-term economic growth over the past 50 years and is expected to account for an even higher percentage in the next 50 years.

And yet, there is growing evidence that we are not doing enough to prepare people to make the most of this emerging "New Economy." The explosive growth in the technology industry has resulted in a growing shortage of qualified and educated workers with skills in computer science and other technologically advanced systems. For example, more than 350,000 information technology positions are currently vacant throughout the United States. That is an astounding statistic. While we have managed to erase the budget deficit, our nation faces a rising knowledge deficit that could just as readily impede economic growth.

At this moment, there is little sign that this technology deficit will be erased. The supply of technology-savvy U.S. college graduates appears to be on the wane. In my home state of Connecticut, public and private colleges combined produced only 297 computer and information science graduates in 1997, a 50 percent decline since 1987. The decline in students receiving engineering degrees is even more troubling. From 1989 to 1999, the number of Connecticut students graduating in this field has decreased by 65 percent.

This trend is not limited to any one state; it is nationwide in scope. The number of graduates receiving bachelor of science degrees in engineering has

fallen to a 17-year low of 19.8 percent. Between 1990 and 1996, the number of students obtaining high-tech degrees declined by 5 percent. These are clearly trends that must be reversed if we wish to continue building upon the technological achievements we have already made and ensure that our economy can continue to grow and create jobs to its full potential.

Indeed, at large and mid-sized companies, there is already one vacancy for every 10 information technology jobs, and eight out of 10 companies expect to hire information technology workers in the year ahead. Over the next decade, the Department of Commerce estimates that 1.3 million new jobs will be created for systems analysts, computer engineers, and computer scientists. Moreover, by 2006, nearly half of the U.S. workforce will be employed by industries that are either producers or significant users of technology products and services.

Clearly, we must do more to eliminate this shortage of technologically skilled workers. Some have suggested stop-gap measures such as extending more visas to foreign nationals who possess the skills most in demand here in the United States. More important than steps such as this are efforts to promote technology-based learning among American students. In Connecticut, many businesses are making such efforts. They are establishing scholarships, donating lab equipment and computers, planning curricula, and sending employees into colleges and universities to instruct and help prepare students for technology-based jobs.

For instance, one Connecticut company, the Bayer Corporation, has committed \$1.1 million to the University of New Haven over six years to help increase the effectiveness of its science curriculum. This partnership includes the donation of equipment, scholarships, internships, and other efforts that seek to engage students more actively in science and technology.

Another positive example of cooperation between business and academic institutions in Connecticut is the support provided to the biotechnology program at Middlesex Community-Technical College by the Bristol Myers Squibb Pharmaceutical Research Institute and the Curagen Corporation. These companies, too, have established scholarships, donated lab equipment, and encouraged their research scientists to give lectures to students.

While these partnerships do exist in Connecticut, and indeed, across the country, businesses and academic institutions should not be left to tackle alone the challenge of helping students obtain the technological learning and skills they need to succeed in the new century. The Senate has before it the opportunity to assist in this effort, to encourage the growth of innovation

and education, and to address the shortage of skilled high-tech workers so vital to our continued technological and economic growth.

That is why I am pleased to have the opportunity today to introduce legislation that will encourage businesses to form partnerships with institutions of higher learning in order to improve technology-based learning so that more of our nation's students will be better prepared to fill the jobs of the 21st century.

The "Businesses Educating Students in Technology," or BEST Act, will give a tax credit to any business that joins with a university, college, or community-technical school to support technology-based educational activities which are directly related to the purpose of that business. The legislation would allow businesses to claim a tax credit for 40 percent of these educational expenses, up to a maximum of \$100,000 for any one company.

Mr. President, it is my hope that this tax credit will provide the incentive for more of our country's corporate leaders to take a more active role in the technological education, training, and skill development of our nation's most valuable resource—its students.

If businesses take advantage of this credit, they will help create a larger pool of skilled workers to draw from and, in turn, help our nation foster a better educated population that possesses the knowledge to succeed in the information-based economy of the future.

I hope my colleagues join me and Senator BENNETT in supporting this important legislation. Mr. President, I ask that the text of the legislation be printed in the RECORD.

The bill follows:

S. 1934

*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 "Businesses Educating Students in Technology (BEST) Act".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) Technological progress is the single most important determining factor in sustaining growth in the Nation's economy. It is estimated that technological innovation has accounted for as much as half the Nation's long-term economic growth over the past 50 years and will account for an even higher percentage in the next 50 years.

(2) The number of jobs requiring technological expertise is growing rapidly. For example, it is estimated that 1,300,000 new computer engineers, programmers, and systems analysts will be needed over the next decade in the United States economy. Yet, our Nation's computer science programs are only graduating 25,000 students with bachelor's degrees yearly.

(3) There are more than 350,000 information technology positions currently unfilled throughout the United States, and the number of students graduating from colleges with computer science degrees has declined dramatically.

(4) In order to help alleviate the shortage of graduates with technology-based education and skills, businesses in a number of States have formed partnerships with colleges, universities, community-technical schools, and other institutions of higher learning to give lectures, donate equipment, plan curricula, and perform other activities designed to help students acquire the skills and knowledge needed to fill jobs in technology-based industries.

(5) Congress should encourage these partnerships by providing a tax credit to businesses that enter into them. Such a tax credit will help students obtain the knowledge and skills they need to obtain jobs in technology-based industries which are among the best paying jobs being created in the economy. The credit will also assist businesses in their efforts to develop a more highly-skilled, better trained workforce that can fill the technology jobs such businesses are creating.

#### SEC. 3. ALLOWANCE OF CREDIT FOR BUSINESS-PROVIDED STUDENT EDUCATION AND TRAINING.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

#### SEC. 45D. BUSINESS-PROVIDED STUDENT EDUCATION AND TRAINING.

"(a) ALLOWANCE OF CREDIT.—For purposes of section 38, the business-provided student education and training credit determined under this section for the taxable year is an amount equal to 40 percent of the qualified student education and training expenditures of the taxpayer for such taxable year.

"(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed \$100,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED STUDENT EDUCATION AND TRAINING EXPENDITURE.—

"(A) IN GENERAL.—The term 'qualified student education and training expenditure' means—

"(i) any amount paid or incurred by the taxpayer for the qualified student education and training services provided by any employee of the taxpayer, and

"(ii) the basis of the taxpayer in any tangible personal property contributed by the taxpayer and used in connection with the provision of any qualified student education and training services.

"(B) EXCLUSION FOR AMOUNTS FUNDED BY GRANTS, ETC.—The term 'qualified student education and training expenditure' shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

"(2) QUALIFIED STUDENT EDUCATION AND TRAINING SERVICES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified student education and training services' means technology-based education and training of students in any eligible educational institution in employment skills related to the trade or business of the taxpayer.

"(B) TECHNOLOGY-BASED EDUCATION AND TRAINING.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'technology-based education and training' means education and training in—

"(I) aerospace technology,

"(II) biotechnology,

"(III) electronic device technology,

"(IV) environmental technology,

"(V) medical device technology,

"(VI) computer technology or equipment, or

"(VII) advanced materials.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) AEROSPACE TECHNOLOGY.—The term 'aerospace technology' means technology used in the manufacture, design, maintenance, or servicing of aircraft, aircraft components, or other aeronautics, including space craft or space craft components.

"(II) BIOTECHNOLOGY.—The term 'biotechnology' means technology (including products and services) developed as the result of the study of the functioning of biological systems from the macro level to the molecular and sub-atomic levels.

"(III) ELECTRONIC DEVICE TECHNOLOGY.—The term 'electronic device technology' means technology involving microelectronics, semiconductors, electronic equipment, instrumentation, radio frequency, microwave, millimeter electronics, optical and optic-electrical devices, or data and digital communications and imaging devices.

"(IV) ENVIRONMENTAL TECHNOLOGY.—The term 'environmental technology' means technology involving the assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"(V) MEDICAL DEVICE TECHNOLOGY.—The term 'medical device technology' means technology involving any medical equipment or product (other than a pharmaceutical product) which has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

"(VI) COMPUTER TECHNOLOGY OR EQUIPMENT.—The term 'computer technology or equipment' has the meaning given such term in section 170(e)(6)(E)(i).

"(VII) ADVANCED MATERIALS.—The term 'advanced materials' means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronics materials, composites, polymers, and biomaterials.

"(C) ELIGIBLE EDUCATIONAL INSTITUTION.—For purposes of subparagraph (A), the term 'eligible educational institution' has the meaning given such term by section 529(e)(5).

"(d) SPECIAL RULES.—For purposes of this section—

"(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) NO DOUBLE BENEFIT.—No deduction or credit shall be allowed under any other provision of this chapter with respect to any expenditure taken into account in computing the amount of the credit determined under this section."

"(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and "plus", and

(C) by adding at the end the following:

“(13) the business-provided student education and training credit determined under section 45D.”

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following:

“Sec. 45D. Business-provided student education and training credit.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.●

By Mr. HARKIN (for himself and Mr. SPECTER):

S. 1935. A bill to amend title XIX of the Social Security Act to provide for coverage of community attendant services and supports under the Medicaid Program; to the Committee on Finance.

THE MEDICAID COMMUNITY ATTENDANT SERVICES AND SUPPORT ACT

Mr. HARKIN. Mr. President, today, along with Senator ARLEN SPECTER, I am introducing the Medicaid Community Attendant Services and Supports Act. Our bill allows people to have a real choice about where they receive certain types of Medicaid long term services and supports. It also provides grants to the States to assist them as they redirect Medicaid resources into community-based services and supports.

We all know that given a real choice, most Americans who need long term services and supports would rather remain in their own homes and communities than go to a nursing home. Older people want to stay in their homes; parents want to keep their children with disabilities close by; and adults with disabilities want to live in the community.

And yet, even though many people prefer home and community services and supports, our current long term care program favors institutional programs. Under our current Medicaid system, a person has a right to the most expensive form of care, a nursing home bed, because nursing home care is an entitlement. But if that same person wants to live in the community, he or she is likely to encounter a lack of available services, because community services are optional under Medicaid. The deck is stacked against community living, and the purpose of our bill is to level the playing field and give people a real choice.

Our bill would allow any person entitled to medical assistance in a nursing facility or an intermediate care facility to use the money for community attendant services and supports. Those services and supports include help with eating, bathing, brooming, toileting, transferring in and out of a wheelchair, meal planning and preparation, shopping, household chores, using the telephone, participating in the community, and health-related functions like taking pills, bowel and bladder care, and

tube feeding. In short, personal assistance services and supports help people do tasks that they would do themselves, if they did not have a disability.

Personal assistance services and supports are the lowest-cost and most consumer friendly services in the long-term care spectrum. They can be provided by a variety of people, including friends and neighbors of the recipient. In many instances, with supervision, the consumer can direct his or her own care and manage his or her own attendants. This cuts down on expensive administrative overhead and the current practice of relying on medical personnel such as nurses to coordinate a person's care. States can save money and redirect medically-oriented care to those who need it most.

Not only is home and community-based care what people want, it can also be far less expensive. There is a wide variation in the cost of supporting people with disabilities in the community because individuals have different levels of need. But, for the average person, the annual cost of home and community based services is less than one-half the average cost of institutional care. In 1997, Medicaid spent \$56 billion on long term care. Out of that \$56 billion, \$42.5 billion was spent on nursing home and institutional care. This paid for a little over 1 million people. In comparison, only \$13.5 billion was spent on home and community-based care—but this money paid for almost 2 million people. Community services make sound, economic sense.

In fact, the States are out ahead of us here in Washington on this issue. Thirty States are now providing the personal care optional benefit through their Medicaid programs. Almost every State offers at least one home and community based Medicaid waiver program. Indeed, this is one of Senator Chafee's most important legacies. He was ahead of his time.

The States have realized that community based care is both popular and cost effective, and personal assistance services and supports are a key component of a successful program.

And yet there are several reasons why we have to do more.

Federal Medicaid policy should reflect the consensus that Americans with disabilities should have the equal opportunity to contribute to our communities and participate in our society as full citizens. Instead, our current Federal Medicaid policy favors exclusion over integration, and dependence over self-determination. This legislation will bring Medicaid policy in line with our broader agreement that Americans with disabilities should have the chance to move toward independence. This bill allows people to receive certain types of services in the community so that they don't have to sacrifice their full participation in society simply because they require a

catheter, assistance with medication, or some other basic service.

Take the example of a friend of mine in Iowa. Dan Piper works at a hardware store. He has his own apartment and just bought a VCR. He also has Down's syndrome and diabetes. For years Dan has received services through a community waiver program. But, he recently learned that he might not be able to receive some basic services under the waiver. The result of this decision? He may have to sacrifice his independence for services. Today, Dan works and contributes to the economy as both a wage earner and a consumer. But, tomorrow, he may be forced into a nursing home, far from his roommate, his job, and his family.

In addition, our country is facing a long-term care crisis of epic proportions in the not-too distant future. We all talk about the coming Social Security shortfall and the Medicare shortfall, but we do not talk about the long-term care shortfall. The truth is that our current long-term care system will be inadequate to deal with the aging of the baby boom generation, the oldest of whom are now turning 60. Our bill helps to create the infrastructure we will need to create the high-quality, community based long term care system of the future. And it will give families the small amount of outside help they need to continue providing care to their loved ones at home.

And, finally, in a common sense decision last June, the Supreme Court found that, to the extent Medicaid dollars are used to pay for a person's long term care, that person has a right to receive those services in the most integrated setting. States must take practical steps to avoid unjustified institutionalization by offering individuals with disabilities the supports they need to live in the community. We in Congress have a responsibility to help States meet the financial costs associated with serving people with disabilities that want to leave institutions and live in the community, and the bill I am introducing will provide that help.

And so I call upon my colleagues for your support. Millions of Americans require some assistance to help them eat, dress, go to the bathroom, clean house, move from bed to wheelchair, remember to take medication, and to perform other activities that make it possible for them to live at home. These Americans live in every State and every congressional district. Most of these people have depended on unpaid caregivers—usually family members—for their needs. But a number of factors have affected the ability of family members to help. A growing number of elderly people need assistance, and aging parents will no longer be able to care for their adult children with disabilities.

But they all have one thing in common with every American. We all deserve to live in our own homes, and be an integral part of our families, our neighborhoods, our communities. Community attendant services and supports allow people with disabilities to lead richer, fuller lives, perhaps have a job, and participate in the community. Some will become taxpayers, some will do volunteer work, some will get an education, some will participate in recreational and other community activities. All will experience a better quality of life, and a better chance to take part in the American dream.

I urge my colleagues and their staff to study our proposal over the break. I hope there will be hearings and action on this bill next year. And, finally, I ask unanimous consent that the bill, along with letters in support of the bill, be printed in the RECORD.

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

S. 1935

*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 "Medicaid Community Attendant Services and Supports Act of 1999".

**SEC. 2. FINDINGS, PURPOSES, AND POLICY.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) Many studies have found that an overwhelming majority of individuals with disabilities needing long-term services and supports would prefer to receive them in home and community-based settings rather than in institutions. However, research on the provision of long-term services and supports under the medicaid program (conducted by and on behalf of the Department of Health and Human Services) has revealed a significant bias toward funding these services in institutional rather than home and community-based settings. The extent of this bias is indicated by the fact that 75 percent of medicaid funds for long-term services and supports are expended in nursing homes and intermediate care facilities for the mentally retarded while approximately 25 percent of such funds pays for services in home and community-based settings.

(2) Because of this bias, significant numbers of individuals with disabilities of all ages who would prefer to live in the community and could do so with community attendant services and supports are forced to live in unnecessarily segregated institutional settings if they want to receive needed services and supports. Benefit packages provided in these settings are medically-oriented and constitute barriers to the receipt of the types of services individuals need and want. Decisions regarding the provision of services and supports are too often influenced by what is reimbursable rather than by what individuals need and want.

(3) There is a growing recognition that disability is a natural part of the human experience that in no way diminishes an individual's right to—

- (A) live independently;
- (B) enjoy self-determination;
- (C) make choices;
- (D) contribute to society; and

(E) enjoy full inclusion and integration in the mainstream of American society.

(4) Long-term services and supports provided under the medicaid program must meet the evolving and changing needs and preferences of individuals with disabilities, including the preferences for living within one's own home or living with one's own family and becoming productive members of the community.

(5) The goals of the Nation properly include providing individuals with disabilities with—

(A) a meaningful choice of receiving long-term services and supports in the most integrated setting appropriate;

(B) the greatest possible control over the services received; and

(C) quality services that maximize social functioning in the home and community.

(b) **PURPOSES.**—The purposes of this Act are as follows:

(1) To provide that States shall offer community attendant services and supports for eligible individuals with disabilities.

(2) To provide financial assistance to States to support systems change initiatives that are designed to assist each State in developing and enhancing a comprehensive consumer-responsive statewide system of long-term services and supports that provides real consumer choice and direction consistent with the principle that services and supports should be provided in the most integrated setting appropriate to meeting the unique needs of the individual.

(c) **POLICY.**—It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the following principles:

(1) Individuals with disabilities, or, as appropriate, their representatives, must be empowered to exercise real choice in selecting long-term services and supports that are of high quality, cost-effective, and meet the unique needs of the individual in the most integrated setting appropriate.

(2) No individual should be forced into an institution to receive services that can be effectively and efficiently delivered in the home or community.

(3) Federal and State policies, practices, and procedures should facilitate and be responsive to, and not impede, an individual's choice in selecting long-term services and supports.

(4) Individuals and their families receiving long-term services and supports must be involved in decisionmaking about their own care and be provided with sufficient information to make informed choices.

**SEC. 3. COVERAGE OF COMMUNITY ATTENDANT SERVICES AND SUPPORTS UNDER THE MEDICAID PROGRAM.**

(a) **REQUIRED COVERAGE FOR INDIVIDUALS ENTITLED TO NURSING FACILITY SERVICES OR ELIGIBLE FOR INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED.**—Section 1902(a)(10)(D) of the Social Security Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

(1) by inserting "(i)" after "(D)";

(2) by adding "and" after the semicolon; and

(3) by adding at the end the following:

"(ii) subject to section 1935, for the inclusion of community attendant services and supports for any individual who is eligible for medical assistance under the State plan and with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage

of such intermediate care facility is provided under the State plan) and who requires such community attendant services and supports based on functional need and without regard to age or disability;".

(b) **MEDICAID COVERAGE OF COMMUNITY ATTENDANT SERVICES AND SUPPORTS.**—

(1) **IN GENERAL.**—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1935 as section 1936; and

(B) by inserting after section 1934 the following:

**"COMMUNITY ATTENDANT SERVICES AND SUPPORTS"**

**"SEC. 1935. (a) DEFINITIONS.**—In this title:

**"(1) COMMUNITY ATTENDANT SERVICES AND SUPPORTS.**—

"(A) **IN GENERAL.**—The term 'community attendant services and supports' means attendant services and supports furnished to an individual, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

"(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual's representative;

"(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility, an intermediate care facility for the mentally retarded, or other congregate facility;

"(iii) under an agency-provider model or other model (as defined in paragraph (2)(C)); and

"(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual's representative.

**"(B) INCLUDED SERVICES AND SUPPORTS.**—Such term includes—

"(i) tasks necessary to assist an individual in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions;

"(ii) acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related functions;

"(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

"(iv) voluntary training on how to select, manage, and dismiss attendants.

**"(C) EXCLUDED SERVICES AND SUPPORTS.**—Subject to subparagraph (D), such term does not include—

"(i) provision of room and board for the individual;

"(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

"(iii) assistive technology devices and assistive technology services;

"(iv) durable medical equipment; or

"(v) home modifications.

**"(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.**—Such term may include expenditures for transitional costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the mentally retarded to a

community-based home setting where the individual resides.

“(2) ADDITIONAL DEFINITIONS.—

“(A) ACTIVITIES OF DAILY LIVING.—The term ‘activities of daily living’ includes eating, toileting, grooming, dressing, bathing, and transferring.

“(B) CONSUMER DIRECTED.—The term ‘consumer directed’ means a method of providing services and supports that allow the individual, or where appropriate, the individual’s representative, maximum control of the community attendant services and supports, regardless of who acts as the employer of record.

“(C) DELIVERY MODELS.—

“(i) AGENCY-PROVIDER MODEL.—The term ‘agency-provider model’ means, with respect to the provision of community attendant services and supports for an individual, a method of providing consumer-directed services and supports under which entities contract for the provision of such services and supports.

“(ii) OTHER MODELS.—The term ‘other models’ means methods, other than an agency-provider model, for the provision of consumer-directed services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

“(D) HEALTH-RELATED FUNCTIONS.—The term ‘health-related functions’ means functions that can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

“(E) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term ‘instrumental activities of daily living’ includes meal planning and preparation, managing finances, shopping for food, clothing and other essential items, performing essential household chores, communicating by phone and other media, and getting around and participating in the community.

“(F) INDIVIDUAL’S REPRESENTATIVE.—The term ‘individual’s representative’ means a parent, a family member, a guardian, an advocate, or an authorized representative of an individual.

“(b) LIMITATION ON AMOUNTS OF EXPENDITURES UNDER THIS TITLE.—In carrying out section 1902(a)(10)(D)(ii), a State shall permit an individual who has a level of severity of physical or mental impairment that entitles such individual to medical assistance with respect to nursing facility services or qualifies the individual for intermediate care facility services for the mentally retarded to choose to receive medical assistance for community attendant services and supports (rather than medical assistance for such institutional services and supports), in the most integrated setting appropriate to the needs of the individual, so long as the aggregate amount of the Federal expenditures for community attendant services and supports for all such individuals in a fiscal year does not exceed the total that would have been expended for such individuals to receive such institutional services and supports in the year.

“(c) MAINTENANCE OF EFFORT.—With respect to a fiscal year quarter, no Federal funds may be paid to a State for medical assistance provided to individuals described in section 1902(a)(10)(D)(ii) for such fiscal year quarter if the Secretary determines that the total of the State expenditures for programs to enable such individuals with disabilities to receive community attendant services and supports (or services and supports) under other provisions of this title for the pre-

ceding fiscal year quarter is less than the total of such expenditures for the same fiscal year quarter for the preceding fiscal year.

“(d) STATE QUALITY ASSURANCE PROGRAM.—In order to continue to receive Federal financial participation for providing community attendant services and supports under this section, a State shall, at a minimum, establish and maintain a quality assurance program that provides for the following:

“(1) The State shall establish requirements, as appropriate, for agency-based and other models that include—

“(A) minimum qualifications and training requirements, as appropriate for agency-based and other models;

“(B) financial operating standards; and

“(C) an appeals procedure for eligibility denials and a procedure for resolving disagreements over the terms of an individualized plan.

“(2) The State shall modify the quality assurance program, where appropriate, to maximize consumer independence and consumer direction in both agency-provided and other models.

“(3) The State shall provide a system that allows for the external monitoring of the quality of services by entities consisting of consumers and their representatives, disability organizations, providers, family, members of the community, and others.

“(4) The State provides ongoing monitoring of the health and well-being of each recipient.

“(5) The State shall require that quality assurance mechanisms appropriate for the individual should be included in the individual’s written plan.

“(6) The State shall establish a process for mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation.

“(7) The State shall obtain meaningful consumer input, including consumer surveys, that measure the extent to which a participant receives the services and supports described in the individual’s plan and the participant’s satisfaction with such services and supports.

“(8) The State shall make available to the public the findings of the quality assurance program.

“(9) The State shall establish an on-going public process for the development, implementation, and review of the State’s quality assurance program.

“(10) The State shall develop and implement a program of sanctions.

“(e) FEDERAL ROLE IN QUALITY ASSURANCE.—The Secretary shall conduct a periodic sample review of outcomes for individuals based upon the individual’s plan of support and based upon the quality assurance program of the State. The Secretary may conduct targeted reviews upon receipt of allegations of neglect, abuse, or exploitation. The Secretary shall develop guidelines for States to use in developing sanctions.

“(f) REQUIREMENT TO EXPAND ELIGIBILITY.—Effective October 1, 2000, a State may not exercise the option of coverage of individuals under section 1902(a)(10)(A)(ii)(V) without providing coverage under section 1902(a)(10)(A)(ii)(VI).

“(g) REPORT ON IMPACT OF SECTION.—The Secretary shall submit to Congress periodic reports on the impact of this section on beneficiaries, States, and the Federal Government.”

“(c) INCLUSION IN OPTIONAL ELIGIBILITY CLASSIFICATION.—Section 1902(a)(10)(A)(ii)(VI) of the Social Security

Act (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by inserting “or community attendant services and supports described in section 1935” after “section 1915” each place such term appears.

(d) COVERAGE AS MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) by striking “and” at the end of paragraph (26);

(B) by redesignating paragraph (27) as paragraph (28); and

(C) by inserting after paragraph (26) the following:

“(27) community attendant services and supports (to the extent allowed and as defined in section 1935); and”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)) is amended by striking “of” and inserting “of”.

(B) Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting “and (27)” after “(24)”.

**SEC. 4. GRANTS TO DEVELOP AND ESTABLISH REAL CHOICE SYSTEMS CHANGE INITIATIVES.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall award grants described in subsection (b) to States to support real choice systems change initiatives that establish specific action steps and specific timetables to provide consumer-responsive long term services and supports to eligible individuals in the most integrated setting appropriate based on the unique strengths and needs of the individual and the priorities and concerns of the individual (or, as appropriate, the individual’s representative).

(2) ELIGIBILITY.—To be eligible for a grant under this section, a State shall—

(A) establish the Consumer Task Force in accordance with subsection (d); and

(B) submit an application at such time, in such manner, and containing such information as the Secretary may determine. The application shall be jointly developed and signed by the designated State official and the chairperson of such Task Force, acting on behalf of and at the direction of the Task Force.

(3) DEFINITION OF STATE.—In this section, the term “State” means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) GRANTS FOR REAL CHOICE SYSTEMS CHANGE INITIATIVES.—

(1) IN GENERAL.—From funds appropriated under subsection (f), the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State real choice systems change initiatives described in subsection (a); and

(B) conduct outreach campaigns regarding the existence of such initiatives.

(2) DETERMINATION OF AWARDS; STATE ALLOTMENTS.—The Secretary shall develop a formula for the distribution of funds to States for each fiscal year under subsection (a). Such formula shall give preference to States that have a relatively higher proportion of long-term services and supports furnished to individuals in an institutional setting but who have a plan described in an application submitted under subsection (a)(2).

(c) AUTHORIZED ACTIVITIES.—A State that receives a grant under this section shall use

the funds made available through the grant to accomplish the purposes described in subsection (a) and, in accomplishing such purposes, may carry out any of the following systems change activities:

(1) NEEDS ASSESSMENT AND DATA GATHERING.—The State may use funds to conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include information about the number of individuals within the State who are receiving long-term services and supports in unnecessarily segregated settings, the nature and extent to which current programs respond to the preferences of individuals with disabilities to receive services in home and community-based settings as well as in institutional settings, and the expected change in demand for services provided in home and community settings as well as institutional settings.

(2) INSTITUTIONAL BIAS.—The State may use funds to identify, develop, and implement strategies for modifying policies, practices, and procedures that unnecessarily bias the provision of long-term services and supports toward institutional settings and away from home and community-based settings, including policies, practices, and procedures governing statewideness, comparability in amount, duration, and scope of services, financial eligibility, individualized functional assessments and screenings (including individual and family involvement), and knowledge about service options.

(3) OVER MEDICALIZATION OF SERVICES.—The State may use funds to identify, develop, and implement strategies for modifying policies, practices, and procedures that unnecessarily bias the provision of long-term services and supports by health care professionals to the extent that quality services and supports can be provided by other qualified individuals, including policies, practices, and procedures governing service authorization, case management, and service coordination, service delivery options, quality controls, and supervision and training.

(4) INTERAGENCY COORDINATION; SINGLE POINT OF ENTRY.—The State may support activities to identify and coordinate Federal and State policies, resources, and services, relating to the provision of long-term services and supports, including the convening of interagency work groups and the entering into of interagency agreements that provide for a single point of entry and the design and implementation of a coordinated screening and assessment system for all persons eligible for long-term services and supports.

(5) TRAINING AND TECHNICAL ASSISTANCE.—The State may carry out directly, or may provide support to a public or private entity to carry out training and technical assistance activities that are provided for individuals with disabilities, and, as appropriate, their representatives, attendants, and other personnel (including professionals, paraprofessionals, volunteers, and other members of the community).

(6) PUBLIC AWARENESS.—The State may support a public awareness program that is designed to provide information relating to the availability of choices available to individuals with disabilities for receiving long-term services and support in the most integrated setting appropriate.

(7) DOWNSIZING OF LARGE INSTITUTIONS.—The State may use funds to support the per capita increased fixed costs in institutional settings directly related to the movement of individuals with disabilities out of specific facilities and into community-based settings.

(8) TRANSITIONAL COSTS.—The State may use funds to provide transitional costs described in section 1935(a)(1)(D) of the Social Security Act, as added by this Act.

(9) TASK FORCE.—The State may use funds to support the operation of the Consumer Task Force established under subsection (d).

(10) DEMONSTRATIONS OF NEW APPROACHES.—The State may use funds to conduct, on a time-limited basis, the demonstration of new approaches to accomplishing the purposes described in subsection (a).

(11) OTHER ACTIVITIES.—The State may use funds for any systems change activities that are not described in any of the preceding paragraphs of this subsection and that are necessary for developing, implementing, or evaluating the comprehensive statewide system of long term services and supports.

(d) CONSUMER TASK FORCE.—

(1) ESTABLISHMENT AND DUTIES.—To be eligible to receive a grant under this section, each State shall establish a Consumer Task Force (referred to in this section as the “Task Force”) to assist the State in the development, implementation, and evaluation of real choice systems change initiatives.

(2) APPOINTMENT.—Members of the Task Force shall be appointed by the Chief Executive Officer of the State in accordance with the requirements of paragraph (3), after the solicitation of recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(3) COMPOSITION.—

(A) IN GENERAL.—The Task Force shall represent a broad range of individuals with disabilities from diverse backgrounds and shall include representatives from Developmental Disabilities Councils, State Independent Living Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports.

(B) INDIVIDUALS WITH DISABILITIES.—A majority of the members of the Task Force shall be individuals with disabilities or the representatives of such individuals.

(C) LIMITATION.—The Task Force shall not include employees of any State agency providing services to individuals with disabilities other than employees of agencies described in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.).

(e) AVAILABILITY OF FUNDS.—

(1) FUNDS ALLOTTED TO STATES.—Funds allotted to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) FUNDS NOT ALLOTTED TO STATES.—Funds not allotted to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for allotment by the Secretary using the allotment formula established by the Secretary under subsection (b)(2).

(f) ANNUAL REPORT.—A State that receives a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of eligible individuals in the State who receive long-term services and supports in the most integrated setting appropriate, including through community attendant services and supports and other community-based settings.

(g) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is authorized to be appropriated and there is appropriated to make grants under this section for—

(1) fiscal year 2001, \$25,000,000; and

(2) for fiscal year 2002 and each fiscal year thereafter, such sums as may be necessary to carry out this section.

#### SEC. 5. STATE OPTION FOR ELIGIBILITY FOR INDIVIDUALS.

(a) IN GENERAL.—Section 1903(f) of the Social Security Act (42 U.S.C. 1396b(f)) is amended—

(1) in paragraph (4)(C), by inserting “subject to paragraph (5),” after “does not exceed”, and

(2) by adding at the end the following:

“(5)(A) A State may waive the income, resources, and deeming limitations described in paragraph (4)(C) in such cases as the State finds the potential for employment opportunities would be enhanced through the provision of medical assistance for community attendant services and supports in accordance with section 1935.

“(B) In the case of an individual who is eligible for medical assistance described in subparagraph (A) only as a result of the application of such subparagraph, the State may, notwithstanding section 1916(b), impose a premium based on a sliding scale related to income.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance provided for community attendant services and supports described in section 1935 of the Social Security Act furnished on or after October 1, 2000.

#### SEC. 6. STUDIES AND REPORTS.

(a) REVIEW OF, AND REPORT ON, REGULATIONS.—The National Council on Disability established under title IV of the Rehabilitation Act of 1973 (29 U.S.C. 780 et seq.) shall review regulations in existence under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on the date of enactment of this Act insofar as such regulations regulate the provision of home health services, personal care services, and other services in home and community-based settings and, not later than 1 year after such date, submit a report to Congress on the results of such study, together with any recommendations for legislation that the Council determines to be appropriate as a result of the study.

(b) REPORT ON REDUCED TITLE XIX EXPENDITURES.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on how expenditures under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) can be reduced by the furnishing of community attendant services and supports in accordance with section 1935 of such Act (as added by section 3 of this Act).

#### SEC. 7. TASK FORCE ON FINANCING OF LONG-TERM CARE SERVICES.

The Secretary of Health and Human Services shall establish a task force to examine appropriate methods for financing long-term services and supports. The task force shall include significant representation of individuals (and representatives of individuals) who receive such services and supports.

NATIONAL COUNCIL ON  
INDEPENDENT LIVING,  
Arlington, VA, November 15, 1999.

Hon. TOM HARKIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN, The National Council on Independent Living (NCIL) applauds your leadership in introducing the Medicaid Community Attendant Services and Supports Act (MiCASSA).

NCIL is the national membership organization for centers for independent living and

people with disabilities. Our membership includes individuals and organizations from each of the 50 states. As a leading national, cross-disability, grassroots organization run by and for people with disabilities, NCIL has been instrumental in efforts to advance the rights and opportunities for all Americans with disabilities.

The members of NCIL have wholeheartedly endorsed MiCASSA, have selected its passage as one of our top priorities. We join with our colleagues from ADAPT, who are leading the national effort to pass MiCASSA. There is nothing more important to our members than real choice for people with disabilities. Passage of MiCASSA will create the critical systems change needed for people with disabilities to enjoy the freedom of real choice in services and supports. This will allow people with disabilities to finally enjoy their civil right to live in their own homes, free from isolation and segregation in nursing homes and institutions.

We thank you for your vision and for your willingness to lead the effort to achieve freedom for our people. You can count on NCIL to work alongside you as we give our finest efforts towards passage of MiCASSA at the very beginning of the new millennium.

Sincerely Yours,

PAUL SPOONER,  
President.

MIKE OXFORD,  
Vice President and Chair,  
Personal Assistance  
Services Sub-Committee.

THE ASSOCIATION OF PROGRAMS  
FOR RURAL INDEPENDENT LIVING,  
Kent, OH, November 12, 1999.

Senator TOM HARKIN, Iowa,  
U.S. Senate, Washington, DC.

DEAR HONORABLE SENATOR, It is my understanding that the Community Attendant Services and Support Act (MiCASSA) is about to be introduced by you, into Congress on Monday, November 15, 1999. On behalf of the Governing Board of the Association of Programs for Rural Independent Living (APRIL) I want to wholeheartedly endorse your efforts to pass this important piece of legislation.

APRIL is a national network of over 150 members, primarily rural centers for independent living (CILs), CIL satellite offices and statewide independent living councils (SILCs), as well as other related organizations and individuals concerned about people with disabilities living and working in Rural America. We are a nonprofit group, who for the past twelve years, has continued to grow in both numbers and in our efforts to bring to light the myriad of issues facing our rural constituents. Our membership in turn, represents thousands of consumers, many of whom still remain confined to rooms in their homes, or in institutions due to lack of community supports.

MiCASA is a Bill that has been long in coming and APRIL has joined with its national colleagues throughout the years to urge that such a consumer-directed, community-based model of attendant services and support be implemented throughout the United States. Let's hope that as the new millennium draws near, that mandatory institutionalization will be unnecessary, and that the long-standing bias toward these institutions will have ended.

As you well know, coming from the rural state of Iowa, there are too many barriers for people with disabilities—from lack of transportation, housing, job opportunities, personal attendants, financial resources,

community access and outdated, limiting attitudes. All these obstacles are compounded in the isolation of rural America. The passage of MiCASA would eliminate one of the greatest barriers that people face. Your record of supporting the rights of our people, is solid. Our continued support of you and your efforts is assured. Please let us know, as the legislation begins its journey towards passage, how we may help assure its success.

As always, our thanks to ADAPT and the others who work so steadfastly on our behalf.

LINDA GONZALES,  
National Coordinator.

PARALYZED VETERANS OF AMERICA,  
Washington, DC, November 16, 1999.

Hon. TOM HARKIN,  
Senate Office Building, Washington, DC.

DEAR SENATOR HARKIN: On behalf of the Paralyzed Veterans of America (PVA), I want to thank you for introducing "The Medicaid Community Attendant Services and Supports Act of 1999." This bill will allow qualified individuals with disabilities the option of receiving long term services and supports including personal assistant services in a home and community based settings rather than in institutions.

PVA has been a long time advocate for consumer-directed personal assistant services (PAS). Attendants providing PAS perform activities of daily living (ADLs) for people with disabilities including feeding, bathing, toileting, dressing, and transferring. With PAS, many PVA members and thousands of people with disabilities across the country are able to live independent and active lives at home or in a community setting.

Historically, long term services for people with disabilities have been provided in nursing homes and in institutional settings. However, your bill will provide funds to States to support systems change initiatives that are designed to assist each State in developing a comprehensive consumer responsive state wide system of long term services and supports that will provide real consumer choice and direct in an integrated setting appropriate to the needs of the individual.

PVA has long recognized that disability is a natural part of life. People with disabilities have the right to live independently, enjoy self-determination, make independent choices, contribute to society and enjoy full inclusion and integration into the mainstream of American society. This legislation will help advance this cause and PVA stands ready and willing to work with you and your staff to ensure passage of the Medicaid Community Attendant Services and Supports Act of 1999.

Sincerely,

JOHN C. BOLLINGER,  
Deputy Executive Director.

THE ARC,  
Arlington, TX, November 16, 1999.  
Hon. THOMAS HARKIN,  
Hon. ARLEN SPECTER,  
U.S. Senate, Washington, DC.

DEAR SENATORS HARKIN AND SPECTER: On behalf of The Arc of the United States, I wish to express our strong support for introducing the Medicaid Community Attendant Services and Supports Act (MiCASSA). MiCASSA represents an important step in reforming our long-term care policy by helping to reduce the institutional bias in our long-term care services system. By doing so, MiCASSA would help individuals with mental retardation live quality lives in the community.

Created over thirty years ago, our long-term care service system is funded mainly by Medicare and Medicaid dollars. Today, over 75 percent of Medicaid long-term care dollars are spent on institutional services, leaving few dollars for community-based services. A national long-term service policy should not favor institutions over home and community-based services. It should allow families and individuals real choice regarding where and how services should be delivered.

People with mental retardation want to live, work and play in the community. MiCASSA would help keep families together and would prevent people with mental retardation from being unnecessarily institutionalized. Community services have also shown on average to be less expensive than institutional services.

MiCASSA complements the 1999 Supreme Court decision in Olmstead, by providing a way for states to meet their obligations under the decision. It would also help reduce the interminable waiting lists for community-based services and supports.

The Arc of the United States, the largest national voluntary organization devoted solely to the welfare of people with mental retardation and their families, stands ready to assist you in any way to move this important piece of legislation.

Sincerely,

BRENDA DOSS,  
President.

JUSTIN DART, Jr.,  
Washington, DC, November 16, 1999.  
Hon. TOM HARKIN,  
U.S. Senator, Senate Hart Office Building,  
Washington, DC.

DEAR SENATOR HARKIN: I know that the great majority of 54 million Americans with disabilities join me in congratulating you and Senator Spector on introducing the Medicaid Community Attendant Services and Supports Act of 1999.

The passage of this law will be a landmark progress for free-enterprise democracy. It will pave the way for liberating hundreds of thousands of Americans from institutions by providing the simple services they need to live in their homes and participate in their communities.

I urge every member of Congress to support this historic legislation.

Sincerely,

JUSTIN DART,  
Justice For All.

NATIONAL SPINAL CORD  
INJURY ASSOCIATION,  
Silver Spring, MD, November 16, 1999.  
Hon. TOM HARKIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR HARKIN: The National Spinal Cord Injury Association (NSCIA) joins our colleagues from the National Council on Independent Living and ADAPT in thanking you for your leadership in introducing the Medicaid Community Attendant Services and Supports Act (MiCASSA).

This bill, when passed, will make a significant difference in the lives of the 600,000 people with spinal cord injury and disease in the United States, many of whom are currently forced to choose institutional and nursing home services when what they really need are personal assistance services. It has been demonstrated repeatedly that community-based services are better, more cost effective and preferred.

We thank you for your support for people living with spinal cord injury and disease and for your willingness to lead the effort to

offer real choices for people with disabilities. You can count on NSCIA's support in the effort to pass MiCASSA.

Sincerely Yours,

THOMAS H. COUNTEE, JR.,  
*Executive Director.*

• Mr. SPECTER. Mr. President, I have sought recognition to join Senator TOM HARKIN, my colleague and distinguished ranking member of the Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, in introducing the Medicaid Attendant Care Services and Supports Act of 1999. This creative proposal addresses a glaring gap in Federal health coverage, and assists one of our Nation's most vulnerable populations, persons with disabilities. I would also note that a similar version on this bill was included in the Health Care Assurance Act of 1999 (S. 24), which I introduced on January 19, 1999.

In an effort to improve the delivery of care and the comfort of those with long-term disabilities, this vital legislation would allow for reimbursement for community-based attendant care services, in lieu of institutionalization, for eligible individuals who require such services based on functional need, without regard to the individual's age or the nature of the disability. The most recent data available tell us that 5.9 million individuals receive care for disabilities under the Medicaid program. The number of disabled who are not currently enrolled in the program who would apply for this improved benefit is not easily counted, but would likely be substantial given the preference of home and community-based care over institutional care.

Under this proposal, States may apply for grants for assistance in implementing "systems change" initiatives, in order to eliminate the institutional bias in their current policies and for needs assessment activities. Further, if a state can show that the aggregate amounts of Federal expenditures on people living in the community exceeds what would have been spent on the same people had they been in nursing homes, the state can limit the program, perhaps by not letting any more people apply; no limiting mechanism is mandated under this bill. And finally, States would be required to maintain expenditures for attendant care services under other Medicaid community-based programs, thereby preventing the states from shifting patients into the new benefit proposed under this bill.

Let me speak briefly about why such a change in Medicaid law is so desperately needed. Only a few short months ago, the Supreme Court held in *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), that the Americans with Disabilities Act (ADA) requires States, under some circumstances, to provide community-based treatment to persons with mental disabilities rather than placing them in institutions. This decision and

several lower court decisions have pointed to the need for a structured Medicaid attendant-care services benefit in order to meet obligations under the ADA. Disability advocates strongly support this legislation, arguing that the lack of Medicaid community-based services options is discriminatory and unhealthful for disabled individuals. Virtually every major disability advocacy group supports this bill, including ADAPT, the Arc, the National Council on Independent Living, Paralyzed Veterans of America, and the National Spinal Cord Injury Association.

Senator HARKIN and I recognize that such a shift in the Medicaid program is a huge undertaking—but feel that it is a vitally important one. We are introducing this legislation today in an attempt to move ahead with the consideration of crucial disability legislation and to provide a starting point for debate. Mr. President, the time has come for concerted action in this arena.

I urge the congressional leadership, including the appropriate committee chairmen, to move forward in considering this legislation, and take the significant next step forward in achieving the objective of providing individuals with disabilities the freedom to live in their own communities. •

By Mr. WYDEN (for himself and Mr. SMITH or Oregon):

S. 1936. A bill to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other National Forest System land in the State of Oregon and use the proceeds derived from the sale or exchange for National Forest System purposes; to the Committee on Energy and Natural Resources.

THE BENT PINE NURSERY LAND CONVEYANCE ACT

Mr. WYDEN. Mr. President, I am introducing today legislation that will allow the Forest Service to sell an abandoned facility to the city of Bend, OR, to be used for recreational purposes. The idea for this legislation came from the citizens of Bend themselves. They worked with Forest Service personnel in the adjacent Deschutes National Forest and crafted a win-win solution to different problems. What others might have seen as a problem, namely the shutdown of the Pine Nursery facility, they saw as an opportunity—the opportunity to provide a recreational complex for the community and to generate funding for needed facilities in the Deschutes Forest. This legislation would allow them to implement this creative idea.

Faced with the inevitable sale, trade or development of the Forest Service's Bend Pine Nursery, which supplied seedlings for five decades of reforestation work, last spring I met with representatives from the Bend Metro Parks and Recreation District; the city of Bend; the Bend School District;

folks from the soccer and Little League baseball programs; and others who are concerned about central Oregon's youth and adults having adequate recreational facilities.

What these folks asked me to do was very straightforward: if the Forest service is going to sell, exchange, or otherwise develop the former Bend Pine Nursery, the community wanted the opportunity to acquire the property for the development of a sports complex, playing fields and other facilities.

My bill simply creates an opportunity for the Bend Metro Parks and Recreation District to work with the people of Bend on whether or not to purchase this property. It does not require purchase by the community, it simply gives the community a right of first refusal to buy the property at fair market value.

At the same time, this legislation allows the Deschutes National Forest to address its need for a new administrative site. Currently, the Deschutes pays approximately \$725,000 per year in annual lease and utility costs. This is  $\frac{3}{4}$  of a million dollars that is not being spent on the ground, improving the quality of Deschutes National Forest facilities, lands and resources. It is a credit to the leadership of the Deschutes National Forest that they seek a way out from this unnecessary, unproductive and recurring expense.

My bill will enable the Deschutes to use the money raised from the sale of the nursery and other surplus properties in Oregon toward the acquisition—and ownership—of a new administrative site. The cost of a new building is estimated to be about \$7 million; as my colleagues can see, the forest is paying almost a million dollars in rent each year. In the words of an ad from today's "Bend Bulletin", and I quote: "Tired of throwing away thousands on rent? Think you can't buy? think again. If you're stuck in the renter rut, try it our way."

I look forward to a hearing next year on this bill in the Energy and Natural Resources Subcommittee on Forests and Public Land Management, of which I am ranking member. I welcome my colleague, Mr. SMITH, as an original co-sponsor of this innovative bill.

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

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

S. 1936

*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 "Bend Pine Nursery Land Conveyance Act".

**SEC. 2. DEFINITIONS.**

In this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(2) STATE.—The term “State” means the State of Oregon.

**SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.**

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) Bend Pine Nursery, comprising approximately 210 acres, as depicted on site plan map entitled “Bend Pine Nursery Administrative Site”, dated May 13, 1999.

(2) The Federal Government-owned facilities at Shelter Cove Resort, as depicted on site plan map entitled “Shelter Cove Resort”, dated November 3, 1997.

(3) Isolated parcels of National Forest System land located in sec. 25, T. 20 S., R. 10 E., and secs. 16, 17, 20, and 21, T. 20 S., R. 11 E., Willamette Meridian, as depicted on the map entitled “Isolated Parcels, Deschutes National Forest”, dated 1988.

(4) Alsea Administrative Site, consisting of approximately 24 acres, as depicted on site plan map entitled “Alsea Administrative Site”, dated May 14, 1999.

(5) Mapleton Administrative Site, consisting of approximately 8 acres, as depicted on site plan map entitled “Mapleton Administrative Site”, dated May 14, 1999.

(6) Springdale Administrative Site, consisting of approximately 3.6 acres, as depicted on site plan map entitled “Site Development Plan, Columbia Gorge Ranger Station”, dated April 22, 1964.

(7) Dale Administrative Site, consisting of approximately 40 acres, as depicted on site plan map entitled “Dale Administrative Site”, dated July 7, 1999.

(b) CONSIDERATION.—Consideration for a sale or exchange of land under subsection (a) may include the acquisition of land, existing improvements, or improvements constructed to the specifications of the Secretary.

(c) APPLICABLE LAW.—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws (including regulations) applicable to the conveyance and acquisition of land for the National Forest System.

(d) CASH EQUALIZATION.—Notwithstanding any other provision of law, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

**(e) SOLICITATIONS OF OFFERS.**

(1) IN GENERAL.—Subject to paragraph (3), the Secretary may solicit offers for sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(3) RIGHT OF FIRST REFUSAL.—The Bend Metro Parks and Recreation District or other units of local government in Deschutes County, Oregon, shall be given the right of first refusal to purchase the Bend Pine Nursery described in subsection (a)(1).

**(f) REVOCATIONS.**

(1) IN GENERAL.—Any public land order withdrawing land described in subsection (a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

(2) EFFECTIVE DATE.—The effective date of any revocation under paragraph (1) shall be the date of the patent or deed conveying the land.

**SEC. 4. DISPOSITION OF FUNDS.**

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or exchange under section 3(a) in the fund established under Public Law 90-171 (16 U.S.C. 484a) (commonly known as the “Sisk Act”).

(b) USE OF PROCEEDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further Act of appropriation, for—

(1) the acquisition, construction, or improvement of administrative facilities and associated land in connection with the Deschutes National Forest; and

(2) to the extent the funds are not necessary to carry out paragraph (1), the acquisition of land and interests in land in the State.

(c) ADMINISTRATION.—Subject to valid existing rights, the Secretary shall manage any land acquired by purchase or exchange under this Act in accordance with the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the “Weeks Act”) and other laws (including regulations) pertaining to the National Forest System.

**SEC. 5. CONSTRUCTION OF NEW ADMINISTRATIVE FACILITIES.**

The Secretary may acquire, construct, or improve administrative facilities and associated land in connection with the Deschutes National Forest System by using—

(1) funds made available under section 4(b); and

(2) to the extent the funds are insufficient to carry out the acquisition, construction, or improvement, funds subsequently made available for the acquisition, construction, or improvement.

**SEC. 6. AUTHORIZATION OF APPROPRIATION.**

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

**ADDITIONAL COSPONSORS**

S. 345

At the request of Mr. ALLARD, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 386

At the request of Mr. GORTON, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 386, a bill to amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing of certain electric facilities.

S. 424

At the request of Mr. MACK, his name was added as a cosponsor of S. 424, a bill to preserve and protect the free choice of individuals and employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 484

At the request of Mr. CAMPBELL, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 484, a bill to provide for the granting of refugee status in the United States to nationals of certain foreign

countries in which American Vietnam War POW/MIA or American Korean War POW/MIA may be present, if those nationals assist in the return to the United States of those POW/MIA alive.

S. 866

At the request of Mr. CONRAD, the name of the Senator from Arkansas [Mrs. LINCOLN] was added as a cosponsor of S. 866, a bill to direct the Secretary of Health and Human Services to revise existing regulations concerning the conditions of participation for hospitals and ambulatory surgical centers under the medicare program relating to certified registered nurse anesthetists’ services to make the regulations consistent with State supervision requirements.

S. 1109

At the request of Mr. MCCONNELL, the names of the Senator from Wisconsin [Mr. FEINGOLD] and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1198

At the request of Mr. SHELBY, the names of the Senator from Tennessee [Mr. THOMPSON], the Senator from Arkansas [Mrs. LINCOLN], the Senator from Ohio [Mr. VOINOVICH], the Senator from Nebraska [Mr. KERREY], the Senator from Alaska [Mr. STEVENS], the Senator from Louisiana [Mr. BREAUX], the Senator from Utah [Mr. BENNETT], the Senator from Louisiana [Ms. LANDRIEU], the Senator from Oklahoma [Mr. INHOFE], the Senator from Virginia [Mr. ROBB], the Senator from Delaware [Mr. ROTH], and the Senator from Nebraska [Mr. HAGEL] were added as cosponsors of S. 1198, a bill to amend chapter 8 of title 5, United States Code, to provide for a report by the General Accounting Office to Congress on agency regulatory actions, and for other purposes.

S. 1200

At the request of Ms. SNOWE, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 1200, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 1272

At the request of Mr. NICKLES, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1272, a bill to amend the Controlled Substances Act to promote pain management and palliative care without permitting assisted suicide and euthanasia, and for other purposes.

S. 1332

At the request of Mr. LUGAR, the names of the Senator from Virginia