

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Alan H. Flanigan, of Virginia, to be Deputy Director for Supply Reduction, Office of National Drug Control Policy.

Colleen Kollar-Kotelly, of the District of Columbia, to be United States District Judge for the District of Columbia.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 2092. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FAIRCLOTH:

S. 2093. A bill to require the Secretary of Health and Human Services to rescind approval of the District of Columbia's welfare reform waiver; to the Committee on Finance.

By Mr. HARKIN:

S. 2094. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON (for himself and Mr. PRYOR):

S. 2095. A bill to promote the capacity and accountability of Government corporations and Government sponsored enterprises; to the Committee on Governmental Affairs.

By Mr. LAUTENBERG (for himself, Mr. KERRY, and Mrs. BOXER):

S. 2096. A bill entitled the "Environmental Crimes and Enforcement Act of 1996"; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 2092. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

IDAHO NATIONAL MONUMENT LEGISLATION

Mr. CRAIG. Mr. President, yesterday afternoon President Clinton stood on

the edge of the Grand Canyon and proclaimed, by Executive order, through the National Antiquities Act, the designation of a national monument in southern Utah of 1.7 million acres.

Was his action illegal? No. It certainly was not, or it does not appear to be at this moment. What is frustrating to those of us in the West who have large expanses of public land is that the President sought no counsel, did not even consult with the Senators from Utah until the very last minute, did not talk to the Governor, to the State legislators or to the county commissioners in whose counties this large expanse of 1.7 million acres was involved. He simply stood on the banks or the edge of the Grand Canyon and proclaimed—yes, this is a device that was used by President Roosevelt who set aside the Grand Canyon years ago; it was a device that was oftentimes used prior to the enactment of the National Environmental Policy Act or the Federal Land Use Management Act, NEPA and FLMPA, because there was no certain public process to ensure the protection of valuable lands or, more importantly, to involve the public in them. The Congress simply had not moved in that direction at that time when the National Antiquities Act came about.

That is not the case today. In my opinion, the President yesterday standing on the edge of the Grand Canyon violated his public trust in failing to openly and publicly involve all of the necessary people in making this decision and making sure that private rights, property rights, water rights, grazing rights, mining rights, all of those kinds of things, were taken into consideration.

In fact, I stood at a press conference yesterday afternoon in which the Democrat Congressman from whose district this large expanse of land was proclaimed by the President yesterday, and he said that at 11 o'clock the night before he was on the phone with the President saying, "But, Mr. President," and the President was saying, "Oh, don't worry. We will take care of you here and we will take care of you there. We will protect hunting rights."

Well, Mr. President, those kind of things do not exist in a national monument. You do not allow hunting. You do not allow grazing. You do not allow mining. Yet, this President, in the dark of night, in the wee hours before he was planning this great publicity event for his reelection, was telling the Democrat Congressman, "I will take care of you," after the fact.

Now, the reason that was happening is because this President sought no public process. As certainly the Presiding Officer knows, over the last good number of years we have looked at a lot of public properties. We spent 10 years designating over 5 million acres of land in southern California as wilderness. I went to California three times in public hearings. It was thoroughly debated on the floor. All of the rights were taken care of.

Finally, this Congress acted and designated as wilderness a large chunk of the southern California desert. However, every issue was taken into consideration prior to that happening. That simply did not happen yesterday with this President. He was interested in the sound bite and the evening news and his politics and the campaign. He trampled all over the rights of citizens and all over the public process. I am saddened by that.

It is for that reason today I am introducing legislation that would deny him that right in the State of Idaho. I hope other Senators would join with me who have large expanses of public land that now might be at risk, because this President, for his environmental political gains, would select another piece of property. All I am saying is that the National Antiquities Act does not apply in Idaho unless there is a public process and unless the Congress agrees or consents or authorizes.

What is important here is that I am not denying what the President did. What I am denying is his right to do it in the back rooms in the dark of night, even with his own Secretary of Interior last Friday and through the weekend not being able to say that this, in fact, was going to happen.

It was the chief of staff of the White House, Leon Panetta, who finally called the Senators from Utah just before it happened and announced that it was going to happen. That should not happen. We want public process. This President has pounded us on public process. We will have public process in Idaho. I am not denying that some lands in Idaho might one day be selected as a national monument. But what I am saying is that the citizens of the State of Idaho, the Governor of the State of Idaho, the county commissioners, the congressional delegation, and this Congress, because it's public land, will participate in the process of making those decisions. We don't want this President, or any President, running roughshod over the State of Idaho, or any other State for that matter.

By Mr. FAIRCLOTH:

S. 2093. A bill to require the Secretary of Health and Human Services to rescind approval of the District of Columbia's welfare reform waiver; to the Committee on Finance.

DISTRICT OF COLUMBIA WELFARE LEGISLATION

Mr. FAIRCLOTH. Madam President, I rise today to introduce legislation that would rescind the approval granted in August to the District of Columbia's welfare waiver.

I would first like to acknowledge and I want to recognize the leadership of my colleague from Oklahoma, Senator NICKLES, who recently introduced similar legislation which would require the enforcement of a 5-year time limit on welfare benefits in the district.

Senator NICKLES' approach requires that the District live by the 5-year requirement. My legislation simply repeals the entire waiver.

Madam President, today's Washington Post reports that the waiver was completed just 2 days before the welfare bill became law. In fact, on July 31 when the District was given notice that the President was going to sign the welfare bill, the District sent its waiver application in within one week. Now, this is the fastest anything has ever happened in the District of Columbia. This is the one efficient thing they have ever done, getting their waiver papers in. The waiver application was granted within 2 weeks. Now, have you ever heard of the bureaucrats at HHS doing anything in 2 weeks? But they got this out.

Madam President, the whole episode is a sham. The District of Columbia is a flat joke that is not funny and its government is a laughingstock. Its welfare system is worse.

Madam President, it is apparent that the Clinton administration is not serious about welfare reform. The President signed the bill with his fingers crossed behind his back. He signed it because, according to Time magazine, the man who had his ear, his political consultant guru and advisor, Dick Morris, told him to sign it and got him to sign it.

It is crystal clear that should the Democrats regain control of Congress—which is not going to happen, but if they should—the welfare bill would be repealed immediately, and they as much as said so at the Chicago convention.

Madam President, it has gotten so bad in the District of Columbia you will be able to collect welfare for 15 years—for 15 years, as long as you are making a good-faith effort to find work.

Let me give you just an example or two of what finding work in the District of Columbia involves: Getting your driver's license is finding work; attending self-esteem classes is work. Now, where else in this country could attending self-esteem classes be called work?

Madam President, only in the District of Columbia would such a laughingstock of a welfare system continue. And only with the Clinton administration in power could it continue. Sadly, the joke is on us. The joke is on the people of this Nation. The joke is on the people of Kansas and North Carolina. They are the ones that are subsidizing and paying for the District of Columbia's folly.

We just passed a bill giving the District of Columbia \$660 million. We do so every year. Now, how is the money used? It is not used. It is misused and it is thrown away at a rate that the average American could not understand.

They cannot open the schools on time. Only 52 percent of high school students actually graduate despite the fact they spend more money per student than any city in the United States—52 percent graduate. The District has the same number of public employees as the City of Chicago—

which is five times larger. And Chicago is 5 times larger. Can you imagine a city when 1 of every 8 citizens is a city employee? It's a disaster. It has more employees per resident than any city in the Nation. They don't pave their roads, and they don't fix their roads. In fact, they are required, by law, to have a local match for Federal road money. But we had to waive that, too. Why did we have to waive it? Because they have thrown away their money on welfare, graft, and giveaway programs, and they simply don't have the money to match it. They have thrown it away in every conceivable way, such as fake employees and employees that don't work. One out of every 8 citizens is employed. They paid Medicaid payments to 20,000 people who weren't eligible; 20,000 people who weren't eligible, they paid it to. The water is contaminated. You have to get up in the morning and boil your water before you can drink it.

The prison system is notorious for its numerous escapes. In fact, it is not a prison system, it is a sieve. Mr. President, our capital is a disaster.

Now comes the mother of all bad ideas for the capital, and that is to give the District a massive tax cut. The concept is that people will move to the district, revenue will increase, and all will be fine.

First, the tax break will give a cushy tax break to the wealthy people who seek a nice tax shelter by maintaining a phony residence in Washington and living in Palm Beach.

Second, it will give all the overpaid bureaucrats that live here a tax break. But most important, the tax cut ignores what happens to the revenue. Will it be somehow be better spent, or will it be wasted, stolen, abused, and thrown away, as it is now? Of course, it will because we have done nothing to get to the root of the problem, which is the District's government and the people running it.

Mr. President, it has gotten so bad that a Los Angeles Times article on conditions in Washington opened with a quote from an Egyptian diplomat. He said:

Every day here in Washington reminds me more and more of Cairo.

Doesn't that say it all? There isn't any way the city could be run worse.

Mr. President, the Nation's capital is just that. It belongs to the Nation. It was set apart as the District of Columbia by the Founding Fathers so that it would not become involved in local politics, and it has become a mishmash of bad local politics.

We need a capital that the people of America can be proud of, a capital that visitors from my State and every State can come to and feel safe. That isn't the case today. Rather than a massive tax cut, we need to seriously consider another form of government for the District—not home rule, not congressional rule, but input from the 50 States who are paying for the operation of this Capital City. It should be one we can be proud of, and it's one

that we have to make continuous apologies for.

It is time for the people of this country to take control of it, as was intended by our forefathers. I think the sooner we do it the better.

By Mr. HARKIN:

S. 2094. A bill to inform and empower consumers in the United States through a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CHILD LABOR FREE CONSUMER INFORMATION ACT OF 1996

Mr. HARKIN. Mr. President, I rise to introduce the Child Labor Free Consumer Information Act of 1996, legislation to establish a voluntary labeling system to help inform American consumers whether wearing apparel or sporting goods they see on the store shelves are made without the use of abusive and exploitative child labor.

Although it is late in the session, I believe we should begin a substantive dialog about ending child labor right now. That is why I am introducing this legislation today. And I intend on reintroducing this measure at the beginning of the next Congress.

A WORLDWIDE SCOURGE

When I speak about child labor, I am not talking about children helping out on the family farm or running errands after school. I am speaking about children who are forced to work in hazardous and dangerous conditions—children denied the classroom and driven into the workrooms.

Child labor is a scourge around the world. But we can't dismiss the problem simply because it may occur an ocean away. We cannot ease our conscience by declaring it a "them" problem, because it is not. It is an "us" problem. And all of us can do something to stop it.

Take a moment to look around. Maybe it's the shirt you have on right now. Or the silk tie or blouse. Or the soccer ball you kick around with the kids in the backyard. Or the tennis shoes you wear on weekends.

Chances are that you have purchased something—perhaps many things—made with abusive and exploitative child labor. And chances are you were completely unaware that was the case. That is hardly surprising. Because the tag we see for items in our stores tell us how much we have to pay to buy it. But it doesn't tell us how much someone else had to pay to make it.

For example, the price tag on a soccer ball doesn't tell us that a young child in South Asia—perhaps no older than 5 years of age—paid to make it by working in cramped conditions, stitching together balls for hours at a time and a dollar a day.

Last year, the United States imported almost 50 percent of the wearing

apparel sold in America and the garment industry netted \$34 billion. According to the Department of Commerce, last year the United States imported 494.1 million pairs of athletic footwear and produced only 65.3 million here at home.

Americans may ask, "What does this have to do with us?" It is quite simple. By protecting the rights of workers everywhere, we will be protecting jobs and opportunities here at home. A U.S. worker cannot compete with a 12 year old working 12 hours a day for 12 cents an hour.

PUBLIC SUPPORT

As I have traveled around the country and spoken with people about the issue of abusive and exploitative child labor, I have found that consumers—ordinary Americans—want to get involved. They want information. They want to know if products on the shelves are made by children. And they do not want to buy it if it is.

Public opinion polls back that up. According to a survey sponsored by Marymount University last year, more than three out of four Americans said they would avoid shopping at stores if they were aware that the goods sold there were made by exploitative and abusive child labor. Consumers also said that they would be willing to pay an extra \$1 on a \$20 garment if it were guaranteed to be made under legitimate circumstances.

Mr. President, consumers have spoken. They do not want to reward companies with their hard earned dollars by buying products made with abusive and exploitative child labor.

This body has also spoken. On September 23, 1993, the Senate put itself on record in opposition to the abhorrent practice of exploiting children for commercial gain. This body passed a sense-of-the-Senate resolution that I introduced which asserted that it should be the policy of the United States to prohibit the importation of products made with the use of abusive and exploitative child labor. This was the first step to ending child labor. Now it's time for the next.

LET THE BUYER BE AWARE

The Child Labor Free Consumer Information Act of 1996 will inform and empower American consumers by establishing a voluntary labeling system for wearing apparel and sporting goods made without abusive and exploitative child labor.

In my view, a system of voluntary labeling holds the best promise of giving consumers the information they want—and giving the companies that manufacture these products the recognition they deserve.

The centerpiece of this legislation is the establishment of a working group of members from the wearing apparel and sporting goods industries; labor organizations; consumer advocacy and human rights groups; along with the Secretaries of Commerce, Treasury, and Labor. This Child Labor Free Commission would establish a labeling

standard and develop a system to assure compliance that items were not made with abusive and exploitative child labor.

In my view, Congress cannot do it alone through legislation. The Department of Labor cannot do it alone through enforcement. It takes all of us—from the private sector to labor and human rights groups—to take responsibility and work together to end abusive and exploitative child labor.

VOLUNTARY APPROACH

Let me be clear, companies can choose whether to use the label. This bill is not about big government telling the private sector what to do. It is based on the commonsense approach that a fully informed American consumer will make the right and moral choice and vote against abusive and exploitative child labor with their pocketbook.

We have seen such an approach work effectively with the Rugmark label for hand-knotted oriental carpets. It is operating in some European countries. Consumers who want to buy child labor-free carpets can just look for the Rugmark label.

Over 150,000 carpets have received the Rugmark label and been shipped to Germany. Rugmark licenses already provide 30 percent of German carpet imports from India. And I am pleased to say that there are now two wholesalers in New York that offer carpets with the Rugmark label.

BUILDING ON PROGRESS

Mr. President, the progress that has been made on eradicating abusive and exploitative child labor is irreversible. We must continue working together to end child labor for all. And I believe my bill provides a road map to reaching that goal.

It allows the consumer to know more about the products they buy and it gives companies that use the label the recognition they deserve. I urge my colleagues to support my bill.

Our Nation began this century by working to end abusive and exploitative child labor in America, let us close this century by ending child labor around the world.

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

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

MARYMOUNT UNIVERSITY CENTER FOR ETHICAL CONCERNS

NEW GARMENT WORKERS STUDY FINDS AMERICANS INTOLERANT OF SWEATSHOPS IN GARMENT INDUSTRY

ARLINGTON, VA—Retailers selling clothing made in sweatshops operating in the United States could feel the ire of American consumers, suggests a new survey sponsored by Marymount University in Arlington, Virginia. The new study shows that consumers would avoid stores that sell goods made in sweatshops and be more inclined to shop at stores working actively to prevent garment worker abuses.

According to the survey, more than three-fourths of Americans would avoid shopping

at stores if they were aware that the stores sold goods made in sweatshops. Consumers also are willing to pay a price for assurances that the goods they buy are not made in sweatshops. An overwhelming majority (84 percent) say they would be willing to pay up to an extra \$1 on a \$20 garment if were guaranteed to be made in a legitimate shop.

The study, sponsored by Marymount's Center for Ethical Concerns and the Department of Fashion Design and Merchandising, was prompted by the recent discovery of sweatshops operating in the United States in which illegal aliens smuggled into the country were forced to produce garments under almost slave labor conditions. In one factory, raided earlier this year by U.S. officials, workers had been confined in a barbed wire-enclosed compound and forced to work between 16 and 22 hours a day. Workers were paid less than \$1 an hour and essentially held captive until they had repaid the cost of their passage to the United States, a process that took years in some cases.

Since these revelations, the U.S. Department of Labor has been working with retailers to encourage greater diligence in policing the industry voluntarily and plans in the near future to release a list of companies that have agreed to cooperate in these efforts. The new study shows that a substantial majority of Americans (66 percent) would be more likely to patronize stores that they know are cooperating with law enforcement officials to prevent sweatshops. If such a list were published, more than two-thirds (69 percent) of consumers say they would take this information into account when deciding where to do their shopping this holiday season.

"It is gratifying to know that Americans condemn these sweatshop conditions and are willing to demonstrate that commitment when they shop, even if it costs them a few pennies. The industry, including retailers, has a responsibility to make sure it is not selling garments made in sweatshops, and the public is willing to hold them accountable," said Sr. Eymard Gallagher, RSHM, president of Marymount University. "Despite the competitiveness in the industry, we can't close our eyes to these kinds of conditions that we thought had disappeared years ago," she said.

The telephone survey of 1,008 randomly selected adults, was conducted by ICR Survey Research Group of Media, PA, at the request of Marymount. The survey has a margin of error of plus or minus 3 percentage points.

Marymount University's fashion design and fashion merchandising programs are among the leaders in this field in the United States. Marymount is an independent, Catholic university, emphasizing excellence in teaching, attention to the individual, and values and ethics across the curriculum. Located in Arlington, Virginia, Marymount enrolls 4,200 men and women in its 34 undergraduate and 24 master's degree programs.

STUDY BACKGROUND AND OBJECTIVES

United States officials recently discovered that workers who had been smuggled into this country were making garments in sweatshops where they were forced to work long hours under extremely poor working conditions for less than the minimum wage. As a result, this research was conducted to determine:

Whether respondents would avoid shopping at retailers if aware they sold garments made in sweatshops;

Whether respondents would be more inclined to shop in retail stores cooperating with law enforcement officials to prevent sweatshops;

Whether respondents would be willing to pay \$1 more for a \$20 garment if it were guaranteed to be made in a legitimate shop;

Whether respondents would be more likely this holiday season to shop in retail stores on a forthcoming list of retailers assisting authorities in their effort to end abuse of United States garment workers; and

Whether the manufacturers or the retailers should have the responsibility of preventing sweatshops.

RESEARCH METHODOLOGY

The research entailed a telephone interview insert in ICR Survey Research Group's EXCEL Omnibus. Each EXCEL includes a national random sample of approximately 1,000 adults (18+), half male and half female.

Interviewing was conducted from Friday, October 27 through Tuesday, October 31. A total of 1008 interviews were completed. Data has been weighted to reflect the U.S. population 18 years of age and older (188,700,000).

IN A NUTSHELL . . . HERE ARE THE FINDINGS; RETAILERS—BEWARE OF SWEATSHOP GARMENTS

Americans overwhelmingly support the idea of officials publishing a list of retailers who assist law enforcement agencies in their effort to end abuse of United States garment workers. Seven-in-ten respondents indicate they would be more likely to shop at the stores this holiday season that cooperate to end garment worker abuse. Consumers are willing to pay a price for assurances that goods they buy are not made in sweatshops. 84% of consumers would pay an additional \$1 on a \$20 item if they knew the garment was guaranteed to be made in a legitimate shop.

Most Americans (76%) blame the existence of sweatshops on the manufacturers who employ the contractors or workers. However, if consumers knew a retailer sold garments that were made in sweatshops, nearly eight-in-ten would avoid shopping there. As the holiday season starts to kick-off, retailers would be wise to ensure their garments were in fact made in legitimate shops. Given the potential for enticing customers with legitimately made garments, and the potential for losing customers if caught selling sweatshop-made garments, promoting legitimately made garments provides a strategic business opportunity for retailers.

By Mr. SIMON (for himself and Mr. PRYOR):

S. 2095. A bill to promote the capacity and accountability of Government corporations and Government sponsored enterprises; to the Committee on Governmental Affairs.

THE GOVERNMENT CORPORATION AND GOVERNMENT SPONSORED ENTERPRISE STANDARDS ACT

• Mr. SIMON. Mr. President, my involvement in the issue of student aid over the past few years has given me a greater understanding of so-called government-sponsored enterprises. I have been critical of Sallie Mae, the Student Loan Marketing Association, for its lobbying activities and its high salaries. Five years ago I began calling for the elimination of Sallie Mae's ties to the Government.

But I would like to go further in addressing this question of corporations that are connected in some way with the Federal government. How do they know when their purpose has been achieved, and their ties to the government should be cut? How do we make sure that they do not become so strong politically that the ties can never be cut? Should they be exempt from federal, state, and local taxes? Should the securities laws apply them?

Today, along with my colleague, Senator PRYOR, I am introducing a bill that would address these and other questions. The bill would establish standards for the creation of new Government-sponsored enterprises, those corporations that are created by Congress but are owned by private investors. The bill also would set guidelines for a very different type of corporation: those that are actually owned by taxpayers as a part of the Federal Government structure.

This legislation is the result of concerns raised by the National Academy of Public Administration. Harold Seidman, in House testimony on behalf of the Academy last year, pointed out that the Congress has not used any consistent criteria for determining when a government corporation is appropriate and when it is not. He also raised questions about some of the privileges that have been granted to Government-sponsored enterprises.

The purpose of this legislation is to ensure that, as Congress considers the creation of new government corporations and government-sponsored enterprises, it does so with its eyes wide open. It would also require some of these entities to plan for eventual privatization, and would force Congress to review their status on a regular basis.

I know that it is not possible for Congress to act on this legislation in these final weeks. But I hope some of my colleagues will take up where I have left off, and work to establish much-needed standards where Government intersects with business. •

By Mr. LAUTENBERG (for himself, Mrs. BOXER, and Mr. KERRY):

S. 2096. A bill entitled the "Environmental Crimes and Enforcement Act of 1996"; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL CRIMES AND ENFORCEMENT ACT OF 1996

• Mr. LAUTENBERG. Mr. President, today I am joined by Senator KERRY in introducing legislation, the Environmental Crimes and Enforcement Act of 1996, to increase penalties and strengthen enforcement for environmental crimes.

Mr. President, most Americans consider themselves environmentalists. Millions of Americans participate in voluntary recycling and do what they can to save the environment. Similarly, many companies spend substantial amounts to comply with environmental laws, and many do much more than required.

Mr. President, expenditures for environmental controls are a cost of business that, in the short run, can adversely affect a company's bottom line. But these controls benefit all Americans. They lead to cleaner water, cleaner air, safer employees and healthier children.

Mr. President, when a business invests in environmental protection to comply with our laws, it should not be

placed at a competitive disadvantage as a result. That is, it shouldn't have to compete against other firms that save costs by disregarding their environmental responsibilities. But to protect against that kind of unfairness, Mr. President, Government must strongly enforce environmental laws. And that is what this bill will help ensure.

Mr. President, this bill was developed by the Department of Justice after consultation with State, local and Federal prosecutors from around the country. It is aimed at bad actors who violate our environmental laws purposely, intentionally, or with knowing disregard for the impact of their actions. These are not people who accidentally miss a deadline or even negligently forget to file for a needed permit.

They are criminals who know what they're doing, and who generally are flouting our laws simply to make a buck.

Mr. President, we need to get tough with those who intentionally violate environmental laws. This bill would help in several ways.

The bill would make it a federal crime to attempt to violate our environmental laws. This would make it much easier to enforce these laws, and to prevent environmental degradation before it happens. Most federal laws, other than criminal environmental laws now include provisions for attempted criminality.

The legislation also would give federal prosecutors tools to work more effectively with their state counterparts. It would improve training of law enforcement personnel in the investigation of environmental crimes. It also would facilitate prosecution by extending the statute of limitations when a violator has tried to conceal environmental crimes.

Another provision in the legislation would allow judges to force environmental criminals to pay to clean up the mess they made. That, Mr. President, is only fair. If a child has to clean up his own room, surely a corporation should have to clean up their own mess when they intentionally dump toxic chemicals.

Finally, Mr. President, this legislation would give judges the authority to increase penalties when an environmental crime leads to serious injury or death. This should help deter the most serious abuses of our laws.

Mr. President, none of these proposals, by itself, will solve the problem of environmental crime. But, together, they would make a real difference. They would help improve the quality of our environment. And they would help protect the majority of law-abiding businesses that invest in environmental protection, and that abide by our laws in good faith.

Mr. President, over the past 20 years, our economy has grown considerably, but pollution has been reduced. This has occurred not only because Congress passed environmental legislation.

It has also occurred because of the creativity of our scientists and the commitment of American businesses. These law-abiding businesses, as I have said, deserve to be treated fairly. They should be rewarded for their diligence, not placed at an unfair competitive disadvantage.

Mr. President, I recognize, given the limited time remaining in the 104th Congress, that this legislation will not become law this year. However, I intend to work in the next Congress to have hearings on this bill, and I would welcome input from any interested parties.

Next year, I am hopeful that we can move in a bipartisan manner to make any needed improvements, and to enact this legislation into law as soon as possible.

Mr. President, I ask unanimous consent that a copy of the bill, S. 2096, and a section-by-section analysis be included in the RECORD.

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

S. 2096

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 "Environmental Crimes and Enforcement Act of 1996".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Federal investigation and prosecution of environmental crimes play a critical role in the protection of human health, public safety, and the environment;

(2) the effectiveness of environmental criminal enforcement efforts is greatly strengthened by close cooperation and coordination among Federal, State, local, and tribal authorities; and

(3) legislation is needed to facilitate Federal investigation and prosecution of environmental crimes and to increase the effectiveness of joint Federal, State, local, and tribal criminal enforcement efforts.

SEC. 3. JOINT FEDERAL, STATE, LOCAL, AND TRIBAL ENVIRONMENTAL ENFORCEMENT.

(a) Chapter 232 of title 18 is amended by adding after section 3673 the following new section 3674—

"§ 3674. Reimbursement of State, local, or tribal government costs for assistance in Federal investigation and prosecution of environmental crimes.

"(a) Upon the motion of the United States, any person who is found guilty of a criminal violation of the Federal environmental laws set forth in subsection (b) below, or conspiracy to violate such laws, may be ordered to pay the costs incurred by a State, local, or tribal government or an agency thereof for assistance to the Federal government's investigation and criminal prosecution of the case. Such monies shall be paid to the State, local, or tribal government or agency thereof and be used solely for the purpose of environmental law enforcement.

"(b) This subsection applies to a violation of any of the following statutes, or conspiracy to violate any of the following statutes—

"(1) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136l(b));

"(2) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. § 2615(b));

"(3) Sections 10, 12, 13, and 16 of the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. §§ 403, 406, 407, 411);

"(4) Sections 309(c) and 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1319(c), 1321(b)(5));

"(5) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b));

"(6) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. § 1908(a));

"(7) Section 4109(c) of the Shore Protection Act of 1988 (33 U.S.C. § 2609(c));

"(8) Sections 1423 and 1432 of the Safe Drinking Water Act (42 U.S.C. §§ 300h-2, 300i-1);

"(9) Sections 3008(d), 3008(e) and 3008(i) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6928(d), 6928(e), 6928(i));

"(10) Section 113(c) of the Clean Air Act (42 U.S.C. § 7413(c));

"(11) Sections 103(b) and 103(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9603(b), 9603(d));

"(12) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11045(b)(4));

"(13) Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1733(a)); or

"(14) Sections 5124, 60123(a), and 60123(b) of title 49, United States Code."

(b) The table of sections of chapter 232 of title 18, United States Code is amended by adding the following after the item relating to section 3673:

"3674. Reimbursement of State, local, or tribal government costs for assistance in Federal investigation and prosecution of environmental crimes."

SEC. 4. PROTECTION OF GOVERNMENT EMPLOYEES AND THE PUBLIC.

(a) Chapter 39 of title 18, United States Code, is amended by adding the following new section:

"§ 838. Protection of government employees and the public from environmental crimes.

"(a) Any person who commits a criminal violation of a Federal environmental law identified in this subsection that is the direct or proximate cause of serious bodily injury to or death of any other person, including a Federal, State, local or tribal government employee performing official duties as a result of the violation, shall be subject to a maximum term of imprisonment of twenty years, a fine of not more than \$500,000, or both, and, if the defendant is an organization, to a fine of not more than \$2,000,000. The laws to which this subsection applies are—

"(1) Section 309(c)(2), 309(c)(4), or 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1319(c)(2), 1319(c)(4), 1321(b)(5));

"(2) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b));

"(3) Section 1423 or 1432 of the Safe Drinking Water Act (42 U.S.C. §§ 300h-2, 300i-1);

"(4) Section 3008(d) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6928(d));

"(5) Section 113(c)(1) or 113(c)(2) of the Clean Air Act (42 U.S.C. §§ 7413(c)(1), 7413(c)(2));

"(6) Section 103(b) or 103(d) of the Comprehensive Response, Compensation, and Liability Act (42 U.S.C. §§ 9603(b), 9603(d));

"(7) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11045(b)(4)); or

"(8) Section 5124, 60123(a), or 60123(b) of title 49, United States Code.

"(b) Any person who commits a criminal violation of Federal environmental law identified in this subsection that is the direct or

proximate cause of serious bodily injury to or death of any other person, including a Federal, State, local or tribal government employee performing official duties as a result of the violation, shall be subject to a maximum term of imprisonment of five years, a fine of not more than \$250,000, or both, and, if a defendant is an organization, to a fine of not more than \$1,000,000. The laws to which this subsection applies are—

"(1) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136l(b)); or

"(2) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. § 2615(b)).

"(c) For purposes of this section, the term "serious bodily injury" means bodily injury which involves—

"(1) unconsciousness;

"(2) extreme physical pain;

"(3) protracted and obvious disfigurement;

or

"(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(d) For purposes of this section, the term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons."

(b) The table of sections of chapter 39 of title 18, United States Code is amended by adding the following after the item relating to section 837:

"§ 838. Protection of government employees and the public from environmental crimes."

SEC. 5. ENVIRONMENTAL CRIMES TRAINING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

(a) This section may be cited as the "Environmental Crimes Training Act of 1996".

(b) The Administrator of the Environmental Protection Agency, as soon as practicable, within the Office of Enforcement and Compliance Assurance, shall establish the State, Local, and Tribal Environmental Enforcement Training Program to be administered by the National Enforcement Training Institute within the Office of Criminal Enforcement, Forensics and Training. This Program shall be dedicated to training State, local, and tribal law enforcement personnel in the investigation of environmental crimes at the Federal Law Enforcement Training Center (FLETC) in Glynn County, Georgia at the EPA-FLETC training center or other training sites which are accessible to State, local, and tribal law enforcement. State, local, and tribal law enforcement personnel shall include, among others, the following: inspectors, civil and criminal investigators, technical experts, regulators, government lawyers, and police.

SEC. 6. STATUTE OF LIMITATIONS.

(a) Chapter 213 of title 18, United States Code, is amended by adding after section 3294 the following new section—

"§ 3295. Felony environmental crimes.

"(a) No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate, any of the offenses listed in subsection (b) unless the indictment is returned or the information is filed within five years after the offense is committed; however, when a person commits an affirmative act that conceals the offense from any Federal, State, local, or tribal government agency, that person shall not be prosecuted, tried, or punished for a violation of, or a conspiracy to violate, any of the offenses listed below in subsection (b) unless the indictment is returned or the information is filed within five years after the offense is committed, or within three years after the offense is discovered by a government agency, whichever is

later but in no event later than eight years after the offense is committed.

“(b) This section applies to a violation of—
“(1) Section 309(c)(2), 309(c)(3), 309(c)(4), or 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1319(c)(2), 1319(c)(3), 1319(c)(4), 1321(b)(5));

“(2) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b));

“(3) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. § 1908(a));

“(4) Section 4109(c) of the Shore Protection Act of 1988 (33 U.S.C. § 2609(c));

“(5) Section 1423 or 1432 of the Safe Drinking Water Act (42 U.S.C. §§ 300h-2, 300i-1);

“(6) Section 3008(d) or 3008(e) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6928(d), 6928(e));

“(7) Section 113(c)(1), 113(c)(2), 113(c)(3), or 113(c)(5) of the Clean Air Act (42 U.S.C. §§ 7413(c)(1), 7413(c)(2), 7413(c)(3), 7413(c)(5));

“(8) Section 103(b) or 103(d) of the Comprehensive Response, Compensation, and Liability Act (42 U.S.C. §§ 9603(b), 9603(d));

“(9) Section 325(b)(4) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11045(b)(4)); or

“(10) Section 5124, 60123(a), or 60123(b) of title 49, United States Code.”.

(b) The table of sections of chapter 213 of title 18, United States Code is amended by adding after the item referring to section 3294 the following new item—

“§ 3295. Felony environmental crimes.”.

SEC. 7. ATTEMPTS.

(a) Section 14(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 1361(b)) is amended by adding a new paragraph 14(b)(5)—

“(5) ATTEMPTS.—Any person who attempts to commit the conduct that constitutes an offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such an offense.”.

(b) Section 16(b) of the Toxic Substances Control Act (15 U.S.C. § 2615(b)), is amended by inserting “(1)” before “Any” and by adding the following new paragraph—

“(2) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.”.

(c) Section 309(c) of the Federal Water Pollution Control Act (33 U.S.C. § 1319(c)), is amended by adding after paragraph (7) the following new paragraph 309(c)(8)—

“(8) Any person who attempts to commit the conduct that constitutes any offense under paragraphs (2), (3) or (4) of this subsection shall be subject to the same penalties as those prescribed for such offense.”.

(d) Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1415(b)), is amended by striking “and” at the end of paragraph (1), striking the period at the end of (2)(B), and inserting “; and”, and adding after paragraph (2) the following new paragraph—

“(3) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.”.

(e) Section 9(a) of the Act to Prevent Pollution from Ships (33 U.S.C. § 1908(a)), is amended by inserting “(1)” before “(A)” and by adding the following new paragraph—

“(2) Any person who attempts to commit the conduct that constitutes any offense under paragraph (1) of this subsection shall be subject to the same penalties as those prescribed for such offense.”.

(f) Section 3008 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6928), is amended by adding after subsection 3008(h) the following new subsection—

“(i) Any person who attempts to commit the conduct that constitutes any offense under subsections (d) or (e) of this section shall be subject to the same penalties as those prescribed for such offense.”.

(g) Section 113(c) of the Clean Air Act (42 U.S.C. § 7413(c)), is amended by adding after paragraph 6 the following new paragraph—

“(7) Any person who attempts to commit the conduct that constitutes any offense under subsections (1), (2), or (3) of this section shall be subject to the same penalties as those prescribed for such offense.”.

SEC. 8. ENVIRONMENTAL CRIMES RESTITUTION.

(a) Section 3663(a)(1) of title 18, United States Code, is amended by striking “or” before “section 46312” and inserting “or an environmental crime listed in section 3674 of this title,” after “section 3663A(c).”

(b) Subsection 3663(b) of title 18, United States Code, is amended by striking “and” at the end of paragraph (4), striking the period at the end of paragraph (5) and inserting “; and”, and adding after paragraph (5) the following new paragraph—

“(6) in the case of an offense resulting in pollution of or damage to the environment, pay for removal and remediation of the environmental pollution or damage and restoration of the environment, to the extent of the pollution or damage resulting from the offense; in such a case, the term ‘victim’ in section 3663(a)(2) includes a community or communities, whether or not the members are individually identified.”.

THE ENVIRONMENTAL CRIMES AND ENFORCEMENT ACT OF 1996 SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 sets out the short title of this bill, the “Environmental Crimes and Enforcement Act of 1996.”

Section 2

Section 2 states the Congressional findings upon which the Act is based. Specifically, the findings are that environmental criminal enforcement plays a critical role in the protection of human health, public safety, and the environment, and that these efforts are greatly enhanced by close cooperation and coordination among Federal, State, local, and tribal authorities. The purpose of the legislation is to increase protection of the environment by strengthening Federal law enforcement and by increasing the effectiveness of joint Federal, State, local, and tribal criminal environmental enforcement efforts.

Section 3

Section 3 authorizes Federal district courts to order convicted criminals to reimburse States, localities, and tribes for costs they incur during Federal environmental prosecutions. Moneys paid to State, local, and tribal governments under this provision may be used solely for environmental law enforcement. This reimbursement provision applies to prosecutions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Toxic Substances Control Act (TSCA); the Rivers and Harbors Appropriations Act of 1899; the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Act to Prevent Pollution from Ships; the Shore Protection Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Federal Land Policy and Management Act; and 49 U.S.C. § 5124, relating to transportation of hazardous materials.

This provision will strengthen criminal environmental enforcement by fostering coop-

erative efforts among Federal, State, local, and tribal officials. State and local inspectors, and investigators often initiate what become Federal enforcement actions, and they continue to work with Federal officials through the trial stage. For example, State laboratories provide analytical support. Many State and local prosecutors participate in joint task forces and they sometimes are cross-designated as special assistant U.S. attorneys. Although certain State courts may award costs to State and local governments in State criminal proceedings, Federal courts are not now expressly authorized to order such reimbursement. Providing for reimbursement will greatly increase the ability of State, local, and tribal officials to cooperate in Federal criminal proceedings to address violations of environmental law. Joint enforcement efforts also make the Federal program more responsive to local communities.

Because the court may order reimbursement only upon motion of the United States, the discretion of both the Federal prosecutor and the court will serve as a check against unwarranted cost awards. Allowable costs are limited to those incurred by a State, local, or tribal government or agency for assistance to the Federal Government’s investigation and prosecution of a case. Costs imposed on a defendant are payable directly to the State or local government in a manner analogous to the payment of restitution directly to the victims of a crime, thus obviating the need for a separate Federal fund or Federal administrator to collect and transfer the moneys.

Section 4

Section 4 provides for enhanced punishment where a criminal violation of specified environmental laws directly or proximately causes serious bodily injury or death to any person, including any Federal, State, local, or tribal government official.

Police officers, firefighters, paramedics, and other public safety and public health personnel often are the first on the scene of an environmental crime. In their efforts to protect others from harm, they themselves may suffer serious injury or death resulting from other people’s criminal mishandling of dangerous materials or failure to comply with their legal duty to notify the government of releases of dangerous substances. Members of the public can also be injured or killed as a result of environmental crimes.

Section 4 will ensure that the criminals who cause this suffering will face an appropriately severe, enhanced punishment upon conviction. It does not establish a new or different crime, but instead provides for enhanced terms of imprisonment and enhanced fines for persons convicted of felony violations under specified Federal environmental laws where death or serious injury results. The laws covered by this provision are: the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; and 49 U.S.C. § 5124. The section also provides for enhanced penalties for environmental misdemeanors under the Federal Insecticide, Fungicide and Rodenticide Act and the Toxic Substances Control Act where death or serious injury results, thereby transforming those violations into felonies.

For enhanced punishment to be imposed, section 4 requires that the defendant commit the underlying environmental crime and that the crime be the direct or proximate

cause of serious bodily injury or death. The requirement of "direct or proximate" causation is in line with language used in other criminal provisions, see, e.g., 18 U.S.C. §844 (personal injury resulting from arson), and limits the sentence enhancement to appropriate cases. Those who commit environmental crimes, for example, by illegally storing hazardous waste, are on notice that their actions may cause serious injury or death to other persons. Unlike existing endangerment provisions in certain environmental statutes that apply to threatened injuries, Section 4 requires actual injury or death, but does not require that the defendant intend or know of the injury or death that the defendant's crime causes.

For the most part, the definition of "serious bodily injury" in Section 4 follows similar definitions in 18 U.S.C. §113 (assaults within maritime and territorial jurisdiction) and 18 U.S.C. §1365(g)(3) (tampering with consumer products). The definition in Section 4, however, does not include "substantial risk of death." In other words, actual serious bodily injury or death (not just the risk of injury or death) must occur for enhanced punishment to be imposed under Section 4. Section 4 also includes "unconsciousness" within the definition of "serious bodily injury," thereby conforming to the definition of that term in the Federal hazardous waste laws at 42 U.S.C. §6928(f)(6).

Section 4 specifically lists certain government employees whose death or injury could trigger enhanced punishment. This listing is not intended to exclude other persons, including other government employees, from the provision's coverage, but rather to emphasize that the specified government employees are exposed to special risks and are thus especially likely to benefit from the added deterrence and protection engendered by this provision.

Section 5

Section 5 responds to the urgent need expressed by State, local, and tribal officials for additional Federal training on environmental criminal enforcement. It establishes within the Environmental Protection Agency a separate program dedicated to the training of State, local, and tribal law enforcement personnel in the investigation of environmental crimes.

States and local governments are undertaking an expanded role in environmental enforcement, not only of their own laws but also of Federal statutes pursuant to delegated authority. The Pollution Prosecution Act of 1990 mandated that EPA deploy 200 criminal investigators across the country and establish the National Enforcement Training Institute (NETI) to train State, local, and tribal law enforcement in safe and effective investigation of environmental crimes. Section 5 will increase training for State, local, and tribal law enforcement officials and strengthen cooperative enforcement of the Nation's environmental laws. Under the mandate of the Pollution Prosecution Act of 1990, the Environmental Protection Agency has regularly trained State, local, and tribal investigators and regulatory personnel in courses conducted at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA. The need and demand for such training, however, has been greatly increasing.

Section 6

Section 6 provides for an extension of the statute of limitations where a violator has engaged in affirmative acts of concealment of specified environmental crimes.

As is the case for most Federal crimes, Federal environmental crimes are currently subject to a five-year statute of limitations, which runs from the time the offense is com-

mitted. 18 U.S.C. §3282. Some environmental crimes, including some of the most egregious ones, involve affirmative acts of concealment by the wrongdoers. Criminals who are the most deceptive, and thus able to hide their wrongdoing the longest, are most likely to escape the legal consequences of their acts through expiration of the statute of limitations.

Section 6 addresses this problem for a specified list of felony violations of environmental statutes by extending the limitations period for up to three years beyond the traditional 5-year period when the defendant commits an affirmative act of concealment. In these circumstances, the limitation period extends to three years after discovery of the crime by the government. In no event does the limitations period extend beyond eight years after the offense was committed. This extended limitations period covers violations of various provisions under the Federal Water Pollution Control Act; the Marine Protection, Research, and Sanctuaries Act; the Act to Prevent Pollution from Ships; the Shore Protection Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Emergency Planning and Community Right-to-Know Act; and 49 U.S.C. §5124.

For example, if a violator committed an affirmative act of concealment and the environmental crime were not discovered until three, four, or five years after it was committed, Section 6 would extend the statute of limitations to 6, 7, or 8 years after the crime was committed, respectively—that is, up to three years after the time of discovery with an eight year cap. If a violator committed an affirmative act of concealment, but the crime were nevertheless discovered by any Federal, State, local, or tribal government agency immediately after it was committed, there would be no extension under Section 6, and the limitations period would be the 5-year period running from the time the crime was committed. Similarly, where there was no affirmative act of concealment, the five-year period would apply and would run from commission of the crime.

The burden rests on the government to prove an affirmative act of concealment under Section 6.

Section 7

Section 7 amends specified environmental statutes to add attempt provisions. Under these new provisions, any person who attempts to commit an offense shall be subject to the same penalties as those prescribed for the offense itself.

The rationale for these new attempt provisions is similar to that for comparable provisions in other Federal criminal statutes. Under these existing attempt laws, when law enforcement authorities uncover planned criminal activity and a substantial step is taken towards the commission of the crime, the crime can be stopped before it is completed and the perpetrator may still be prosecuted. For example, Federal law makes attempted bank robbery a crime, punishable the same as bank robbery. 18 U.S.C. §2113(a). Similar attempt provisions exist for numerous other crimes, such as uttering a Treasury check with forged endorsement (18 U.S.C. §510); bank fraud (18 U.S.C. §1344); damage to government property (18 U.S.C. §1361); obstruction of court orders (18 U.S.C. §1509); and obtaining mail by fraud or deception (18 U.S.C. §1708).

There has been only one attempt provision in Federal environmental criminal enforcement statutes. As a result, Federal agents can be placed in the untenable situation of choosing between obtaining evidence nec-

essary for a criminal prosecution and preventing pollution from occurring. For example, without an attempt statute, if agents stop a would-be environmental criminal from dumping hazardous waste, the perpetrator cannot be prosecuted for illegal dumping because no environmental crime has occurred. Only if the agents allow the dumping to occur, with the possibility of damage to the environment and risk to the public health, could the perpetrator be prosecuted for illegal dumping. These attempt provisions allow law enforcement personnel to stop environmental crimes before they are completed and still bring the wrongdoer to justice.

Attempt statutes serve another very important purpose in law enforcement, related to undercover investigations. Attempt statutes allow prosecution where a defendant purposely engages in conduct that would constitute the crime if the circumstances were as the defendant believes them to be. Undercover operations are widely recognized as a valuable tool to ferret out serious crimes, and attempt provisions will make undercover environmental investigations safer to the public by allowing the government to substitute benign substances for the dangerous substances that make the conduct illegal, but still prosecute for attempt the person who believes he is engaging in the illegal conduct.

The new language added by Section 7 is analogous to the attempt provision contained in the Federal drug laws. 21 U.S.C. §846. An attempt to commit the conduct constituting one of specified environmental criminal offenses is punished in the same manner as the offense itself.

Section 8

Section 8 amends the Federal restitution statutes to clarify the authority of the courts to provide for restitution to victims in environmental crimes cases.

Existing restitution statutes provide for restitution for bodily injury and property loss. Those categories of restitution address the harm suffered by victims of violent and economic crimes and are intended to make them whole for their physical injuries and pecuniary damages. The victims of environmental crimes also may suffer physical injuries and pecuniary losses. Indeed, environmental crimes often are economic crimes. At the same time, however, an environmental crime also may cause more widespread and longstanding damage, with the harm inflicted on all members of a community or communities affected by the environmental pollution or damage.

Section 8 clarifies the existing authority of the courts by including environmental offenses among the crimes explicitly enumerated in the restitution statutes. It makes plain that the costs of removal and remediation of environmental pollution or damage, and required restoration of the environment, are included within the coverage of that statute, to the extent of the pollution or damage resulting from the offense. This section recognizes that environmental crimes can harm entire communities and clarifies that the definition of "victim" in the restitution statutes may include all members of a community or communities, whether or not they are individually identified.

Section 9

Section 9 authorizes the government, after notice to the defendant, to seek an order from the court to prevent a defendant charged with an environmental crime from dealing with its assets in a manner that would impair its ability to pay for the harm caused by its environmental violations. The government bears the burden of establishing the costs involved, and the defendant may

avert such an order by showing that it retains sufficient assets to cover those costs or that it already has paid such costs. The Federal Rules of Criminal Procedure govern any proceedings under this section for an order to prevent the disposal or alienation of assets. Such an order expires at the point of sentencing, or of dismissal or acquittal of the prosecution.

This section expressly codifies the authority already available to a court under the All Writs Act, 28 U.S.C. §1651. It will prevent a defendant, during the pendency of criminal environmental charges, from concealing, disposing of, or otherwise dealing with its assets in such a manner that, if it is convicted and is ordered to pay the costs of the harm caused by its actions, sufficient assets no longer will be available for that purpose. If such authority were not available, defendants could easily thwart the purposes of the restitution provisions of this act and those found elsewhere in the law. Similar authority, to prevent the disposal of assets to pay for violations of law, can be found at 18 U.S.C. §1345 (Injunctions against Fraud). At the same time, the section allows a defendant that can show that defendant's other assets will be sufficient to pay for such harm, or that such costs already have been paid, to avoid being burdened by such an order.

SEC. 9. PREVENTION OF ALIENATION OR DISPOSAL OF ASSETS NEEDED TO REMEDY ENVIRONMENTAL HARMS CAUSED BY ENVIRONMENTAL CRIMES.

(a) Chapter 39 of title 18, United States Code, is amended by adding after section 838 the following new section—

“§839. Prejudgment orders to secure payment for environmental damage

“(a) At the time of filing of an indictment or information for the violation of any of the statutory provisions set forth in section 838(a) of this chapter, or at any time thereafter, if, after notice to the defendant, the United States shows probable cause to believe that—

(1) the defendant will conceal, alienate or dispose of property, or place property outside the jurisdiction of the Federal district courts; and,

(2) the defendant will thereby reduce or impair the defendant's ability to pay restitution, in whole or in part, including removal and remediation of environmental pollution or damage and restoration of the environment resulting from the statutory violation, the district court may order the defendant not to alienate or dispose of any such property, or place such property outside the jurisdiction of the Federal district courts, without leave of the court. The United States shall bear the burden of proving, by a preponderance of the evidence, the projected cost for the removal and remediation of the environmental pollution or damage and restoration of the environment.

“(b) Defenses—

The defendant may establish the following affirmative defenses to a motion by the government under this section—

(1) that the defendant possesses other assets sufficient to pay restitution, including the costs of removal and remediation of the environmental pollution or damage and restoration of the environment resulting from the statutory violation, provided that the defendant places those other assets under the control of the court, or

(2) that the defendant has made full restitution, including the removal and remediation of the environmental pollution or damage and restoration of the environment.

“(c) Procedures—

Any proceeding under this section is governed by the Federal Rules of Criminal Procedure.

“(d) Property Defined—

For the purposes of this section, “property” shall include—

(1) Real property, including things growing on, affixed to, and found in land; and,

(2) Tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities.

“(e) Expiration of Order—

The court may amend an Order issued pursuant to this section at any time. In no event, however, shall the Order extend beyond sentencing, in the case of a conviction, or a dismissal or acquittal of the prosecution.

“(f) All Writs Act—

Nothing in this section diminishes the powers of the court otherwise available under section 1651 of title 28 United States Code, the All Writs Act.”

(b) The table of sections of chapter 39 of Title 18, United States Code, is amended by adding after section 838, the following new section—

“§839. Prejudgment orders to secure payment for environmental damage.”●

Mr. KERRY. Mr. President, I am proud to introduce today with my good friend Senator LAUTENBERG the Environmental Crimes and Enforcement Act of 1996. The American people have every right to expect their Government to protect their health and safety, and take swift action against those who choose to do harm. Our bill would strengthen efforts to ensure a safer, cleaner environment for the future and would enhance the Federal-State-local government partnership in fighting environmental crimes.

This administration has the strongest record in taking action against intransigent polluters, and it has collected among the biggest fines levied on those polluters in American history. However, for too long, many industrial polluters have gone largely unchecked and have consistently evaded responsibility for the severe damage they have done to our environment.

I would like to review quickly some of the more important provisions contained in our legislation.

One of the ground-breaking measures contained in this legislation is the provision amending existing environmental statutes to define the attempt to commit an offense as a crime, subject to the penalties of the offense itself. This makes environmental law consistent with other Federal criminal statutes. With only one exception, attempting to commit an environmental crime is itself not a Federal crime. It is this area of law enforcement that would greatly benefit from such provisions, which would in turn have the effect of better protecting the public's health and safety and our environment. Furthermore, this provision closes the gap between prosecution and environmental protection. In the past, law enforcement officials could not prosecute violators of environmental law until the crime was committed, causing damage to the environment and jeopardizing public health and safety. Now, would-be wrong-doers can be stopped and prosecuted before they do harm.

Let me provide you with a good example of how this would work, using a

hypothetical case of hazardous waste dumping. While haulers are required by law to dispose of toxic materials in a permitted hazardous waste disposal facility, often renegade transporters dump in vacant lots, remote areas, and other unauthorized locales. Once they have received information that illegal dumping is occurring, Federal agents conduct surveillance of hazardous waste transporters. But, because there is no attempt provision in statutes defining environmental crimes, if agents prevent a transporter from dumping hazardous waste, the perpetrator cannot be prosecuted for illegal dumping because no environmental crime has occurred. Under current law, only by damaging the environment by allowing the hazardous waste dumping to occur, can the Government build a case to prosecute a person for illegal dumping. This does not make sense and we must change these laws.

This provision adds a new dimension to the protection of the environment: the capability of officials to engage in undercover operations. These investigations will allow Federal officials to conduct “sting” operations by substituting benign substances for the actual pollutants, and prosecute, to the fullest extent of the law, those violators who engaged in behavior they know to be illegal.

Another provision, and arguably the most important for cleaning up the environment in a fiscally responsible way, is the authority granted to Federal district courts to order convicted criminals to reimburse States, localities, and tribes for costs they incur during Federal environmental prosecutions. These recovered costs will be used exclusively for funding the enhancement of environmental law enforcement required in this bill.

Greater protection is also given to the first line of defense in many environmental crime scenes: police, firefighters, and public health personnel. This measure will strengthen the existing penalties for violations of the Clean Water Act, the Clean Air Act, the Community Right-to-Know Act, Superfund, the Marine Sanctuaries Act, and other key environmental statutes.

Our legislation also addresses the increasing need for additional training of law enforcement personnel. In response to the urgent requests of State, local, and tribal authorities, the Environmental Crimes and Enforcement Act would establish, under the Environmental Protection Agency, a separate program for environmental crimes investigations.

In addition, the act limits the effect of the affirmative acts of concealment that violators commit to prevent prosecution during the current statute of limitations for environmental crimes, which is 5 years. This bill extends the limitations period for up to 3 years beyond the traditional 5 years for cases in which the defendant deliberately conceals the original infraction.

This bill also adds environmental crimes to the list of statutes that provide for restitution to victims, such as violent and economic crime. The act recognizes that longstanding and widespread damage, in addition to the physical injuries and financial losses, may be caused by an environmental crime. The restitution provision includes the costs of removal and remediation of pollution and the necessary restoration of the environment.

Finally, the Environmental Crimes and Enforcement Act would authorize prosecutors to seize the assets of environmental criminals before conviction so that the defendant retains sufficient assets to make reparations. This measure ensures that environmental criminals cannot hide behind bankruptcy, or hide their assets so that the Government bears the burden of the cost of repairs.

Let me conclude, Mr. President, by saying that although this legislation is long overdue, the effects of it will be far-reaching. This issue is not only about the environment, it is about fiscal responsibility and taking responsibility for one's actions. This bill does not propose newer, stricter regulations, it does not call for any burdensome Federal mandates; it merely closes loopholes through which polluters have slipped for many years. Furthermore, it reduces the burden placed of Government to pay for environmental cleanups and places it firmly on the shoulders of the criminals, where it belongs. Once again, I complement the leadership of the Senator from New Jersey. It was a pleasure working together to develop this legislation, and I look forward to working with him to pass it.●

ADDITIONAL COSPONSORS

S. 1243

At the request of Mr. SPECTER, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1243, a bill to provide educational assistance to the dependents of Federal law enforcement officials who are killed or disabled in the performance of their duties.

S. 1385

At the request of Mr. BREAU, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1385, a bill to amend title XVIII of the Social Security Act to provide for coverage of periodic colorectal screening services under Part B of the Medicare program.

S. 1628

At the request of Mr. BROWN, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 1628, a bill to amend title 17, United States Code, relating to the copyright interests of certain musical performances, and for other purposes.

S. 2047

At the request of Mr. HATCH, the name of the Senator from Alaska [Mr.

MURKOWSKI] was added as a cosponsor of S. 2047, a bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans.

S. 2064

At the request of Ms. SNOWE, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of S. 2064, a bill to amend the Public Health Service Act to extend the program of research on breast cancer.

S. 2089

At the request of Mr. THOMAS, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2089, a bill to transfer land administered by the Bureau of Land Management to the States in which the land is located.

SENATE RESOLUTION 274

At the request of Mrs. FEINSTEIN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of Senate Resolution 274, a resolution to express the sense of the Senate regarding the outstanding achievements of NetDay96.

SENATE RESOLUTION 292

At the request of Mr. GRAHAM, the names of the Senator from North Dakota [Mr. DORGAN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Washington [Mrs. MURRAY], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Resolution 292, a resolution designating the second Sunday in October 1996 as "National Children's Day," and for other purposes.

AMENDMENT NO. 5383

At the request of Mrs. HUTCHISON, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of amendment No. 5383 proposed to S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

AMENDMENTS SUBMITTED

THE MARITIME SECURITY ACT OF 1996

GRASSLEY AMENDMENT NO. 5391

Mr. GRASSLEY proposed an amendment to the bill (H.R. 1350) a bill to amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. . UNIFORM PAYMENT FOR HAZARDOUS DUTY.

Title III of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131), as amended by section 10 of this Act, is further amended by adding at the end the following new section:

"SEC. 303. PAYMENT OF MERCHANT SEAMEN FOR HAZARDOUS DUTY.

"(a) IN GENERAL.—The Secretary of Transportation, in cooperation with the Secretary

of Defense, shall establish a wage scale for hazardous duty applicable to an individual who is employed on a vessel that is used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including training purposes or testing for readiness and suitability for mission performance).

"(b) CONTENT OF WAGE SCALE.—The wage scale established under this section shall be commensurate with the incentive pay for hazardous duty provided to members of the uniformed services under section 301 of title 37, United States Code."

THE INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENT ACT OF 1996

MCCAIN AMENDMENT NO. 5392

Mr. STEVENS (for Mr. MCCAIN) proposed an amendment to the bill (H.R. 3378) to amend the Indian Health Care Improvement Act to extend the demonstration program for direct billing of Medicare, Medicaid, and other third party payors; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Indian Health Care Improvement Technical Corrections Act of 1996".

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act.

SEC. 2. TECHNICAL CORRECTIONS IN THE INDIAN HEALTH CARE IMPROVEMENT ACT.

(a) DEFINITION OF HEALTH PROFESSION.—Section 4(n) (25 U.S.C. 1603(n)) is amended—

(1) by inserting "allopathic medicine," before "family medicine"; and

(2) by striking "and allied health professions" and inserting "an allied health profession, or any other health profession".

(b) INDIAN HEALTH PROFESSIONS SCHOLARSHIPS.—Section 104(b) of the Indian Health Care Improvement Act (25 U.S.C. 1613a(b)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the matter preceding clause (i) and inserting the following:

"(3)(A) The active duty service obligation under a written contract with the Secretary under section 338A of the Public Health Service Act (42 U.S.C. 2541) that an individual has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice, by service—";

(ii) by striking "or" at the end of clause (iii);

(iii) by striking the period at the end of clause (iv) and inserting "; or"; and

(iv) by adding at the end the following new clause:

"(v) in an academic setting (including a program that receives funding under section 102, 112, or 114, or any other academic setting that the Secretary, acting through the Service, determines to be appropriate for the purposes of this clause) in which the major duties and responsibilities of the recipient are the recruitment and training of Indian health professionals in the discipline of that recipient in a manner consistent with the purpose of this title, as specified in section 101.";