

and Other Devices, together with its technical annex (in this resolution referred to as "Protocol II").

(b) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which shall be included in the instrument of ratification of the Convention:

(1) RESERVATION.—Article 7(4)(b) of the Convention shall not apply with respect to the United States.

(2) DECLARATION.—The United States declares, with reference to the scope of application defined in Article 1 of the Convention, that the United States will apply the provisions of the Convention, Protocol I, and Protocol II to all armed conflicts referred to in Articles 2 and 3 common to the Geneva Conventions for the Protection of War Victims of August 12, 1949.

(3) UNDERSTANDING.—The United States understands that Article 6(1) of Protocol II does not prohibit the adaptation for use as booby-traps of portable objects created for a purpose other than as a booby-trap if the adaptation does not violate paragraph (1)(b) of the Article.

(4) UNDERSTANDING.—The United States considers that the fourth paragraph of the preamble to the Convention, which refers to the substance of provisions of Article 35(3) and Article 55(1) of Additional Protocol I to the Geneva Conventions for the Protection of War Victims of August 12, 1949, applies only to States which have accepted those provisions.

(c) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which are not required to be included in the instrument of ratification of the Convention:

(1) DECLARATION.—Any amendment to the Convention, Protocol I, or Protocol II (including any amendment establishing a commission to implement or verify compliance with the Convention, Protocol I, or Protocol II), any adherence by the United States to Protocol III to the Convention, or the adoption of any additional protocol to the Convention, will enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, Section 2, Clause 2 of the Constitution of the United States.

(2) DECLARATION.—The Senate notes the statements by the President and the Secretary of State in the letters accompanying transmittal of the Convention to the Senate that there are concerns about the acceptability of Protocol III to the Convention from a military point of view that require further examination and that Protocol III should be given further study by the United States Government on an interagency basis. Accordingly, the Senate urges the President to complete the process of review with respect to Protocol III and to report the results to the Senate on the date of submission to the Senate of any amendments which may be concluded at the 1995 international conference for review of the Convention.

(3) STATEMENT.—The Senate recognizes the expressed intention of the President to negotiate amendments or protocols to the Convention to carry out the following objectives:

(A) An expansion of the scope of Protocol II to include internal armed conflicts.

(B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.

(C) A requirement that manually emplaced antipersonnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.

(D) A requirement that all mines shall be detectable using commonly available technology.

(E) A requirement that the party laying mines assumes responsibility for them.

(F) The establishment of an effective mechanism to verify compliance with Protocol II.

The following executive reports of committees were submitted on March 23, 1995:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation:

Robert Pitofsky, of Maryland, to be a Federal Trade Commissioner for the term of seven years from September 26, 1994.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PRESSLER. Mr. President, for the Committee on Commerce, Science, and Transportation, I also report favorably five nomination lists in the Coast Guard, which were printed in full in the CONGRESSIONAL RECORDS of January 6, February 3 and 16, 1995, 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 January 6, February 3 and 16, 1995, at the end of the Senate proceedings.)

By Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry:

Daniel Robert Glickman, of Kansas, to be Secretary of Agriculture.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

#### 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 Mrs. BOXER:

S. 600. A bill to require the Secretary of Agriculture to issue regulations concerning use of the term "fresh" in the labeling of poultry, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CHAFEE (for himself, Mr. KENNEDY, Mr. PELL, and Mr. KERRY):

S. 601. A bill to revise the boundaries of the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BROWN (for himself, Mr. SIMON, Mr. DOLE, Ms. MIKULSKI, Mr. ROTH, Mr. MCCONNELL, and Mr. MCCAIN):

S. 602. A bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic

Treaty Organization of European countries emerging from communist domination; to the Committee on Foreign Relations.

By Mr. FAIRCLOTH:

S. 603. A bill to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PRESSLER:

S. 604. A bill to amend title 49, United States Code, to relieve farmers and retail farm suppliers from limitations on maximum driving and on-duty time in the transportation of agricultural commodities or farm supplies if such transportation occurs within 100-air mile radius of the source of the commodities or the distribution point for the farm supplies; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEFLIN, Mr. LOTT, Mr. GRAMM, Mr. BROWN, Mr. CRAIG, Mr. SHELBY, Mr. NICKLES, Mr. KYL, Mr. ABRAHAM, Mr. THURMOND, Mr. INHOFE, Mr. PACKWOOD, Mr. WARNER, Mr. COATS, Mr. BURNS, Mr. THOMAS, Mr. PRESSLER, Mrs. HUTCHISON, Mr. HATFIELD, Mr. GRAMS, Mr. FRIST, Mr. MCCONNELL, Mr. ASHCROFT, Mr. MACK, Mr. MURKOWSKI, Mr. BENNETT, Mr. KEMPTHORNE, Mr. GRASSLEY, Mr. BOND, and Mr. STEVENS):

S. 605. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; to the Committee on the Judiciary.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 606. A bill to make improvements in pipeline safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. WARNER (for himself and Mr. REID):

S. 607. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 608. A bill to establish the New Bedford Whaling National Historical Park in New Bedford, Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE:

S. 609. A bill to assure fairness and choice to patients and health care providers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LOTT:

S. 610. A bill to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes; to the Committee on Energy and Natural Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PELL (for himself, Mr. KERRY, Mr. FEINGOLD, and Ms. SNOWE):

S. Res. 91. A resolution to condemn Turkey's illegal invasion of Northern Iraq; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED  
BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER:

S. 600. A bill to require the Secretary of Agriculture to issue regulations concerning use of the term "fresh" in the labeling of poultry, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

## THE TRUTH IN POULTRY LABELING ACT

• Mrs. BOXER. Mr. President, today I am introducing the Truth in Poultry Labeling Act of 1995. This legislation directs the Secretary of Agriculture to restrict the use of the term "fresh" to poultry that has never been kept frozen.

The bill closes a loophole in Federal law that allows frozen chickens and turkeys to be labeled and sold as fresh.

I am frankly disappointed that I have to introduce this legislation. I have been repeatedly assured that the Agriculture Department was prepared to act to end the fraud allowed by current law. In January, a draft rule to restrict the use of the term "fresh" to poultry that has never been kept frozen was actually issued, but there are no assurances that the rule will be finalized any time soon.

In fact, evidence suggests that we are likely to see more delay than action on this issue. Two weeks ago, the Food Safety and Inspection Service decided that it will grant an extension of the comment period on its proposed rule. The extension had been sought by the very industry groups which have dedicated themselves to protecting the status quo. The new rule was proposed in January, and the original 60-day comment period was set to expire last week.

I strongly object to the decision to delay—once again—the rule protecting consumers against mislabeled poultry.

The Agriculture Department did the right thing in January when it proposed the new rule.

Unfortunately, the announced delay is just another in a series of delays stretching back to 1988, when this same rule was first proposed: 7 years is far too long for consumers to wait for basic truth in labeling.

USDA has had a chance to act responsibly on behalf of consumers and has failed. I am therefore introducing this bill to require USDA to issue the new rule within 30 days of enactment, and will seek early consideration of the bill.

This legislation is supported by Consumers Union, the National Consumers League, Public Voice, the California Poultry Industry Federation, the Consumer Federation of America, and the United Food and Commercial Workers International Union.

Current law promotes consumer fraud, allowing chickens and turkeys that have been frozen hard as bowling balls to be thawed out and labeled fresh. Consumers are paying a substantial premium for fresh poultry that has no right to the label. It is time to end

the delays and end the fraud, and I ask my colleagues to support this important piece of legislation.

Mr. President, I ask unanimous consent that the full text of the bill appear in the RECORD.

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

S. 600

*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 "Truth in Poultry Labeling Act of 1995."

## SEC. 2. REGULATIONS ON LABELING OF POULTRY.

Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue final regulations under the Poultry Product Inspection Act (21 U.S.C. 451 et seq.) that prohibit the use of the term "fresh" on labeling of any poultry or poultry part, or of any edible portion of the poultry or part, that has been frozen or previously frozen to below 26 degrees Fahrenheit. •

By Mr. BROWN (for himself, Mr. SIMON, Mr. DOLE, Ms. MIKULSKI, Mr. ROTH, Mr. MCCONNELL, and Mr. MCCAIN):

S. 602. A bill to amend the NATO Participation Act of 1994 to expedite the transition to full membership in the North Atlantic Treaty Organization of European countries emerging from Communist domination; to the Committee on Foreign Relations.

THE NATO PARTICIPATION ACT AMENDMENT OF  
1995

Mr. BROWN. Mr. President, I sent to the desk just a few minutes ago the NATO Participation Act Amendments of 1995. Included as sponsors, along with myself, are Senator SIMON, Senator DOLE, Senator MIKULSKI, Senator ROTH, and Senator MCCONNELL. And I ask unanimous consent that Senator MCCAIN be added as a cosponsor of this measure.

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

Mr. BROWN. Mr. President, this NATO Participation Act deals with the hopes and fears and the concerns, I believe, of every American, because it deals with our very freedom.

Every American has a special place in their heart for the people of Central Europe and perhaps even a special place in their conscience. It was in Central Europe where we saw the treachery of Hitler plunge the world into the Second World War. No one can forget that his treachery saw the demise of what was then Czechoslovakia. Few Americans will ever forget the treachery of both Nazi Germany and the Soviet Union in carving up Poland. And I cannot think of a more apt description than the quote of Edmund Burke, when he said:

The only thing necessary for the triumph of evil in this world is for good men to do nothing.

Mr. President, that is what happened in Central Europe. Good men and

women concerned about democracy and freedom stood by and did nothing while Fascist and Communist forces carved up Central Europe. We paid for it in a cold war that lasted more than half a century.

Mr. President, we must never allow that tragedy to happen again. We must be very clear that the men and women of Central Europe are entitled to freedom. That is what the NATO Participation Act Amendments are all about—clarity, making it clear that we believe the Czech Republic, Poland, Hungary, and the Republic of Slovakia should be free and should be masters of their own destiny.

The NATO Participation Act of 1994 was a step forward because it authorized the establishment of a program within this Government to transition those eligible countries to NATO membership, and this follow-on act does four basic things to improve on that situation.

First of all, it helps to set aside the uncertainty of powers in this world about the countries' future by making it clear our policy is to move them into NATO. It develops a program and a focus for this Nation's foreign policy to proceed on a regularized path to include them in NATO, to move them toward full membership. But let me emphasize their membership is not free. It will involve major new responsibilities as well as cost for them.

Second, Mr. President, this act moves to reallocate funds for military training that will include those four countries. By training together and by working together, we will lay the groundwork for a partnership in NATO in the years ahead.

And third, it sets forth a clear policy of encouraging United States support for observer status in NATO for these four countries, a prerequisite and an important part of their training for full participation.

Last, in the event these four countries are not fully members of NATO by the end of this decade, it calls on the President in January 1999 to report fully to Congress on the progress of these countries in entering NATO. It will give us the tools and the ability to evaluate the progress, evaluate the program, and take the additional steps that may be necessary to accomplish our goal.

Mr. President, the bottom line is this: Those countries in Central Europe lost their freedom and lost their right to independence when the dark cloud of Nazism spread across Europe. It could have been prevented if good men and women had not stood aside.

They, again, saw their hoped-for independence snuffed out when the Iron Curtain fell across Europe and Soviet domination extinguished their freedom.

More than anything, this act says to the world that Americans will not stand idly by, unconcerned about Central Europe's security. The loss of the freedom of Poland, Hungary, the

Czech Republic, the Slovak Republic, and other eligible countries may ultimately mean the loss of our freedom.

Mr. SIMON. Mr. President, I am pleased to be a cosponsor. Let me address one concern that people have, that this will be viewed as somehow anti-Russian. There is no question the Russians do not like this move toward expanding NATO, and there is no question that there are genuine fears, whether justified or not, on the part of some of the countries of Central Europe with Russia. There is no reason, at some point in the future when democracy is insensibly established in Russia—and it is moving in the right direction—that Russia cannot become a part of NATO. As a matter of fact, if I were a Russian leader looking at a potential foe, I would not be looking to the West, I would be looking to the East—China, with all the population and potential there. I think this is not only in the best interest of the countries of Central Europe. I think this is in the best interest of Russia, and I am pleased to be a cosponsor.

• Ms. MIKULSKI. Mr. President, I am proud to rise as a cosponsor of the NATO Participation Act Amendments of 1995. This bipartisan legislation will increase security and stability in eastern Europe, and will contribute to the security of the United States.

This year we are marking the 50th anniversary of our victory in World War II. But the end of the World War was also the start of the cold war. Soviet expansionism forced us to prepare to defend western Europe. And the captive nations of eastern Europe were forced behind the Iron Curtain.

After more than 40 years of living under Soviet tyranny, Poland, Hungary, the Czech Republic, and Slovakia are free and independent. They are not asking for protection. They are merely asking to be full partners in the new Europe. By transforming their countries into free-market democracies, they have earned this right.

If our international organizations are to survive—as I believe they must—they must adapt to the post-cold-war world. This sounds so obvious. Yet NATO is still mired in its cold war structure. We still have not established the criteria for NATO membership—let alone a timetable for admitting new states.

In recent months the United States has more explicitly stated that NATO will be expanded. I applaud this. But our NATO partners have been dragging their feet. This legislation will help to clarify the United States position on NATO expansion—and will enable us to lead the alliance to meet the challenges of the post-Soviet world.

We have all heard the arguments against expanding NATO. Some believe that we will offend Russia by expanding NATO membership. I disagree. NATO is a defensive organization. A country that doesn't have expansionist aims has nothing to fear from an expanded NATO.

Mr. President, for many years I have worked with Senator BROWN and Senator SIMON to make the United States a more effective advocate for democracy and economic development in eastern Europe. I commend them for their leadership and look forward to working with them to enact the NATO Participation Act Amendments into law. •

By Mr. CHAFEE (for himself, Mr. KENNEDY, Mr. PELL, and Mr. KERRY):

S. 601. A bill to revise the boundaries of the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

THE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR REAUTHORIZATION ACT OF 1995

• Mr. CHAFEE. Mr. President, it gives me great pleasure today to introduce legislation to reauthorize and expand the boundaries of the Blackstone River Valley National Heritage corridor. I am delighted to be joined in this effort by my colleagues from Rhode Island and Massachusetts, Senators PELL, KENNEDY, and KERRY, all of whom have worked hard on this issue through the years.

Before I describe our legislation in detail, allow me to provide a little historical background for the benefit of my colleagues.

Known as the cradle of the Industrial Revolution, the Blackstone Valley is the place where modern America begins—200 years ago on the banks of the Blackstone River, in Pawtucket, RI, Samuel Slater built our Nation's first water-powered textile mill, an event which changed this country forever. Backed by capital from Providence, other entrepreneurs followed Slater's lead. Factories and villages sprang up along the river's banks. Families migrated from farms into the towns. Canals—and later railroads—were built to improve the transportation of goods. Immigrants from all over Europe came to the region in search of work and opportunity.

In the 1920's, the region's prosperity began to fade. Mills closed and moved south. The Great Depression made matters worse. In subsequent years, the Blackstone, which had been renowned as "the hardest working river in America" became just another neglected, polluted body of water.

But people in the valley recognized that the river still had a story to tell. Evidence of the region's glorious past remained in abundance. Beautiful dams, bridges, mills, villages, farms, and pastures—all these things contribute to a special sense of place, identity, and history. Many began to realize that preserving and celebrating the area's past was the key to a brighter future.

In the early 1980's, we prevailed upon the National Park Service to conduct a study of the Blackstone Valley. They

too concluded that its resources were of national significance and were well worth preserving. The question was: How? With half a million people living there, the valley does not lend itself to the traditional national park strategy where the Federal Government owns and manages the land.

What was needed was an approach that would encourage cooperation among communities, across State lines, and between the private and public sectors. And so, in 1986, through legislation which Senators PELL, KENNEDY, KERRY, and I advanced together, the Blackstone River Valley National Heritage corridor was born.

Stretching 46 miles along the Blackstone River, from Worcester, MA to Providence, RI, the corridor encompasses 20 cities and towns over a 250,000-acre area. Efforts to interpret and preserve the valley's historical and scenic resources are coordinated by the Blackstone Corridor Commission, which receives modest Federal funding to support its operations. The National Park Service works closely with the Commission, providing invaluable technical assistance and guidance.

Not surprisingly, there were some who doubted that the corridor concept could work. It was, of course, unlike anything that had been tried before. But I can say with great confidence that the Blackstone corridor is working. And it is working precisely because it is not managed like the traditional national park. Under the umbrella of the Corridor Commission, individuals from different communities, businesses, levels of government, and walks of life are working together toward a common vision, and with impressive results.

Historic treasures are being uncovered, interpreted, and restored. Old mills are being converted for modern use. Visitors now can enjoy the Blackstone by riverboat or canoe. Parks are being established along its banks. A greenway, for bicyclists and hikers is well underway. A Friends of the Blackstone group is cleaning up the river. National Park Service rangers and volunteers are educating visitors about the valley's rich history. A strategy for reintroducing salmon to the Blackstone river is being developed. Imagine that, salmon coming back to a river that was once an environmental disgrace.

And all this is being done with relatively little money from the Federal Government, because every Federal dollar that goes into the corridor is leveraged many times over by the Commission, sometimes by as much as twenty to one. In fact, often the Commission provides no money at all, just the expertise and can-do attitude needed to shepherd a project from concept to reality.

This bill, which is identical to legislation introduced in the last Congress by Senator KENNEDY and approved by the Senate Energy and Natural Resources Committee last year, builds

upon that success. It extends the life of the Blackstone Corridor Commission—which, under current law, will expire in November 1996—for another 10 years, and gives the Secretary of Interior the authority to extend the Commission for an additional 10 years thereafter, providing the Commission meets certain criteria.

In addition, the bill will add to the corridor five new communities—three in Rhode Island and two in Massachusetts—which are culturally and historically tied to the existing corridor and contain the headwaters of the Blackstone River. This logical expansion will allow the Commission to interpret and protect the region's resources in a comprehensive and unified fashion. Finally, our legislation increases the Commission's annual authorization from \$350,000 to \$650,000, in recognition of its tremendous success and new responsibilities, and authorizes up to \$5 million over 3 years in matching funds for development projects within the corridor.

Mr. President, it seems to me that protecting and preserving our Nation's special places, like the Blackstone Valley, is one of the Federal Government's most important functions. But as we all know, preservation does take money, and money is tight. I would submit that in these tough budgetary times, the Blackstone Corridor, which has accomplished so much with so little, offers us a model that should be encouraged and expanded upon. I thank my colleagues from Rhode Island and Massachusetts for their hard work and support, and urge the Senate to give this measure its swift approval.

Mr. President, 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. 601

*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 "Blackstone River Valley National Heritage Corridor Amendments Act of 1995".

#### SEC. 2. BOUNDARY CHANGES.

Section 2 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by striking the first sentence and inserting the following new sentence: "The boundaries shall include the lands and water generally depicted on the map entitled Blackstone River Valley National Heritage Corridor Boundary Map, numbered BRV-80-80,011, and dated May 2, 1993."

#### SEC. 3. TERMS.

Section 3(c) of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by inserting immediately before the period at the end the following: ", but may continue to serve after the expiration of this term until a successor has been appointed."

#### SEC. 4. REVISION OF PLAN.

Section 6 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

"(d) REVISION OF PLAN.—(1) Not later than 1 year after the date of enactment of this subsection, the Commission, with the approval of the Secretary, shall revise the Cultural Heritage and Land Management Plan. The revision shall address the boundary change and shall include a natural resource inventory of areas or features that should be protected, restored, managed, or acquired because of their contribution to the understanding of national cultural landscape values.

"(2) No changes other than minor revisions may be made in the approved plan as amended without the approval of the Secretary. The Secretary shall approve or disapprove any proposed change in the plan, except minor revisions, in accordance with subsection (b)."

#### SEC. 5. EXTENSION OF COMMISSION.

Section 7 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows:

##### "TERMINATION OF COMMISSION

"SEC. 7. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the date that is 10 years after the date of enactment of the Blackstone River Valley National Heritage Corridor Amendments Act of 1995.

"(b) EXTENSION.—The Commission may be extended for an additional term of 10 years if—

"(1) not later than 180 days before the termination of the Commission, the Commission determines that an extension is necessary to carry out this Act;

"(2) the Commission submits a proposed extension to the appropriate committees of the Senate and the House of Representatives; and

"(3) the Secretary, the Governor of Massachusetts, and the Governor of Rhode Island each approve the extension.

"(c) DETERMINATION OF APPROVAL.—The Secretary shall approve the extension if the Secretary finds that—

"(1) the Governor of Massachusetts and the Governor of Rhode Island provide adequate assurances of continued tangible contribution and effective policy support toward achieving the purposes of this Act; and

"(2) the Commission is effectively assisting Federal, State, and local authorities to retain, enhance, and interpret the distinctive character and nationally significant resources of the Corridor."

#### SEC. 6. IMPLEMENTATION OF THE PLAN.

Subsection (c) of section 8 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows: U.S.C. 461 note), as amended, is amended by inserting the following:

"(c) IMPLEMENTATION.—(1) To assist in the implementation of the Cultural Heritage and Land Management Plan in a manner consistent with purposes of this Act, the Secretary is authorized to undertake a limited program of financial assistance for the purpose of providing funds for the preservation and restoration of structures on or eligible for inclusion on the National Register of Historic Places within the Corridor which ex-

hibit national significance or provide a wide spectrum of historic, recreational, or environmental education opportunities to the general public.

"(2) To be eligible for funds under this section, the Commission shall submit an application to the Secretary that includes—

"(A) a 10-year development plan including those resource protection needs and projects critical to maintaining or interpreting the distinctive character of the Corridor; and

"(B) specific descriptions of annual work programs that have been assembled, the participating parties, roles, cost estimates, cost-sharing, or cooperative agreements necessary to carry out the development plan.

"(3) Funds made available pursuant to this subsection shall not exceed 50 percent of the total cost of the work programs.

"(4) In making the funds available, the Secretary shall give priority to projects that attract greater non-Federal funding sources.

"(5) Any payment made for the purposes of conservation or restoration of real property or structures shall be subject to an agreement either—

"(A) to convey a conservation or preservation easement to the Department of Environmental Management or to the Historic Preservation Commission, as appropriate, of the State in which the real property or structure is located; or

"(B) that conversion, use, or disposal of the resources so assisted for purposes contrary to the purposes of this Act, as determined by the Secretary, shall result in a right of the United States for reimbursement of all funds expended upon such resources or the proportion of the increased value of the resources attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater.

"(6) The authority to determine that a conversion, use, or disposal of resources has been carried out contrary to the purposes of this Act in violation of an agreement entered into under paragraph (5)(A) shall be solely at the discretion of the Secretary."

#### SEC. 7. LOCAL AUTHORITY.

Section 5 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

"(j) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED.—Nothing in this Act shall be construed to affect or to authorize the Commission to interfere with—

"(1) the rights of any person with respect to private property; or

"(2) any local zoning ordinance or land use plan of the Commonwealth of Massachusetts or a political subdivision of such Commonwealth."

#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), as amended, is further amended—

(1) in subsection (a), by striking "\$350,000" and inserting "\$650,000"; and

(2) by amending subsection (b) to read as follows:

"(b) DEVELOPMENT FUNDS.—For fiscal years 1996, 1997, and 1998, there is authorized to be appropriated to carry out section 8(c), \$5,000,000 in the aggregate."•

Mr. PELL. Mr. President, it is with great pride in the Blackstone River Valley National Heritage Corridor and great hope for its continued success

that I join Senator CHAFEE of Rhode Island, Senator KENNEDY of Massachusetts, and Senator KERRY of Massachusetts in introducing legislation to reauthorize the corridor.

As I have said before about this exceptional partnership project, nothing succeeds like success. The Blackstone NHC is a wonderful example of success. Our bill both reauthorizes and expands the Blackstone NHC—the largest national park or affiliated area in New York or New England: 250,000 acres, including 20 towns or cities in 2 states.

The expansion is a logical one. We should increase the boundaries to include the communities of Burrillville, Glocester, and Smithfield in Rhode Island, and Worcester and Leceister in Massachusetts. All are within the watershed of the 46-mile long Blackstone River.

More than a decade ago, I convened the first planning meeting for the corridor involving Federal, State and local officials. Ever since then, the corridor has been a bipartisan project enthusiastically supported by both the Rhode Island and Massachusetts congressional delegations.

Senator CHAFEE introduced the initial authorization. I introduced the existing authorization, and I am delighted that Senator CHAFEE is working hard to continue our bipartisan, bistate effort. All of us want the corridor to showcase the cradle of the American Industrial Revolution.

I would like to underscore what I consider a very important point. The Heritage Corridor Commission has used its relatively meager Federal resources to leverage dramatic expenditures and results.

The Blackstone NHC is an extraordinary bargain for the taxpayers. With only a modest Federal contribution, the corridor has leveraged funds by sometimes as much as a 20 to 1 match.

My own State of Rhode Island has invested more than \$7.7 million and has acquired more than 250 acres of land in the Blackstone River Valley. A linear park and bikeway are in the planning stage, as is completion of an Anadromous fisheries restoration program that has met with initial success.

We continue to look for examples of imaginative, efficient, and cost-effective concepts. We need to look no further than the Blackstone Valley—not only for where those concepts were born but where they continue to be practiced and developed to this day.

The legislation that we are submitting today is intended to safeguard the integrity and coherence of the Corridor Commission by including areas that are functionally, ecologically, and historically integral components of the Blackstone Region.

In Rhode Island, the three communities that would be added are highly motivated to join in the success of corridor and worked hard to develop comprehensive town plans. Glocester also developed strategies, including local historic district zoning, to turn the vil-

lage of Chepachet into a visitor destination.

Calling the area a corridor is somewhat of a misnomer, since it must be understood that we are not talking about some narrow strip of land and water. Its boundaries comprise an area more than 25 miles wide and 46 miles long; a management unit that now would include an entire watershed.

When future generations of Americans want to understand how communities and industries are made and grow, if we do our job right, they will understand the entire system by a visit to the Blackstone Valley.

We already have noticed a real transformation in confidence that is occurring in the Blackstone Valley. It is a transformation that is coming about because our citizens are realizing the value of our heritage. The lessons of history are increasingly part of the fabric of the valley.

I want to add the National Park Service has played a strong role and completely positive role in the corridor. These are people we trust, who understand the meaning of the words "public service." There have been no complaints about Federal intrusion, only praise for Federal creativity and skill.

I am pleased to note that this new authorization by Senator CHAFEE builds on the foundation that we established—with Senators KENNEDY and KERRY—and improves the final product. It is worth noting that our own bipartisan commitment and collaboration mirrors the spirit of the corridor.

Mr. KENNEDY. Mr. President, it is a privilege to be a sponsor of this legislation introduced by Senator CHAFEE to improve the Blackstone River Valley National Heritage Corridor, and I commend Senator CHAFEE for his leadership on this important matter. This legislation is designed to build upon the successful historic preservation effort already underway in the Blackstone Valley in Massachusetts and Rhode Island. It was approved by the Senate Energy and Natural Resources Committee last year, and I hope it will receive the committee's support again, so that it can be enacted by the 104th Congress.

This legislation is the result of bipartisan and bistate cooperation among several Senators and Representatives. Senator CHAFEE and I and Senators JOHN KERRY and CLAIBORNE PELL, and Congressmen PETER BLUTE, RICHARD NEAL, JACK REED, and PATRICK KENNEDY all have a strong commitment to this historic preservation effort.

This bill will extend the current boundaries of the Blackstone Corridor to include neighboring communities that are essential parts of the region's history, as recommended by a comprehensive National Park Service study. It will also continue the Corridor Commission, which has been very effective in leveraging private support and bringing local groups together to preserve these important historical,

cultural, and natural resources. The bill will modestly increase the Commission's funding, in order to strengthen current preservation efforts and address the broader responsibilities that will result from the larger boundaries of the corridor.

The Blackstone Corridor is unique in many respects, and it meets stringent criteria of national significance. Historically, it is distinctive as the site of the birth of the Industrial Revolution in America. It was here that the widespread use of water power for industry was first developed in the United States.

Much of this early development is still intact, with approximately 10,000 historic structures, including a canal system and dams that harness the force of the river, which drops dramatically at many points along its 46-mile course. Dozens of 19th century mill villages and communities spring up along the river to take advantage of its power. Many other aspects of the area—the farms and pastures that provide food for the mill workers, and the beautiful woods and scenic areas along the river—remain intact for the enjoyment of visitors.

The Blackstone Corridor is also distinctive because it represents an innovative and highly cost-effective way for the Federal Government to assist in preserving historic and natural resources. Rather than acquiring and managing vast acres of land and historic structures, the National Park Service and the Blackstone Commission serve as guiding hands to foster restoration projects that are predominantly funded with local resources. The Federal role is to provide technical expertise, set high standards, and provide national recognition. These efforts encourage local citizens, businesses, nonprofit historic and environmental organizations, schools and universities, 20 local Governments and two State Governments to work together to protect the valley's heritage, and to do so in a way that is consistent with National Park Service standards.

When the corridor was first established by Congress in 1986, this type of public-private partnership was an experimental concept. Neither Congress nor the Park Service was certain that the concept—very different from traditional Federal ownership and control—would work. Now it is clear that the corridor is a success, and it serves as a model for similar efforts across the country. A 1992 report by the Advisory Board of the Secretary of the Interior on National Parks gave Blackstone a glowing endorsement, calling it an outstanding initiative and partnership model. At a conference on heritage areas hosted by the National Trust for Historic Preservation, the Blackstone project was featured as the prime example of the effective use of Federal seed money to encourage local preservation.

Because the corridor has been such an unqualified success, other communities in the valley want to participate, and they have petitioned for official inclusion in the corridor boundaries. The Blackstone Commission has conducted a comprehensive evaluation of these communities—Worcester and Leicester in Massachusetts and Burrillville, Glocester, and Smithfield in Rhode Island. The Commission found that each of these communities has significant historic and natural resources that merit inclusion in the project.

One of the most valuable features of the corridor, as described in its cultural heritage and land management plan approved by the Secretary of the Interior in 1990, is its wholeness—the survival of representative elements of entire 18th and 19th century production systems, power and transportation methods, communities, workplaces, and machinery. The expansion will help ensure the protection of the entire corridor, including the headwaters of the Blackstone River, to tell a fuller story of America's industrial revolution.

Continuation of the Blackstone Corridor Commission is also essential. Existing law terminates the Commission's authority in 1996, undermining opportunities for the new areas to participate in the corridor and undercutting the Commission's effective ongoing efforts within the existing boundaries. The Commission has provided a vital framework for encouraging the local involvement and private sector financial participation that are the hallmark of the Blackstone project.

This legislation will extend the Commission for 10 years, and permit an additional 10-year extension if the Commission can satisfy criteria showing it continues to be effective in protecting and interpreting the corridor through the partnership approach. The Secretary's Advisory Board recommended reconsideration of the 1996 sunset clause in its report on Blackstone, stating that after the planning stage, there should be "a program into which the corridor can feed, one with parameters as carefully drawn as those governing traditional park units."

Our legislation also makes clear that the Commission will not interfere with private property rights. In fact, one of the priorities of the Commission is to work cooperatively with all interested parties and, in many cases, to enhance the value of private property in the region, by providing technical assistance to local communities. The Commission has no authority to issue regulations or impose its own restrictions on land or property.

The legislation proposes a modest increase in the Commission's operating budget to \$650,000 a year. It authorizes up to \$5 million over the next 3 years in matching funds for development projects that will be largely financed through local contributions. These funds will enable the Commission to continue its excellent work in the 20

towns now comprising the corridor and to expand its outreach efforts to the additional communities.

These investments are highly cost-effective. The corridor is the largest National Park Service-affiliated area in New England. The Commission deserves this vote of confidence by Congress for the impressive groundwork it has laid and for the important tasks it has set for itself in the years ahead.

Again, I commend Senator CHAFEE for leading the way on this legislation. I believe it offers an excellent opportunity to build on the success of the Blackstone River Valley National Heritage Corridor, and to keep an important part of our American heritage alive and accessible for future generations. I urge the Senate to move expeditiously to approve this bill.

• Mr. KERRY. Mr. President, I am pleased once again to join my colleagues, the distinguished Senators from Rhode Island, Senator CHAFEE and Senator PELL, and the senior Senator from Massachusetts, Senator KENNEDY, in sponsoring legislation to revise the boundaries of the Blackstone River Valley National Heritage Corridor. The bill we are introducing today is identical to legislation that was passed overwhelmingly out of the Senate Energy Committee during the last Congress. I am hopeful that the committee will expeditiously act to support this important component of the National Park System.

When the Blackstone River Valley National Heritage Corridor was established in 1986, it represented a unique experiment which sought to reconcile resource preservation with economic growth through the cooperation of the community, its businesses, the State government, and the National Park Service. Now, 8 years later, the success of this partnership can be seen in all of the 20 townships and 5 cities that comprise the corridor. From the historic preservation of buildings to the construction of parks, bikeways, and river access, the corridor has effectively blended the beauty of a New England landscape with the preservation of the region's history shaped so indelibly by the Industrial Revolution. This project has been so successful for all involved that five additional cities and towns—two in Massachusetts and three in Rhode Island—have petitioned to be included in the Commission.

For those of us who represent States east of the Mississippi and who are concerned with the aesthetic value of the landscapes of our States, this project is particularly exciting. Unlike Western States where large tracts of land are protected by the National Park Service, most Eastern States simply do not have open expanses of land available to develop as national parks in the traditional sense. The Blackstone River Valley National Heritage Corridor is a model for other regions interested in preserving their unique characteristics and their historic resources without disturbing their economic base. Just as

the great national parks of the West symbolize the expansiveness and independence that are part of our history, the Blackstone Corridor captures another aspect of our collective heritage—a heritage that is rooted in the communities and industries of the east coast and which helped define the 19th century American experience. This architectural and industrial landscape stands today as a reminder of our past and its contributions to both our spiritual identity and our industrial development.

The Blackstone Valley Corridor should serve as a model for the preservation of our unique heritage and for the process by which it has been developed and promoted. This project exemplifies a solid partnership of Federal, State, and local resources working in unison leveraged to produce the highest level of results. It also exemplifies an extraordinary effort in pulling together committed private local volunteers and financial support to enhance the public investment. This is a prototype which could be duplicated in other National Park Service projects throughout the country.

While the success of this project is attested to by all involved, we must ensure that the hard work and resources that have contributed to that success are not compromised. By extending the Corridor Commission another 10 years and increasing the operating budget, this bill would allow the Commission the leeway it needs to continue in its unique mission. In addition, the boundaries would be expanded so that the five communities of Massachusetts and Rhode Island which have requested inclusion would be able to participate in the Commission-sponsored activities.

I sincerely hope that the corridor's success as both a national park and as an example of a positive public-private partnership in pursuit of conservation objectives will be replicated in other areas of the country. If we are to hold Blackstone Valley up as such a model, however, we first must ensure that it is provided with the resources it needs. Mr. President, for these reasons I look forward to continued positive action on this legislation. •

By Mr. PRESSLER:

S. 604. A bill to amend title 49, United States Code, to relieve farmers and retail farm suppliers from limitations on maximum driving and on-duty time in the transportation of agricultural commodities or farm supplies if such transportation occurs within 100-air mile radius of the source of the commodities or the distribution point for the farm supplies; to the Committee on Commerce, Science, and Transportation.

THE REGULATORY RELIEF FOR FARMERS ACT OF 1995

Mr. PRESSLER. Mr. President, now is the time of the year American's are preparing their fields for planting of this year's crops. Planting season can be unpredictable for farmers. Once the



season begins there is the inevitable uncooperative weather conditions of rain, snow, hail or early spring frosts. Farmers must move quickly and put in long hours.

The demand for farm supplies escalates during planting season. The last thing farmers need are burdensome and unnecessary regulations that interfere with planting operations.

The Department of Transportation has issued hours-of-service regulations that could interrupt or stop planting. These regulations are highly impractical, burdensome and costly for farmers and farm suppliers. Simply put, the regulations would require farmers to take three days off—at the peak work time of the year—after working up to 15 hours a day for 4 days straight. I might add these regulations would cause severe problems for farmers at harvest time, as well.

The solution to this dilemma is simple. The Department of Transportation should waive the hours of service requirements for agricultural purposes during harvest and planting seasons.

This issue is not new. Last year, 34 Senators, including myself, wrote to Transportation Secretary Peña urging a waiver from hours-of-service requirements for agricultural purposes during planting and harvest seasons.

Mr. President, I ask unanimous consent that a copy of that letter appear in the RECORD.

Mr. President, I want to extend my deepest appreciation to the efforts of our colleague, Senator EXON, on this effort. He has been a leader in the effort to waive agriculture from the hours-of-service regulations. Senator EXON led Senate efforts last year to pass legislation to provide this agricultural exemption. However, an agricultural exemption has never cleared the Congress.

I have worked with Senator EXON closely on this matter. I have let him know that I would introduce this bill today.

I have worked with my House and Senate farm State colleagues for regulatory relief for farmers and farm suppliers. Department of Transportation regulations are unfair to farmers and farm suppliers. An agricultural exemption did not clear Congress last year. What did clear the House last year was watered down and reduced to yet another mandated regulatory hurdle for farmers. That is the situation facing farmers today.

Farmers and farm suppliers want to obey the law and rules on hours-of-service. However, the rules do not make sense. Because of what I view as a bureaucratic entanglement brought about by the Department of Transportation, I am introducing this bill today. Legislative action is needed so that American agriculture can have a sensible rule in place for the 1995 planting and harvest seasons.

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

U.S. SENATE,  
Washington, DC, September 26, 1994.  
Hon. FEDERICO PEÑA,  
Secretary of Transportation, Department of  
Transportation, Washington, DC.

DEAR SECRETARY PEÑA: We support the provision in the Hazardous Materials Transportation Act (Public Law 103-311) which requires you to initiate a rulemaking proceeding relating to hours of service rules as they apply to retail farm suppliers.

As you know, current section 395.3 hours of service regulations require an on-duty worker to take three days off and wait in order to accumulate enough off-duty time to resume driving. Application of hours of service requirements upon farmers and their farm suppliers is burdensome, imposes costs and encourages violating the hours of service rules. Therefore, we strongly support a waiver from the hours of service requirements for agricultural purposes during the harvest and planting season.

DOT has recognized that the on-duty time of certain occupations are subject to special demands and has granted seasonal exemptions from section 395.3 hours of service requirements. We request your support for agriculture regulatory relief at least as accommodating as that granted under section 395.3(c) for small package delivery drivers meeting holiday seasonal demands. Farmers and farm suppliers engaged in the transport of fertilizer and fertilizer materials, agricultural chemicals, pesticides, seed, animal feeds, crops, and other essential farm supplies want to obey the law and should be subject to an hours of service rule which makes sense.

During certain weeks of each year in our agricultural states, there is a small window of opportunity in the crop-planting season when the demand for farm supplies escalates. The same is true for amount of rainfall or freezing temperatures. Because of farmer procedures and driver safety, it is impractical and costly for these workers to take three days off at the peak of agricultural production. Driving is incidental to their principal work function of servicing farmers' fields.

Increasingly, farmers utilize farm suppliers who are agronomic experts to help them cope with environmental regulations, develop, implement, and manage precision agriculture, and harvest profitable crops that produce safe, abundant and affordable food for Americans and the world. Over 80 percent of our nation's farmers utilize farm suppliers who are trained agronomic experts who service farmers' fields, which is their principal job function and driving is incidental to this principal job function.

As you draft this important regulatory relief proposed rule, we respectfully request that you take our comments and concerns into consideration. We look forward to working closely with you on this important rule-making for American agriculture and having it finalized before the 1995 spring planting season.

Sincerely,

Jim Exon, Wendell H. Ford, Paul Simon,  
Arlen Specter, Carol Moseley-Braun,  
Richard C. Shelby, Byron L. Dorgan,  
Thomas A. Daschle, David H. Pryor,  
Tom Harkin, Chuck Grassley, Robert  
Kerrey, Kent Conrad, Trent Lott,  
Chuck Robb, John Breaux, Bob  
Graham, John Warner.

Larry Pressler, Howell Heflin, Max Baucus,  
Conrad Burns, Larry E. Craig, Kay  
Bailey Hutchison, Thad Cochran, Dan  
Coats, Don Nickles, Connie Mack, Malcolm  
Wallop, Hank Brown, Robert  
Dole, Mitch McConnell, Richard G.  
Lugar, Herb Kohl.

By Mr. DOLE (for himself, Mr. HATCH, Mr. HEFLIN, Mr. LOTT, Mr. GRAMM, Mr. BROWN, Mr. CRAIG, Mr. SHELBY, Mr. NICKLES, Mr. KYL, Mr. ABRAHAM, Mr. THURMOND, Mr. INHOFE, Mr. PACKWOOD, Mr. WARNER, Mr. COATS, Mr. BURNS, Mr. THOMAS, Mr. PRESSLER, Mrs. HUTCHISON, Mr. HATFIELD, Mr. GRAMS, Mr. FRIST, Mr. MCCONNELL, Mr. ASHCROFT, Mr. MACK, Mr. MURKOWSKI, Mr. BENNETT, Mr. KEMPTHORNE, Mr. GRASSLEY, Mr. BOND, and Mr. STEVENS):

S. 605. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; to the Committee on the Judiciary.

THE OMNIBUS PROPERTY RIGHTS ACT OF 1995

Mr. DOLE. Mr. President, since last November's elections we have pursued an ambitious program of reform to fundamentally change and improve the relationship between the Government and its citizens. No doubt about it, to the defenders of business as usual these are wrenching changes we propose: A balanced budget amendment; the line item veto; regulatory reform; and even the elimination of cabinet level departments. Each of these reforms has been opposed by those who do not understand that the American people have instructed us to rein in the Federal Government. But we will continue to fight for these reforms, and for the American people.

Today, we add to these reforms, by confronting one of the most basic clashes between Government and individual liberty: The taking of private property for public uses. There is perhaps no greater foundation for a successful free society than private property. The American Revolution was fought in part because of the threat that tyranny posed to private property, whether it was taxation without representation, restraints on trade, or violation of home and hearth by British soldiers. Private property rights are the rights to enjoy the fruits of our labor and our ideas and thus enjoy a special place in the U.S. Constitution.

Mr. President, one of the most basic of these protections is found in the fifth amendment to the Constitution; "nor shall private property be taken for public use, with just compensation." As the Supreme Court has stated, this protection is about basic fairness: Preventing the Government "from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole." The fifth amendment thus provides a balance between public need and individual liberty.

Today, however, this balance is missing. A regulatory state that seems only to grow and grow—that is increasingly intrusive—has provided the means for a sustained assault on private property rights in America. It is our duty to ensure that we limit the arbitrary exercise of Government power and pursue

worthwhile goals in ways that protect the rights of our citizens.

Mr. President, I and my colleagues today are proud to introduce the Omnibus Property Rights Act of 1995. I want to especially commend my colleagues who worked hard to bring a lot of good ideas together in one comprehensive package. Senator HATCH should be particularly commended for his leadership of the working group that consisted of Senators SHELBY, NICKLES, HEFLIN, CRAIG, GRAMM, LOTT, THOMAS, BROWN, KYL, and ABRAHAM.

Mr. President, the Omnibus Property Rights Act of 1995 would accomplish four major objectives:

First, it would require the Federal Government to compensate property owners if Government action reduces the value of property by one-third;

Second, it would provide for alternative dispute resolution procedures and clarify court jurisdiction for takings claims;

Third, it would require Federal agencies responsible for Endangered Species Act and section 404 of the Clean Water Act to provide for administrative procedures to address takings claims; and

Fourth, it would require agencies to perform a takings impact analysis of regulations, and ensure that agencies select the regulatory alternative that minimizes the taking of private property.

Mr. President, these are sweeping reforms. But it is important to point out that our reforms do more than provide that just compensation is paid in proper circumstances. The real test is to minimize the number of takings that occur in the first instance. We need to ensure that when we pursue otherwise laudable goals, that we do so in ways that allow the Government to take private property only as a last resort, and when it is necessary to do so, to insist that just compensation is paid to the property owner. The Omnibus Property Rights Act of 1995 accomplishes these goals, and I intend to bring this bill to the floor as soon as possible. I urge my colleagues to support this much-needed legislation.

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. 605

*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 "Omnibus Property Rights Act of 1995".

#### TITLE I—FINDINGS AND PURPOSES

##### SEC. 101. FINDINGS.

The Congress finds that—

(1) the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government;

(2) the framers of the United States Constitution, in order to protect private property and liberty, devised a framework of Government designed to diffuse power and limit Government;

(3) to further ensure the protection of private property, the fifth amendment to the United States Constitution was ratified to prevent the taking of private property by the Federal Government, except for public use and with just compensation;

(4) the purpose of the takings clause of the fifth amendment of the United States Constitution, as the Supreme Court stated in *Armstrong v. United States*, 364 U.S. 40, 49 (1960), is "to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole";

(5) the Federal Government has singled out property holders to shoulder the cost that should be borne by the public, in violation of the just compensation requirement of the takings clause of the fifth amendment of the United States Constitution;

(6) there is a need both to restrain the Federal Government in its overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people; and

(7) the incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment of the United States Constitution has been ineffective and costly and there is a need for Congress to clarify the law and provide an effective remedy.

##### SEC. 102. PURPOSE.

The purpose of this Act is to encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government by—

(1) the establishment of a new Federal judicial claim in which to vindicate and protect property rights;

(2) the simplification and clarification of court jurisdiction over property right claims;

(3) the establishment of an administrative procedure that requires the Federal Government to assess the impact of government action on holders of private property;

(4) the minimization, to the greatest extent possible, of the taking of private property by the Federal Government and to ensure that just compensation is paid by the Government for any taking; and

(5) the establishment of administrative compensation procedures involving the enforcement of the Endangered Species Act of 1973 and section 404 of the Federal Water Pollution Control Act.

#### TITLE II—PROPERTY RIGHTS LITIGATION RELIEF

##### SEC. 201. FINDINGS.

The Congress finds that—

(1) property rights have been abrogated by the application of laws, regulations, and other actions by the Federal Government that adversely affect the value of private property;

(2) certain provisions of sections 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act), that delineate the jurisdiction of courts hearing property rights claims, complicates the ability of a property owner to vindicate a property owner's right to just compensation for a governmental action that has caused a physical or regulatory taking;

(3) current law—

(A) forces a property owner to elect between equitable relief in the district court and monetary relief (the value of the property taken) in the United States Court of Federal Claims;

(B) is used to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims; and

(C) is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should seek equitable relief in district court;

(4) property owners cannot fully vindicate property rights in one court;

(5) property owners should be able to fully recover for a taking of their private property in one court;

(6) certain provisions of section 1346 and 1402 and chapter 91 of title 28, United States Code (commonly known as the Tucker Act) should be amended, giving both the district courts of the United States and the Court of Federal Claims jurisdiction to hear all claims relating to property rights; and

(7) section 1500 of title 28, United States Code, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and made by the same plaintiff, should be repealed.

##### SEC. 202. PURPOSES.

The purposes of this title are to—

(1) establish a clear, uniform, and efficient judicial process whereby aggrieved property owners can obtain vindication of property rights guaranteed by the fifth amendment to the United States Constitution and this Act;

(2) amend the Tucker Act, including the repeal of section 1500 of title 28, United States Code;

(3) rectify the constitutional imbalance between the Federal Government and the States; and

(4) require the Federal Government to compensate property owners for the deprivation of property rights that result from State agencies' enforcement of federally mandated programs.

##### SEC. 203. DEFINITIONS.

For purposes of this title the term—

(1) "agency" means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government;

(2) "agency action" means any action or decision taken by an agency that—

(A) takes a property right; or

(B) unreasonably impedes the use of property or the exercise of property interests;

(3) "just compensation"—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken and business losses arising from a taking, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(4) "owner" means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(5) "private property" or "property" means all property protected under the fifth amendment to the Constitution of the United States, any applicable Federal or State law, or this Act, and includes—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;



(iv) easements;  
 (v) leaseholds;  
 (vi) recorded liens; and  
 (vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded lines on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy;

(D) property rights provided by, or memorialized in, a contract, except that such rights shall not be construed under this title to prevent the United States from prohibiting the formation of contracts deemed to harm the public welfare or to prevent the execution of contracts for—

(i) national security reasons; or

(ii) exigencies that present immediate or reasonably foreseeable threats or injuries to life or property;

(E) any interest defined as property under State law; or

(F) any interest understood to be property based on custom, usage, common law, or mutually reinforcing understandings sufficiently well-grounded in law to back a claim of interest;

(6) "State agency" means any State department, agency, political subdivision, or instrumentality that—

(A) carries out or enforces a regulatory program required under Federal law;

(B) is delegated administrative or substantive responsibility under a Federal regulatory program; or

(C) receives Federal funds in connection with a regulatory program established by a State,

if the State enforcement of the regulatory program, or the receipt of Federal funds in connection with a regulatory program established by a State, is directly related to the taking of private property seeking to be vindicated under this Act; and

(7) "taking of private property", "taking", or "take"—

(A) means any action whereby private property is directly taken as to require compensation under the fifth amendment to the United States Constitution or under this Act, including by physical invasion, regulation, exaction, condition, or other means; and

(B) shall not include—

(i) a condemnation action filed by the United States in an applicable court; or

(ii) an action filed by the United States relating to criminal forfeiture.

#### SEC. 204. COMPENSATION FOR TAKEN PROPERTY.

(a) IN GENERAL.—No agency or State agency, shall take private property except for public use and with just compensation to the property owner. A property owner shall receive just compensation if—

(1) as a consequence of an action of any agency, or State agency, private property (whether all or in part) has been physically invaded or taken for public use without the consent of the owner; and

(2)(A) such action does not substantially advance the stated governmental interest to be achieved by the legislation or regulation on which the action is based;

(B) such action exacts the owner's constitutional or otherwise lawful right to use the property or a portion of such property as a condition for the granting of a permit, license, variance, or any other agency action without a rough proportionality between the stated need for the required dedication and the impact of the proposed use of the property;

(C) such action results in the property owner being deprived, either temporarily or

permanently, of all or substantially all economically beneficial or productive use of the property or that part of the property affected by the action without a showing that such deprivation inheres in the title itself;

(D) such action diminishes the fair market value of the affected portion of the property which is the subject of the action by 33 percent or more with respect to the value immediately prior to the governmental action; or

(E) under any other circumstance where a taking has occurred within the meaning of the fifth amendment of the United States Constitution.

(b) NO CLAIM AGAINST STATE OR STATE INSTRUMENTALITY.—No action may be filed under this section against a State agency for carrying out the functions described under section 203(6).

(c) BURDEN OF PROOF.—(1) The Government shall bear the burden of proof in any action described under—

(A) subsection (a)(2)(A), with regard to showing the nexus between the stated governmental purpose of the governmental interest and the impact on the proposed use of private property;

(B) subsection (a)(2)(B), with regard to showing the proportionality between the exaction and the impact of the proposed use of the property; and

(C) subsection (a)(2)(C), with regard to showing that such deprivation of value inheres in the title to the property.

(2) The property owner shall have the burden of proof in any action described under subsection (a)(2)(D), with regard to establishing the diminution of value of property.

(d) COMPENSATION AND NUISANCE EXCEPTION TO PAYMENT OF JUST COMPENSATION.—(1) No compensation shall be required by this Act if the owner's use or proposed use of the property is a nuisance as commonly understood and defined by background principles of nuisance and property law, as understood within the State in which the property is situated, and to bar an award of damages under this Act, the United States shall have the burden of proof to establish that the use or proposed use of the property is a nuisance.

(2) Subject to paragraph (1), if an agency action directly takes property or a portion of property under subsection (a), compensation to the owner of the property that is affected by the action shall be either the greater of an amount equal to—

(A) the difference between—

(i) the fair market value of the property or portion of the property affected by agency action before such property became the subject of the specific government regulation; and

(ii) the fair market value of the property or portion of the property when such property becomes subject to the agency action; or

(B) business losses.

(e) TRANSFER OF PROPERTY INTEREST.—The United States shall take title to the property interest for which the United States pays a claim under this Act.

(f) SOURCE OF COMPENSATION.—Awards of compensation referred to in this section, whether by judgment, settlement, or administrative action, shall be promptly paid by the agency out of currently available appropriations supporting the activities giving rise to the claims for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

#### SEC. 205. JURISDICTION AND JUDICIAL REVIEW.

(a) IN GENERAL.—A property owner may file a civil action under this Act to challenge

the validity of any agency action that adversely affects the owner's interest in private property in either the United States District Court or the United States Court of Federal Claims. This section constitutes express waiver of the sovereign immunity of the United States. Notwithstanding any other provision of law and notwithstanding the issues involved, the relief sought, or the amount in controversy, each court shall have concurrent jurisdiction over both claims for monetary relief and claims seeking invalidation of any Act of Congress or any regulation of an agency as defined under this Act affecting private property rights. The plaintiff shall have the election of the court in which to file a claim for relief.

(b) STANDING.—Persons adversely affected by an agency action taken under this Act shall have standing to challenge and seek judicial review of that action.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—(1) Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, in cases not sounding in tort, or for invalidation of any Act of Congress or any regulation of an executive department that adversely affects private property rights in violation of the fifth amendment of the United States Constitution";

(B) in paragraph (2) by inserting before the first sentence the following: "In any case within its jurisdiction, the Court of Federal Claims shall have the power to grant injunctive and declaratory relief when appropriate."; and

(C) by adding at the end thereof the following new paragraphs:

"(4) In cases otherwise within its jurisdiction, the Court of Federal Claims shall also have ancillary jurisdiction, concurrent with the courts designated in section 1346(b) of this title, to render judgment upon any related tort claim authorized under section 2674 of this title.

"(5) In proceedings within the jurisdiction of the Court of Federal Claims which constitute judicial review of agency action (rather than de novo proceedings), the provisions of section 706 of title 5 shall apply."

(2)(A) Section 1500 of title 28, United States Code, is repealed.

(B) The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

#### SEC. 206. STATUTE OF LIMITATIONS.

The statute of limitations for actions brought under this title shall be 6 years from the date of the taking of private property.

#### SEC. 207. ATTORNEYS' FEES AND COSTS.

The court, in issuing any final order in any action brought under this title, shall award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff.

#### SEC. 208. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to interfere with the authority of any State to create additional property rights.

#### SEC. 209. EFFECTIVE DATE.

The provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to any agency action that occurs after such date.

### TITLE III—ALTERNATIVE DISPUTE RESOLUTION

#### SEC. 301. ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Either party to a dispute over a taking of private property as defined under this Act or litigation commenced under title II of this Act may elect to resolve the dispute through settlement or arbitration. In the administration of this section—

(1) such alternative dispute resolution may only be effectuated by the consent of all parties;

(2) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(3) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this Act.

(b) COMPENSATION AS A RESULT OF ARBITRATION.—The amount of arbitration awards shall be paid from the responsible agency's currently available appropriations supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(c) REVIEW OF ARBITRATION.—Appeal from arbitration decisions shall be to the United States District Court or the United States Court of Federal Claims in the manner prescribed by law for the claim under this Act.

(d) PAYMENT OF CERTAIN COMPENSATION.—In any appeal under subsection (c), the amount of the award of compensation shall be promptly paid by the agency from appropriations supporting the activities giving rise to the claim for compensation currently available at the time of final action on the appeal. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

### TITLE IV—PRIVATE PROPERTY TAKING IMPACT ANALYSIS

#### SEC. 401. FINDINGS AND PURPOSE.

The Congress finds that—

(1) the Federal Government should protect the health, safety, welfare, and rights of the public; and

(2) to the extent practicable, avoid takings of private property by assessing the effect of government action on private property rights.

#### SEC. 402. DEFINITIONS.

For purposes of this title the term—

(1) "agency" means an agency as defined under section 203 of this Act, but shall not include the General Accounting Office;

(2) "rule" has the same meaning as such term is defined under section 551(4) of title 5, United States Code; and

(3) "taking of private property" has the same meaning as such term is defined under section 203 of this Act.

#### SEC. 403. PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

(a) IN GENERAL.—(1) The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this title; and

(B) subject to paragraph (2), all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related

agency action which is likely to result in a taking of private property.

(2) The provisions of paragraph (1)(B) shall not apply to—

(A) an action in which the power of eminent domain is formally exercised;

(B) an action taken—

(i) with respect to property held in trust by the United States; or

(ii) in preparation for, or in connection with, treaty negotiations with foreign nations;

(C) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(D) a study or similar effort or planning activity;

(E) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(F) the placement of a military facility or a military activity involving the use of solely Federal property;

(G) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(H) any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under section 553(b)(B) of title 5, United States Code, if the taking impact analysis is completed after the emergency action is carried out or the regulation is published.

(3) A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(4) Each agency shall provide an analysis required under this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with a proposed regulation.

(b) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) The Attorney General of the United States shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) No later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall submit a report to the Director of the Office of Management and Budget and the Attorney General of the United States identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation under the just compensation

clause of the fifth amendment of the United States Constitution. The Director of the Office of Management and Budget and the Attorney General of the United States shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies submitted under this paragraph.

(c) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(1) make each private property taking impact analysis available to the public; and

(2) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(d) PRESUMPTIONS IN PROCEEDINGS.—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(1) such analysis was completed 5 years or more before the date of such action or proceeding; and

(2) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

#### SEC. 404. DECISIONAL CRITERIA AND AGENCY COMPLIANCE.

(a) IN GENERAL.—No final rule shall be promulgated if enforcement of the rule could reasonably be construed to require an uncompensated taking of private property as defined by this Act.

(b) COMPLIANCE.—In order to meet the purposes of this Act as expressed in section 401 of this title, all agencies shall—

(1) review, and where appropriate, re-promulgate all regulations that result in takings of private property under this Act, and reduce such takings of private property to the maximum extent possible within existing statutory requirements;

(2) prepare and submit their budget requests consistent with the purposes of this Act as expressed in section 401 of this title for fiscal year 1997 and all fiscal years thereafter; and

(3) within 120 days of the effective date of this section, submit to the appropriate authorizing and appropriating committees of the Congress a detailed list of statutory changes that are necessary to meet fully the purposes of section 401 of this title, along with a statement prioritizing such amendments and an explanation of the agency's reasons for such prioritization.

#### SEC. 405. RULES OF CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit any right or remedy, constitute a condition precedent or a requirement to exhaust administrative remedies, or bar any claim of any person relating to such person's property under any other law, including claims made under this Act, section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of—

(A) the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

#### SEC. 406. STATUTE OF LIMITATIONS.

No action may be filed in a court of the United States to enforce the provisions of this title on or after the date occurring 6 years after the date of the submission of the applicable private property taking impact analysis to the Office of Management and Budget.

# TITLE V—PRIVATE PROPERTY OWNERS ADMINISTRATIVE BILL OF RIGHTS

## SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—  
(1) a number of Federal environmental programs, specifically programs administered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), have been implemented by employees, agents, and representatives of the Federal Government in a manner that deprives private property owners of the use and control of property;

(2) as Federal programs are proposed that would limit and restrict the use of private property to provide habitat for plant and animal species, the rights of private property owners must be recognized and respected;

(3) private property owners are being forced by Federal policy to resort to extensive, lengthy, and expensive litigation to protect certain basic civil rights guaranteed by the United States Constitution;

(4) many private property owners do not have the financial resources or the extensive commitment of time to proceed in litigation against the Federal Government;

(5) a clear Federal policy is needed to guide and direct Federal agencies with respect to the implementation of environmental laws that directly impact private property;

(6) all private property owners should and are required to comply with current nuisance laws and should not use property in a manner that harms their neighbors;

(7) nuisance laws have traditionally been enacted, implemented, and enforced at the State and local level where such laws are best able to protect the rights of all private property owners and local citizens; and

(8) traditional pollution control laws are intended to protect the general public's health and physical welfare, and current habitat protection programs are intended to protect the welfare of plant and animal species.

(b) PURPOSES.—The purposes of this title are to—

(1) provide a consistent Federal policy to encourage, support, and promote the private ownership of property; and

(2) to establish an administrative process and remedy to ensure that the constitutional and legal rights of private property owners are protected by the Federal Government and Federal employees, agents, and representatives.

## SEC. 502. DEFINITIONS.

For purposes of this title the term—

(1) "the Acts" means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(2) "agency head" means the Secretary or Administrator with jurisdiction or authority to take a final agency action under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(3) "non-Federal person" means a person other than an officer, employee, agent, department, or instrumentality of—

(A) the Federal Government; or

(B) a foreign government;

(4) "private property owner" means a non-Federal person (other than an officer, employee, agent, department, or instrumentality of a State, municipality, or political subdivision of a State, acting in an official capacity or a State, municipality, or subdivision of a State) that—

(A) owns property referred to under paragraph (5) (A) or (B); or

(B) holds property referred to under paragraph (5) (C);

(5) "property" means—

(A) land;

(B) any interest in land; and

(C) the right to use or the right to receive water; and

(6) "qualified agency action" means an agency action (as that term is defined in section 551(13) of title 5, United States Code) that is taken—

(A) under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); or

(B) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

## SEC. 503. PROTECTION OF PRIVATE PROPERTY RIGHTS.

(a) IN GENERAL.—In implementing and enforcing the Acts, each agency head shall—

(1) comply with applicable State and tribal government laws, including laws relating to private property rights and privacy; and

(2) administer and implement the Acts in a manner that has the least impact on private property owners' constitutional and other legal rights.

(b) FINAL DECISIONS.—Each agency head shall develop and implement rules and regulations for ensuring that the constitutional and other legal rights of private property owners are protected when the agency head makes, or participates with other agencies in the making of, any final decision that restricts the use of private property in administering and implementing this Act.

## SEC. 504. PROPERTY OWNER CONSENT FOR ENTRY.

(a) IN GENERAL.—An agency head may not enter privately owned property to collect information regarding the property, unless the private property owner has—

(1) consented in writing to that entry;

(2) after providing that consent, been provided notice of that entry; and

(3) been notified that any raw data collected from the property shall be made available at no cost, if requested by the private property owner.

(b) NONAPPLICATION.—Subsection (a) does not prohibit entry onto property for the purpose of obtaining consent or providing notice required under subsection (a).

## SEC. 505. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED FROM PRIVATE PROPERTY.

An agency head may not use data that is collected on privately owned property to implement or enforce the Acts, unless—

(1) the agency head has provided to the private property owner—

(A) access to the information;

(B) a detailed description of the manner in which the information was collected; and

(C) an opportunity to dispute the accuracy of the information; and

(2) the agency head has determined that the information is accurate, if the private property owner disputes the accuracy of the information under paragraph (1)(C).

## SEC. 506. RIGHT TO AN ADMINISTRATIVE APPEAL OF WETLANDS DECISIONS.

Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended by adding at the end the following new subsection:

"(u) ADMINISTRATIVE APPEALS.—

"(1) The Secretary or Administrator shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions under this section:

"(A) A determination of regulatory jurisdiction over a particular parcel of property.

"(B) The denial of a permit.

"(C) The terms and conditions of a permit.

"(D) The imposition of an administrative penalty.

"(E) The imposition of an order requiring the private property owner to restore or otherwise alter the property.

"(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the property involved in the action.

"(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995."

## SEC. 507. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE ENDANGERED SPECIES ACT OF 1973.

Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding at the end the following new subsection:

"(i) ADMINISTRATIVE APPEALS.—

"(1) The Secretary shall, after notice and opportunity for public comment, issue rules to establish procedures to allow private property owners or their authorized representatives an opportunity for an administrative appeal of the following actions:

"(A) A determination that a particular parcel of property is critical habitat of a listed species.

"(B) The denial of a permit for an incidental take.

"(C) The terms and conditions of an incidental take permit.

"(D) The finding of jeopardy in any consultation on an agency action affecting a particular parcel of property under section 7(a)(2) or any reasonable and prudent alternative resulting from such finding.

"(E) Any incidental 'take' statement, and any reasonable and prudent measures included therein, issued in any consultation affecting a particular parcel of property under section 7(a)(2).

"(F) The imposition of an administrative penalty.

"(G) The imposition of an order prohibiting or substantially limiting the use of the property.

"(2) Rules issued under paragraph (1) shall provide that any administrative appeal of an action described in paragraph (1) shall be heard and decided by an official other than the official who took the action, and shall be conducted at a location which is in the vicinity of the parcel of property involved in the action.

"(3) An owner of private property may receive compensation, if appropriate, subject to the provisions of section 508 of the Emergency Property Owners Relief Act of 1995."

## SEC. 508. COMPENSATION FOR TAKING OF PRIVATE PROPERTY.

(a) ELIGIBILITY.—A private property owner that, as a consequence of a final qualified agency action of an agency head, is deprived of 33 percent or more of the fair market value, or the economically viable use, of the affected portion of the property as determined by a qualified appraisal expert, is entitled to receive compensation in accordance with the standards set forth in section 204 of this Act.

(b) TIME LIMITATION FOR COMPENSATION REQUEST.—No later than 90 days after receipt of a final decision of an agency head that deprives a private property owner of fair market value or viable use of property for which compensation is required under subsection (a), the private property owner may submit in writing a request to the agency head for compensation in accordance with subsection (c).

(c) OFFER OF AGENCY HEAD.—No later than 180 days after the receipt of a request for compensation, the agency head shall stay the decision and shall provide to the private property owner—

(1) an offer to purchase the affected property of the private property owner at a fair market value assuming no use restrictions under the Acts; and

(2) an offer to compensate the private property owner for the difference between the fair market value of the property without those restrictions and the fair market value of the property with those restrictions.

(d) **PRIVATE PROPERTY OWNER'S RESPONSE.**—(1) No later than 60 days after the date of receipt of the agency head's offers under subsection (c) (1) and (2) the private property owner shall accept one of the offers or reject both offers.

(2) If the private property owner rejects both offers, the private property owner may submit the matter for arbitration to an arbitrator appointed by the agency head from a list of arbitrators submitted to the agency head by the American Arbitration Association. The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on—

(A) the agency head and a private property owner as to the amount, if any, of compensation owed to the private property owner; and

(B) whether the private property owner has been deprived of fair market value or viable use of property for which compensation is required under subsection (a).

(e) **JUDGMENT.**—A qualified agency action of an agency head that deprives a private property owner of property as described under subsection (a), is deemed, at the option of the private property owner, to be a taking under the United States Constitution and a judgment against the United States if the private property owner—

(1) accepts the agency head's offer under subsection (c); or

(2) submits to arbitration under subsection (d).

(f) **PAYMENT.**—An agency head shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbitrator under that subsection, out of currently available appropriations supporting the activities giving rise to the claim for compensation. The agency head shall pay to the extent of available funds any compensation under this section not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively. If insufficient funds are available to the agency in the fiscal year in which the award becomes final, the agency shall either pay the award from appropriations available in the next fiscal year or promptly seek additional appropriations for such purpose.

(g) **FORM OF PAYMENT.**—Payment under this section, as that form is agreed to by the agency head and the private property owner, may be in the form of—

(1) payment of an amount equal to the fair market value of the property on the day before the date of the final qualified agency action with respect to which the property or interest is acquired; or

(2) a payment of an amount equal to the reduction in value.

#### **SEC. 509. PRIVATE PROPERTY OWNER PARTICIPATION IN COOPERATIVE AGREEMENTS.**

Section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended by adding at the end the following new subsection:

“(j) Notwithstanding any other provision of this section, when the Secretary enters into a management agreement under subsection (b) with any non-Federal person that establishes restrictions on the use of property, the Secretary shall notify all private

property owners or lessees of the property that is subject to the management agreement and shall provide an opportunity for each private property owner or lessee to participate in the management agreement.”.

#### **SEC. 510. ELECTION OF REMEDIES.**

Nothing in this title shall be construed to—

(1) deny any person the right, as a condition precedent or as a requirement to exhaust administrative remedies, to proceed under title II or III of this Act;

(2) bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(3) constitute a conclusive determination of—

(A) the value of property for purposes of an appraisal for the acquisition of property, or for the determination of damages; or

(B) any other material issue.

#### **TITLE VI—MISCELLANEOUS**

##### **SEC. 601. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

##### **SEC. 602. EFFECTIVE DATE.**

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment and shall apply to any agency action of the United States Government after such date.

Mr. HATCH. Mr. President, I am pleased today to support the introduction of the Omnibus Property Rights Act of 1995. This bill is an omnibus property rights measure that combines four different approaches, contained in separate titles in the act, designed to protect private property from Federal Government intrusion. The citizens of Utah understand that the right to own property is a precious fundamental right, one which is vulnerable to an overbearing Federal Government.

At my urging, four different approaches contained in various bills, bills designed to protect private property from Federal Government intrusion and introduced by several Senators, were merged in a single bill. I believed that the combination of these approaches would be far more efficacious in protecting private property than in just relying on a single strategy. This omnibus bill is the product of almost a year of work and countless drafts and represents the most sophisticated legislative mechanism to foster and protect the private ownership of property. I want to commend Senators DOLE, GRAMM of Texas, SHELBY, NICKLES, BROWN, CRAIG, LOTT, HEFLIN, KYL, ABRAHAM, and THOMAS, and their staffs, for participating in this project. I intend to hold formal hearings on this bill in the very near future.

The first approach under the bill encompasses property rights litigation reform. This approach, advocated by myself and in part by Senator GRAMM of Texas, establishes a distinct Federal fifth amendment takings claim against Federal agencies by aggrieved property

owners, thus clarifying the sometimes incoherent and contradictory constitutional property rights case law. It also resolves the jurisdictional dispute between the Federal district courts and the Court of Federal Claims over fifth amendment takings cases. It is a refinement of a proposal I placed in the CONGRESSIONAL RECORD on October 7, 1994.

The second approach, promoted by Senator DOLE, in essence codifies President Reagan's Executive Order 12630. Under this approach, a Federal agency must conduct a private property taking impact analysis before issuing or promulgating any policy, regulation, or related agency action which is likely to result in a taking of private property. Significantly, we have added to this section a reform provision that prohibits any rule from becoming final if the rule could reasonably be construed when enforced to result in an uncompensated taking of private property.

The third approach, initiated by Senators SHELBY and NICKLES, establishes an agency administrative appellate and compensation procedure for takings of real property during enforcement and administration of both the Endangered Species Act and the Wetlands Preservation Program under section 404 of the Clean Water Act.

These acts present special enforcement problems and an agency appellate and compensation procedure allows the agency and the aggrieved party the option to avoid litigation. The fourth approach provides for alternative dispute resolution in arbitration proceedings. I must add that the bill provides for a complete election of remedies. If a decision of an agency appeal is unreasonably delayed, an aggrieved party may drop the appeal and litigate according to the terms of the act. These four approaches, established by the Omnibus Property Rights Act, together function to empower the property owner with mechanisms to vindicate the fundamental constitutional right of private ownership of property, while instituting powerful incentives for Federal agencies both to protect private property and include such protection in agency planning and regulating.

#### **IMPORTANCE OF PRIVATE PROPERTY**

The private ownership of property is essential to a free society and is an integral part of our Judeo-Christian culture and the Western tradition of liberty and limited government. Private ownership of property and the sanctity of property rights reflects the distinction in our culture between a pre-existing civil society and the state that is consequently established to promote order. Private property creates the social and economic organizations that counterbalance the power of the state by providing an alternative source of power and prestige to the state itself. It is therefore a necessary condition of liberty and prosperity.

While government is properly understood to be instituted to protect liberty within an orderly society and such liberty is commonly understood to include the right of free speech, assembly, religious exercise, and other rights such as those enumerated in the Bill of Rights, it is all too often forgotten that the right of private ownership of property is also a critical component of liberty. To the 17th-century English political philosopher, John Locke, who greatly influenced the Founders of our Republic, the very role of government is to protect property: "The great and chief end therefore, on Men uniting into Commonwealths, and putting themselves under Government, is the preservation of their property." [J. Locke, *Second Treatise* ch. 9, §124, in J. Locke, *"Two Treatises of Government"* (1698)]. The Framers of our Constitution likewise viewed the function of government as one of fostering individual liberties through the protection of property interests. James Madison, termed the "Father of the Constitution," unhesitatingly endorsed this Lockean viewpoint when he wrote in the *Federalist* No. 54 that "[government] is instituted no less for the protection of property, than of the persons of individuals." Indeed, to Madison, the private possession of property was viewed as a natural and individual right both to be protected against government encroachment and to be protected by government against others.

To be sure, the private ownership of property was not considered absolute. Property owners could not exercise their rights as a nuisance that harmed their neighbors, and Government could use, what was termed in the 18th century, its despotic power of eminent domain to seize property for public use. Justice, it became to be believed, required compensation for the property taken by Government. The earliest example of a compensation requirement is found in chapter 28 of the *Magna Carta* of 1215, which reads:

No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

But the record of English and colonial compensation for taken property was spotty at best, although it has been argued by some historians and legal scholars that compensation for takings of property became recognized as customary practice during the American colonial period. [See W. Stoebe, "A General Theory of Eminent Domain," 47 *Wash. L. Rev.* 53 (1972)].

Nevertheless, by American independence the compensation requirement was considered a necessary restraint on arbitrary governmental seizures of property. The Vermont Constitution of 1777, the Massachusetts Constitution of 1780, and the Northwest Ordinance of 1787, recognized that compensation must be paid whenever property was taken for general public use or for pub-

lic exigencies. And although accounts of the 1791 congressional debate over the Bill of Rights provide no evidence of why a public use and just compensation requirement for takings of private property was eventually included in the fifth amendment, James Madison, the author of the fifth amendment, reflected the views of other supporters of the new Constitution who feared the example to the new Congress of uncompensated seizures of property for building of roads and forgiveness of debts by radical State legislatures. Consequently, the phrase "[n]or shall private property be taken for public use, without just compensation" was included within the fifth amendment to the Constitution.

#### THE MODERN THREAT TO PROPERTY RIGHTS

Despite this historical pedigree and the constitutional requirement for the protection of property rights, the America of the mid- and late-20th century has witnessed an explosion of Federal regulation of society that has jeopardized the private ownership of property with the consequent loss of individual liberty. Indeed, the most recent estimate of the direct—that is, not counting indirect costs such as higher consumer prices—cost of Federal regulation was \$857 billion for 1992. Today, the cost to the society probably is approaching \$1 trillion. According to economist Paul Craig Roberts, the number of laws Americans are forced to endure has risen a staggering 3,000 percent since the turn of the century. Every day the *Federal Register* grows by an incredible 200 pages, containing new rules and obligations imposed on the American people by supposedly their Government.

Furthermore, even the very concept of private property is under attack. Indeed, certain environmental activists have termed private property an "outmoded concept" which presents an impediment to the Federal Government's resolution of society's problems. It is this type of thinking that has led regulators, in the rush of governmental social engineering, to ignore individual rights. Here are just a few of the hundreds—if not thousands—of examples that occur nationwide:

Mrs. Nellie Edwards was the owner of 36 acres of prime land that was seized by the city of Provo, UT, last year for an airport expansion project. Mrs. Edwards received only \$21,500 for her land, which was well below the expected market value of the land because, unbeknownst to her, the Army Corps of Engineers had arbitrarily classified part of her land as a wetland. Mrs. Edwards, in essence, was victimized by the low-land value attached to wetlands. But the infuriating part of this sad story is that an investigator examined her land and saw absolutely no water or wildlife present on the land.

Ocie Mills, a Florida builder, and his son were sent to prison for 2 years for violating the Clean Water Act for placing sand on a quarter-acre lot he owned;

Under this same act, a small Oregon school district faced a Federal lawsuit for dumping clean fill to build a baseball-soccer field for its students and had to spend thousands of dollars to remove the fill;

Ronald Angelocci was jailed for violating the Clean Water Act for dumping several truckloads of dirt in the backyard of his Michigan home to help a family member who had acute asthma and allergies aggravated by plants in the backyard; and

A retired couple in the Poconos, after obtaining the necessary permits to build their home, was informed by the Army Corps of Engineers—4 years later—that they built their home on wetlands and faced penalties of \$50,000 a day if they did not restore most of the land to its natural state.

See B. Bovard, "Lost Rights," 35 (1944); N. Marzulla, "The Government's War on Property Rights," *Defenders of Property Rights* (1994).

#### CURRENT PROTECTION OF PROPERTY RIGHTS FALL SHORT

Judicial protection of property rights against the regulatory state has been both inconsistent and ineffective. Physical invasions and Government seizures of property have been fairly easy for courts to analyze as a species of eminent domain, not so the effect of regulations which either diminish the value of the property or appropriate a property interest. This key problem to the regulatory takings dilemma was recognized by Justice Oliver Wendell Holmes in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). Just how do courts determine when regulation amounts to a taking? Holmes' answer, "if regulation goes too far it will be recognized as a taking," 260 U.S. at 415, is nothing more than an *ipse dixit*. In the 73 years since *Mahon*, the Court has eschewed any set formula for determining how far is too far, preferring to engage in ad hoc factual inquiries, such as the three-part test made famous by *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), which balances the economic impact of the regulation on property and the character of the regulation against specific restrictions on investment-backed expectations of the property owner.

Despite the valiant attempt by the Rehnquist Court to clarify regulatory takings analysis in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), and in its recent decision of *Dolan v. City of Tigard*, No. 93-518 (June 24, 1994), takings analysis is basically incoherent and confusing and applied by lower courts haphazardly. The incremental, fact-specific approach that courts now must employ in the absence of adequate statutory language to vindicate property rights under the fifth amendment thus has been ineffective and costly. There is, accordingly, a need for Congress to clarify the law by providing bright line standards and an effective remedy. As Chief Judge Loren A. Smith of the

Court of Federal Claims, the court responsible for administering takings claims against the United States, opined in *Bowles v. United States*, 31 Fed. Cl. 37 (1994):

[J]udicial decisions are far less sensitive to societal problems than the law and policy made by the political branches of our great constitutional system. At best courts sketch the outlines of individual rights, they cannot hope to fill in the portrait of wise and just social and economic policy.

This incoherence and confusion over the substance of takings claims is matched by the muddle over jurisdiction of property rights claims. The Tucker Act, which waives the sovereign immunity of the United States by granting the Court of Federal Claims jurisdiction to entertain monetary claims against the United States, actually complicates the ability of a property owner to vindicate the right to just compensation for a Government action that has caused a taking. The law currently forces a property owner to elect between equitable relief in the Federal district court and monetary relief in the Court of Federal Claims. Further difficulty arises when the law is used by the Government to urge dismissal in the district court on the ground that the plaintiff should seek just compensation in the Court of Federal Claims, and is used to urge dismissal in the Court of Federal Claims on the ground that plaintiff should first seek equitable relief in the district court. This Tucker Act shuffle is aggravated by section 1500 of the Tucker Act, which denies the Court of Federal Claims jurisdiction to entertain a suit which is pending in another court and brought by the same plaintiff. Section 1500 is so poorly drafted and has brought so many hardships, that Justice Stevens, in *Keene Corporation v. United States*, 113 S.Ct. 2035, 2048 (1993), has called for its repeal or amendment.

Title II of the Omnibus Property Rights Act, which I introduced as S. 135 in January, addresses these problems. In terms of clarifying the substance of takings claims, it first clearly defines property interests that are subject to the act's takings analysis. In this way a floor definition of property is established by which the Federal Government may not evict. This title also establishes the elements of a takings claim by codifying and clarifying the holdings of the *Nollan*, *Lucas*, and *Dolan* cases. For instance, *Dolan's* rough proportionality test is interpreted to apply to all exaction situations whereby an owner's otherwise lawful right to use property is exacted as a condition for granting a Federal permit. And a distinction is drawn between a noncompensable mere diminution of value of property as a result of Federal regulation and a compensable partial taking, which is defined as any agency action that diminishes the fair market value of the affected property by 33 percent or more. The result of drawing these bright lines will not end fact-specific litigation,

which is endemic to all law suits, but it will ameliorate the ever-increasing ad hoc and arbitrary nature of takings claims.

This title also resolves the jurisdictional confusion over takings claims. Because property owners should be able fully to recover for a taking in one court, the Tucker Act is amended giving both the district courts and the Court of Federal Claims concurrent jurisdiction to hear all claims relating to property rights. Furthermore, to resolve any further jurisdictional ambiguity, section 1500 of the Tucker Act is repealed.

Finally, I want to respond to any suggestion that may arise that this act will impede Government's ability to protect the environment or promote health and safety through regulation. This legislation does not emasculate the Government's ability to prevent individuals or businesses from polluting. It is well established that the Constitution only protects a right to reasonable use of property. All property owners are subject to prior restraints on the use of their property, such as nuisance laws which prevent owners from using their property in a manner that interferes with others. The Government has always been able to prevent harmful or noxious uses of property without being obligated to compensate the property owner, as long as the limitations on the use of property "inhere in the title itself." In other words, the restrictions must be based on "background principles of State property and nuisance law" already extant. The Omnibus Property Rights Act codifies this principle in a nuisance exception to the requirement of the Government to pay compensation.

Nor does the Omnibus Property Rights Act hinder the Government's ability to protect public health and safety. The act simply does not obstruct the Government from acting to prevent imminent harm to the public safety or health or diminish what would be considered a public nuisance. Again, this is made clear in the provision of the act that exempts nuisance from compensation. What the act does is force the Federal Government to pay compensation to those who are singled out to pay for regulation that benefits the entire public. In other words, it does not prevent regulation, but fulfills the promise of the fifth amendment, which the Supreme Court in *Armstrong v. United States*, 364 U.S. 40, 49 (1960), opined is:

to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole.

Mr. BURNS. Mr. President, I rise today as an original cosponsor to the Omnibus Private Property Act. Since the beginning of this Congress, many bills to protect private property rights have been introduced. This bill encompasses those bills in a comprehensive proposal.

For too long, Washington has disregarded the fifth amendment to our

Constitution. Laws, regulations, and other actions have allowed the rights of private property owners to be abused. Now we have the opportunity to provide a consistent Federal policy to encourage, support, and promote the private ownership of property and to ensure the constitutional and legal rights of private property owners.

The legislation we are introducing reaffirms our private property rights. It requires compensation for a loss of property value when the Federal Government takes certain actions. The bill also allows for taking disputes to be resolved through settlement or arbitration as an alternative to litigation. In addition, the Omnibus Private Property Rights Act requires that the Federal agencies responsible for enforcing the Endangered Species Act and the Clean Water Act establish procedures so private property owners may appeal actions and seek compensation.

Another important aspect of the bill deals with regulations. This bill requires that taking impact analysis be conducted prior to promulgating regulations. If these actions result in a loss of 33 percent of value of the property, compensation is required.

Montanans believe that protecting private property is of utmost importance. And Congress should pass the Omnibus Property Rights Act which reinforces the Government's responsibility to protect property rights and will help get the Federal Government off the backs of Montana's working men and women.

Mr. MACK. Mr. President, I am proud to be an original cosponsor of the Omnibus Property Rights Act of 1995. I thank Senator HATCH and my other colleagues who drafted this bill which seeks to stop Government from infringing upon its citizens' private property rights.

Private property rights are fundamental to a free and fair society. Last June, Chief Justice Rehnquist wrote on behalf of the majority, "We see no reason why the takings clause of the fifth amendment, as much a part of the Bill of Rights as the first amendment or fourth amendment, should be relegated to the status of a poor relation."

Over the past several years, we have seen Federal bureaucrats trample our fifth amendment right that private property shall not, "\* \* \* be taken for public use without just compensation." There are countless examples of people forced to spend their time and money fighting their own Government for the simple right to use their land. Unfortunately, there are even more citizens who never make it to court because they cannot afford lawyers to help them fight for their rights. In these cases, Government has robbed its citizens of the use of their property, without even compensating them. It makes you wonder if the American people still



control their Government or if our U.S. Government now controls us.

The Omnibus Property Rights Act will restore the basic rights accorded to private property owners by our Founding Fathers in the Bill of Rights. It will slash through the bureaucracy that has rendered those rights meaningless, and it will preserve for future generations the essential freedoms and rights upon which America was founded.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 606. A bill to make improvements in pipeline safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PIPELINE SAFETY ENHANCEMENT ACT OF 1995

• Mr. BRADLEY. Mr. President, I introduce legislation that will save lives and property: the Pipeline Safety Enhancement Act. I am very pleased to announce that my colleague, Senator LAUTENBERG, is joining me as a cosponsor of this bill.

Exactly 1 year ago today, at 11:55 p.m., a fireball lit up the sky in Edison, NJ. This eerie light was visible for miles around. At ground zero, a plume of fire and smoke rose hundreds of feet in the air. Within minutes, nearby apartment buildings caught fire. Within hours, these buildings were utterly gone. Hundreds of people were rendered homeless, their possessions completely destroyed.

The physical casualties were miraculously low. Yet, damage was done. The nightmares persist. The memory and the fear remain.

The community is rebuilding. The victims are healing and moving on. But, issues raised by the blast remain unresolved.

Edison spurred a national debate on how we manage pipeline safety. My comprehensive one-call legislation—introduced in the House by Congressman PALLONE—came within a hairsbreadth of becoming law last Congress. The signals are positive for this year: it's a truly bipartisan issue—Senators SPECTER and LOTT have joined Senators LAUTENBERG and EXON and myself as cosponsors—pushed by a powerful private sector coalition.

Since the Edison accident and the introduction of legislation, the value of these one-call notification programs have been recognized by the State of New Jersey, which now has a first-class program, the National Transportation Safety Board and the U.S. Department of Transportation. In fact, the need for a better program is a central feature of the pipeline safety reauthorization bill being proposed by the Secretary of Transportation and the Administration.

There's more to the story, however. On February 7, 1995, the NTSB issued safety recommendations stemming from the Edison disaster. These recommendations should be taken very seriously. Edison was a wake-up call,

where only by a miracle literally hundreds of people escaped serious injury. They certainly weren't saved by our public policies.

My legislation will codify the NTSB recommendations into law. My bill will call for stronger materials in our pipelines, better pipeline identification procedures, improved leak detection, more effective safety inspection requirements and new analysis of siting risks. Every one of these is included specifically in the NTSB report.

Mr. President, this is needed. This is also the least we can do. I urge my colleagues to consider this legislation carefully and pass it without delay.

Mr. President, I ask unanimous consent to have a brief description of the bill and the bill text be printed in the RECORD.

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

S. 606

*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 "Pipeline Safety Enhancement Act of 1995".

**SEC. 2. IMPROVEMENTS IN PIPELINE SAFETY.**

(a) **TOUGHNESS STANDARDS.**—Section 60102 of title 49, United States Code, is amended by adding at the end the following new subsections:

“(1) **TOUGHNESS STANDARDS.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of the Pipeline Safety Enhancement Act of 1995, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration of the Department of Transportation (referred to in this section as the ‘Research and Special Programs Administration’), shall prescribe minimum standards for toughness (as defined and determined by the Secretary of Transportation, in consultation with the appropriate officials of the Research and Special Programs Administration) for new pipes installed in gas pipeline facilities and hazardous liquid pipeline facilities.

“(2) **HIGH-DENSITY POPULATION AREAS.**—In establishing the minimum standards for toughness under paragraph (1), the Secretary of Transportation shall give particular attention to the installation of new pipes in high-density population areas (as such term is used in section 60109).

“(3) **PIPE DEFINED.**—For purposes of this subsection, the term ‘pipe’ means any pipe or tubing used in the transportation of gas, including pipe-type holders.

“(m) **MARKINGS.**—

“(1) **IN GENERAL.**—Not later 180 days after the date of enactment of the Pipeline Safety Enhancement Act of 1995, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration, shall prescribe minimum standards that require for the marking of pipelines in class 3 and class 4 locations (as such terms are used in subpart L of part 192 of title 49, Code of Federal Regulations, as in effect on the day before the date of enactment of the Pipeline Safety Enhancement Act of 1995) to identify hazardous liquid pipeline facilities and high-pressure pipelines.

“(2) **HIGH-PRESSURE PIPELINE DEFINED.**—For purposes of this subsection, the term ‘high-pressure pipeline’ means any gas pipeline in which the gas pressure is higher than that provided to the customer.

“(n) **TESTING.**—

“(1) **IN GENERAL.**—Not later than one year after the date of enactment of the Pipeline Safety Enhancement Act of 1995, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration, shall include in the minimum safety standards prescribed under subsection (a) a requirement that each operator of a gas pipeline facility or hazardous liquid pipeline facilities conduct, on a periodic basis, inspections or tests capable of identifying damage caused by corrosion and other time-dependent damage that may be detrimental to the continued safe operation of the pipeline and that may necessitate remedial action, in order to determine the adequacy of the pipeline facility to operate at established maximum allowable operating pressure.

“(2) **MAXIMUM ALLOWABLE OPERATING PRESSURE DEFINED.**—For purposes of this subsection, the term ‘maximum allowable operating pressure’ means the maximum pressure at which a pipeline or a segment of a pipeline may be operated under regulations issued under this chapter.”.

(b) **ASSESSMENT OF PUBLIC EDUCATION PROGRAM CONCERNING LEAK DETECTION.**—Section 60116 of title 49, United States Code, is amended—

(1) by inserting “(a) **IN GENERAL.**—” before “Under regulations”; and

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

“(b) **ASSESSMENT.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of enactment the Pipeline Safety Enhancement Act of 1995, and every two years thereafter, the Secretary of Transportation, in consultation with appropriate officials of the Research and Special Programs Administration of the Department of Transportation, shall conduct an assessment of the programs conducted under this section to determine—

“(A) with respect to the programs conducted under this section—

“(i) the appropriateness of the information provided; and

“(ii) the effectiveness of the educational techniques used; and

“(B) in comparison to other similar educational programs, the relative effectiveness of educational techniques used in the programs conducted under this section.

“(2) **REGULATIONS.**—Upon completion of an assessment conducted under paragraph (1), the Secretary, in consultation with the appropriate officials of the Research and Special Programs Administration, shall promulgate such regulations as the Secretary determines to be appropriate to improve the programs conducted under this section.”.

(c) **STUDY.**—The Secretary of Transportation shall take such action as may be necessary to expedite the completion of the study conducted by the Research and Special Programs Administration of the Department of Transportation relating to methods to reduce public safety risks in the siting pipeline facilities. In addition, the scope of the study referred to in the previous sentence shall be modified to include the consideration of building standards. The Secretary of Transportation shall ensure that the results of the study are widely available to the governments of States and political subdivisions thereof.

PIPELINE SAFETY ENHANCEMENT ACT

This legislation would codify recommendations made by the National Transportation Safety Board. This independent safety board made specific safety recommendations to the

federal government on February 7, 1995. At that time, the NTSB released a report on the natural gas pipeline disaster that occurred at Edison, NJ, on March 23, 1994.

The Pipeline Safety Enhancement Act will include the following five requirements which are identified specifically in the Edison safety report:

(1) that the Secretary of Transportation develop minimum standards for the strength of new pipe installed for natural gas and hazardous liquid pipelines; the Secretary is to give special consideration to the use of pipe in high-density population areas (such as Edison, NJ);

(2) that there be established minimum standards for the permanent marking of pipelines in high-density areas;

(3) that minimum safety standards for pipeline operators include a protocol for periodic inspection and appropriate tests for pipeline damage;

(4) that there be an assessment and improvement of public education programs concerning pipeline leak detection;

(5) that ongoing studies on the safety risks associated with pipeline siting be expedited and that the analysis also include the effect of building standards on risk.

This legislation would be complementary to legislation already introduced by Senator Bradley on comprehensive "one-call" notification and other pipeline safety issues.●

● Mr. LAUTENBERG. Mr. President, I express my strong support for the Pipeline Safety Enhancement Act of 1995. This legislation, which Senator BRADLEY and I are introducing today, is based upon recommendations made by the National Transportation Safety Board as a result of its investigation into the Edison pipeline exposition.

It was 1 year ago today that residents of the Durham Woods Apartments in Edison, NJ, ran for their lives to escape a ball of fire that lit up the night sky. The heat of the fire was so intense that it burned the clothes off people's backs and singed their bare feet as they escaped over the hot pavement.

On this painful anniversary, people in New Jersey are reflecting on the horror of a year ago. All too often, disasters get just 15 minutes in the news and are forgotten. But for New Jersey, the Edison explosion lives on. We are not prepared to rest until we can guarantee that this tragedy will not be repeated.

Mr. President, today Senator BRADLEY and I are introducing legislation to significantly increase pipeline safety. This is the third bill that we have introduced in the last year to protect the thousands of Americans who live, work, or go to school in the vicinity of a pipeline.

The Pipeline Safety Enhancement Act would:

Direct the Department of Transportation to develop toughness standards for new pipes installed in gas and hazardous liquid pipelines, particularly in urban areas;

Establish standards for permanent markings that identify the location of high-pressure natural gas and hazardous liquid pipelines in urban, industrial and commercial areas;

Establish minimum safety standards for pipeline operators, including a protocol for periodic inspection and appropriate tests for pipeline damage;

Assess and improve public education programs concerning pipeline leak detection; and

Require that ongoing studies on the safety risks associated with pipeline siting be expedited and that the analysis also include the effect of building standards on risk.

Over the last year, we have taken positive steps to increase pipeline safety. However, I will not rest in my efforts to improve pipeline safety until I can personally vouch for the safety of every American who lives or works near a pipeline, and until we can promise the children of Edison that there will never again be an explosion like the one they endured at Durham Woods.

Since last March, I have seen and heard the devastation that followed this explosion. I have met with families who lost everything but the clothes on their back. I have heard from children who continue to wake up sweating in the middle of the night—still on the run a year later from that fiery ball of smoke.

I have learned about residents who lost their lives' work, like the scientist who was struggling to support his wife, his mother and two small children—and then saw his dissertation, his dream of a better life for his family, disappear in the tangled plastic of a melted computer.

For New Jersey, the Edison pipeline explosion was an unparalleled tragedy. But the truth is that this was no isolated event. There were pipeline problems in other places before March 23. And there have been pipeline problems since. I want to put these events deep into the recesses of history.

Senator BRADLEY and I believe that the Pipeline Safety Enhancement Act would do just that. If this bill and other bills Senator BRADLEY and I have introduced on this subject had been the law before March 23, 1994, life at Durham Woods would not have taken such a tragic turn.

Mr. President, today, we all should reflect on the 1-year anniversary of the Edison explosion. I pray for the victims who still suffer from the fallout of this disaster. I hope that Congress has learned an important lesson. And I pledge to continue to fight for improvements in pipeline safety so no other community will ever be doomed to undergo the trauma of a pipeline explosion.●

By Mr. WARNER (for himself and Mr. REID):

S. 607. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes; to the Committee on Environment and Public Works.

THE SUPERFUND RECYCLING EQUITY ACT OF 1995

Mr. WARNER. Mr. President, I am introducing today, along with my distinguished colleague from Nevada, Senator REID, the Superfund Recycling Equity Act of 1995.

This bill will allow the private sector to respond more freely to increased demands for recycling by removing many of the unintended impediments that Superfund has placed on recycling activities.

As a member of the Committee on Environment and Public Works, I have come to learn from the many expert witnesses who have testified before the committee that Superfund has the unintentional consequence of penalizing those who prepare materials for recycling. Federal courts have ruled that Superfund imposes "generator" liability on persons who sell secondary materials that are diverted from the waste stream for recycling. These rulings come from an overly broad interpretation of the law's provision which imposes liability on those who arrange for disposal of waste. Unfortunately, these courts have presumed that any transaction of material which is no longer useful in its current form is a waste treatment or disposal transaction. This legislation clarifies that legitimate recycling transactions are not, and were not intended to be, subject to Superfund's liability scheme.

The legislation I am introducing today will place traditional recyclable, or secondary, materials which are used as feedstocks in the manufacturing process on closer to equal footing with virgin, or primary materials counterparts. Traditional recyclables are paper, glass, plastic, metals, textiles, and rubber.

The sale of virgin material feedstocks—sold for the same or similar purpose as the recyclable feedstocks—is not considered to be an arrangement for treatment or disposal of hazardous substance. The sale of recyclables should be treated the same. If recyclables are not similarly treated, and those who prepare recyclables for the market face greater liability exposure than their competitors who sell virgin materials, a market disadvantage is created to recycling.

The inequity in current law is impeding recyclers' ability to provide the kind of environmentally beneficial recycling activities our society demands. The existing liability scheme exposes recyclers to financial risks that their competitors, virgin material suppliers, do not face. This restricts financing for expansion and makes it more difficult to respond to changing market conditions. In addition, many materials which can be properly recycled are now not being captured for reuse because of Superfund liability exposure.

Mr. President, I have been supportive of stimulating the private sector marketplace for recycled materials—and certainly believe that Federal legislation should not stall recycling efforts. Americans recognize that increased recycling means more efficient use of natural resources, which extends the

life of those resources. Because recycling utilizes significantly less energy than the use of virgin materials, recycling is a key step toward energy efficiency. The use of recyclables is also important to achieving the goals of pollution prevention and waste minimization.

Let me now address what this bill provides. The Superfund Recycling Equity Act recognizes that the Congress did not intend to apply Superfund liability to those who collect and process recyclables for sale as raw material feedstocks. The bill removes from liability those who collect, process and sell secondary paper, glass, plastic, metal, textiles, and rubber recyclables.

It should also be pointed out that this bill clarifies the application of liability regarding the sale of the recycler's products. The bill does not alter liability for contamination that is created by a recycler or owner, or operator liability for a facility. CERCLA's existing liability scheme remains in effect where a recycler is an owner/operator who contaminates a facility, or sends process waste for treatment or disposal which contributes to contamination. Furthermore, for the purposes of this bill, a series of tests or criteria are established to help determine if a bonafide recycling transaction has occurred.

During the Superfund legislation process in the previous Congress, I worked with a number of my colleagues to develop a recycling provision that addressed the problems discussed, while providing strong environmental protection.

As a number of the Committee on Environment and Public Works, I will continue to work with my colleagues as we work on reforming the Superfund program. I am introducing this legislation today to make clear my intention of clarifying the existing statute by placing supplies of recyclables on more equal footing with suppliers of virgin material.

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

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

S. 607

*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 "Superfund Recycling Equity Act of 1995".

#### SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to promote the reuse and recycling of scrap material, in furtherance of the goals of waste minimization and natural resource conservation, while protecting human health and the environment;

(2) to level the playing field between the use of virgin materials and recycled materials; and

(3) to remove the disincentives and impediments to recycling created by potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

#### SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

##### "SEC. 127. RECYCLING TRANSACTIONS.

"(a) DEFINITIONS.—In this section:

"(1) CONSUMING FACILITY.—The term 'consuming facility' means a facility where recyclable material is handled, processed, reclaimed, or otherwise managed by a person other than a person who arranges for the recycling of the recyclable material.

"(2) RECYCLABLE MATERIAL.—

"(A) IN GENERAL.—Subject to subparagraph (B), the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, or other spent batteries, as well as minor quantities of material incident to or adhering to the scrap or spent material as a result of the normal and customary use of the material prior to the material becoming scrap or spent material.

"(B) PCBs.—The term 'recyclable material' does not include a material that contains polychlorinated biphenyls in excess of—

"(i) 50 parts per million; or

"(ii) any standard promulgated under Federal law after the date of enactment of this section.

"(3) SCRAP METAL.—The term 'scrap metal' means 1 or more bits or pieces of metal parts (such as a bar, turning, rod, sheet, or wire), or 1 or more metal pieces that may be combined together with bolts or soldering (such as a radiator, scrap automobile, or railroad box car), that, when worn or superfluous, can be recycled, except for—

"(A) a material that the Administrator excludes from the definition of scrap metal by regulation; and

"(B) a steel shipping container with a capacity of not less than 30 and not more than 3,000 liters, whether intact or not, that has any hazardous substance (but not metal bits or pieces) contained in or adhering to the container.

"(b) LIMITATION ON LIABILITY.—

"(1) IN GENERAL.—Subject to subsection (c), a person who arranges for the recycling of recyclable material shall not be liable under paragraph (3) or (4) of section 107(a).

"(2) TRANSACTIONS DEEMED TO BE RECYCLING OF A RECYCLABLE MATERIAL.—For purposes of this section, a transaction involving a recyclable material is considered to be arranging for recycling of recyclable material if the person arranging for the transaction can demonstrate, by a preponderance of the evidence, that, at the time of the transaction—

"(A) the recyclable material met a commercial specification grade;

"(B) a market existed for the recyclable material;

"(C) a substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product;

"(D) the recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material;

"(E) in the case of a transaction occurring not later than 90 days after the date of enactment of this section, the person exercises reasonable care to determine that the consuming facility was in compliance with any substantive (and not procedural or administrative) provision of Federal, State, or local

environmental law or regulation, and any compliance order or decree issued pursuant to the law or regulation, applicable to the handling, processing, reclamation, storage, or other management activity associated with the recyclable material;

"(F) in the case of a transaction involving scrap metal—

"(i) in the case of a transaction occurring after the effective date of the issuance of a regulation or standard regarding the storage, transport, management, or other activity associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) subsequent to the date of enactment of this section, the person acted in compliance with the regulation or standard; and

"(ii) the person did not melt the scrap metal prior to the transaction; and

"(G) in the case of a transaction involving a battery—

"(i) the person did not recover the valuable components of the battery;

"(ii) in the case of a transaction involving a lead-acid battery, the person acted in compliance with any applicable Federal environmental regulation or standard regarding the storage, transport, management, or other activity associated with the recycling of a spent lead-acid battery;

"(iii) in the case of a transaction involving a nickel-cadmium battery—

"(I) a Federal environmental regulation or standard is in effect regarding the storage, transport, management, or other activity associated with the recycling of a spent nickel-cadmium battery; and

"(II) the person acted in compliance with the regulation or standard; and

"(iv) with respect to a transaction involving a spent battery other than a lead-acid or nickel-cadmium battery—

"(I) a Federal environmental regulation or standard is in effect regarding the storage, transport, management, or other activity associated with the recycling of the spent battery; and

"(II) the person acted in compliance with the regulation or standard.

"(3) SWEATING.—For purposes of paragraph (2)(F)(ii), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in the melting points of the materials.

"(4) PROCESSING OF BATTERY BY THIRD PERSON.—For purposes of paragraph (2)(G)(i), a person who, by contract, arranges or pays for processing of a battery by an unrelated third person, and receives from the third person materials reclaimed from the battery, shall be considered not to have recovered the valuable components of the battery.

"(5) REASONABLE CARE.—For purposes of paragraph (2)(E), reasonable care shall be determined using criteria that include—

"(A) the price paid to or received by the person in the recycling transaction;

"(B) the ability of the person to detect the nature of the operations of the consuming facility concerning the handling, processing, reclamation, or other management activities associated with the recyclable material; and

"(C) the result of any inquiry made to an appropriate Federal, State, or local environmental agency regarding the past and current compliance of the consuming facility with substantive (and not procedural or administrative) provisions of Federal, State, and local environmental laws and regulations, and any compliance order or decree issued pursuant to the laws and regulations, applicable to the handling, processing, reclamation, storage, or other management activity associated with the recyclable material.

"(c) EXCLUSION FROM LIMITATION ON LIABILITY.—

“(1) IN GENERAL.—Subsection (b) shall not apply if the person arranging for recycling of a recyclable material—

“(A) had an objectively reasonable basis to believe at the time of the recycling transaction that—

“(i) the recyclable material would not be recycled;

“(ii) the recyclable material would be burned as fuel, or for energy recovery or incineration; or

“(iii) in the case of a transaction occurring not later than 90 days after the date of the enactment of this section, the consuming facility acting not in compliance with a substantive (and not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or a compliance order or decree issued pursuant to the law or regulation, applicable to the handling, processing, reclamation, or other management activity associated with the recyclable material;

“(B) added a hazardous substance to the recyclable material for purposes other than processing for recycling; or

“(C) failed to exercise reasonable care with respect to the management or handling of the recyclable material.

“(2) REASONABLE BASIS FOR BELIEF.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include—

“(A) the size of any business owned by the person;

“(B) the customary industry practices for any business owned by the person;

“(C) the price paid to or received by the person in the recycling transaction;

“(D) the ability of the person to detect the nature of the operations of the consuming facility concerning the handling, processing, reclamation, or other management activities associated with the recyclable material.

“(c) PERMIT REQUIREMENT.—For the purposes of this section, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with a recyclable material shall be considered to be a substantive provision.

“(d) REGULATIONS.—The Administrator may issue regulations to carry out this section.

“(e) LIABILITY FOR ATTORNEY FEES FOR CERTAIN ACTIONS.—Any person who commences an action for contribution against a person who is alleged to be liable under this Act but is found not to be liable as a result of this section shall be liable to the person defending the action for all reasonable costs of defending the action, including all reasonable attorney and expert witness fees.

“(f) EFFECT ON PENDING OR CONCLUDED ACTIONS.—This section shall not affect a judicial or administrative action concluded prior to the date of enactment of this section, or a pending judicial action initiated by the United States prior to the date of enactment of this section.

“(g) EFFECT ON OTHER LIABILITY.—Nothing in this section affects the liability of a person under paragraph (1) or (2) of section 107(a).

“(h) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section affects—

“(1) liability under any other Federal, State, or local law, or regulation promulgated pursuant to the law, including any requirement promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

“(2) the ability of the Administrator to promulgate a regulation under any other law, including the Solid Waste Disposal Act.”.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 608. A bill to establish the New Bedford Whaling National Historical Park in New Bedford, MA, and for other purposes; to the Committee on Energy and Natural Resources.

#### THE NEW BEDFORD WHALING NATIONAL PARK ACT OF 1995

Mr. KENNEDY. Mr. President, today Senator KERRY and I are introducing a bill to establish a Whaling National Historical Park in New Bedford, MA. This legislation is part of a bipartisan effort with Congressmen BARNEY FRANK and PETER BLUTE, who are introducing an identical bill today in the House of Representatives.

Our bill is similar to legislation introduced in 1994. However, we have made several changes to minimize the cost of this new park and enhance its public/private partnership components, in recognition of the current budget pressures on the National Park System. The original bill's funding level of \$10.4 million for development and an estimated \$6 million for operations in the first 5 years was based on the recommendations of a comprehensive study conducted by the Park Service. Our new legislation aims to achieve many of the same goals set forth in that study, but to do so at the lower cost of \$2 million for development and an estimated \$2 million for operations in the first 5 years.

The Park Service began its special resource study of New Bedford in 1990. The study, completed in November 1993, strongly endorsed the establishment of a national park unit in New Bedford. The Park Service noted the important role of the whaling industry in 19th-century American history. The study concluded that this theme is not currently represented in the National Park System, and New Bedford would be the ideal site for a park commemorating that history. As the former whaling capital of the world, New Bedford provided the oil that fueled the Nation's lamps and kept the wheels of the Industrial Revolution turning. So prosperous was the whaling industry there that, by the mid-19th century, New Bedford had become the wealthiest city, per capita, in the world.

New Bedford's whaling history raises many significant social and economic themes that are essential to a true understanding of our American heritage. Among these are the spirit of technological progress, the courage that motivated daring men and women to risk their lives on the seas, and the many cultures that took root here, brought by immigrants drawn from every corner of the globe. It was this diversity which contributed to New Bedford's position as a center of the abolitionist movement in the 19th century and made it a key stop for fugitive slaves on the underground railroad. Frederick Douglas spent his first 3 years of freedom in New Bedford, working as a caulker on the hulls of whaleboats.

New Bedford is also the port from which Herman Melville set sail aboard

the whaler *Acushnet* in 1841. The voyage inspired “Moby Dick,” one of the greatest of all American novels. The streets that Melville and Ishmael wandered can still be seen in New Bedford today, as can the famous Seamen's Bethel, where the whalers attended religious services before setting off on their voyages.

Much of New Bedford's old whaling waterfront still exists in the city's National Historic Landmark District, and that 20-acre site has become a model for historic preservation. Businesses, residents, and tourists coexist in an environment of restored buildings, cobblestone streets, and brick sidewalks from the whaling era.

New Bedford also is the site of the Rotch-Jones-Duff House and Garden Museum, one of the finest examples of Greek Revival residential architecture in the country and the only surviving whaling era mansion open to the public complete with its original gardens and grounds.

New Bedford's historical and cultural assets are not limited to its streets and buildings. They also include outstanding collections of artworks and archives associated with the whaling era and located at the city's public library and the renowned whaling museum. The Museum houses a half-size model of the whaling bark *Lagoda* that can be boarded by visitors.

The city is also home port to the restored, 100-year-old National Historic Landmark vessel *Ernestina*, the oldest Grand Banks schooner in existence. The *Ernestina* has had a distinguished maritime career as a fishing vessel, as an Arctic exploration vessel under Capt. Bob Bartlett, and as a packet plying the route between the Cape Verde Islands and the United States. In her packet role, she was the last great sailing ship to bring immigrants to our shores.

National park designation will be a valuable economic stimulus for tourism and associated development for the city. While the proposed Federal funding level is modest, establishment of this national park will spur extensive private sector preservation efforts.

The whaling park in New Bedford will help protect a nationally significant historic treasure and stimulate the economy of a city in need. It is an investment in America's past and in a city's future. I urge my colleagues to support this important legislation.

Mr. KERRY. Mr. President, I am pleased once again to join my good friend and colleague senator KENNEDY in introducing legislation to establish a whaling national historical park in New Bedford, MA. Our initiative is based upon a special resource study completed by the National Park Service in 1993 which found that the New Bedford area meets the criteria for inclusion in the National Park System. However, this legislation, while similar to a bill we introduced last Congress, is

a much scaled-back version. Trying to balance the need for fiscal restraint with the importance of protecting our National heritage, our new bill calls for less than one-fifth of the Federal funding of our original initiative and would require significant matching contributions from other interested parties.

The city of New Bedford, tucked by the sea in the southeast corner of Massachusetts, has a rich and diverse history. For decades it was the center of our Nation's whaling industry. And although the whaling industry collapsed by the turn of the last century, New Bedford is to this day remembered for its seafaring heritage.

As a national park, the New Bedford National Historic Landmark District and surrounding area would enhance the National Park System by expanding its maritime history theme to include a focus on our Nation's whaling past. Particularly noteworthy are the historic town center, the waterfront with the National Historic Landmark Schooner *Ernestina*, and an array of over three dozen historically rehabilitated buildings which combine to provide a cultural resource that reflects the era of whaling.

Since 1962, a public/private partnership—initiated by the waterfront historic area league of New Bedford in cooperation with the Bedford Landing Taxpayers Association, the Old Dartmouth Historical Society, private property owners and the city of New Bedford, has already raised \$6.4 million, rehabilitated 37 buildings and created over 40 new businesses and 200 new jobs. That is just the kind of local entrepreneurship that we should be supporting. Creating a New Bedford Whaling Park will preserve an important piece of seafarer heritage while simultaneously permitting the public/private partnership to expand and grow.

I am hopeful that the Senate will look favorably upon this new, streamlined initiative and I would encourage my colleagues to support this important, historically significant addition to our National Park System.

By Mr. WELLSTONE:

S. 609. A bill to assure fairness and choice to patients and health care providers, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH CARE QUALITY AND FAIRNESS ACT  
OF 1995

• Mr. WELLSTONE. Mr. President, despite the flurry of efforts in the 103d Congress, many of us were deeply disappointed that healthcare reform legislation failed to be enacted. The American people, however, still are concerned about this issue, and feel that reform of our healthcare system should be a high priority for this Congress, although most feel that small steps, rather than giant leaps are now best. While we debate these issues in Congress, however, the number of uninsured continues to grow, particularly children, and health care costs, al-

though moderating, may only be doing so transiently.

The private sector has not waited for Congress to act, and has been rapidly transforming the healthcare delivery system for those Americans who are fortunate enough to have access to, and the ability to pay for coverage. The proliferation of managed care systems has been extraordinary, although their ability to control healthcare costs in the long run, particularly as older, sicker patients join, remains to be proven. Health plan standards were included in many of the compromise bills that emerged during the 103d Congress. There was wide, bipartisan agreement that there should be Federal standards to level the playing field in the rapidly changing healthcare delivery environment. Such standards would assure fairness for consumers and providers, while still encouraging health plans to pursue innovative approaches to providing high-quality, cost effective care.

The Senate Committee on Labor and Human Resources recently conducted a 2-day hearing on healthcare reform. We heard witnesses who eloquently described the successes of our Nation's largest employers in negotiating with providers and health plans, and holding down the growth of health costs. These large businesses have developed demanding purchasing and performance standards that they use to select plans and develop provider networks. Unfortunately, however, small employers and individual purchasers often lack the expertise and resources necessary to navigate through the health plan maze. In order to ensure that health care of the highest quality is available to all consumers, it is essential that all health plans be required to meet minimum standards.

Discussions of these safeguards got lost in the tussle over larger and more contentious issues during the healthcare reform debate last year. I believe now more than ever, especially with talk of restructuring Medicare and Medicaid being framed along the lines of restraining the growth of costs while maintaining choice and quality, that provisions to ensure that consumers are adequately protected and informed are absolutely imperative.

With these thoughts in mind, today I am introducing the Health Care Quality and Fairness Act of 1995, which is designed to assure fairness and choice to patients and health care providers. Its scope would include all health plans including those that are self-funded, not just HMO's or managed care plans. Its major provisions include:

Protection of consumer choice by requiring an employer to offer a choice of at least three types of health plan—managed care, point-of-service, and traditional insurance. Currently, only about half of all Americans who get their health insurance through employers are offered more than one plan. Evidence suggests that employers are increasingly limiting their employees'

choice of health plans, while this bill would assure adequate choice is provided;

Establishment of an Office of Consumer Information Counseling and Assistance to perform public outreach and provide education and assistance regarding consumer rights with regard to health insurance. This effort would build on an existing Medigap model that has been highly successful in a number of States;

Development of health plan standards, including utilization review activities, credentialing of health professionals, and handling of grievances by providers or consumers. These standards would ensure fairness in the interactions between health plans, consumers, and providers;

Requirements for health plan solvency standards to be developed to protect employees and individual purchasers from being left high and dry;

Provision of information on plan coverage, benefits, loss ratio, satisfaction statistics, and quality indicators to assist consumers in making wise purchasing decisions; and

Insurance market reforms including guaranteed issue and renewability, prohibitions on preexisting condition exclusions, and risk adjustment. Insurance reform, if carefully crafted, would stabilize premiums for small employers and individual purchasers and prevent plans from excluding those who most need coverage.

This legislation has broad support among provider groups, including the American Medical Association and the Advocates for Practitioner Equity Coalition which includes nonphysician provider groups like the American Optometric Association, the American Podiatric Medical Association, the American Occupational Therapy Association, and consumer groups, including Consumers Union and Citizen Action. Together these groups hope to form a partnership to work with health plans to assure that fair, high-quality care is delivered, utilizing the standards enacted in the Health Care Quality and Fairness Act.

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

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

S. 609

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

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

(a) SHORT TITLE.—This Act may be cited as "The Health Care Quality and Fairness Act of 1995".

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

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

**TITLE I—PROTECTION OF CONSUMER CHOICE**

Sec. 101. Protection of consumer choice.  
Sec. 102. Enrollment.

## TITLE II—OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE

Sec. 201. Establishment.

### TITLE III—UTILIZATION MANAGEMENT

Sec. 301. Definitions.

Sec. 302. Requirement for utilization review program.

Sec. 303. Standards for utilization review.

### TITLE IV—HEALTH PLAN STANDARDS

Sec. 401. Health plan standards.

Sec. 402. Minimum solvency requirements.

Sec. 403. Information on terms of plan.

Sec. 404. Access.

Sec. 405. Credentialing for health professionals.

Sec. 406. Grievance procedures.

Sec. 407. Confidentiality standards.

Sec. 408. Discrimination.

Sec. 409. Prohibition on selective marketing.

### TITLE V—HEALTH INSURANCE MARKET REFORM

Sec. 501. Guaranteed issue and renewability.

Sec. 502. Nondiscrimination based on health status.

Sec. 503. Adjustments based on age, geography and family size.

Sec. 504. Risk adjustment.

Sec. 505. Lifetime limits.

Sec. 506. Patient's right to self-determination.

Sec. 507. Affect on State law.

Sec. 508. Association plans.

### TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Enforcement.

Sec. 602. Effective date.

### SEC. 2. DEFINITIONS.

Unless specifically provided otherwise, as used in this Act:

(1) **CARRIER.**—The term "carrier" means a licensed insurance company, a hospital or medical service corporation (including an existing Blue Cross or Blue Shield organization, within the meaning of section 833(c)(2) of Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act), a health maintenance organization, or other entity licensed or certified by the State to provide health insurance or health benefits.

(2) **COVERED INDIVIDUAL.**—The term "covered individual" means a member, enrollee, subscriber, covered life, patient or other individual eligible to receive benefits under a health plan.

(3) **DEPENDENT.**—The term "dependent" means a spouse or child (including an adopted child) of an enrollee in a health plan who is financially dependent upon the enrollee.

(4) **EMERGENCY SERVICES.**—The term "emergency services" means those health care services that are provided to a patient after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, and the absence of such immediate medical attention could reasonably be expected, to result in—

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily function; or

(C) serious dysfunction of any bodily organ or part.

(5) **HEALTH PLAN.**—The term "health plan" includes any organization that seeks to arrange for, or provide for the financing and coordinated delivery of, health care services directly or through a contracted health professional panel, and shall include health maintenance organizations, preferred provider organizations, single service health maintenance organizations, single service preferred provider organizations, other entities such as physician-hospital or hospital-physician organizations, employee welfare

benefit plans (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and multiple employer welfare plans or other association plans, as well as carriers.

(6) **HEALTH PROFESSIONAL.**—The term "health professional" means individuals who are licensed, certified, accredited, or otherwise credentialed to provide health care items and services as authorized under State law.

(7) **MANAGED CARE PLAN.**—

(A) **IN GENERAL.**—The term "managed care plan" means a plan operated by a managed care entity (as defined in subparagraph (B)), that provides for the financing and delivery of health care services to persons enrolled in such plan through—

(i) arrangements with selected providers to furnish health care services;

(ii) explicit standards for the selection of participating providers;

(iii) organizational arrangements for ongoing quality assurance, utilization review programs, and dispute resolution; and

(iv) financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan.

(B) **MANAGED CARE ENTITY.**—The term "managed care entity" includes a licensed insurance company, hospital or medical service plan (including physician and physician-hospital networks), health maintenance organization, an employer or employee organization, or a managed care contractor (as defined in subparagraph (C)), that operates a managed care plan.

(C) **MANAGED CARE CONTRACTOR.**—The term "managed care contractor" means a person that—

(i) establishes, operates, or maintains a network of participating providers;

(ii) conducts or arranges for utilization review activities; and

(iii) contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan.

(8) **PHYSICIAN.**—The term "physician" means a doctor of medicine, a doctor of osteopathy, or a doctor of allopathy.

(9) **PROVIDER.**—The term "provider" means a physician, an organized group of physicians, a facility or any other health care professional licensed or certified by the State, where licensure or certification is required.

(10) **PROVIDER NETWORK.**—The term "provider network" means, with respect to a health plan that restricts access, those providers who have entered into a contract or agreement with the plan under which such providers are obligated to provide items and services under the plan to eligible individuals enrolled in the plan, or have an agreement to provide services on a fee-for-service basis.

(11) **POINT-OF-SERVICE PLAN.**—The term "point-of-service plan" means a plan that offers services to enrollees through a provider network and also offers additional services or access to care by network or non-network providers.

(12) **SECRETARY.**—The term "Secretary" means the Secretary of Health and Human Services.

(13) **SMALL GROUP MARKET.**—

(A) **IN GENERAL.**—The term "small group market" means, with respect to a calendar year, employers (including sole proprietorships, firms, corporations, partnerships, or associations actively engaged in business) that, on at least 50 percent of its business days, employ at least one but not more than 50 employees. In determining the number of employees for purposes of this paragraph, en-

titles that are affiliated, or that are eligible to file a combined tax return, shall be considered as a single employer.

(B) **APPLICATION OF PROVISIONS.**—Except as specifically provided otherwise, the requirements of this Act that apply to an employer in the small group market shall continue to apply to such employer through the end of the rating period in which the employer has failed to meet the requirements of subparagraph (A).

(14) **SPECIALIZED TREATMENT EXPERTISE.**—The term "specialized treatment expertise" means expertise in diagnosing and treating unusual diseases and condition, diagnosing and treating diseases and conditions that are usually difficult to diagnose or treat, and providing other specialized health care.

(15) **SPONSOR.**—The term "sponsor" means a carrier or employer that provides a health plan.

(16) **TRADITIONAL INSURANCE PLAN.**—The term "traditional insurance plan" includes plans that offer a health benefits package and that pay for medical services on a fee-for-service basis using a usual, customary, or reasonable payment methodology or a resource based relative value schedule, usually linked to an annual deductible and/or coinsurance payment on each allowed amount.

(17) **UTILIZATION REVIEW.**—The term "utilization review" means a set of formal techniques designed to monitor and evaluate the clinical necessity, appropriateness and efficiency of health care services, procedures, providers and facilities. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning and retrospective review.

### TITLE I—PROTECTION OF CONSUMER CHOICE

#### SEC. 101. PROTECTION OF CONSUMER CHOICE.

(a) **IN GENERAL.**—Each employer, including a self-insured employer, who offers, provides, or makes available to employees a health plan must provide to each such employee a choice of health plans as required under subsection (b).

(b) **OFFERING OF PLANS.**—Each employer referred to in subsection (a) shall include among its health plan offerings at least one of each of the following types of health plans, where available:

(1) A managed care plan, including a health maintenance organization or preferred provider organization.

(2) A point-of-service plan.

(3) A traditional insurance plan (as defined in section 2).

#### SEC. 102. ENROLLMENT.

Each employer including a self-insured employer, who offers, provides, or makes available a health plan shall establish a process for enrollment in such plan which consists of—

(1) a general annual open enrollment period of at least 30 days; and

(2) special open enrollment periods for changes in enrollment as required by the Secretary.

### TITLE II—OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE

#### SEC. 201. ESTABLISHMENT.

(a) **IN GENERAL.**—The Secretary shall award a grant to each State for the establishment of an Office for Consumer Information, Counseling and Assistance (hereafter referred to in this section as the "Office") in each such State. Each such Office shall perform public outreach and provide education and assistance concerning consumer rights with respect to health insurance as provided for in subsection (d).

(b) **USE OF GRANT.**—

(1) **IN GENERAL.**—A State shall use a grant under this section—



(A) to administer the Office and carry out the duties described in subsection (d);

(B) to solicit and award contracts to private, nonprofit organizations applying to the State to administer the Office and carry out the duties described in subsection (d); or

(C) in the case of a State operating a consumer information counseling and assistance program on the date of enactment of this Act, to expand and improve such program.

(2) **CONTRACTS.**—With respect to the contract described in paragraph (1)(B), the contract period shall be not less than 2 years and not more than 4 years.

(c) **STAFF.**—A State shall ensure that the Office has sufficient staff (including volunteers) and local offices throughout the State to carry out its duties under this section and a demonstrated ability to represent and work with a broad spectrum of consumers, including vulnerable and underserved populations.

(d) **DUTIES.**—An Office established under this section shall—

(1) establish a State-wide toll-free hotline to enable consumers to contact the Office;

(2) have the ability to provide appropriate assistance under this subsection to individuals with limited English language ability;

(3) develop outreach programs to provide health insurance information, counseling, and assistance;

(4) provide outreach and education relating to consumer rights and responsibilities under this Act, including the rights and services available through the Office;

(5) provide individuals with assistance in enrolling in health plans (including providing plan comparisons) or in obtaining services or reimbursements from health plans;

(6) provide individuals with assistance in filing applications for appropriate State health plan premium assistance programs;

(7) provide individuals with information concerning existing grievance procedures and institute systems of referral to appropriate Federal or State departments or agencies for assistance with problems related to insurance coverage (including legal problems);

(8) ensure that regular and timely access is provided to the services available through the Office;

(9) implement training programs for staff members (including volunteer staff members) and collect and disseminate timely and accurate health care information to staff members;

(10) not less than once each year, conduct public hearings to identify and address community health care needs;

(11) coordinate its activities with the staff of the appropriate departments and agencies of the State government and other appropriate entities within the State; and

(12) carry out any other activities determined appropriate by the Secretary.

(e) **STATE DUTIES.**—

(1) **ACCESS TO INFORMATION.**—The State shall ensure that, for purposes of carrying out the duties of the Office, the Office has appropriate access to relevant information, subject to the application of procedures to ensure confidentiality of enrollee and proprietary health plan information.

(2) **REPORTING AND EVALUATION REQUIREMENTS.**—

(A) **REPORT.**—The Office shall annually prepare and submit to the State a report on the nature and patterns of consumer complaints received by the Office during the year for which the report is prepared. Such report shall contain any policy, regulatory, and legislative recommendations for improvements in the activities of the Office together with a record of the activities of the Office.

(B) **EVALUATION.**—The State shall annually evaluate the quality and effectiveness of the Office in carrying out the activities described in subsection (d).

(3) **CONFLICTS OF INTEREST.**—The State shall ensure that no individual involved in selecting the entity with which to enter into a contract under subsection (b)(1)(B), or involved in the operation of the Office, or any delegate of the Office, is subject to a conflict of interest.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

### TITLE III—UTILIZATION MANAGEMENT

#### SEC. 301. DEFINITIONS.

As used in this title:

(1) **ADVERSE DETERMINATION.**—The term “adverse determination” means a determination that an admission to or continued stay at a hospital or that another health care service that is required has been reviewed and, based upon the information provided, does not meet the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness.

(2) **AMBULATORY REVIEW.**—The term “ambulatory review” means utilization review of health care services performed or provided in an outpatient setting.

(3) **APPEALS PROCEDURE.**—The term “appeals procedure” means a formal process under which a covered individual (or an individual acting on behalf of a covered individual), attending physician, facility or applicable health care provider may appeal an adverse utilization review decision rendered by the health plan or its designee utilization review organization.

(4) **CASE MANAGEMENT.**—The term “case management” means a coordinated set of activities conducted for the individual patient management of serious, complicated, protracted or chronic health conditions that provides cost-effective and benefit-maximizing treatments for extremely resource-intensive conditions.

(5) **CLINICAL REVIEW CRITERIA.**—The term “clinical review criteria” means the recorded (written or otherwise) screening procedures, decision abstracts, clinical protocols and practice guidelines used by the health plan to determine necessity and appropriateness of health care services.

(6) **CONCURRENT REVIEW.**—The term “concurrent review” means utilization review conducted during a patient’s hospital stay or course of treatment.

(7) **DISCHARGE PLANNING.**—The term “discharge planning” means the formal process for determining, coordinating and managing the care a patient receives following the discharge of the patient from a facility.

(8) **FACILITY.**—The term “facility” means an institution or health care setting providing the prescribed health care services under review. Such term includes hospitals and other licensed inpatient facilities, ambulatory surgical or treatment centers, skilled nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers and rehabilitation and other therapeutic health care settings.

(9) **PROSPECTIVE REVIEW.**—The term “prospective review” means utilization review conducted prior to an admission or a course of treatment.

(10) **RETROSPECTIVE REVIEW.**—The term “retrospective review” means utilization review conducted after health care services have been provided to a patient. Such term does not include the retrospective review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding and adjudication for payment.

(11) **SECOND OPINION.**—The term “second opinion” means an opportunity or requirement to obtain a clinical evaluation by a provider other than the provider originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

(12) **UTILIZATION REVIEW ORGANIZATION.**—The term “utilization review organization” means an entity that conducts utilization review.

#### SEC. 302. REQUIREMENT FOR UTILIZATION REVIEW PROGRAM.

A health plan shall have in place a utilization review program that meets the requirements of this title and that is certified by the State.

#### SEC. 303. STANDARDS FOR UTILIZATION REVIEW.

(a) **ESTABLISHMENT.**—The Secretary shall establish standards for the establishment, operation, and certification and periodic recertification of health plan utilization review programs.

(b) **ALTERNATIVE STANDARDS.**—

(1) **IN GENERAL.**—A State may certify a health plan as meeting the standards established under subsection (a) if the State determines that the health plan has met the utilization standards required for accreditation as applied by a nationally recognized, independent, nonprofit accreditation entity.

(2) **REVIEW BY STATE.**—A State that makes a determination under paragraph (1) shall periodically review the standards used by the private accreditation entity to ensure that such standards meet or exceed the standards established by the Secretary under this title.

(c) **UTILIZATION REVIEW PROGRAM REQUIREMENTS.**—The standards developed by the Secretary under subsection (a) shall require that utilization review programs comply with the following:

(1) **DOCUMENTATION.**—A health plan shall provide a written description of the utilization review program of the plan, including a description of—

(A) the delegated and nondelegated activities under the program;

(B) the policies and procedures used under the program to evaluate medical necessity; and

(C) the clinical review criteria, information sources, and the process used to review and approve the provision of medical services under the program.

(2) **PROHIBITION.**—With respect to the administration of the utilization review program, a health plan may not employ utilization reviewers or contract with a utilization management organization if the conditions of employment or the contract terms include financial incentives to reduce or limit the medically necessary or appropriate services provided to covered individuals.

(3) **REVIEW AND MODIFICATION.**—A health plan shall develop procedures for periodically reviewing and modifying the utilization review of the plan. Such procedures shall provide for the participation of providers in the health plan in the development and review of utilization review policies and procedures.

(4) **DECISION PROTOCOLS.**—

(A) **IN GENERAL.**—A utilization review program shall develop and apply recorded (written or otherwise) utilization review decision protocols. Such protocols shall be based on sound medical evidence.

(B) **PROTOCOL CRITERIA.**—The clinical review criteria used under the utilization review decision protocols to assess the appropriateness of medical services shall be clearly documented and available to participating health professionals upon request. Such protocols shall include a mechanism for assessing the consistency of the application of the

criteria used under the protocols across reviewers, and a mechanism for periodically updating such criteria.

(5) REVIEW AND DECISIONS.—

(A) REVIEW.—The procedures applied under a utilization review program with respect to the preauthorization and concurrent review of the necessity and appropriateness of medical items, services or procedures, shall require that qualified medical professionals supervise review decisions. With respect to a decision to deny the provision of medical items, services or procedures, a physician shall conduct a subsequent review to determine the medical appropriateness of such a denial. Board certified physicians from the appropriate specialty areas of medicine and surgery shall be utilized in the review process as needed.

(B) DECISIONS.—All utilization review decisions shall be made in a timely manner, as determined appropriate when considering the urgency of the situation.

(C) ADVERSE DETERMINATIONS.—With respect to utilization review, an adverse determination or noncertification of an admission, continued stay, or service shall be clearly documented, including the specific clinical or other reason for the adverse determination or noncertification, and be available to the covered individual and the affected provider or facility. A health plan may not deny or limit coverage with respect to a service that the enrollee has already received solely on the basis of lack of prior authorization or second opinion, to the extent that the service would have otherwise been covered by the plan had such prior authorization or a second opinion been obtained.

(D) NOTIFICATION OF DENIAL.—A health plan shall provide a covered individual with timely notice of an adverse determination or noncertification of an admission, continued stay, or service. Such a notification shall include information concerning the utilization review program appeals procedure.

(6) REQUESTS FOR AUTHORIZATION.—A health plan utilization review program shall ensure that requests by covered individuals or physicians for prior authorization of a nonemergency service shall be answered in a timely manner after such request is received. If utilization review personnel are not available in a timely fashion, any medical services provided shall be considered approved.

(7) NEW TECHNOLOGIES.—A utilization review program shall implement policies and procedures to evaluate the appropriate use of new medical technologies or new applications of established technologies, including medical procedures, drugs, and devices. The program shall ensure that appropriate professionals participate in the development of technology evaluation criteria.

(8) SPECIAL RULE.—Where prior authorization for a service or other covered item is obtained under a program under this section, the service shall be considered to be covered unless there was fraud or incorrect information provided at the time such prior authorization was obtained. If a provider supplied the incorrect information that led to the authorization of medically unnecessary care, the provider shall be prohibited from collecting payment directly from the enrollee, and shall reimburse the plan and subscriber for any payments or copayments the provider may have received.

(d) HEALTH PLAN REQUIREMENTS.—

(1) DISCLOSURE OF INFORMATION.—

(A) PROSPECTIVE COVERED INDIVIDUALS.—A health plan shall, with respect to any materials distributed to prospective covered individuals, include a summary of the utilization review procedures of the plan.

(B) COVERED INDIVIDUALS.—A health plan shall, with respect to any materials distributed to newly covered individuals, include a

clear and comprehensive description of utilization review procedures of the plan and a statement of patient rights and responsibilities with respect to such procedures.

(C) STATE OFFICIALS.—

(i) IN GENERAL.—A health plan shall disclose to the State insurance commissioner, or other designated State official, the health plan utilization review program policies, procedures, and reports required by the State for certification.

(ii) STREAMLINING OF PROCEDURES.—To the extent practicable, a State shall implement procedures to streamline the process by which a health plan documents compliance with the requirements of this Act, including procedures to condense the number of documents filed with the State concerning such compliance.

(2) TOLL-FREE NUMBER.—A health plan shall have a membership card which shall have printed on the card the toll-free telephone number that a covered individual should call to receive precertification utilization review decisions.

(3) EVALUATION.—A health plan shall establish mechanisms to evaluate the effects of the utilization review program of the plan through the use of member satisfaction data or through other appropriate means.

(e) EMERGENCY CARE.—

(1) IN GENERAL.—A health plan shall provide coverage for emergency services provided to an enrollee without regard to whether the health professional or provider furnishing such services has a contractual (or other arrangement) with the plan.

(2) PREAUTHORIZATION.—With respect to emergency services furnished in a hospital emergency department, a health plan shall not require prior authorization for the provision of such services if the enrollee arrived at the emergency department with symptoms that reasonably suggested an emergency medical condition, regardless of whether the hospital was affiliated with the health plan. All procedures performed during the evaluation and treatment of an emergency condition shall be covered under the health plan.

#### TITLE IV—HEALTH PLAN STANDARDS

##### SEC. 401. HEALTH PLAN STANDARDS.

(a) ESTABLISHMENT.—The Secretary shall establish standards for the certification and periodic recertification of health plans, including standards which require plans to meet the requirements of this title.

(b) STATE CERTIFICATION.—

(1) IN GENERAL.—A State shall provide for the certification of health plans if the certifying authority designated by the State determines that the plan meets the applicable requirements of this Act.

(2) REQUIREMENT.—Effective on January 1, 1997, a health plan sponsor may only offer a health plan in a State if such plan is certified by the State under paragraph (1).

(c) CONSTRUCTION.—Whenever in this title a requirement or standard is imposed on a health plan, the requirement or standard is deemed to have been imposed on the sponsor of the plan in relation to that plan.

##### SEC. 402. MINIMUM SOLVENCY REQUIREMENTS.

(a) IN GENERAL.—Except as provided in subsection (b), each State shall apply minimum solvency requirements to all health plans offered or operating with the State. A health plan shall meet the financial reserve requirements that are established by the State to assure proper payment for health care services provided under the plan.

(b) FEDERAL STANDARDS.—The Secretary shall establish minimum solvency standards that shall apply to all self-insured health plans. Such standards shall at least meet the solvency requirements established by the National Association of Insurance Commissioners.

##### SEC. 403. INFORMATION ON TERMS OF PLAN.

(a) IN GENERAL.—A health plan shall provide prospective covered individuals with written information concerning the terms and conditions of the health plan to enable such individuals to make informed decisions with respect to a certain system of health care delivery. Such information shall be standardized so that prospective covered individuals may compare the attributes of all such plans offered within the coverage area.

(b) UNDERSTANDABILITY.—Information provided under this section, whether written or oral shall easily understandable, truthful, linguistically appropriate and objective with respect to the terms used. Descriptions provided in such information shall be consistent with standards developed for supplemental insurance coverage under title XVIII of the Social Security Act.

(c) REQUIRED INFORMATION.—Information required under this section shall include information concerning—

(1) coverage provisions, benefits, and any exclusions by category of service or product;

(2) plan loss ratios with an explanation that such ratios reflect the percentage of the premiums expended for health services;

(3) prior authorization or other review requirements including preauthorization review, concurrent review, post-service review, post-payment review and procedures that may lead the patient to be denied coverage for, or not be provided, a particular service or product;

(4) an explanation of how plan design impacts enrollees, including information on the financial responsibility of covered individuals for payment for coinsurance or other out-of-plan services;

(5) covered individual satisfaction statistics, including disenrollment statistics;

(6) advance directives and organ donation;

(7) the characteristics and availability of health care professionals and institutions participating in the plan, including descriptions of the financial arrangements or contractual provisions with hospitals, utilization review organizations, physicians, or any other provider of health care services that would affect the services offered, referral or treatment options, or physician's fiduciary responsibility to patients, including financial incentives regarding the provision of medical or other services; and

(8) quality indicators for the plan and for participating health professionals and providers under the plan, including population-based statistics such as immunization rates and performance measures such as survival after surgery, adjusted for case mix.

##### SEC. 404. ACCESS.

(a) IN GENERAL.—A health plan shall demonstrate that the plan has a sufficient number, distribution, and variety of qualified health care providers to ensure that all covered health care services will be available and accessible in a timely manner to adults, infants, children, and individuals with disabilities enrolled in the plan.

(b) AVAILABILITY OF SERVICES.—A health plan shall ensure that services covered under the plan are available in a timely manner that ensures a continuity of care, are accessible within a reasonable proximity to the residences of the enrollees, are available within reasonable hours of operation, and include emergency and urgent care services when medically necessary and available which shall be accessible within the service area 24-hours a day, seven days a week.

(c) SPECIALIZED TREATMENT.—A health plan shall demonstrate that plan enrollees have access, when medically or clinically indicated in the judgment of the treating

health professional, to specialized treatment expertise.

(d) CHRONIC CONDITIONS.—

(1) IN GENERAL.—Any process established by a health plan to coordinate care and control costs may not impose an undue burden on enrollees with chronic health conditions. The plan shall ensure a continuity of care and shall, when medically or clinically indicated in the judgment of the treating health professional, ensure direct access to relevant specialists for continued care.

(2) CARE COORDINATOR.—In the case of an enrollee who has a severe, complex, or chronic condition, the health plan shall determine, based on the judgment of the treating health professional, whether it is medically or clinically necessary or appropriate to use a care coordinator from an interdisciplinary team or a specialist to ensure continuity of care.

(e) REQUIREMENT.—

(1) IN GENERAL.—The requirements of this section may not be waived and shall be met in all areas where the health plan has enrollees, including rural areas. With respect to children, such services shall include pediatric services.

(2) OUT-OF-NETWORK SERVICES.—If a health plan fails to meet the requirements of this section, the plan shall arrange for the provision of out-of-network services to enrollees in a manner that provides enrollees with access to services in accordance with this section.

**SEC. 405. CREDENTIALING FOR HEALTH PROFESSIONALS.**

(a) IN GENERAL.—A health plan shall credential health professionals furnishing health care services under the plan.

(b) CREDENTIALING PROCESS.—

(1) IN GENERAL.—A health plan shall establish a credentialing process. Such process shall ensure that a health professional is credentialed prior to that professional being listed as a health professional in the health plan's marketing materials, in accordance with recorded (written or otherwise) policies and procedures.

(2) RESPONSIBILITY OF MEDICAL DIRECTOR.—The medical director of the health plan, or another designated health professional, shall have responsibility for the credentialing of health professionals under the plan.

(3) UNIFORM APPLICATIONS.—A State shall develop a basic uniform application that shall be used by all health plans in the State for credentialing purposes.

(4) CREDENTIALING COMMITTEE.—

(A) ESTABLISHMENT.—The health plan shall establish a credentialing committee that shall be composed of licensed physicians and other health professionals to review credentialing information and supporting documents.

(B) REQUIREMENT.—The credentialing process shall provide for the review of an application for credentialing by a credentialing committee with appropriate representation of the applicant's medical specialty.

(5) STANDARDS.—

(A) IN GENERAL.—Credentialing decisions under a health plan shall be based on objective standards with input from health professionals credentialed under the plan. Information concerning all application and credentialing policies and procedures shall be made available for review by the health professional involved upon written request.

(B) REQUIREMENT.—The standards referred to in subparagraph (A) shall include determinations as to—

(i) whether the health professional has a current valid license to practice the particular health profession involved;

(ii) whether the health professional has clinical privileges in good standing at the hospital designated by the practitioner and

the primary admitting facility, as applicable;

(iii) whether the health professional has a valid DEA or CDS certificate, as applicable;

(iv) whether the health professional has graduated from medical school and completed a residency, or received Board certification, as applicable;

(v) the work history of the health professional;

(vi) whether the health professional has current, adequate malpractice insurance in accordance with the policy of the health plan; and

(vii) the professional liability claims history of the health professional.

(C) RIGHT TO REVIEW INFORMATION.—A health professional who undergoes the credentialing process shall have the right to review the basis information, including the sources of that information, that was used to meet the designated credentialing criteria.

**SEC. 406. GRIEVANCE PROCEDURES.**

(a) IN GENERAL.—A health plan shall adopt a timely and organized system for resolving complaints and formal grievances filed by covered individuals. Such system shall include—

(1) recorded (written or otherwise) procedures for registering and responding to complaints and grievances in a timely manner;

(2) documentation concerning the substance of complaints, grievances, and actions taken concerning such complaints and grievances, which shall be in writing, and be available upon request to the Office for Consumer Information, Counseling and Assistance;

(3) procedures to ensure a resolution of a complaint or grievance;

(4) the compilation and analysis of complaint and grievance data;

(5) procedures to expedite the complaint process if the complaint involves a dispute about the coverage of an immediately and urgently needed service; and

(6) procedures to ensure that if an enrollee orally notifies a health plan about a complaint, the plan (if requested) must send the enrollee a complaint form that includes the telephone numbers and addresses of member services, a description of the plan's grievance procedure, and the telephone number of the Officer for Consumer Information, Counseling and Assistance where enrollees may register complaints.

(b) APPEAL PROCESS.—A health plan shall adopt an appeals process to enable covered individuals to appeal decisions that are adverse to the individuals. Such a process shall include—

(1) the right to a review by a grievance panel;

(2) the right to a second review with a different panel, independent from the health plan, or to a review through an impartial arbitration process which shall be described in writing by the plan; and

(3) an expedited process for review in emergency cases.

The Secretary shall develop guidelines for the structure and requirements applicable to the independent review panel and impartial arbitration process described in paragraph (2).

(c) NOTIFICATION.—With respect to the complaint, grievance, and appeals processes required under this section, a health plan shall, upon the request of a covered individual, provide the individual a written decision concerning a complaint, grievance, or appeal in a timely fashion.

(d) NON-IMPEDIMENT TO BENEFITS.—The complaint, grievance, and appeals processes established in accordance with this section may not be used in any fashion to discourage or prevent a covered individual from receiving

medically necessary care in a timely manner.

(e) DUE PROCESS WITH RESPECT TO CREDENTIALING.—

(1) RECEIPT OF INFORMATION.—A health professional who is subject to credentialing under section 405 shall, upon written request, receive from the health plan any information obtained by the plan during the credentialing process that, as determined by the credentialing committee, does not meet the credentialing standards of the plan, or that varies substantially from the information provided to the health plan by the health professional.

(2) SUBMISSION OF CORRECTIONS.—A health plan shall have a formal, recorded (written or otherwise) process by which a health professional may submit supplemental information to the credentialing committee if the health professional determines that erroneous or misleading information has been previously submitted. The health professional may request that such information be reconsidered in the evaluation for credentialing purposes.

(3) NO ENTITLEMENT.—

(A) IN GENERAL.—A health professional is not entitled to be selected or retained by a health plan as a participating or contracting provider whether or not such professional meets the credentialing standards established under section 405.

(B) ECONOMIC CONSIDERATIONS.—If economic considerations, including the health care professional's patterns of expenditure per patient, are part of a selection decision, objective criteria shall be used in examining such considerations and a written description of such criteria shall be provided to applicants, participating health professionals, and enrollees. Any economic profiling of health professionals must be adjusted to recognize case mix, severity of illness, and the age of patients of a health professional's practice that may account for higher or lower than expected costs, to the extent appropriate data in this regard is available to the health plan.

(4) TERMINATION, REDUCTION OR WITHDRAWAL.—

(A) PROCEDURES.—A health plan shall develop and implement procedures for the reporting, to appropriate authorities, of serious quality deficiencies that result in the suspension or termination of a contract with a health professional.

(B) REVIEW.—A health plan shall develop and implement policies and procedures under which the plan reviews the contract privileges of health professionals who—

(i) have seriously violated policies and procedures of the health plan;

(ii) have lost their privilege to practice with a contracting institutional provider; or

(iii) otherwise pose a threat to the quality of service and care provided to the enrollees of the health plan.

At a minimum, the policies and procedures implemented under this subparagraph shall meet the requirements of the Health Care Quality Improvement Act of 1986.

(C) DUE PROCESS.—The policies and procedures implemented under subparagraph (B) shall include requirements for the timely notification of the affected health professional of the reasons for the reduction, withdrawal, or termination of privileges, and provide the health professional with the right to appeal the determination of reduction, withdrawal, or termination.

(D) AVAILABILITY.—A written copy of the policies and procedures implemented under this paragraph shall be made available to a health professional on request prior to the time at which the health professional contracts to provide services under the plan.

**SEC. 407. CONFIDENTIALITY STANDARDS.**

(a) **IN GENERAL.**—A health plan shall ensure that the confidentiality of specified enrollee patient information and records is protected.

(b) **POLICIES AND PROCEDURES.**—A health plan shall have written confidentiality policies and procedures. Such policies and procedures shall, at a minimum—

- (1) maintain the confidentiality of enrollee patient information within the administrative structure of the health plan;
- (2) protect medical record information;
- (3) protect claim information;
- (4) establish requirements for the release of information; and

(5) inform employees of the confidentiality policies and procedures.

(c) **PATIENT CARE PROVIDERS AND FACILITIES.**—A health plan shall ensure that providers, offices and facilities responsible for providing covered items or services to plan enrollees have implemented policies and procedures to prevent the unauthorized or inadvertent disclosure of confidential patient information to individuals who should not have access to such information.

(d) **RELEASE OF INFORMATION.**—An enrollee in a health plan shall have the opportunity to approve or disapprove the release of identifiable personal patient information by the health plan, except where such release is required under applicable law.

**SEC. 408. DISCRIMINATION.**

(a) **ENROLLEES.**—A health plan (network or non-network) may not discriminate or engage (directly or through contractual arrangements) in any activity, including the selection of service area, that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socio-economic status, age, disability, health status, or anticipated need for health services.

(b) **PROVIDERS.**—A health plan may not discriminate in the selection of members of the health professional or provider network (and in establishing the terms and conditions for membership in the network) of the plan based on—

- (1) the race, national origin, or disability of the health professional;
- (2) the socio-economic status, disability, health status, or anticipated need for health services of the patients of the health professional or provider; or
- (3) the health professional or provider's lack of affiliation with, or admitting privileges at, a hospital.

(c) **LICENSE OR CERTIFICATION.**—A health plan may not discriminate in participation, reimbursement, or indemnification against a health professional who is acting within the scope of the license or certification of the professional under applicable State law solely on the basis of the license or certification of the health professional. A health plan may not discriminate in participation, reimbursement, or indemnification against a health provider that is providing services within the scope of services that it is authorized to perform under State law.

**SEC. 409. PROHIBITION ON SELECTIVE MARKETING.**

A health plan may not engage in marketing or other practices intended to discourage or limit the issuance of health plans to individuals on the basis of health condition, geographic area, industry, or other risk factors.

**TITLE V—HEALTH INSURANCE MARKET REFORM****SEC. 501. GUARANTEED ISSUE AND RENEWABILITY.**

(a) **GUARANTEED ISSUE.**—Except as otherwise provided in this section, a health plan sponsor offering a health plan to a class of

individuals shall offer such plan to any individual within such class who applies for coverage (either directly with the plan or through an employer) under such plan. A health plan may not engage in any practice that has the effect of attracting or limiting enrollees on the basis of personal characteristics, such as occupation or affiliation with any person or entity.

(b) **RENEWABILITY.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), a health plan sponsor may not refuse to renew, or may not terminate, coverage under a health plan with respect to any individual or family.

(2) **GROUND FOR REFUSAL TO RENEW OR TERMINATE.**—Paragraph (1) shall not apply in the case of—

- (A) nonpayment of premiums;
- (B) fraud on the part of the individual relating to such plan;
- (C) misrepresentation of material facts on the part of the individual relating to an application for coverage or claim for benefits; or

(D) the occurrence of other acts as prescribed in standards developed by the National Association of Insurance Commissioners.

(3) **TERMINATION OF PLANS.**—The Secretary, in consultation with the National Association of Insurance Commissioners, shall develop standards under which a health plan sponsor may terminate a health plan.

**SEC. 502. NONDISCRIMINATION BASED ON HEALTH STATUS.**

(a) **NO LIMITS ON COVERAGE; NO PRE EXISTING CONDITION LIMITS.**—Except as provided in subsection (b), a health plan may not—

(1) terminate, restrict, or limit coverage or establish premiums based on the health status, medical condition, claims experience, receipt of health care, medical history, anticipated need for health care services, disability, genetic predisposition to medical conditions, or lack of evidence of insurability of an individual;

(2) terminate, restrict, or limit coverage in any portion of the plan's coverage area;

(3) except as provided in section 501(b)(2), cancel coverage for any individual until that individual is enrolled in another applicable health plan;

(4) impose waiting periods before coverage begins; or

(5) impose a rider that serves to exclude coverage of particular individuals or particular health conditions.

(b) **TREATMENT OF PREEXISTING CONDITION EXCLUSIONS.**—

(1) **IN GENERAL.**—A health plan may impose a limitation or exclusion of benefits relating to treatment of a condition based on the fact that the condition preexisted the effective date of the plan with respect to an individual if—

(A) the condition was diagnosed or treated during the 3-month period ending on the day before the date of enrollment under the plan;

(B) the limitation or exclusion extends for a period not more than 6 months after the date of enrollment under the plan;

(C) the limitation or exclusion does not apply to an individual who, as of the date of birth, was covered under the plan; or

(D) the limitation or exclusion does not relate to pregnancy.

(2) **CONTINUOUS COVERAGE.**—A health plan shall provide that if an individual under such plan is in a period of continuous coverage with respect to particular services as of the date of enrollment under such plan, any period of exclusion of coverage with respect to a preexisting condition as permitted under paragraph (1) shall be reduced by 1 month for each month in the period of continuous coverage.

(3) **DEFINITIONS.**—As used in this subsection:

(A) **PERIOD OF CONTINUOUS COVERAGE.**—The term "period of continuous coverage" means the period beginning on the date an individual is enrolled under a health plan or health care program which provides benefits equivalent to those provided by the plan in which the individual is seeking to enroll with respect to coverage of a preexisting condition and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

(B) **PREEXISTING CONDITION.**—The term "preexisting condition" means, with respect to coverage under a health plan, a condition which was diagnosed, or which was treated, within the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

**SEC. 503. ADJUSTMENTS BASED ON AGE, GEOGRAPHY AND FAMILY SIZE.**

(a) **IN GENERAL.**—With respect to health plan premiums, the Secretary, in consultation with the NAIC, shall specify uniform age, geography, and family size categories and maximum rating increments for age, geography, and family size adjustment factors that reflect the relative actuarial costs of benefit packages among enrollees.

(b) **AGE FACTORS.**—With respect to age adjustment factors established under subsection (a), for individuals who have attained age 18 but not age 65, the highest age adjustment factor may not exceed twice the lowest age adjustment factor.

(c) **PHASE-IN PERIOD.**—The Secretary, in consultation with the NAIC, shall establish a schedule for the phase-in of age-adjusted community rates so as to minimize disruption of the insurance market.

(d) **APPLICATION.**—A health plan shall ensure that the factors developed under this section are applied uniformly across each of the small group and individual markets.

**SEC. 504. RISK ADJUSTMENT.**

(a) **IN GENERAL.**—A health plan shall participate in a risk adjustment program developed by the State involved under standards established by the Secretary in consultation with the National Association of Insurance Commissioners. Such a risk adjustment program shall—

(1) with respect to a plan offered within the small group market; or

(2) with respect to a plan offered within the individual market,

provide for adjustments based on risk within the market in which the plan is marketed.

(b) **PROCESS.**—A program developed under subsection (a) shall include a process designed to share the risk associated with, or to equalize, high cost claims, claims of high cost individuals, costs of variations among carriers based on demographic factors associated with the individuals insured which correlate with such cost variations, to protect health plans from the disproportionate adverse risks of offering coverage to all applicants. Risk adjustment mechanisms under the program shall, to the maximum extent practicable, be prospective to minimize the uncertainty associated with the setting of premiums by health plans to maintain consumer choice from among multiple health plans based on rates that reflect the relative medical and administrative efficiencies of health plans.

**SEC. 505. LIFETIME LIMITS.**

A health plan may not impose a lifetime limitation on the amount or provision of benefits under the plan.

**SEC. 506. PATIENT'S RIGHT TO SELF-DETERMINATION.**

A health plan shall be considered to be an eligible organization under title XVIII of the Social Security Act for purposes of applying the rules under section 1866(f) of such Act (42 U.S.C. 1395cc(f)).

**SEC. 507. AFFECT ON STATE LAW.**

(a) **PREEMPTION.**—The requirements of this title do not preempt any State law unless such State law directly conflicts with such requirements. The provision of additional consumer protections under State law shall not be considered to directly conflict with such requirements. Such State consumer protection laws which are not preempted under this title include—

(1) laws that limit the exclusions for pre-existing medical conditions to periods that are less than those provided for in section 502;

(2) laws that limit variations in premium rates beyond the variations permitted under section 503; and

(3) laws that would expand the small group market.

(b) **STATE REFORM MEASURES.**—Nothing in this title shall be construed as prohibiting a State from enacting health care reform measures that exceed the measures established under this title, including reforms that expand access to health care services, control health care costs, and enhance the quality of care.

**SEC. 508. ASSOCIATION PLANS.**

With respect to health plans offered to small employers and individuals through associations or other intermediaries, such plans shall meet the requirements of this title.

**TITLE VI—MISCELLANEOUS PROVISIONS****SEC. 601. ENFORCEMENT.**

(a) **IN GENERAL.**—A State shall prohibit the offering or issuance of any health plan in such State if such plan does not—

(1) have in place a utilization review program that is certified by the State as meeting the requirements of title III;

(2) comply with the standards developed under title IV;

(3) have in place a credentialing program that meets the requirements of section 405;

(4) comply with the requirements of title V; and

(5) meet any other requirements determined appropriate by the Secretary.

(b) **SELF-INSURED PLANS.**—The Secretary of Labor shall develop health plan standards, consistent with this Act, that are applicable to self-insured plans. The Secretary of Labor may take corrective action to terminate or disqualify a self-insured plan that does not meet the standards developed under this subsection.

**SEC. 602. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as otherwise provided in this section, this Act shall take effect on the date of enactment of this Act.

(b) **STANDARDS.**—The standards and programs required under this Act shall apply to health plans beginning on January 1, 1997.

(c) **OFFICE FOR CONSUMER INFORMATION, COUNSELING AND ASSISTANCE.**—A State shall have in place the Office required under section 201 on January 1, 1997. The Secretary may award grants for the establishment of such Offices beginning on the date of enactment of this Act.

(d) **OTHER REQUIREMENTS.**—The requirements of titles I and V shall apply to health plans beginning on January 1, 1997.●

By Mr. LOTT:

S. 610. A bill to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes; to the Committee on Energy and Natural Resources.

**CORINTH MISSISSIPPI BATTLEFIELD ACT**

Mr. LOTT. Mr. President, I rise today to introduce legislation relevant to historic preservation. This legislation pro-

poses to establish an interpretive center at the Siege and Battle of Corinth sites in Corinth, MS. The battlefield of Corinth is a significant part of our Nation's history. Corinth was the scene of a monumental battle during the War between the States.

I would like my colleagues to know, that on two occasions during the 103d Congress, legislation for this proposed interpretive center was favorably reported out of the Senate Energy and Natural Resources Committee. In addition, legislation for this proposed interpretive center was passed twice in the 103d Congress, by the full Senate. This legislation needs to come to closure. It needs to be passed by both Chambers of Congress and signed into law. It is long overdue.

The Siege and Battle of Corinth sites are the only sites in my home State of Mississippi, which have been included on a Department of the Interior's American Battlefield Protection Program. Also, the sites are two of only twenty-five nationwide placed on a list of Priority Civil War Battlefields for preservation by former Secretary of the Interior, Manuel Lujan.

The Battle of Corinth, the largest to take place in Mississippi, and the Siege of Corinth, both rank, in terms of aggregate numbers of troops involved, among the largest in the history of the Western Hemisphere.

Of all the major Civil War crusades, the Battle of Corinth and the Corinth Siege are indisputably the least known and definitely the least recognized. The site area has already received National Historic Landmark designation. It is time to go one step further to ensure that this important chapter of American history is preserved.

It is most appropriate that we safeguard our national heritage and protect this significant battlefield upon which our ancestors lost life and limb in pursuit of their most fundamental ideals. I encourage my colleagues to join me in supporting the passage of this legislation.

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

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

S. 610

*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 "Corinth, Mississippi, Battlefield Act of 1995".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) **FINDINGS.**—Congress finds that—

(1) the sites located in the vicinity of Corinth, Mississippi, that were designated as a National Historic Landmark by the Secretary of the Interior in 1991 represent nationally significant events in the Siege and Battle of Corinth during the Civil War; and

(2) the Landmark sites should be preserved and interpreted for the benefit, inspiration, and education of the people of the United States.

(b) **PURPOSE.**—The purpose of this Act is to provide for a center for the interpretation of

the Siege and Battle of Corinth and other Civil War actions in the region and to enhance public understanding of the significance of the Corinth Campaign in the Civil War relative to the Western theater of operations, in cooperation with State or local governmental entities and private organizations and individuals.

**SEC. 3. ACQUISITION OF PROPERTY AT CORINTH, MISSISSIPPI.**

(a) **IN GENERAL.**—The Secretary of the Interior (referred to in this Act as the "Secretary") shall acquire by donation, purchase with donated or appropriated funds, or exchange, such land and interests in land in the vicinity of the Corinth Battlefield, in the State of Mississippi, as the Secretary determines to be necessary for the construction of an interpretive center to commemorate and interpret the 1862 Civil War Siege and Battle of Corinth.

(b) **PUBLICLY OWNED LAND.**—Land and interests in land owned by the State of Mississippi or a political sub-division of the State of Mississippi may be acquired only by donation.

**SEC. 4. INTERPRETIVE CENTER AND MARKING.**

(a) **INTERPRETIVE CENTER.**—

(1) **CONSTRUCTION OF CENTER.**—The Secretary shall construct, operate, and maintain on the property acquired under section 3 a center for the interpretation of the Siege and Battle of Corinth and associated historical events for the benefit of the public.

(2) **DESCRIPTION.**—The center shall contain approximately 5,300 square feet, and include interpretive exhibits, an auditorium, a parking area, and other features appropriate to public appreciation and understanding of the site.

(b) **MARKING.**—The Secretary may mark sites associated with the Siege and Battle of Corinth National Historic Landmark, as designated on May 6, 12991, if the sites are determined by the Secretary to be protected by State or local governmental agencies.

(c) **ADMINISTRATION.**—The land and interests in land acquired, and the facilities constructed and maintained pursuant to this Act, shall be administered by the Secretary as a part of Shiloh National Military Park, subject to the appropriate laws (including regulations) applicable to the park, the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1 et seq.), and the Act entitled "an Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance and for other purposes", approved August 21, 1935 (16 U.S.C. 461 et seq.).

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this Act.

(b) **CONSTRUCTION.**—Of the amounts made available to carry out this Act, not more than \$6,000,000 may be used to carry out section 4(a).

**ADDITIONAL COSPONSORS**

S. 12

At the request of Mr. ROTH, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.