S. 1959. An original bill making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes (Rept. No. 104–320).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 391. A bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes (Rept. No. 104–321).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with amendments:

S. 901. A bill to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of certain water reclamation and reuse projects and desalination research and development projects, and for other purposes (Rept. No. 104–322).

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. 1956. An original bill to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 1997.

## 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. HUTCHISON:

S. 1953. A bill to reform the financing of Federal elections, and for other purposes; to the Committee on Rules and Administration.

By Mr. HATCH (for himself, Mr. LOTT, Mr. HEFLIN, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BURNS, Mr. CRAIG, Mr. FAIRCLOTH, Mr. GRAMS, Mr. KEMPTHORNE, Mr. MACK, Mr. MCCONNELL, Mr. BENNETT, Mr. BOND, Mr. BROWN, Mr. GRASSLEY, Mr. NICKLES, Mr. SIMPSON, Mr. STEVENS, Mr. THURMOND, Mr. PRESSLER, Mr. SHELBY, Mr. COCHRAN, Mr. WARNER, and Mr. THOMAS):

S. 1954. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; read the first time.

By Mr. HATCH (for himself, Mr. HARKIN, Mr. FAIRCLOTH, Mr. BENNETT, Mr. INOUYE, Mr. THURMOND, Mr. SIMON, Mr. PRESSLER, and Mr. DEWINE):

S. 1955. A bill to amend the Public Health Service Act to provide for the establishment of a National Center for Pain Research, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DOMENICI:

S. 1956. An original bill to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 1997; from the Committee on the Budget; placed on the calendar.

By Mr. PRESSLER (for himself, Mr. LOTT, and Mr. INOUYE):

S. 1957. A bill to amend chapter 59 of title 49, United States Code, relating to intermodal safe container transportation; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. GREGG, and Mr. KERRY):

S. 1958. A bill to terminate the advanced light water reactor program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S. 1959. An original bill making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Ms. SNOWE (for herself and Mr. PRESSLER):

S. 1960. A bill to require the Secretary of Transportation to reorganize the Federal Aviation Administration to ensure that the Administration carries out only safety-related functions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH:

S. 1961. A bill to establish the United States Intellectual Property Organization, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes; to the Committee on the Judiciary.

By Mr. MCCAIN (for himself, Mr. INOUYE, Mr. GLENN, Mr. THOMAS, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. COCHRAN, Mr. MURKOWSKI, Mr. CAMPBELL, and Mr. SIMON):

S. 1962. A bill to amend the Indian Child Welfare Act of 1978, and for other purposes; to the Committee on Indian Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 1953. A bill to reform the financing of Federal elections, and for other purposes; to the Committee on Rules and Administration.

THE CAMPAIGN FINANCE AND DISCLOSURE ACT OF 1996

● Mrs. HUTCHISON. Mr. President, today I am introducing legislation which I believe addresses shortcomings in the current campaign finance law.

First, though, if I were going to give a title to the campaign finance reform legislation under consideration in the Senate until now, I would call it the Incumbent Protection Act of 1996, because that is what proposed limitations on expenditures would accomplish.

For us to limit campaign contributions across the board would be counterproductive and self-serving. Any such limit, voluntary or otherwise, would favor incumbents because it would inhibit the right of a challenger to go out and raise more campaign funds than an incumbent who already enjoys greater name recognition.

Challengers would have no way of overcoming that very real disadvantage. We should strive to level the playing field, not tilt it further toward those who already enjoy the advantage.

That said, there are a number of commonsense principles I believe can be invoked in order strengthen the current campaign finance law and make it more equitable.

I support the idea of requiring that 60 percent of a Senate candidate's campaign funds be raised from individuals within his or her home State. This rule would ensure that those who would be represented by the candidate have the greatest say in the outcome of an election.

I support limiting the use of personal wealth to finance campaigns. Right now there are no limits on the amount of personal wealth a candidate can spend on his or her own political campaign and be reimbursed. Today, such candidates are entitled to make personal campaign contributions to their own campaigns, and repay themselves after the fact. The status quo is campaign finance based on creditworthiness, and as such is inherently inequitable.

I think we can fairly, and constitutionally, set a limit on the amount for which such candidates can be reimbursed for upfront expenditures from their personal pocketbooks.

The bill I am introducing today would set a personal reimbursement limit of $250,000 on the use of Senate candidates' personal funds or funds from members of their immediate families.

I support limiting political action committee [PAC] donations to the same amount as individuals are entitled to donate to a candidate.

This legislation decreases the PAC contribution limit to the same limit as an individual. Under the bill individual contributions are limited to $1,000 and PAC contributions are lowered from $5,000 to $1,000 to make both categories of limitations equal.

The vast majority of PAC's are cooperative, grassroots efforts within a specific group, or company, such as a teachers' association, a union, or a tax-limitation group. Most people who contribute to PACs give small amounts of money. If someone wants to participate in the process, they should be encouraged. Our campaign finance law should be neutral. Neither PAC's, nor individuals, should be given preferential treatment.

I support the idea of doing away with the congressional franking privilege for mass mailings during election years. I do not use and have never used the franking privilege of mass mailings at any time. It is, frankly, an advantage for incumbents provided at taxpayer expense which should be canceled.

My legislation would eliminate mass mailings as franked mail from January 1 of an election year through the date of an incumbent Senator's general election. This may seem strenuous, but it is absolutely necessary.

Mr. President, campaign finance reform is a work in progress. We are in the process of restoring confidence in the political process. For the American people, this is a plus—not a weakness. The ability to fine tune and strengthen the political process while preserving our basic democratic institutions is one of the great strengths of our country. It requires our greatest dedication.●

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By Mr. HATCH (for himself, Mr. LOTT, Mr. HEFLIN, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BURNS, Mr. CRAIG, Mr. FAIRCLOTH, Mr. GRAMS, Mr. KEMPTHORNE, Mr. MACK, Mr. MCCONNELL, Mr.

BENNETT, Mr. BOND, Mr. BROWN, Mr. GRASSLEY, Mr. NICKLES, Mr. SIMPSON, Mr. STEVENS, Mr. THURMOND, Mr. PRESSLER, Mr. SHELBY, Mr. COCHRAN, Mr. WARNER, and Mr. THOMAS):

S. 1954. A bill to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment; read the first time.

THE OMNIBUS PROPERTY RIGHTS ACT

Mr. HATCH. Mr. President, I am pleased today to introduce a new version of the Omnibus Property Rights Act of 1996. This bill is a narrower version of the bill introduced as S. 605, on March 23, 1995.

Americans everywhere are losing their fundamental right to property. They cannot build homes, farm land, clear ditches or cut firebreaks in property that clearly belongs to them. Often, this property has been in their family for years. The Omnibus Property Rights Act is the proper vehicle to vindicate property rights and limit arbitrary actions by Federal bureaucrats.

The criticisms of S. 605, in my view, are vastly overblown. But, in a good faith effort to address concerns raised by critics of the original bill, I am introducing this revised version. This version will: First, narrow the definition of property to include only real property, including fixtures on land, such as crops, timber, and mining interests, and water rights; Second, increase the threshold amount that property or a portion of property need be diminished in value before compensation for a taking be sought from 33 to 50 percent; Third, expressly exempt civil rights laws from the bill's purview, including those protecting persons with disabilities; Fourth, remove the takings regulatory reform ''look back'' provision from the bill by striking all of section 404, this in an effort to address the fear that any and all agency review provisions are too burdensome; and Fifth, amend the owner's consent to enter land provision to allow for nonconsensual agency access to private land pursuant to criminal law enforcement and emergency access exceptions.

In addressing the bill oponent's claims by making these significant changes, I would like to say once again that our critics' real problem is not with the overall bill, but with the U.S. Supreme Court. In 1992, the Supreme Court held in Lucas versus South Carolina Coastal Council that restrictions on property use based on ''background principles of the State's law of property and nuisance'' need not be compensated. Common law nuisance is either the use of property that harms or interferes with another's property or that injures public health, safety, or morals. This common law exemption for compensation has been codified literally in this bill as a ''nuisance exception.'' All we did in our bill was to codify the ''law of the land.'' The bill codifies and clarifies recent Supreme Court standards as to what constitutes a ''taking'' of private property and ameliorates the arbitrary nature of court and administrative proceedings.

What this bill does is to limit big government's ability to regulate and control private property without paying innocent or nonpolluting property holders compensation. Currently, the Federal Government and agency bureaucrats are able to shift the cost of public regulation to individual property owners.

The Omnibus Property Rights Act helps to take away this arbitrary free ride. The bill helps secure and protect private property rights guaranteed by the takings clause of the fifth amendment of our Constitution, which the Supreme Court in Armstrong versus United States (1960) determined is ''to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by public as a whole.''

In adopting the Supreme Court's recent Lucas holding, the Omnibus Property Rights bill provides that only innocent property holders are to be compensated for government takings. Those that misuse their property to pollute or to harm public health and safety are not entitled to compensation under the bill's nuisance provision. Property owners remain subject to the same laws and regulations as everyone else. Only if government cannot demonstrate that their use of property amounts to a harm recognized as common law nuisance will a property holder be compensated under this bill. What could be fairer than this?

What about those Federal statutes, named by opponents of the Omnibus bill, that might not fall under the nuisance exception? Will enforcement of those statutes, designed to protect the public, diminish the value of property and require compensation? The answer is no: property holders are subject to the same general laws and regulations as everyone else. Only where enforcement of regulatory schemes amounts to a taking under current law, and arbitrarily singles out property holders to their detriment by requiring them, through reduced property values, to fund programs that should be paid out of the public treasury, will property holders be compensated. Moreover, even in these limited circumstances, the Federal Government can still regulate by paying compensation when it takes property. Current law—even without this bill—recognizes that justice and fairness require the government to pay for the property it takes. Thus, contrary to the bill's critics and the administration, if the Omnibus Property Rights Act is enacted into law, the sky will not fall. In reality, the Federal bureaucracy has a poor record in protecting the right of the American public to use and own property. That is why we need a vehicle—such as this bill—to force the government by statute to heed the public's rights.

Indeed, the omnibus bill includes provisions that require Federal agencies to account for the costs of taking property when formulating policy, and it provides for a more efficient administrative remedy for property owners who seek compensation. It also allows for alternative dispute resolution mechanisms to encourage quicker settlements of takings claims. For cases that go to Federal court under the bill, the bill codifies recent Supreme Court decisions and clarifies the law in regulatory takings cases. Because the bill provides for clearer, bright-line rules of liability, it will lead to lower costs overall, as both agencies and property owners become fully aware of the limits of the government's power to take property. Importantly, the codification of bright-line rules will ameliorate the ad hoc and arbitrary nature of takings jurisprudence.

I ask my colleagues to support this bill and breathe life into the fifth amendment of the U.S. Constitution.

By Mr. HATCH (for himself, Mr. HARKIN, Mr. FAIRCLOTH, Mr. BENNETT, Mr. INOUYE, Mr. THURMOND, Mr. SIMON, Mr. PRESSLER and Mr. DEWINE):

S. 1955. A bill to amend the Public Health Service Act to provide for the establishment of a National Center for Pain Research, and for other purposes; to the Committee on Labor and Human Resources.

THE NATIONAL CENTER FOR PAIN RESEARCH ESTABLISHMENT ACT OF 1996

Mr. HATCH. Mr. President, I rise today to introduce S. 1955, a bill to establish a National Center for Pain Research within the National Institutes of Health. This is legislation that I have developed working closely with Senators HARKIN and FAIRCLOTH. S. 1955 is also cosponsored by Senators BENNETT, INOUYE, THURMOND, SIMON, PRESSLER and DEWINE.

Pain is a condition that each of us experiences throughout our lives. Millions of individuals suffer from pain, sometimes chronic and often needlessly. Yet, there is insufficient knowledge about the basic mechanisms of pain, relatively few resources dedicated to the development and evaluation of pain treatment modalities, and inadequate transfer of new knowledge and information to health care professionals.

To show the magnitude of the problem, I will cite several statistics. Studies show that four in five Americans will have low back pain at some point in their lives. Nearly one in six Americans suffers from some form of arthritis, a very painful condition. In fact, according to the American Chronic Pain Association, pain is a part of the daily lives of one in three Americans.

These painful conditions are not only common, they are also expensive. A recent survey has shown that absences from work due to pain totaled 50 million days in 1995, accounting for billions of dollars in lost wages for sick days or medical and disability payments.

Mr. President, with an appropriation of $12 billion a year, you would think that the NIH would be devoting a substantial amount of funding toward a medical condition which is so prevalent. In fact, I was shocked to learn that such is not the case. According to statistics provided to me by the agency, NIH is spending only $54 million per year on pain-related research, only one-half of one percent. And that number is down almost 10 percent from the previous year.

To take one example, acute back pain, a serious condition which will affect about 80 percent of all Americans sometime in their lives, is alone responsible for a $40-billion-a-year drain on the U.S. economy. Yet, NIH reports that it currently funds only $2.5 million of research into this area.

My study of this issue has led me to conclude there is another serious problem associated with our Government campaign against pain. Pain research is spread across many of the Institutes, yet there is little coordination of these research activities to make sure these resources are effectively used.

Mr. President, this is not to say that NIH has neglected pain research. In fact, I want to make clear that NIH deserves high marks for its significant contributions in the field of pain research. NIH scientists have been integral in the cataloging of neurotransmitters and have been the key to improved understanding of the process of nociception. This basic science research has allowed for the development of several new drugs to treat pain.

I want to take this opportunity to thank Dr. Harold Varmus, NIH Director, and Dr. Harold Slavkin, NIDR Director, for their continued support of a most impressive program within the National Institute of Dental Research. The NIDR's Intramural Pain Research Program, operated through the Neurobiology and Anesthesiology Branch [NAB] of NIDR, exemplifies the high quality of pain research that I hope can be multiplied with enactment of this bill.

The NAB has trained almost 100 basic and clinical science pain researchers around the world, many of who have become deans of dental and medical schools, department chairs and successful grantees of many NIH Institutes. In fact, the American Pain Society has recently awarded two major research medals to two NAB investigators in recognition of their collaborative basic and clinical science research on neuropathic pain.

The National Center for Pain Research Act of 1996 will allow us to build on the successful pain research activities currently underway at the NIH.

This bill will improve integration of pain-related research within NIH, establish a national agenda for pain research, and expand the utilization of interdisciplinary pain research teams.

Specifically, it will, first, establish a Center for Pain Research within NIH. The purpose of this Center is to improve the quality of life of individuals suffering from pain by fostering clinical and basic science research into the causes of and effective treatments for pain; second, authorize the Center to coordinate pain research throughout the Institutes at NIH, as well as fund priority pain-related research through its own research budget; third, create an advisory board that will be made up of experts in pain research and pain management from a wide variety of health care disciplines, including physicians who practice pain management, psychology, physical medicine and rehabilitative services, nursing, dentistry, and chiropractic health care professionals; and fourth, establish six regional pain research centers to facilitate and enhance pain-related research, training, education, and related activities to be carried out by the Center.

In addition to increasing our knowledge about pain, it is important to disseminate information about advances made in the pain research. Through pioneering research supported by the NIH, we have already made great strides in increasing our knowledge of pain and in treating painful conditions.

However, the treatment of patients suffering from painful conditions remains woefully inadequate. Too many of our health professionals lack specific training in pain management. With adequate pain control, much of the suffering from painful conditions can be prevented or greatly attenuated.

Sadly, pain control is a significant problem for patients with cancer. A statement from the National Cancer Institute indicated that, ''the under treatment of pain and other symptoms of cancer is a serious and neglected public health problem.'' With 1 million new cases of cancer diagnosed each year, this problem cannot be ignored.

Additional studies have shown that pain associated with cancer is most frequently under treated in the elderly and children—two of our most vulnerable populations. The need for a national movement to help these individuals is illustrated by the fact that cancer pain can be virtually abolished in approximately 90 percent of patients by the intelligent use of drugs.

This bill has widespread support from organizations representing the providers of pain management, pain researchers, and the people they serve. These organizations include: American Academy of Pain Management, American Academy of Pain Medicine, American Chiropractic Association, American Chronic Pain Association, American Pain Society, Arthritis Foundation, Back Pain Association of America, Endometriosis Association, Interstitial Cystitis Association, National Chronic Pain Outreach Association, National Committee on the Treatment of Intractable Pain, Pain Research Group of the University of Wisconsin, Reflex Sympathetic Dystrophy Syndrome Association of America, American Cancer Society, Sickle Cell Disease Association of America, and the Vulvar Pain Foundation.

In closing, I would like to thank the chiropractic community for bringing this issue to the forefront of public attention. The chiropractic profession, through its ability to effectively treat many painful conditions—including low back pain, headaches and neck pain—has been on the leading edge of pain management for years. They have joined their colleagues in the health professions in initiating and developing this important legislation and our bill recognizes the substantial role chiropractors play in the pain treatment community.

I would also like to thank the contributions of the American Pain Society, which represents the interdisciplinary pain management research and care community. They also have actively participated in the development of this legislation.

Mr. President, the creation of the Center for Pain Research will facilitate the discovery of new treatments for painful conditions afflicting almost all of our fellow Americans. This bill also makes certain that these discoveries reach the people who now suffer from needless pain as soon as possible.

I urge my colleagues to support creation of a Center for Pain Research within the National Institutes of Health.

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

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

S. 1955

*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 ''National Center for Pain Research Act of 1996''.

**SEC. 2. NATIONAL CENTER FOR PAIN RESEARCH.**

(a) ESTABLISHMENT.—Section 401(b)(2) of the Public Health Service Act (42 U.S.C. 281(b)(2)) is amended by adding at the end thereof the following new subparagraph:

''(F) The National Center for Pain Research.''.

(b) OPERATION.—Part E of title IV (42 U.S.C. 287 et seq.) is amended by adding at the end thereof the following new subpart:

''Subpart 5—National Center for Pain Research

**''SEC. 485E. ESTABLISHMENT AND PURPOSE OF THE CENTER.**

''(a) ESTABLISHMENT.—The Secretary shall establish within the National Institutes of Health, a center to be known as the National Center for Pain Research (hereafter referred to in this subpart as the 'Center'). The Center shall be headed by a Director (hereafter referred to in this subpart as the 'Director') who shall be appointed by the Director of NIH, after consultation with experts in the fields of pain research and treatment representing the disciplines designated in subsection (b)(3), and have the powers described in section 405.

''(b) GENERAL PURPOSE.—The general purpose of the National Center for Pain Research is—

''(1) to improve the quality of life of individuals suffering from pain by fostering of

clinical and basic science research into the causes of and effective treatments for pain;

''(2) to establish a national agenda for conducting and supporting pain research in the specific categories described in subparagraphs (A), (B), (C), and (D) of paragraph (3);

''(3) to identify, coordinate and support research, training, health information dissemination and related activities with respect to—

''(A) acute pain;

''(B) cancer and HIV-related pain;

''(C) back pain, headache pain, and facial pain; and

''(D) other painful conditions;

including the biology of pain, the development of new and the refinement of existing pain treatments, the delivery of pain treatment through the health care system and the coordination of interdisciplinary pain management, that should be conducted or supported by the National Institutes of Health;

''(4) to conduct and support pain research, training, education and related activities that have been identified as requiring additional, special priority as determined appropriate by the Director of the Center and the advisory council established under subsection (c);

''(5) to coordinate all pain research, training, and related activities being carried out among and within the National Institutes of Health;

''(6) to initiate a comprehensive program of collaborative interdisciplinary research among schools, colleges and universities, including colleges of medicine and osteopathy, colleges of nursing, colleges of chiropractic who are members of the Association of Chiropractic Colleges, schools of dentistry, schools of physical therapy, schools of occupational therapy, and schools of clinical psychology, comprehensive health care centers, and specialized centers of pain research and treatment; and

''(7) to promote the sufficient allocation of the resources of the National Institutes of Health for conducting and supporting pain research in the specific categories described in subparagraphs (A), (B), (C), and (D) of paragraph (3).

''(c) ADVISORY COUNCIL.—

''(1) IN GENERAL.—The National Pain Research Center Advisory Board shall be the advisory council for the Center. Section 406 applies to the advisory council established under this paragraph, except that—

''(A) the members of the advisory council shall include representatives of the broad range of health and scientific disciplines involved in research and treatment related to those categories of pain described in subsection (b)(2), and shall include an equal number of representatives of physicians who practice pain management, clinical psychologists, individuals who provide physical medicine and rehabilitative services (including physical therapy and occupational therapy), nurses, dentists, and chiropractic health care professionals;

''(B) the nonvoting ex officio members shall include—

''(i) the Director of the National Cancer Institute;

''(ii) the Director of the National Institute of Dental Research;

''(iii) the Director of the National Institute of Child Health and Human Development;

''(iv) the Director of the National Institute of Nursing Research;

''(v) the Director of the National Institute of Allergy and Infectious Diseases;

''(vi) the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases;

''(vii) the Director of the National Institute of Neurological Disorders and Stroke;

''(viii) the Director of the National Institute on Drug Abuse; and

''(ix) the Director of the National Institute on Disability and Rehabilitation Research of the Department of Education; and

''(3) the council shall meet at least two times each fiscal year.

''(2) DUTIES.—The advisory council shall advise, assist, consult with and make recommendations to the Director of the Center concerning matters relating to the coordination, research, training, education, and related general purposes set forth in subsection (b), including policy recommendations with regard to grants, contracts, and the operations of the Center.

''(d) ESTABLISHMENT OF REGIONAL PAIN RESEARCH CENTERS.—

''(1) ESTABLISHMENT.—To facilitate and enhance the research, training, education, and related activities to be carried out by the Center, the Director of the Center, in consultation with the advisory council established under subsection (c), shall establish not less than six regional pain research centers.

''(2) FOCUS AND DISTRIBUTION.—

''(A) FOCUS.—The regional centers established under paragraph (1) shall have as their primary focus one of the categories of pain described in subparagraphs (A), (B), (C), and (D) of subsection (b)(3).

''(B) DISTRIBUTION.—One regional pain research center shall be established in each of the following six regions of the United States as defined by the Secretary:

''(A) The northeast region.

''(B) The southeast region.

''(C) The midwest region.

''(D) The southwest region.

''(E) The west region, including Hawaii.

''(F) The Pacific Northwest region, including Alaska.

''(2) USE OF TECHNOLOGY.—The regional centers established under paragraph (1) shall be a part of the Center and shall be interconnected to the Center headquarters through the utilization of distance learning technologies, satellites, fiber optic links, or other telecommunications and computer systems, to allow for the interactive exchange of information, research data, findings, training programs, educational programs, and other Center research and related initiatives.

''(3) INITIAL REGIONAL CENTERS.—The initial regional centers shall be selected through a competitive process from among institutions and centers of the type described in subsection (b)(6).

''(e) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—For the purposes of carrying out this section, there are authorized to be appropriated $20,000,000 for each of fiscal years 1997, 1998, and 1999, and such sums as may be necessary for fiscal year 2000.

''(2) REGIONAL CENTERS.—Of the amount appropriated under paragraph (1) for fiscal year 1998 and each subsequent fiscal year, not less than $1,000,000 shall be made available to each of the regional centers established under subsection (d).

''(3) REPORT TO CONGRESS.—Not later than January 1, 1998, and each January 1, thereafter, the Director of the Center shall prepare and submit to the committees of Congress a report concerning the total amount of funds expended to support pain-related research in the year for which the report was prepared.''.

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By Mr. DOMENICI:

S. 1956. An original bill to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 1997; from the Committee on the Budget.

THE PERSONAL RESPONSIBILITY WORK OPPORTUNITY AND MEDICAID RESTRUCTURING ACT OF 1996

Mr. DOMENICI. Mr. President, for purposes of the Senate's consideration of the Personal Responsibility, Work Opportunity, and Medicaid Restructuring Act of 1996, pursuant to section 423(f)(2) of the Unfunded Mandates Reform Act of 1995 I hereby submit the mandate cost estimates for the Agriculture and Finance Committees reconciliation submissions and ask unanimous consent that they by printed in the RECORD

The entire cost estimate will be available in a Committee print proposed by the Senate Committee on the Budget.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 3, 1996.*

Hon. RICHART G. LUGAR,
*Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared enclosed cost estimate for the Agricultural Reconciliation Act of 1996, as recommended by the Senate Committee on Agriculture, Nutrition, and Forestry. Enactment of this bill would affect direct spending. Therefore, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

PAUL VAN DE WATER
(For June E. O'Neill, Director).

Enclosure.

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8. Estimated impact on State, local, and tribal governments: The bill contains at least two mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), but the total costs of the mandates would not exceed the $50 million annual threshold established in the law. The bill would require state agencies that administer the Food Stamp program to provide information to law enforcement agencies under certain circumstances. CBO estimates that the additional costs of this mandate would be negligible because such information is readily available from other sources.

The bill would also require states to implement an electronic benefit transfer (EBT) system before October 1, 2002, unless the Secretary of Agriculture provides a waiver. Based on information provided by the Department of Agriculture, CBO expects that under current law all states will have such systems in place by October 1, 2002, or would receive a waiver from the Secretary of Agriculture under the bill. Therefore, no additional direct costs would be associated with this new mandate.

Other provisions of the bill would also affect state budgets, but CBO is uncertain whether these provisions would be considered mandates as defined by Public Law 104–4. One provision would reduce the amount that states are allowed to retain when they collect overissuances of food stamp benefits. The bill would also reduce amounts that states receive from the Federal Government for administering Child Nutrition programs. The receipt of these funds is based on a percentage of funds spent on certain Child Nutrition programs during the second preceding fiscal year. Thus, reductions in programmatic funding beginning in fiscal year

1997 would result in less administrative funding two years later.

Public Law 104–4 defines a mandate for large entitlement programs, including the Food Stamp program, as a provision that would increase the stringency of conditions under the program or would place caps upon, or otherwise decrease, the federal government's responsibility to provide funding to state, local, or tribal governments under the program if the state, local, or tribal governments lack the authority under the program to amend their financial or programmatic responsibilities to continue providing required services.

In the case of overissuances of food stamp benefits, it is unclear whether the amounts states retain from collection of overissuances should be considered part of the federal government's responsibility to provide funding to states for administering the Food Stamp program. It is also unclear whether states have sufficient flexibility in the administration of the overall program to offset the losses they would experience with savings elsewhere in the program, then any losses would not be the result of a mandate as defined by the law. CBO estimates that states could lose federal funds totaling $15 million annually in fiscal years 1997–2001 and $200 million in fiscal year 2002 as the result of this provision.

In the case of administrative funding for Child Nutrition programs, it is also unclear whether states have sufficient flexibility in the administration of the program to offset the losses in federal funding. If such flexibility exists, then any losses would not be the result of a mandate as defined by the law. CBO estimates that states would lose $1.5 million in fiscal year 1999 and approximately $7 million annually by fiscal year 2002.

The bill would have other impacts on the budgets of state and local governments that would not be the result of mandates as defined by the law. The bill would eliminate funding for startup and expansion costs associated with the school breakfast program totaling $10 million to $25 million annually. The bill would also allow states to opt to receive funding for the Food Stamp program through a block grant. States opting to receive the block grant would be given flexibility to administer the program within broad parameters in exchange for receiving funding levels established in the bill.

9. Estimated impact on the private sector: The bill contains no private-sector mandates as defined in Public Law 104–4.

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U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 10, 1996.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for federal, state and local, and private sector cost estimates for the reconciliation recommendations of the Senate Committee on Finance, as ordered reported on June 26, 1996. Enactment of the bill would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES F. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE ESTIMATED COST OF INTERGOVERNMENTAL MANDATES

1. Bill number: Not yet assigned.

2. Bill title: Not yet assigned.

3. Bill status: As ordered reported by the Senate Committee on Finance on June 26, 1996.

4. Bill purpose: The bill would restructure or modify the federal welfare programs and Medicaid by reducing federal spending and granting states greater authority in operating many of these programs.

5. Intergovernmental mandates contained in bill: The bill contains a number of new mandates as defined under the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and repeals a number of existing mandates.

Block Grants for Temporary Assistance for Needy Families. The bill would eliminate a mandate by allowing states to lower their payment levels for cash assistance. Current law requires states to maintain their AFDC payment levels at or above their levels on May 1, 1988, as a condition for having their Medicaid plans approved, and at or above their levels on July 1, 1987, as a condition for receiving some Medicaid funds for pregnant women and children. This bill would repeal those requirements but would replace it with the new requirement that states maintain their overall level of expenditures for needy families at 80 percent of their historical level.

Supplemental Security Income (SSI). SSI is a federal program, but most states supplement the federal program. Current federal law requires states to either maintain their supplemental payment levels at or above 1983 levels or maintain their annual expenditures at a level at least equal to the level from the previous year. Once a state elects to supplement SSI, federal law requires it to continue in order to remain eligible for Medicaid payments. This bill would eliminate that mandate.

Child Support. The bill would mandate changes in the operation and financing of the state child enforcement system. The primary changes include using new enforcement techniques, eliminating a current $50 payment to welfare recipients for whom child support is collected, and allowing former public assistance recipients to keep a greater share of their child support collections.

Restricting Welfare and Public Benefits for Aliens. Future legal entrants to the United States would be banned, with some exceptions, from receiving federal benefits until they have resided in the country for five years. Thereafter, the bill would require states to use deeming (including a sponsor or spouse's income as part of the alien's) when determining financial eligibility for federal means-tested benefits. The bill would also require states to implement an alien verification system for determining eligibility for federal benefit programs that they administer. The requirements associated with applying deeming in these programs and implementing verification systems could result in costs to some states. However, the flexibility afforded states in determining eligibility and benefit levels reduces the likelihood that these requirements would represent mandates as defined by Public Law 104–4.

6. Estimated direct costs of mandates to State, local, and tribal governments:

(a) *Is the $50 Million Threshold Exceeded?* No.

(b) *Total Direct Costs of Mandates:* On balance, spending by state and local governments on federally mandated activities could be reduced by billions of dollars over the next five years as a result of enactment of this bill, although states are not likely to take full advantage of this new flexibility to reduce spending. While the new mandates imposed by the bill would result in additional costs to some states, the repeal of existing mandates and the additional flexibility provided are likely to reduce spending by more than the additional costs. (Other aspects of the bill that do not relate to mandates could be very costly to state and local governments. These impacts are discussed in the ''other impacts'' section of this estimate.)

Block Grants for Temporary Assistance for Needy Families. The bill would grant states additional flexibility in maintaining their spending for needy families. This flexibility could save states a significant amount of money; however, CBO is unable to estimate the magnitude of such savings at this time.

Supplemental Security Income. Eliminating the current maintenance of effort requirement on state supplements to SSI could reduce spending for federally mandated activities by nearly $4 billion annually.

Child Support. The mandates in the child support portion of the bill would produce a net saving to states. CBO estimates that the direct savings from increasing child support collections retained by the states and eliminating the $50 pass through would outweigh the additional costs of improving the child support enforcement system and allowing former public assistance recipients to keep a greater share of their child support collections.

The table below summarizes the costs and savings associated with the child support portion of the bill. In total, CBO estimates that states would save over $163 million in 1997 and $1.9 billion over the 1997–2002 period.

CHANGES IN SPENDING BY STATES ON CHILD SUPPORT ENFORCEMENT

[By fiscal years, outlays in millions of dollars]

| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|
| Enforcement and Data Processing [1] | 62 | −5 | 50 | 60 | 40 | 48 |
| Direct Savings from Enforcement | −20 | −45 | −127 | −216 | −302 | −380 |
| Elimination of $50 Pass Through | −206 | −221 | −244 | −267 | −292 | −315 |
| Modifying Distribution of Payments | 0 | 47 | 52 | 58 | 112 | 138 |
| Total | −163 | −223 | −269 | −364 | −442 | −510 |

[1] Net of technical assistance provided by the Secretary of Health and Human Services.

(c) *Estimate of Necessary Budget Authority:* None

*Basis of estimate*

*Supplemental Security Income*

States annually supplement federal SSI payments with nearly $4 billion of their own funds. Even though some states supplement SSI beyond what is required by the federally mandated levels, most of the $4 billion can be attributed to the mandate to maintain spending levels. While CBO would not expect states to cut their supplement programs drastically, they would no longer be required by federal law to spend these amounts.

*Child support*

Enforcement and Data Processing Costs. The new system for child support enforcement would focus on matching Social Security numbers in the states' registries of child support orders and directories of new hires. The states would track down non-cooperative parents and insure that support payments would be withheld from their pay checks.

Much of the costs of improving the system would involve automated data processing. The bill would require states to develop computer systems so that information can be processed electronically. The federal government would pay for 80 percent to 90 percent of these costs. Other mandates include suspending a variety of licenses of parents who are not paying child support and providing enforcement services to recipients of Temporary Assistance for Needy Families, Foster Care, and Medicaid and anyone else who requests assistance. The federal government would pay 66 percent of these costs. The

numbers in the table in the previous section reflect only the states' share of these costs.

Direct Savings from Enforcement. Under current law, states can recoup some of the costs of supporting welfare recipients by requiring child support payments to be assigned to the state. As child support enforcement improves, state and federal collections would increase. In addition, by strengthening and increasing collections, states would achieve other savings, such as a reduction in the number of people eligible for Medicaid.

Elimination of the $50 Passthrough. Under current law, the first $50 in monthly child support collections is paid to welfare families receiving cash assistance. The rest is retained by the state and federal government. Because states and the federal government would be allowed to keep the first $50 if this bill is enacted, states would annually save between $200 million and $300 million.

Modifying Distribution of Payments. Under current law, when someone ceases to receive public assistance, states continue to collect and enforce the family's child support order. All amounts that are collected on time are sent directly to the family. If states collect past-due child support, however, they may either send the amount to the family or use the amount to reimburse themselves and the federal government for past AFDC payments. Under this bill, after a transition period, payments of past-due child support would first be used to pay off arrearages to the family accrued when the family was not on welfare. The bill would thus result in a loss of collections that otherwise would be recouped by the states.

*Restricting welfare and public benefits for aliens*

The bill would afford states broad flexibility to offset any additional costs associated with the deeming and verification requirements. Because in general states would have sufficient flexibility to make reductions in most of the affected programs, the new requirements would not be mandates as defined in Public Law 104–4. (Additional requirements imposed on states as part of large entitlement programs are not considered mandates under Public Law 104–4 if the states have the flexibility under the program to reduce their own programmatic and financial responsibilities.) Deeming requirements and verification procedures would thus constitute mandates only in those states where such flexibility does not exist. Furthermore, any additional costs would be at least partially offset by reduced caseloads in some programs. On balance, CBO estimates that the net cost of these requirements would not exceed the $50 million annual threshold established in Public Law 104–4.

7. Appropriation or other Federal financial assistance provided in bill to cover mandate costs: The federal government would provide 66 percent to 90 percent of the costs of improving the child support enforcement system. The costs reflected in this estimate are just the share of the costs imposed on the states.

8. Other impacts on State, local, and tribal governments: The bill would have many other impacts on the budgets of state, local, and tribal governments, especially the loss of federal funding to the states or their residents.

This loss of funding would not be considered a mandate under Public Law 104–4, however, because states would retain a significant amount of flexibility to offset the loss with reductions in the affected programs. Under Public Law 104–4, an increase in the stringency of conditions of assistance or a reduction in federal funding for an entitlement program under which the federal government spends more than $500 million annually is a mandate only if state, local, or tribal governments lack authority under that program to amend their own financial or programmatic responsibilities.

*Block grants for temporary assistance for needy families*

The bill would convert Aid to Families with Dependent Children (AFDC), Emergency Assistance, and Job Opportunities and Basic Skills Training (JOBS) into a block grant under which states would have a lot of freedom to develop their own programs for needy families. The bill, however, would impose several requirements and restrictions on states, most importantly work requirements. By fiscal year 2002, the bill would require states to have 50 percent of certain families that are receiving cash assistance in work activities. CBO estimates that the cost of achieving these targets would be $10 billion in fiscal year 2002. CBO assumes that, rather than achieving the targets, most states would opt to pay the penalty for not meeting these requirements.

The federal government's contribution to assistance to needy families would be capped. By fiscal year 2002, annual contributions for assistance (excluding child care) would be about $1 billion less than what is expected under current law. In order to deal with the shrinking federal support and the requirements discussed above, the states would have the option of cutting benefit levels or restricting eligibility. Some state and local governments could decide to offset partially or completely the loss of federal fund with their own funds.

*Supplemental Security Income*

The bill would reduce SSI benefits (net of increases in food stamp benefits) by about $2 billion annually by fiscal year 2002. Some state and local governments may choose to replace some or all of these lost benefits.

*Child protection and foster care*

The bill would maintain the current open-ended entitlement to states for foster care and adoption assistance and the block grant to states for Independent Living. The bill would also extend funding to states for certain computer purchases at an enhanced rate for one year.

*Child care*

The bill would authorize the appropriation of $1 billion in each of fiscal years 1996 through 2002 for the Child Care and Development Block Grant. The appropriation for the block grant for fiscal year 1996 is $935 million.

In addition, the bill would provide between $2.0 billion and $2.7 billion between 1997 and 2002 in mandatory funding for child care on top of the $1 billion authorization. This mandatory spending would replace AFDC work-related child care—an open ended entitlement program—Transitional Child Care, and At-Risk Child Care. By fiscal year 2002, annual mandatory spending for child care under the bill would be about $800 million higher than federal spending for current child care programs is currently projected to be.

*Miscellaneous*

This bill would reduce funding of the Social Services Block Grant to States by $560 million annually between fiscal year 1997 and 2002.

*Medicaid*

The new Medicaid program would be primarily funded by a capped grant rather than an open entitlement to the states as under current law. But the availability of an ''umbrella'' fund would allow states to receive additional federal funds in the event of certain unanticipated increases in enrollment. In addition, some states would be eligible for supplemental payments for treatment of illegal aliens and Native Americans. Compared to current levels, the annual federal contribution to Medicaid would drop by $29 billion by fiscal year 2002. Some states may decide to offset the loss of federal funds with additional state funds rather than reduce benefits, restrict eligibility, or reduce payments to providers. In addition, to the extent that public hospitals and clinics decide to serve individuals who lose Medicaid benefits, state and local government spending would increase.

Increased Flexibility for States. The bill would restructure the Medicaid program by granting states greater control over the program. For example, the bill would allow states to operate their programs under a managed care structure without receiving a federal waiver. In addition, states would no longer be constrained to provide the same level of medical assistance statewide, nor would comparability of coverage among beneficiaries be required. States would also have greater flexibility in determining provider reimbursement levels, because the proposal would repeal the Boren amendment.

Limits on Flexibility for States. The bill would prohibit states from supplanting state funds expended for health services with federal funds provided under this bill. As currently written, this provision is not clear. Based on verbal communications with Senate staff, CBO assumes that the intent of this provision is to prevent states from reducing spending for health services that do not qualify for federal matching under Medicaid. If the term ''state funds'' includes the states' share of Medicaid, however, this provision may conflict with the proposed increase in the federal matching rate for some states.

In addition, the bill would limit the new flexibility to use managed care without a waiver. If states mandate enrollment in managed care, they would have to provide beneficiaries with a choice of at least two health plans. States would also have to set aside funds for Federally Qualified Health Clinics and Rural Health Clinics. The set aside for each state would equal 95 percent of that state's expenditures for these clinics in fiscal year 1995.

Finally, the bill would prohibit Medicaid plans from imposing treatment limits or financial requirements on services for mental illnesses that are not imposed on services for other illnesses. Similar language for health insurance plans is included in H.R. 1303, the Health Reform Act of 1996, as passed by the Senate on April 23, 1996. Based on our interpretation of the provision in H.R. 3103, we assume that the intent of the Medicaid provision is not to mandate mental health services but to require parity if states provide any mental health services. If states choose to provide mental health services, parity for inpatient hospital services would be costly. Current law prohibits states from using Medicaid funds to provide inpatient care at psychiatric institutions for individuals who are between the ages of 21 and 65. Although not a guaranteed benefit, the bill would expand the definition of inpatient mental health services to include coverage of these individuals for acute care. Therefore, if a state provides any mental health services, the parity provision would require the state to provide these individuals with acute inpatient care without restrictions that differ from other inpatient services.

If the parity provision is interpreted to mandate mental health services, states with the least flexibility in their Medicaid program may not be able to offset the costs of this requirement by decreasing their responsibilities in other parts of the program. In those states, this provision could thus result

in a mandate with costs that could exceed the $50 million annual threshold established in Public Law 104–4.

Drug Rebate Program. The bill would also restructure the drug debate program so that states would keep the entire rebate, rather than share it with the federal government.

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CONGRESSIONAL BUDGET OFFICE ESTIMATE OF COST OF PRIVATE SECTOR MANDATES

1. Bill number: Not yet assigned.

2. Bill title: Not yet assigned.

3. Bill status: As ordered reported by the Senate Committee on Finance on June 26, 1996.

4. Bill purpose: The bill would reform and restructure the welfare and Medicaid programs and provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 1997.

5. Private sector mandates contained in the bill: Subtitle A contains several private-sector mandates as defined in Public Law 104–4. Chapter 3 would require employers to provide information on all new employees to new-hire directories maintained by the states, generally within 20 days of hiring the workers. This requirement could be satisfied by submitting a copy of the employee's W–4 form.

Chapter 4 would impose new requirements on individuals who sign affidavits of support for legal immigrants. Under current law, any new immigrant who is expected to become a public charge must obtain a financial sponsor who signs an affidavit promising, as necessary, to support the immigrant for up to three years. The affidavit is not legally binding, however. During this three-year period, a portion of the sponsor's income is counted as being available to the immigrant, and is used to reduce the amount of certain welfare benefits for which the immigrant may be eligible. After the three-year period, immigrants are eligible for welfare benefits on the same basis as U.S. citizens.

The bill would make the affidavit of support legally binding on sponsors of new immigrants, either until those immigrants became citizens or until they had worked in the U.S. for at least 10 years. This requirement would impose an enforceable duty on the sponsors to provide, as necessary, at least a minimum amount of assistance to the new immigrants. The bill would also make most new immigrants completely ineligible for welfare benefits for a period of five years. In addition, the bill would require sponsors to report any change in their own address to a state agency.

Chapters 4 and 9 include changes in the Earned Income Credit that would raise private-sector costs. Specific changes include modifying the definition of adjusted gross income used for calculation of the credit, altering provisions related to disqualifying income, denying eligibility to workers not authorized to be employed in the U.S., and suspending the inflation adjustment for individuals with no qualifying children.

6. Estimated direct cost to the private sector: CBO estimates that the direct cost of the private sector mandates in the bill would be $92 million in fiscal year 1997 and would total about $1.3 billion over the five-year period from 1997 through 2001, as shown in the following table.

[By fiscal years, in millions of dollars]

| | 1997 | 1998 | 1999 | 2000 | 2001 |
|---|---|---|---|---|---|
| Requirement on Employers | ..... | 10 | 10 | 10 | 10 |
| Requirements on Sponsors of New Immigrants | 5 | 20 | 55 | 195 | 400 |
| Changes in the Earned Income Credit | 87 | 107 | 126 | 138 | 155 |

The mandate requiring employers to provide information on new employees to new-hire directories maintained by the states would impose a direct cost on private sector employers of approximately $10 million per year once it becomes effective in 1998. Based on data from the Bureau of the Census, CBO estimates that private employers hire over 30 million new workers each year. Even so, the cost to private employers of complying with this mandate would be expected to be relatively small. Many states already require some or all employers to provide this information, so that a federal mandate would only impose additional costs on a subset of employers. In addition, employers could comply with the mandate by simply mailing or faxing a copy of the worker's W–4 form to the state agency, or by transmitting the information electronically.

The mandate to make future affidavits of support legally binding on sponsors of new immigrants would impose an estimated direct cost on the sponsors of $5 million in 1997, rising to $400 million in 2001. These estimates represent the additional costs to sponsors of providing the support to immigrants that would be required under the bill. The added costs are larger after the first three years because of the new responsibility sponsors would have to provide support after the three-year deeming period.

The Joint Committee on Taxation estimates that the direct mandate cost of the changes in the Earned Income Credit in the bill would be $87 million in 1997, rising to $155 million in 2001. These estimates include only the revenue effect of the changes in the credit, and not the effect on federal outlays.

CBO estimates that the other mandates in the bill would impose minimal costs on private sector entities.

7. Appropriations or other Federal financial assistance: None.

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By Mr. PRESSLER (for himself, Mr. LOTT and Mr. INOUYE):

S. 1957. A bill to amend chapter 59 of title 49, United States Code, relating to intermodal safe container transportation; to the Committee on Commerce, Science, and Transportation.

THE INTERMODAL SAFE CONTAINER TRANSPORTATION AMENDMENTS ACT OF 1996

Mr. PRESSLER. Mr. President, today I am introducing the Intermodal Safe Container Transportation Amendments Act of 1996. I am pleased to be joined by Senators LOTT and INOUYE, chairman and ranking member of the Surface Transportation and Merchant Marine Subcommittee. This is a bipartisan technical corrections bill and I urge its swift passage.

Before I explain the purpose of this legislation, I want to provide some history on intermodal container shipments in order for my colleagues to better understand the time-sensitive nature of the bill we are introducing today. Let me explain.

Intermodal containers are used throughout the world to transport cargo by ship, rail, and highway. These containers facilitate the timely movement of imports and exports. More often than not, they pose no overweight concerns while transported by ship or rail. However, if a container is too heavy, it can cause problems when transferred to a truck. In some cases, trucks carrying heavy containers end up on our Nation's highways operating in violation of vehicle weight regulations. This can damage our highway infrastructure and reduce highway safety for the traveling public.

In an effort to mitigate these problems, Congress enacted the Intermodal Safe Container Transportation Act of 1992. The purpose of that law was to require shippers to provide a carrier involved in intermodal transportation with a certification of the gross cargo weight of the intermodal container prior to accepting the shipment. This information, including weight and a general cargo description, should assist the operator in determining whether transporting a particular container could result in violations of highway gross weight or axle weight regulations. Without the communication of this information, the trucker has no way of knowing whether he or she may be operating an overweight vehicle. In short, the act let the trucker beware.

Mr. President, the 1992 act has yet to be implemented. Final Regulations were issued by the Department of Transportation [DOT] in December 1994. However, significant concerns about implementation were raised by shippers and carriers, causing DOT to reassess its final rule and implementation was delayed until September 1, 1996.

Unfortunately, the implementation as currently proposed could have devastating consequences on intermodal transportation. At best, shipments of intermodal cargo will be late in reaching their destination. At worst, a complete backlog of shipments and severe gridlock at our Nation's ports will result.

Many of these operational concerns could be alleviated by administrative action. Yet, DOT informs us that some of the issues can only be resolved by legislation. That is why we are introducing this bill today.

As chairman of the Senate Committee on Commerce, Science, and Transportation, I want to assure my colleagues that the sponsors of today's technical corrections proposal are very concerned about the lengthy delay in implementing the 1992 law. As I said earlier, overweight vehicles negate safety and cause severe damage to our Nation's highway infrastructure. We need to help our motor carrier operators receive information to prevent overweight carriage. That is the intent of the 1992 act. That congressional intent must be carried forward during implementation.

Indeed, we are all frustrated over the delays. We also are frustrated that the various industry concerns have not been brought to our attention far earlier to facilitate a timely legislative resolution. However, in the past few weeks, we worked with representatives from all of the affected groups, including shippers, motor carriers, rail carriers, and ocean carriers. We also requested and received input from the administration and safety advocates.

After many meetings and lengthy discussions, we have developed what I consider to be a very sound and reasonable technical amendments bill. Of

course, we also are willing to consider further refinements and other suggestions. Nonetheless, our goal is to ensure the long overdue implementation of the 1992 1ct can be responsibly carried out as soon as possible.

This technical corrections bill also is designed to reduce unnecessary paperwork by allowing greater use of electronic interchange technology to expedite the transfer of information. Moreover, it provides incentives to encourage the private sector to comply with overweight container regulations.

Our bill raises the intermodal container weight threshold requiring certification from 10,000 to 29,000 pounds. Studies have concluded the new threshold weight will still prevent gross vehicle weight violations while eliminating unnecessary compliance burdens that would otherwise be imposed on smaller shipments. Because the 1992 enacted trigger was not based on any conclusive data concerning gross vehicle weight or axle weight limitations, we feel it is appropriate to institute a more appropriate level for certification. In fact, Federal Highway Administration officials have confirmed the new trigger provision would be quite sufficient to effectively meet the intent of the 1992 act.

Finally, the bill would clarify liability for failing to provide the certification or transferring the information during the intermodal movement. It ensures the party responsible for the failure is the party liable for the costs incurred for overweight violations.

Clearly, it is important for my colleagues to understand the technical changes proposed by this bill. It is equally important, however, for my colleagues to understand what this bill does not do. Given the limited time left in this legislative session, we simply cannot afford to fall victim to misconceptions or misrepresentations of this measure.

This bill does not make any changes to regulations or enforcement of laws concerning the carriage, documentation, placarding, or handling of hazardous materials transportation. It does not allow for an increase in Federal truck gross vehicle weights nor affect State enforcement of such regulations in any way. And, the bill does not affect truck axle weight regulations either. The bill meets the objectives of the 1992 act, but reduces unnecessary compliance burdens and service disruptions.

Mr. President, I urge all of my colleagues to recognize the urgency for moving this measure forward expeditiously. I also urge the administration to work diligently to address those problematic areas which do not need legislative action. Working together, we can advance the safety of our Nation's roads and highways.

I urge my colleagues to support this bipartisan legislation.

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

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

S. 1957

*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 ''Intermodal Safe Container Transportation Amendments Act of 1996''.

**SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49 of the United States Code.

**SEC. 3. DEFINITIONS.**

Section 5901 (relating to definitions) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) except as otherwise provided in this chapter, the definitions in section 13102 of this title apply.'';

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

''(6) 'gross cargo weight' means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.''.

**SEC. 4. NOTIFICATION AND CERTIFICATION.**

(a) PRIOR NOTIFICATION.—Subsection (a) of section 5902 (relating to prior notification) is amended—

(1) by striking ''Before a person tenders to a first carrier for intermodal transportation a'' and inserting ''If the first carrier to which any'';

(2) by striking ''10,000 pounds (including packing material and pallets), the person shall give the carrier a written'' and inserting ''29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a'';

(3) by striking ''trailer.'' and inserting ''trailer before the tendering of the container or trailer.'';

(4) by striking ''electronically.'' and inserting ''electronically or by telephone.''; and

(5) adding at the end thereof the following: ''This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.''

(b) CERTIFICATION.—Subsection (b) of section 5902 (relating to certification) is amended to read as follows:

''(b) CERTIFICATION.—

''(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

''(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include—

''(A) the actual gross cargo weight;

''(B) a reasonable description of the contents of the container or trailer;

''(C) the identity of the certifying party;

''(D) the container or trailer number; and

''(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

''(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electronic format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

''(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

''(5) USE OF 'FREIGHT ALL KINDS' TERM.—The term 'Freight All Kinds' or 'FAK' may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

''(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked 'INTERMODAL CERTIFICATION'.

''(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.''.

''(c) FORWARDING CERTIFICATIONS.—Subsection (c) of section 5902 (relating to forwarding certifications to subsequent carriers) is amended—

(1) by striking ''transportation.'' and inserting ''transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required.''; and

(2) by adding at the end thereof the following ''If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.''.

(d) LIABILITY.—Section 5902 is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

''(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

''(1) a person inaccurately transfers information on a certifcation required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;

''(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and

''(3) that subsequent carrier exercises its rights to a lien under section 5905,

then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent

carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.

(e) NONAPPLICATION.—Subsection (e) of section 5902, as redesignated, is amended—

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

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) The notification and certification requirements of subsections (a and b) of this section do not apply to any intermodal container or trailer containing consolidation shipments loaded by a motor carrier if that motor carrier—

''(A) performs the highway portion of the intermodal movement; or

''(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.''.

**SEC. 5. PROHIBITIONS.**

Section 5903 (relating to prohibitions) is amended—

(1) by inserting after ''person'' a comma and the following: ''to whom section 5902(b) applies,'';

(2) by striking subsection (b) and inserting the following:

''(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

''(1) PRESUMPTION.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

''(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Nothwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.''; and

(3) by striking ''10,000 pounds (including packing materials and pallets)'' in subsection (c)(1) and inserting ''29,000 pounds''.

**SEC. 6. LIENS.**

Section 5905 (relating to liens) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

''(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;

''(2) the failure of the party required to provide the certification to the first carrier to provide it;

''(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

''(4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c),

then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.'';

(2) by inserting a comma and ''or the owner or beneficial owner of the contents,'' and ''first carrier'' in subsection (b)(1); and

(3) by striking ''cost, or interest.'' in subsection (b)(1) and inserting ''cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.''.

**SEC. 7. PERISHABLE AGRICULTURAL COMMODITIES.**

Section 5906 (relating to perishable agricultural commodities) is amended by striking ''Sections 5904(a)(2) and 5905 of this title do'' and inserting ''Section 5905 of this title does''.

**SEC. 8. REGULATIONS; EFFECTIVE DATE.**

(a) REGULATIONS.—Section 5907(a) (relating to regulations) is amended by striking the first sentence and inserting the following: ''Not later than 30 days after the date of enactment of the International Safe Container Transportation Amendments Act of 1996, the Secretary of Transportation shall initiate a proceeding to consider adoption or modification of regulations under this chapter to reflect the amendments made by that Act. The Secretary shall prescribe final regulations, if such regulations are needed, within 90 days after such date of enactment.''.

(b) EFFECTIVE DATE.—Section 5907(b) (relating to effective date) is amended to read as follows:

''(b) EFFECTIVE DATE.—This chapter is effective on the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996. The Secretary shall implement the provisions of this chapter 180 days after such date of enactment.''.

**SEC. 9. RELATIONSHIP TO OTHER LAWS.**

(a) IN GENERAL.—Chapter 59 is amended by adding at the end thereof the following:

**''§ 5908. Relationship to other laws**

''Nothing in this chapter affects—

''(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

''(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end thereof the following:

''5908. Relationship to other laws''

Mr. LOTT. Mr. President, I rise today to speak in support of the Intermodal Safe Container Transportation Amendments Act of 1996 which is being introduced today by Senator PRESSLER. It was drafted in a completely bipartisan manner with other members of the Senate's Committee on Commerce, Science, and Transportation.

Let me be clear. Without a doubt, there is a problem with overweight containers in the transportation world. There is also a problem with how the government disciplines offenders under the current law. This legislation will go to the root of the problem and provide effective remedies.

The present system places the truck operators, who in most cases are least responsible for the problem, in the greatest jeopardy. It is like getting mad at your local letter carrier for delivering a month old letter to you. It makes no sense because the letter carrier just received the letter today. The intermodal carrier receives the container already overweight. They did not make it overweight. For the government policy to be effective, Senator PRESSLER has proposed legislation which goes directly at the cause and not the symptom. This will make the world's intermodal transportation system safer.

Let me also be up-front. This bill will raise the threshold for certification from 10,000 pounds to 29,001 pounds. This action is definitely needed and acknowledged as a responsible action. Studies from all segments of the transportation industry have concluded that this new trigger weight would not increase the risks to the public. I believe this will permit better regulatory compliance.

The efficiency of the intermodal system is addressed by reducing or virtually eliminating unnecessary paperwork. Senator PRESSLER allows for the use of electronic data interchange technology to speed intermodal transfers. No longer will a driver have to carry a hard copy paper certification. The shippers also benefit with the elimination of the burdensome separate intermodal certifications. This will permit shippers to use a standard bill of lading or other existing shipping document as the certification.

Let's talk enforcement. Senator PRESSLER put teeth into this amendment by focusing action on the beneficial owner of the cargo. While this requires no additional State action, it permits the truck operator to resolve an overweight violation with greater efficiency. It preserves State authority to regulate all highway safety laws. Let me be clear, this bill ensures that the parties who cause the container to be overweight will be identified and held accountable and liable.

Let me conclude by complimenting all those who worked skillfully and diligently in order to forge this bipartisan and very necessary piece of legislation. The dedication in resolving the many technical details is reflected in this legislation. This legislation is a collaborative effort through the leadership of Senator PRESSLER and with input from the Department of Transportation, The Advocates for Highway and Auto Safety, National Industrial Transportation League and the Intermodal Safe Container Coalition.

The bottom line is that the world of intermodal transportation needs to be improved, and Senator PRESSLER's Intermodal Safe Container Transportation Amendments Act of 1996 offers the right legislative solutions. It will produce many enhancements and safety practices which will benefit all the parties involved. This legislation will also increase speed and efficiency in the intermodal world without jeopardizing the concerns of the general public.

I ask all my colleagues to take a closer look at Senator PRESSLER's proposal and consider joining us as cosponsors to this important transportation legislation.

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By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. GREGG, and Mr. KERRY):

S. 1958. A bill to terminate the Advanced Light Water Reactor Program,

and for other purposes; to the Committee on Energy and Natural Resources.

THE ADVANCED LIGHT WATER REACTOR PROGRAM FUNDING ACT OF 1996

● Mr. MCCAIN. Mr. President, this legislation would terminate funding for the Advanced Light Water Reactor [ALWR] Program which provides taxpayer funded subsidies to corporations for the design, engineering, testing, and commercialization of nuclear reactor designs.

I am very pleased that Senators FEINGOLD, GREGG, and KERRY have joined me as original cosponsors on this important legislation and I urge our colleagues to support us in ending this wasteful Government spending and corporate welfare. Organizations such as Public Citizen, Citizens Against Government Waste, Competitive Enterprise Institute, Taxpayers for Common Sense, and the Heritage Foundation have lent their strong support to eliminating ALWR funding. And last year, a bipartisan Senate coalition, with the help of the Progressive Policy Institute and Cato Institute, included the ALWR Program as one of a dozen high priority corporate pork programs to be eliminated.

Although, the ALWR Program has already received more than $230 million in Federal support over the past 5 years and is due to be completed at the end of fiscal year 1996, the Department of Energy has requested $40 million for the ALWR Program in fiscal year 1997. The House appropriations subcommittee recently marked up the fiscal 1997 energy and water appropriations bill and provided $17 million in corporate subsidies for commercialization efforts under the ALWR Program. The Senate appropriations subcommittee has appropriated $22 million for the design certification phase of the ALWR Program.

The ALWR Program was created under the Energy Policy Act [EPACT] of 1992. EPACT makes clear that design certification support should only be provided for ALWR designs that can be certified by the Nuclear Regulatory Commission by no later than the end of fiscal year 1996. DOE has acknowledged that no ALWR designs will be certified by the end of fiscal year 1996. Therefore, under EPACT, no funds should be appropriated to support ALWR designs.

In addition, although EPACT specifies that no entity shall receive assistance for commercialization of an advanced light water reactor for more than 4 years, DOE's fiscal year 1997 funding request would allow for a fifth year of Federal financial assistance to the program's chief beneficiaries—well to do corporations which can afford to bear commercialization costs on their own. General Electric, Westinghouse, and Asea Brown Boveri/Combustion Engineering have already received 4 years of Federal assistance under the ALWR program since at least 1993. Significantly, these three companies had combined 1994 revenues of over $70 billion and last year their combined revenues exceeded $100 billion. These corporations certainly can afford to bring new products to the market without taxpayer subsidies.

Moreover, one of the primary recipients of ALWR Program funds, General Electric, recently announced that it is cancelling its Simplified Boiling Water Reactor [SBWR] after receiving $50 million from DOE because ''extensive evaluations of the market competitiveness of a 600 MWe size advanced Light Water Reactor have not established the commercial viability of these designs.'' Westinghouse's AP–600, a similarly designed reactor scheduled to receive ALWR support, is a similar sized design facing similar market forces that led GE to cancel the SBWR.

Mr. President, the ALWR Program exemplified the problems and unfairness corporate welfare engenders. If the ALWR designs are commercially feasible, large, wealthy corporations like Westinghouse do not need taxpayers to subsidize them because the market will reward them for their efforts and investment in this research. If the ALWR designs are not commercially viable, then the American taxpayer is unfairly being forced to pay for a product, in complete defiance of market forces, that a company would not pay to produce itself.

As a matter of fundamental fairness, we cannot ask Americans to tighten their belts across-the-board to put our fiscal house in order while we provide taxpayer funded subsidies to large corporations. As a practical matter, such unnecessary and wasteful Government spending must be eliminated if we are to restore fiscal sanity. Simply put, corporate welfare of this kind is unfair to the American taxpayer, it increases the deficit and we cannot allow it to continue.

Enough is enough. After 5 years and $230 million, it is time that we bring the ALWR Program to an end.

I ask unanimous consent that copies of letters from Citizens Against Government Waste, Public Citizen and Competitive Enterprise Institute supporting this legislation be included in the RECORD.

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

PUBLIC CITIZEN,
*Washington, DC June 25, 1996.*

Senator JOHN MCCAIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR: We are pleased to support your efforts to terminate further government support for the Advanced Light Water Reactor (ALWR) program at the U.S. Department of Energy. The ALWR program, having received five years of support and more than $230 million of taxpayer money, is a prime candidate for elimination in the coming budget cycle. It represents a textbook example of corporate welfare, provides little value to taxpayers and fails to account for the fact that domestic interest in new nuclear technologies is at an all-time low.

As of today, not one utility or company participating in the ALWR program has committed to building a new reactor in this country nor are there any signs that domestic orders will be forthcoming in the foreseeable future. Instead of providing reactors for American utilities, the ALWR program has become an export promotion subsidy for General Electric, Westinghouse and Asea Brown Boveri in direct violation of the intent of the Energy Policy Act. These companies, with combined annual revenues of over $70 billion, are hardly in need of such generous financial support.

Continuing to fund the ALWR program would send a strong message that subsidies to large, profitable corporations are exempt from scrutiny while other programs in the federal budget are cut to reach overall spending targets. The industry receiving this support is mature, developed and profitable and should be fully able to invest its own money in bringing new products to market.

This legislation is consistent with your long-standing campaign to eliminate wasteful and unnecessary spending in the federal budget. We salute your effort and offer our help in pruning this subsidy from the fiscal year 1997 budget.

Sincerely,

BILL MAGAVERN,
*Director, Critical Mass Energy Project.*

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COMPETITIVE ENTERPRISE INSTITUTE,
*Washington, DC, June 14, 1996.*

Hon. JOHN MCCAIN,
*U.S. Senate,*
*Washington, DC.*

DEAR CONGRESSMAN MCCAIN: I wish to commend you for your efforts to eliminate funding for Advanced Light Water Reactor (ALWR) research. As a longtime opponent of federal subsidies for energy research of this kind, I am glad to see members of Congress representing the interests of the taxpayer on this issue.

Since 1992, the Department of Energy has spent over $200 million on ALWR research, with little to show for it. If such reactors are commercially viable, as supporters claim, then there is no need to waste taxpayer dollars on what amounts to corporate welfare. If the ALWR is not commercially viable, then throwing taxpayer dollars at it is even more wasteful. The fact that no utility plans to build such a reactor in this country any time soon suggests that the latter is more likely. Either way, federal funding for this program should end.

I full support your efforts to eliminate the ALWR research subsidy and hope that this effort is the first step in the eventual elimination of the Department of Energy as a whole.

Sincerely,

FRED L. SMITH, JR.,
*President.*

COUNCIL FOR CITIZENS
AGAINST GOVERNMENT WASTE,
*Washington, DC, June 18, 1996.*

Hon. JOHN MCCAIN,
*U.S. Senate*
*Washington, DC.*

DEAR SENATOR MCCAIN: On behalf of the 600,000 members of the Council for Citizens Against Government Waste (CCAGW), I am writing to urge you to introduce legislation to eliminate the Advanced Light Water Reactor (ALWR) program. This program has already surpassed its authorized funding level, and extending its funding will exceed the goals of the Energy Policy Act of 1992 (EPACT).

In 1992, EPACT authorized $100 million for first-of-a-kind engineering of new reactors. In addition, EPACT specified that the Department of Energy should only support advanced light water reactor designs that could be certified by the Nuclear Regulatory Commission no later than the end of FY 1996.

In a surprise announcement on February 28, 1996, General Electric (GE) terminated

one of its taxpayer-subsidized R&D light water reactor programs (the simplified boiling water reactor), stating that the company's recent internal marketing analyses showed that the technology lacked ''commercial viability.'' Westinghouse, which is slated to receive ALWR support between FYs 1997–99 for its similar AP–600 program, is not expected to receive design certification until FY 1998 or FY 1999. Taxpayers should not be expected to throw money at projects with little or no domestic commercial value.

EPACT also stipulates that recipients of any ALWR money must certify to the Secretary of Energy that they intend to construct and operate a reactor in the United States. In 1995, the Nuclear Energy Institute's newsletter, Nuclear Energy Insight, reported that ''all three [ALWR] designers see their most immediate opportunities for selling their designs in Pacific Rim countries.'' In fact, GE has sold two reactors developed under this program to Japan, and still the government has not recovered any money.

As you may recall, CCAGW endorsed your corporate welfare amendment, including the elimination of the ALWR program, to the FY 1996 Budget Reconciliation bill. We are again looking to your leadership to introduce legislation to now eliminate this program. I also testified before the House Energy and Environment Subcommittee on Science on May 1, 1996 calling for the elimination of the ALWR. The mission has been fulfilled, now the program should end.

Sincerely,

THOMAS A. SCHATZ,
*President.*●

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By Ms. SNOWE (for herself and Mr. PRESSLER):

S. 1960. A bill to require the Secretary of Transportation to reorganize the Federal Aviation Administration to ensure that the Administration carries out only safety-related functions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FEDERAL AVIATION ADMINISTRATION LEGISLATION

● Ms. SNOWE. Mr. President, on June 18, the Secretary of Transportation, Federico Peña, called on Congress to ''* * * change the FAA charter to give it a single primary mission: safety and only safety.'' And that is exactly what the bill I am introducing today, along with the distinguished Chairman of the Commerce, Science and Transportation Committee, Senator PRESSLER, will do.

In light of the many safety concerns that have become public as a result of the tragic ValuJet crash, it is important to restate Congress' commitment to ensuring the safety of air travel in this country. By removing the dual and dueling missions of safety and air carrier promotion, as one reporter accurately put it, there will be no room for doubt in the minds of the traveling public, or the staff of the Federal Aviation Administration that safety is their job—first, last and always.

My bill will require the removal of all nonsafety related duties from the FAA. It also requires the Secretary of Transportation to provide Congress, within 180 days, with legislation outlining where all the nonsafety related duties will be transferred to, within his Department.

We cannot expect the FAA to regain the trust of the traveling public while it maintains the mission to both ensure their safety while at the same time continuing to promote the growth of the carriers. The current mission of the FAA places it in the untenable position of being both the enforcer and the best friend of the airlines—no one can perform both roles and do them well.

The ValuJet crash and the startling information about the safety problems at the airline that have come out as a result, only serve to clarify the need for this legislation. If FAA is to learn its lesson from this tragedy, and to meet the Secretary's call for zero accidents, it must turn its attention to improving training for its inspectors, to providing a better way to track problems at airlines and to design a more systematic approach to inspections—in other words, to return their attention to safety issues. My bill will require them to do just that.

There have been those who have stated that removing the promotion of air carriers from the mandate is simply a word fix, that it will change nothing. The FAA needs to be changed if it is to meet the challenges of the coming new century. A Boeing study projects that if worldwide aviation maintains the same level of safety that it has for the past 5 years, by 2013 we can expect to lose an aircraft worldwide every 8 days. A very sobering statistic.

The bill I am introducing today with Senator PRESSLER should serve as Congress' wake up call to the FAA. And it will be the job of Congress to make sure that the agency moves beyond the status quo to embrace the safety only mandate, as well as to provide them with the resources necessary to step up enforcement and improve their training programs.

No one should be promoting an unsafe airline. And by limiting its role to improving the safety of U.S. air carriers, the FAA will be providing the best reason to purchase a ticket—a safe trip.●

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By Mr. HATCH:

S. 1961. A bill to establish the United States Intellectual Property Organization, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes; to the Committee on the Judiciary.

THE OMNIBUS PATENT ACT OF 1996

Mr. HATCH. Mr. President, today I am introducing the Omnibus Patent Act of 1996. The purposes of this bill are: First, to rationalize the way intellectual property policy is formulated; second, to provide for more efficient administration of the patent, trademark, and copyright systems; third, to save the U.S. taxpayers' money by making the patent, trademark, and copyright systems self-funding; fourth, to discourage gaming the patent system while ensuring against loss of patent term and theft of American inventiveness; fifth, to protect the rights of prior users of inventions which are later patented by another; sixth, to increase the liability of patents by allowing third parties more meaningful participation in the reexamination process; seventh, to make certain that American provisional applications are given the same weight as other countries' provisional applications in other countries' courts; eighth, to make technical corrections in the plant patent provisions of the Patent Act; ninth, to require the Federal Government to pay a successful plaintiff's reasonable attorney's fees in a suit for the taking of a patent; and tenth, to allow for the filing of patent and trademark documents by electronic medium.

U.S. INTELLECTUAL PROPERTY ORGANIZATION

Intellectual property normally signifies patents, trademarks, and copyrights. Intellectual property is of vital importance not only to continued progress in science and the arts but also to the economy. A vast array of industries depend on intellectual property. From the chemical, electrical, biotechnological, and manufacturing industries to books, movies, music, and computer software and hardware. Indeed, trademark is important to all businesses, period.

Intellectual property industries also contribute mightily to our balance of trade. American-produced software, for example, accounts for 70 percent of the world market. U.S. recorded music constitutes approximately 60 percent of the international market, with annual foreign sales totaling in excess of $12 billion. Together, U.S. copyright industries accounted for an estimated $45.8 billion in foreign sales in 1993, an 11.7 percent increase over 1992 sales figures.

The remarkable overall performance of these industries continues to manifest itself in their tremendous rate of growth. For example, between 1991 and 1993, core copyright industries grew at twice the annual rate of the U.S. economy, while the rate of employment growth in these industries outpaced the rate of employment growth in the Nation's economy as a whole by nearly 4 to 1 between 1988 and 1993.

Keep in mind that these figures do not even begin to take into account the significant trade benefits attributable to the ever-expanding world market for patented American inventions and products enjoying U.S. trademark or trade secret protection. While these benefits are more difficult to quantify, we need only to look at such American companies as DuPont, Ford, General Electric, IBM, Kodak, Motorola, Monsanto, Palaroid, Xerox, and countless others whose development was founded in large part on U.S. patent protection to realize the utility of strong intellectual property protection to our Nation's economy and our international predominance in creative industries.

Because intellectual property protection is so essential to our economy, intellectual property policy must be given a high priority, and because our markets are becoming increasingly global, international intellectual property policy will inevitably loom larger. In some instances, domestic policy will be affected by international developments. For example, as a direct result of the General Agreement on Tariffs and Trade [GATT], the basic U.S. patent term of 17 years from issuance was changed to 20 years from filing. I certainly don't advocate a slavish following of foreign models. Whatever is one's view of what international policy should be, however, the fact remains that international policy will have a great impact on domestic intellectual property policy.

These developments argue for better coordination between international and domestic intellectual property policymaking. Currently, there is no official agency in the U.S. Government centralizing intellectual property policy formulation. Indeed, not only are there two government entities that deal with intellectual property—the Patent and Trademark Office [PTO] and the Copyright Office—but they are in different branches. The PTO is in the executive branch, while the Copyright Office is in the legislative branch of the Government.

The conduct of international affairs has constitutionally been delegated to the executive branch. Because the international aspects of intellectual property will increasingly affect domestic intellectual property policy, it is appropriate that intellectual property policy should be initially formulated in the executive branch. Thus, the bill I am introducing today creates a U.S. Intellectual Property Organization [USIPO] in the executive branch.

By centering the initial formulation of intellectual property policy in the executive branch, my bill not only predicts a trend but reflects the current reality. Despite the fact that there is no official intellectual property office, international and domestic intellectual property policy for the current administration is originating largely from the Patent and Trademark Office. Despite its name, the PTO is heavily involved in copyright policy as well. For example, the current negotiations for a Protocol and a New Instrument for the Berne Convention, the world's premiere copyright treaty, are being led by PTO personnel. In addition, the Commissioner of Patents and Trademarks chaired the working group that drafted the original version of the National Information Infrastructure Copyright Protection Act. This de facto intellectual property office is unlikely to disappear regardless of the outcome of the Presidential elections because it simply makes sense. My bill makes it official.

I want to make clear that this restructuring of intellectual property policy is not motivated by dissatisfaction with the performance of the Copyright Office. I have the highest respect for the Register of Copyrights, Ms. Marybeth Peters, and I have always found her advice and that of her staff to be extremely helpful. Indeed, on a number of occasions, I have modified my legislation after listening to her wise counsel. This, however, does not detract from the fact that I believe that there would be an improvement in formulating and coordinating intellectual property policy if the Copyright Office were located within the USIPO, as I have proposed.

Under current practice, the role of the Copyright Office in international policy formulation has diminished. Under this bill, with the elimination of the bifurcation of intellectual property policy between the legislative and the executive branches, it is likely that its role would be enhanced. In formulating copyright policy, the Commissioner of Intellectual Property would naturally turn to the Copyright Office subdivision of the USIPO for assistance and advice.

In addition to policymaking, the PTO administers the system which grants patents and registers trademarks. The Copyright Office registers copyrights and oversees adjudication incident to the compulsory licenses. Under my bill, these administrative functions would continue under the umbrella of the USIPO. The bill provides for three subdivisions within the USIPO: the Patent Office, the Trademark Office, and the Copyright Office. Each Office is responsible for the administration of its own system. Each Office controls its own budget and its management structure and procedures. Each Office must generate its own revenue.

The efficiency of the Patent, Trademark, and Copyright Offices will be enhanced by the status of the USIPO as a Government corporation, as proposed in my bill. This status allows the USIPO and its subdivisions to function without the bureaucratic restraints that bedevil much of the Federal Government.

The personnel problems of the Copyright Office illustrate this point. As a part of the Library of Congress, the Copyright Office is subject to the rigid complexity and great delay which characterize the Library's hiring policy. For example, the Copyright Office has been unable to fill the position of General Counsel for several years.

A management review of the Library of Congress prepared for the General Accounting Office [GAO] by Booz, Allen and Hamilton notes in its May 7, 1996 report that the median time for hiring a replacement worker is 177 days, much longer than for other Government agencies. Currently, the Library utilizes a 30-step hiring process with multiple hand-offs.

The report levels many other criticisms at the Library of Congress' management, but time does not permit me to detail them here. For purposes of this legislation, however, the most important conclusion was that ''[t]here is little operational reason for housing the copyright function at the Library of Congress.''

Although I concur in this conclusion, I am sensitive to the concern of the Librarian of Congress, Dr. James Billington, about the importance for the collection of the Library of the deposits made incident to copyright registrations. This bill makes no change in the deposit requirement, and it makes the Librarian of Congress a member ex officio of the Management Advisory Board of the Copyright Office to insure that this very important matter is given the attention it deserves.

This legislation also simplifies and streamlines the adjudication that takes place under the auspices of the Copyright Office regarding compulsory licenses. Currently, the Copyright Office oversees the work of ad hoc arbitration panels, called Copyright Arbitration Royalty Panels [CARPs], which engage in rate setting and distribution proceedings as provided by the Copyright Act for certain compulsory licenses. I was an original cosponsor of the legislation that created them, and I had great hopes that they would be less costly than the Copyright Royalty Tribunal [CRT] that they replaced. Recent experience with distribution proceedings under the cable compulsory license, however, have proved otherwise. Whereas the last annual budget of the CRT was nearly $1 million for all rate setting and distribution, the cable distribution alone has to date exceeded $700,000 under the CARPs, and it is still not concluded.

This bill returns to the tried and true method of administrative adjudication, namely, decisions rendered by administrative law judges subject to the Administrative Procedure Act. This solution is a natural one for a government body in the executive branch, although in the legislative branch this solution was always problematic under Buckley versus Valeo. Indeed, because of separation of powers constitutional concerns, the ultimate authority in the current CARP system is the Librarian of Congress, not the Register of Copyrights, because the Librarian is a Presidential appointee.

Currently, whenever the Copyright Office is tasked with an executive-type function, the constitutional question arises. This concern discourages utilization of the Copyright Office from playing a more significant role in copyright matters. This issue has arisen, for example, in discussions about instituting virtual magistrates in the Copyright Office to render quick decisions on on-line service provider liability and on fair use.

In sum, my bill vests primary responsibility for intellectual property policy in the head of the USIPO, the Commissioner of Intellectual Property and primary responsibility for administration of the patent, trademark, and copyright systems in the respective Commissioners of Patents, Trademarks,

and Copyrights. The corporate form of the USIPO inoculates the Patent, Trademark, and Copyright Offices as much as possible from the bureaucratic sclerosis that infects many Federal agencies.

Although I considered making the USIPO an independent agency in the executive branch, this bill links the USIPO to the Secretary of Commerce by providing that the Commissioner of Intellectual Property, the head of the USIPO, will be the policy advisor of the Secretary regarding intellectual property matters.

The parties interested in patents, copyrights, and trademarks support having close access to the President by having the chief intellectual policy advisor directly linked to a cabinet officer. The Secretary of Commerce is a logical choice. The PTO, which today has the major role in intellectual property policy as such is in the Department of Commerce. I do not believe, however, that the USIPO necessarily belongs there.

Mr. President, although the creation of the USIPO may be the most dramatic part of this bill, it also contains several important changes to substantive patent law that will, taken as a whole, dramatically improve our patent system.

With the adoption of the GATT provisions in 1994, the United States changed the manner in which it calculated the duration of patent terms. Under the old rule, utility patents lasted for 17 years after the grant of the patent. The new rule under the legislation implementing GATT is that these patents last for 20 years from the time the patent application is filed.

In addition to harmonizing American patent terms with those of our major trading partners, this change solved the problem of submarine patents. A submarine patent is not a military secret. Rather, it is a colloquial way to describe a legal but unscrupulous strategy to game the system and unfairly extend a patent term.

Submarine patenting is when an applicant purposefully delays the final granting of his permit by filing a series of amendments and delaying motions. Since, under the old system, the term did not start until the patent was granted, no time was lost. And since patent applications are secret in the United States until a patent is actually granted, no one knows that the patent application is pending. Thus, competitors continue to spend precious research and development dollars on technology that has already been developed.

When a competitor finally does develop the same technology, the submarine applicant springs his trap. He stops delaying his application and it is finally approved. Then, he sues his competitor for infringing on his patent. Thus, he maximizes his own patent term while tricking his competitors into wasting their money.

Mr. President, submarine patents are terribly inefficient. Because of them, the availability of new technology is delayed and instead of moving to new and better research, companies are fooled into throwing away time and money on technology that already exists.

By changing the manner in which we calculate the patent term to 20 years from filing, we eliminated the submarine problem. Under the current rule, if an applicant delays his own application, it simply shortens the time he will have after the actual granting of the patent. Thus, we have eliminated this unscrupulous, inefficient practice by removing its benefits.

Unfortunately, the change in term calculation potentially creates a new problem. Under the new system, if the Patent Office takes a long time to approve a patent, the delay comes out of the patent term, thus punishing the patent holder for the PTO's delay. This is not right.

The question we face now, Mr. President, is how to fix this new problem. Some have suggested combining the old 17 years from granting system with the new 20 years from filing and giving the patent holder whichever is longer. But that approach leads to uncertainty in the length of a patent term and even worse, resurrects the submarine patent problem by giving benefits to an applicant who purposefully delays his own application. I believe that titles II and III of the Omnibus Patent Act of 1996 solve the administrative delay dilemma without recreating old problems.

EARLY PUBLICATION

Title II of the bill provides for the early publication of patent applications. It would require the Patent Office to publish pending applications 18 months after the application was filed. An exception to this rule is made for applications filed only in the United States. Those applications will be published 18 months after filing or 3 months after the office issues its first response on the application, whichever is later. By publishing early, competitors are put on notice that someone has already beaten them to the invention and thus allowing them to stop spending money researching that same invention.

The claims that early publication will allow foreign competitors to steal American technology are simply not true. To start with, between 75 and 80 percent of patent applications filed in the United States are also filed abroad where 18 month publication is the rule. Further, I have provided in my bill for delayed publication of applications only submitted in the United States to protect them from competitors. Additionally, once an application is published, title II grants the applicant provisional rights, that is, legal protection for his invention. Thus, while it is true that someone could break the law and steal the invention, that is true under current law and will always be true. And the early publication provision will result in publication only 2 or 3 months before the granting of most patents, so there is little additional time for would-be pirates to steal the invention.

PATENT TERM RESTORATION

Title III deals directly with the administrative delay problem by restoring to the patent holder any part of the term that is lost due to undue administrative delay. This title is very similar to a bill I introduced earlier this Congress, S. 1540. Some concerns were raised about that bill because it left the decision of what was an undue delay to the Commissioner of the PTO. I took those concerns to heart and adopted the provision that appears in H.R. 3460, Congressman MOORHEAD's Omnibus Patent bill, giving clear deadlines for the Patent Office to act. Any delay beyond those deadlines is considered undue delay and will be restored to the Patent term. Thus, title III solves the administrative delay problem in a clear, predictable, and objective manner.

PRIOR DOMESTIC COMMERCIAL USE

Title IV deals with people who independently invent something and use it in commercial sale but who never patent their invention. Specifically, this title provides rights to a person who has commercially sold an invention more than 1 year before that invention was patented by another person. Anyone in this situation will be permitted to continue to sell his product without being forced to pay a royalty to the patent holder. This basic fairness measure is aimed at protecting the innocent inventor who chooses to use trade secret protection instead of pursuing a patent and who has expended enough time and money to begin commercial sale of the invention. It also serves as an incentive for those who wish to seek a patent to seek it quickly, thus reducing the time during which others may acquire prior user rights. The incentives of this title will improve the efficiency of our patent system by protecting ongoing business concerns and encouraging swift prosecution of patent applications.

PATENT REEXAMINATION REFORM

Title V provides for a greater role for third parties in patent re-examination proceedings. It is taken almost verbatim from my free-standing re-examination bill, S. 1070.

Nothing is more basic to an effective system of patent protection than a reliable examination process. Without the high level of faith that the PTO has earned, respect for existing patents would fall away and innovation would be discouraged for fear of a lack of protection for new inventions.

In the information age, however, it is increasingly difficult for the PTO to keep track of all the prior art that exists. It does the best job it can, but inevitably someone misses something and grants a patent that should not be granted. This is the problem that Title V addresses.

Title V allows third-parties to raise a challenge to an existing patent and to

participate in the re-examination process in a meaningful way. Thus, the expertise of the patent examiner is supplemented by the knowledge and resources of third-parties who may have information not known to the patent examiner. Through this joint effort, we maximize the flow of information, increase the reliability of patents, and thereby increase the strength of the American patent system.

PROVISIONAL APPLICATIONS FOR PATENTS

Title VI is comprised of miscellaneous provisions. First, it fixes a matter of a rather technical nature. Some foreign courts have interpreted American provisional applications in a way that would not preserve their filing priority. This title amends section 115 of title 35 of the United States Code to clarify that if a provisional application is converted into a nonprovisional application within 12 months of filing, that it stands as a full patent application, with the date of filing of the provisional application as the date of priority. If no request is made within 12 months, the provisional application is considered abandoned. This clarification will make certain that American provisional applications are given the same weight as other countries' provisional applications in other countries' courts.

PLANT PATENTS

Title VI also makes two fairly technical corrections to the plant patent statute. First, the ban on tuber propagated plants is removed. This depression-era ban was included for fear of limiting the food supply. Obviously, this is no longer a concern. Second, the plant patent statute is amended to include parts of plants. This closes a loophole that foreign growers have used to import the fruit or flowers of patented plants without paying a royalty because the entire plant was not being sold.

ATTORNEY'S FEES FOR TAKINGS OF PATENTS

Title VI has an additional provision that requires the Federal Government to pay a successful plaintiff's reasonable attorney's fees in a suit for the taking of a patent. This is only fair as the nature of both patent litigation and takings litigation is long and expensive. In many cases the award that is finally won is reduced dramatically when attorney's fees are factored in. This provision allows a successful plaintiff to truly be made whole.

ELECTRONIC FILING

Last, this title also allows for the filing of patent and trademark documents by electronic medium.

Mr. President, I have already mentioned H.R. 3460, Congressman MOORHEAD's omnibus patent bill. H.R. 3460 provides for restructuring of the Patent and Trademark Office and deals with virtually all of the substantive patent issues that are in my bill, and in a similar way. The most significant difference is that my bill restructures all of intellectual property policymaking and administration by the Federal Government. If we are going to restructure patents and trademarks, I believe that copyright policymaking and administration cannot be ignored.

H.R. 3460 has been reported out of the House Committee on the Judiciary and is awaiting floor action. I hope for swift action by the Senate on the bill I am introducing today.

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:

OMNIBUS PATENT ACT OF 1996 SUMMARY
JULY 16, 1996

TITLE I—THE UNITED STATES INTELLECTUAL PROPERTY ORGANIZATION

This title establishes the United States Intellectual Property Organization (USIPO). The USIPO brings together in one entity patent, trademark, and copyright policy formulation and the administration of the patent, trademark, and copyright systems. The USIPO is a government corporation connected to the Department of Commerce.

The USIPO is headed by a Commissioner of Intellectual Property [CIP] who is the chief advisor to the President through the Secretary of Commerce regarding intellectual property policy. He or she is appointed by the President with Senate confirmation, and he or she serves at the pleasure of the President.

The USIPO has three autonomous subdivisions: the Patent Office, the Trademark Office, and the Copyright Office. Each office is responsible for the administration of its own system. Each office controls its own budget and its management structure and procedures. Each office must generate its own revenue in order to be self-sustaining and to provide for the office of the CIP. The Patent, Trademark and Copyright Offices are headed by the Commissioner of Patents, the Commissioner of Trademarks, and the Commissioner of Copyrights, respectively. The three Commissioners are appointed by the CIP and serve at his or her pleasure.

Title I also abolishes the Copyright Arbitration Royalty Panels [CARPs] for rate-setting and distribution under some of the compulsory licenses and replaces them with administrative law judges.

TITLE II—EARLY PUBLICATION

Title II of the bill provides for the early publication of patent applications. It would require the Patent Office to publish pending applications eighteen months after the application was filed. An exception to this rule is made for applications filed only in the United States. Those applications will be published eighteen months after filing or three months after the office issues its first response on the application, whichever is later. Additionally, once an application is published, Title II grants the applicant ''provisional rights,'' that is, legal protection for his or her invention.

TITLE III—PATENT TERM RESTORATION

Title III deals with the problem of administrative delay in the patent examination process by restoring to the patent holder any part of the term that is lost due to undue administrative delay. Title III gives clear deadlines in which the Patent Office must act. Any delay beyond those deadlines is considered undue delay and will be restored to the patent term.

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

This title provides rights to a person who has commercially sold an invention more than one year before that invention was patented by another person. Anyone in this situation will be permitted to continue to sell his or her product without being forced to pay a royalty to the patent holder.

TITLE V—PATENT RE-EXAMINATION REFORM

Title V provides for a greater role for third parties in patent re-examination proceedings by allowing third-parties to raise a challenge to an existing patent and to participate in the re-examination process in a meaningful way.

TITLE VI—MISCELLANEOUS

*Provisional Applications for Patents*

This title amends section 115 of Title 35 of the U.S. Code to clarify that if a provisional application is converted into a non-provisional application within twelve months of filing, that it stands as a full patent application, with the date of filing of the provisional application as the date of priority. If no request is made within twelve months, the provisional application is considered abandoned. This clarification will make certain that American provisional applications are given the same weight as other countries' provisional applications in other countries' courts.

*Plant Patents*

Title VI also makes two fairly technical corrections to the plant patent statute. First, the ban on tuber propagated plants in removed. This depression-era ban was included for fear of limiting the food supply. This is no longer a concern. Second, the plant patent statute is amended to include parts of plants. This closes a loophole that foreign growers have used to import the fruit or flowers of patented plants without paying a royalty because the entire plant was not being sold.

*Attorney's Fees for Takings of Patents*

Title VI has an additional provision that requires the federal government to pay a successful plaintiff's reasonable attorney's fees in a suit for the taking of a patent.

*Electronic Filing*

Lastly, this title also allows for the filing of patent and trademark documents by electronic medium.

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By Mr. MCCAIN (for himself, Mr. INOUYE, Mr. GLENN, Mr. THOMAS, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. COCHRAN, Mr. MURKOWSKI, Mr. CAMPBELL and Mr. SIMON):

S. 1962. A bill to amend the Indian Child Welfare Act of 1978, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN CHILD WELFARE ACT OF 1978

Mr. MCCAIN. Mr. President, I rise today with great pleasure to introduce a measure which has been laboriously crafted to resolve many of the differences between Indian tribes and advocates of adoption. The voices of reason and good will have prevailed. The measure I am introducing today, along with Senators INOUYE, Thomas, DOMENICI, KASSEBAUM, COCHRAN, MURKOWSKI, CAMPBELL, GLENN, and SIMON, enjoys the support of both the Indian tribes and the adoption community.

The bill reflects a very delicate compromise. But fragile it is not. Its strength lies in both the process by which it was developed and the substance it embodies.

More than one year ago, several high-profile cases adoption cases captured national attention because they involved Indian children caught in protracted legal disputes under the Indian

Child Welfare Act of 1978 [ICWA]. Adoption advocates believed these cases would provide political support for amendments they had long sought to the act. Indian tribes felt like they were under siege, battling distorted news stories about what the ICWA does and does not do while simultaneously having to fend off overly broad amendments to ICWA. As more time passed, the rhetoric heightened, the stakes of the game rose, and positions hardened.

It is remarkable that a few visionaries on both sides ventured away from these battle lines last year to begin to talk with each other about what common ground might exist. These talks began a long process of negotiation over possible compromise amendments to ICWA. Over time, the protagonists began to see ways in which some of each side's objectives could be accomplished through common agreement. Mr. President, I know it is perhaps an over-used phrase, but I can think of no more fitting example of a win-win resolution of an otherwise intractable problem.

ICWA was enacted in 1978 in response to growing concern over the consequences to Indian children, families and tribes of the separation of large numbers of Indian children from their families and tribes through adoption or foster care placements by the State courts. Studies conducted by the Association of American Indian Affairs [AAIA] in the mid-1970s revealed that 25 to 35 percent of all Indian children had been separated from their families and placed into adoptive families, foster care, or other institutions. For example, in the State of Minnesota nearly one in every four Indian children under the age of 1 year was placed for adoption between 1971 and 1972, and approximately 90 percent of adoptive placements of Indian children at that time were with non-Indian families. In response, Congress protected both the best interest of Indian children and the interest of Indian tribes in the welfare of their children, by carefully crafting ICWA to make use of the roles traditionally played by Indian tribes and families in the welfare of their children through a unique jurisdictional framework, favorably described in the majority opinion of the United States Supreme Court in Mississippi Band of Choctaw Indians versus Holyfield as follows:

> At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. Section 1911 lays out a dual jurisdictional scheme. Section 1911(a) establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child 'who resides or is domiciled within the reservation of such tribe,' as well as for wards of tribal courts regardless of domicile. Section 1911(b), on the other hand, creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of 'good cause,' objection by either parent, or declination of jurisdiction by the tribal court. 490 U.S. 30, 36 (1989).

The issue of Indian child welfare stirs the deepest emotions. Nothing is more sacred than children. And while developing common ground is always extremely difficult during a battle, it is especially difficult on such a deeply personal issue.

As with all compromises, I am sure each side would prefer language that is better for them. I am told many Indian tribes would rather not have any amendments at all, and that many in the adoption community would rather have the House-passed amendments be the law of the land. But on behalf of the Indian children and their parents, both biological and adoptive, I want to extend my personal thanks to persons on both sides of this debate who have led the way to a compromise in which both sides, and most importantly, Indian children, are the winners.

I am especially grateful for the position taken by the Indian tribes, and particularly, for the leadership of the National Congress of American Indians [NCAI], its President, the Honorable Ron Allen and his able NCAI staff, and that of Terry Cross, Jack Trope, Mike Walleri and other tribal leaders or representatives associated with the National Indian Child Welfare Association [NICWA], Tanana Chiefs Conference, and others. Their efforts to reach out to the adoption community, even as the debate was quickening, made all the difference.

Likewise, I am indebted to the courage and foresight that led adoption advocates like Jane Gorman and Marc Gradstein to pursue a reasonable and fair-minded approach in dialogue with their tribal counterparts. These two practicing attorneys gave many hours to the task of fashioning a compromise that has now been endorsed by their colleagues in the American Academy of Adoption Attorneys and the Academy of California Adoption Attorneys.

Finally, I want to commend the tribal delegates and representatives who labored for many long hours at the mid-year convention of the National Congress of American Indians in Tulsa, OK in early June in order to respond to the request I and Congressman DON YOUNG, Chairman of the House Committee on Resources, made to them, asking that they work in good faith with adoption attorneys to finalize a minimum set of compromise amendment provisions that could be adopted as an alternative to the House-passed amendments. I am told that hundreds of delegates worked around the clock for several days to come up with the language that I am introducing today. The process makes for a remarkable story.

And the product is even more remarkable. The bill I am introducing today will amend the Indian Child Welfare Act of 1978 to better serve the best interests of Indian children without trampling on tribal sovereignty and without eroding fundamental principles of Federal-Indian law.

The compromise bill would achieve greater certainty and speed in adoptions involving Indian children through new guarantees of early and effective notice in all cases combined with new, strict time restrictions placed on both the right of Indian tribes and families to intervene and the right of Indian birth parents to revoke their consent to an adoptive placement. The compromise bill would encourage early identification of the relatively few cases involving controversy, and promote settlement of cases by making visitation agreements enforceable.

It would limit when and how an Indian family or tribe may intervene in an adoption case involving an Indian child; 25 U.S.C. 1911(c) and 1913(e) would be substantially amended to curtail the present right of an Indian family or tribe to intervene at any point in the proceeding. Under the compromise, this right of intervention could be exercised only within the following periods of time: within 30 days of receipt of notice of a termination of parental rights proceeding, or within the later of 90 days of receipt of notice of an adoptive placement or 30 days of receipt of notice of a voluntary adoption proceeding. With proper notice, an Indian tribe's failure to act within these timeframes early in the placement proceedings would be considered final. An Indian tribe's waiver of its right to intervene would be considered binding. If an Indian tribe seeks to intervene, it must accompany its motion with a certification that the child at issue is, or is eligible to be, a member of the tribe and it must provide documentation of this pursuant to tribal law.

The compromise bill would limit when an Indian biological parent may withdraw his or her consent to adoption or termination of parental rights; 25 U.S.C. 1913(b) would be substantially amended to curtail the present right of an Indian parent to withdraw his or her consent to an adoption placement or termination of parental rights at any time prior to entry of a final decree. Under the bill, such consent could be withdrawn before a final decree of adoption has been entered only if less than 6 months has passed since the Indian child's tribe received the required notice, or if the adoptive placement specified by the parent ends, or if less than 30 days has passed since the adoption proceeding began. An Indian biological parent may otherwise revoke consent only under applicable State law. In the case of fraud or duress, an Indian biological parent may seek to invalidate an adoption up to 2 years after the adoption has been in effect, or within a longer period established by the applicable State law.

This legislation would require those facilitating an adoption to provide early and effective notice and information to Indian tribes; 25 U.S.C. 1913 would be substantially amended to add a requirement for notice to be sent to the Indian child's tribe by a party seeking to place or to effect a voluntary termination of parental rights

concerning a child known to be an Indian. Under the bill, this notice must be sent by registered mail within 100 days following a foster care placement, within 5 days following a pre-adoptive or adoptive placement, and within 10 days of the commencement of a termination of parental rights proceeding or adoption proceeding. The bill would specify the particular information that is to be provided. In addition, 25 U.S.C 1913(a) would be amended to require a certification by the State court that the attorney or public or private agency facilitating the voluntary termination of parental rights or adoptive placement has informed the biological parents of their placement options and of other provisions of ICWA and has certified that the natural parents will be notified within 10 days of any change in the adoptive placement.

The compromise bill would authorize and encourage open adoptions and enforceable visitation agreements between Indians and non-Indians; 25 U.S.C. 1913 would be amended to encourage and facilitate voluntary agreements between Indian families or tribes and non-Indian adoptive families for enforceable rights of visitation or continued contact after entry of an adoption decree. This provision would have the effect of authorizing such agreements where independent authority does not exist in a particular State's law. This should help encourage early identification and settlement of controversial cases.

Finally, this bill would apply penalties for fraud and misrepresentation as a sanction against efforts to evade responsibilities under the act. The bill would apply criminal penalties to any efforts to encourage or facilitate fraudulent representations or omissions regarding whether a child or biological parent is an Indian for purposes of the act. The exclusive jurisdiction of tribal courts under 25 U.S.C. 1911(a) would be clarified to continue once a child is properly made a ward of that tribal court, regardless of the location of the treatment ordered by the court. And the bill would make a few minor changes to existing law to clarify several issues which have caused delays in child custody and placement proceedings.

I view this compromise bill as a wholly appropriate and fair-minded alternative to the title III provisions which the Committee on Indian Affairs voted on June 19 to strike from H.R. 3286, the Adoption Promotion and Stability Act of 1996. Title III, proposed by Congresswoman DEBORAH PRYCE, WOULD SUBSTANTIALLY AMEND ICWA in ways I and many others on the committee concluded would eviscerate the act. Title III was passed by the House in May by a narrow margin after extended debate. The Senate Committee on Indian Affairs deleted that controversial title because of our serious concern about the breadth of its language and the fundamental changes it would make to the government-to-government relations between the United States and Indian tribes. Title III was strenuously opposed by virtually every tribal government in the Nation and by the Justice and Interior Departments.

At the same time, I told Congresswoman Pryce that I and many others believed that some of the problems identified by her and other proponents of title III were legitimate. It seemed to me that adoptive families seek certainty, speed, and stability throughout the adoption process. They do not want surprises that threaten to take away from them a child they have loved and cared for after they have followed the law. At the same time, Indian tribes have long sought early and substantive notice of proposed adoptions and the continued protections of tribal sovereignty. They do not want to learn that their young tribal members have been placed for adoption outside of the Indian community many months or years after the fact.

I was pleased to see that the negotiators of the compromise bill responded to these concerns. And I am extremely pleased to say that Congresswoman PRYCE has indicated to me she will now lend her support to prompt enactment of this landmark, compromise legislation. Because it is a delicately balanced package, I am strongly committed to moving this compromise language without substantial change as quickly as possible through the Senate and the House in the remaining weeks before the close of this Congress. Mr. President, I ask my colleagues to join me in this effort.

There is no doubt in my mind that in the case of an Indian child there are special interests that must be taken into account during an adoption placement process. But these interests, as provided for in ICWA, must serve the best interests of the Indian child. And those best interests are best served by certainty, speed, and stability in making adoptive placements with the participation of Indian tribes. This is the key, these concerns can be addressed in ways that preserve fundamental principles of tribal sovereignty by recognizing and preserving the appropriate role of tribal governments in the lives of Indian children.

Mr. President, I urge my colleagues to support the compromise bill so that the agreement reached by the parties can be realized.

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:

S. 1962

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

**SECTION 1. SHORT TITLE; REFERENCES.**

(a) SHORT TITLE.—This Act may be cited as the ''Indian Child Welfare Act Amendments 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 Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

**SEC. 2. EXCLUSIVE JURISDICTION.**

Section 101(a) (25 U.S.C. 1911(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by striking the last sentence and inserting the following:

''(2) An Indian tribe shall retain exclusive jurisdiction over any child custody proceeding that involves an Indian child, notwithstanding any subsequent change in the residence or domicile of the Indian child, in any case in which the Indian child—

''(A) resides or is domiciled within the reservation of the Indian tribe and is made a ward of a tribal court of that Indian tribe; or

''(B) after a transfer of jurisdiction is carried out under subsection (b), becomes a ward of a tribal court of that Indian tribe.''.

**SEC. 3. INTERVENTION IN STATE COURT PROCEEDINGS.**

Section 101(c) (25 U.S.C. 1911(c)) is amended by striking ''In any State court proceeding'' and inserting ''Except as provided in section 103(e), in any State court proceeding''.

**SEC. 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

Section 103(a) (25 U.S.C. 1913(a)) is amended—

(1) by inserting ''(1)'' before ''Where'';

(2) by striking ''foster care placement'' and inserting ''foster care or preadoptive or adoptive placement'';

(3) by striking ''judge's certificate that the terms'' and inserting the following: ''judge's certificate that—

''(A) the terms'';

(4) by striking ''or Indian custodian.'' and inserting ''or Indian custodian; and'' ;

(5) by inserting after subparagraph (A), as designated by paragraph (3) of this subsection, the following new subparagraph:

''(B) any attorney or public or private agency that facilitates the voluntary termination of parental rights or preadoptive or adoptive placement has informed the natural parents of the placement options with respect to the child involved, has informed those parents of the applicable provisions of this Act, and has certified that the natural parents will be notified within 10 days of any change in the adoptive placement.'';

(6) by striking ''The court shall also certify'' and inserting the following:

''(2) The court shall also certify'';

(7) by striking ''Any consent given prior to,'' and inserting the following:

''(3) Any consent given prior to,''; and

(8) by adding at the end the following new paragraph:

''(4) An Indian custodian who has the legal authority to consent to an adoptive placement shall be treated as a parent for the purposes of the notice and consent to adoption provisions of this Act.''.

**SEC. 5. WITHDRAWAL OF CONSENT.**

Section 103(b) (25 U.S.C. 1913(b)) is amended—

(1) by inserting ''(1)'' before ''Any''; and

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

''(2) Except as provided in paragraph (4), a consent to adoption of an Indian child or voluntary termination of parental rights to an Indian child may be revoked, only if—

''(A) no final decree of adoption has been entered; and

''(B)(i) the adoptive placement specified by the parent terminates; or

''(ii) the revocation occurs before the later of the end of—

''(I) the 180-day period beginning on the date on which the Indian child's tribe receives written notice of the adoptive placement provided in accordance with the requirements of subsections (c) and (d); or

''(II) the 30-day period beginning on the date on which the parent who revokes consent receives notice of the commencement of the adoption proceeding that includes an explanation of the revocation period specified in this subclause.

''(3) The Indian child with respect to whom a revocation under paragraph (2) is made shall be returned to the parent who revokes consent immediately upon an effective revocation under that paragraph.

''(4) Subject to paragraph (6), if, by the end of the applicable period determined under subclause (I) or (II) of paragraph (2)(B)(ii), a consent to adoption or voluntary termination of parental rights has not been revoked, beginning after that date, a parent may revoke such a consent only—

''(A) pursuant to applicable State law; or

''(B) if the parent of the Indian child involved petitions a court of competent jurisdiction, and the court finds that the consent to adoption or voluntary termination of parental rights was obtained through fraud or duress.

''(5)(A) Subject to paragraph (6), if a consent to adoption or voluntary termination of parental rights is revoked under paragraph (4)(B), with respect to the Indian child involved—

''(i) in a manner consistent with paragraph (3), the child shall be returned immediately to the parent who revokes consent; and

''(ii) if a final decree of adoption has been entered, that final decree shall be vacated.

''(6) Except as otherwise provided under applicable State law, no adoption that has been in effect for a period longer than or equal to 2 years may be invalidated under this subsection.''.

**SEC. 6. NOTICE TO INDIAN TRIBES.**

Section 103(c) (25 U.S.C. 1913(c)) is amended to read as follows:

''(c)(1) A party that seeks the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child shall provide written notice of the placement or proceeding to the Indian child's tribe. A notice under this subsection shall be sent by registered mail (return receipt requested) to the Indian child's tribe, not later than the applicable date specified in paragraph (2) or (3).

''(2)(A) Except as provided in paragraph (3), notice shall be provided under paragraph (1) in each of the following cases:

''(i) Not later than 100 days after any foster care placement of an Indian child occurs.

''(ii) Not later than 5 days after any preadoptive or adoptive placement of an Indian child.

''(iii) Not later than 10 days after the commencement of any proceeding for a termination of parental rights to an Indian child.

''(iv) Not later than 10 days after the commencement of any adoption proceeding concerning an Indian child.

''(B) A notice described in subparagraph (A)(ii) may be provided before the birth of an Indian child if a party referred to in paragraph (1) contemplates a specific adoptive or preadoptive placement.

''(3) If, after the expiration of the applicable period specified in paragraph (2), a party referred to in paragraph (1) discovers that the child involved may be an Indian child—

''(A) the party shall provide notice under paragraph (1) not later than 10 days after the discovery; and

''(B) any applicable time limit specified in subsection (e) shall apply to the notice provided under subparagraph (A) only if the party referred to in paragraph (1) has, on or before commencement of the placement made reasonable inquiry concerning whether the child involved may be an Indian child.''.

**SEC. 7. CONTENT OF NOTICE.**

Section 103(d) (25 U.S.C. 1913(d)) is amended to read as follows:

''(d) Each written notice provided under subsection (c) shall contain the following:

''(1) The name of the Indian child involved, and the actual or anticipated date and place of birth of the Indian child.

''(2) A list containing the name, address, date of birth, and (if applicable) the maiden name of each Indian parent and grandparent of the Indian child, if—

''(A) known after inquiry of—

''(i) the birth parent placing the child or relinquishing parental rights; and

''(ii) the other birth parent (if available); or

''(B) otherwise ascertainable through other reasonable inquiry.

''(3) A list containing the name and address of each known extended family member (if any), that has priority in placement under section 105.

''(4) A statement of the reasons why the child involved may be an Indian child.

''(5) The names and addresses of the parties involved in any applicable proceeding in a State court.

''(6)(A) The name and address of the State court in which a proceeding referred to in paragraph (5) is pending, or will be filed; and

''(B) the date and time of any related court proceeding that is scheduled as of the date on which the notice is provided under this subsection.

''(7) If any, the tribal affiliation of the prospective adoptive parents.

''(8) The name and address of any public or private social service agency or adoption agency involved.

''(9) An identification of any Indian tribe with respect to which the Indian child or parent may be a member.

''(10) A statement that each Indian tribe identified under paragraph (9) may have the right to intervene in the proceeding referred to in paragraph (5).

''(11) An inquiry concerning whether the Indian tribe that receives notice under subsection (c) intends to intervene under subsection (e) or waive any such right to intervention.

''(12) A statement that, if the Indian tribe that receives notice under subsection (c) fails to respond in accordance with subsection (e) by the applicable date specified in that subsection, the right of that Indian tribe to intervene in the proceeding involved shall be considered to have been waived by that Indian tribe.''.

**SEC. 8. INTERVENTION BY INDIAN TRIBE.**

Section 103 (25 U.S.C. 1913) is amended by adding at the end the following new subsections:

''(e)(1) The Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court only if—

''(A) in the case of a voluntary proceeding to terminate parental rights, the Indian tribe filed a notice of intent to intervene or a written objection to the termination, not later than 30 days after receiving notice that was provided in accordance with the requirements of subsections (c) and (d); or

''(B) in the case of a voluntary adoption proceeding, the Indian tribe filed a notice of intent to intervene or a written objection to the adoptive placement, not later than the later of—

''(i) 90 days after receiving notice of the adoptive placement that was provided in accordance with the requirements of subsections (c) and (d); or

''(ii) 30 days after receiving a notice of the voluntary adoption proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(2)(A) Except as provided in subparagraph (B), the Indian child's tribe shall have the right to intervene at any time in a voluntary child custody proceeding in a State court in any case in which the Indian tribe did not receive written notice provided in accordance with the requirements of subsections (c) and (d).

''(B) An Indian tribe may not intervene in any voluntary child custody proceeding in a State court if the Indian tribe gives written notice to the State court or any party involved of—

''(i) the intent of the Indian tribe not to intervene in the proceeding; or

''(ii) the determination by the Indian tribe that—

''(I) the child involved is not a member of, or is not eligible for membership in, the Indian tribe; or

''(II) neither parent of the child is a member of the Indian tribe.

''(3) If an Indian tribe files a motion for intervention in a State court under this subsection, the Indian tribe shall submit to the court, at the same time as the Indian tribe files that motion, a certification that includes a statement that documents, with respect to the Indian child involved, the membership or eligibility for membership of that Indian child in the Indian tribe under applicable tribal law.

''(f) Any act or failure to act of an Indian tribe under subsection (e) shall not—

''(1) affect any placement preference or other right of any individual under this Act;

''(2) preclude the Indian tribe of the Indian child that is the subject of an action taken by the Indian tribe under subsection (e) from intervening in a proceeding concerning that Indian child if a proposed adoptive placement of that Indian child is changed after that action is taken; or

''(3) except as specifically provided in subsection (e), affect the applicability of this Act.

''(g) Notwithstanding any other provision of law, no proceeding for a voluntary termination of parental rights or adoption of an Indian child may be conducted under applicable State law before the date that is 30 days after the Indian child's tribe receives notice of that proceeding that was provided in accordance with the requirements of subsections (c) and (d).

''(h) Notwithstanding any other provision of law (including any State law)—

''(1) a court may approve, as part of an adoption decree of an Indian child, an agreement that states that a birth parent, an extended family member, or the Indian child's tribe shall have an enforceable right of visitation or continued contact with the Indian child after the entry of a final decree of adoption; and

''(2) the failure to comply with any provision of a court order concerning the continued visitation or contact referred to in paragraph (1) shall not be considered to be grounds for setting aside a final decree of adoption.''.

**SEC. 9. FRAUDULENT REPRESENTATION.**

Title I of the Indian Child Welfare Act of 1978 is amended by adding at the end the following new section:

**''SEC. 114. FRAUDULENT REPRESENTATION.**

''(a) IN GENERAL.—With respect to any proceeding subject to this Act involving an Indian child or a child who may be considered to be an Indian child for purposes of this Act, a person, other than a birth parent of the child, shall, upon conviction, be subject to a criminal sanction under subsection (b) if that person—

''(1) knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether, for purposes of this Act—

''(A) a child is an Indian child; or

''(B) a parent is an Indian; or

''(2)(A) makes any false, fictitious, or fraudulent statement, omission, or representation; or

''(B) falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact described in paragraph (1).

''(b) CRIMINAL SANCTIONS.—The criminal sanctions for a violation referred to in subsection (a) are as follows:

''(1) For an initial violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 1 year, or both.

''(2) For any subsequent violation, a person shall be fined in accordance with section 3571 of title 18, United States Code, or imprisoned not more than 5 years, or both.''.

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SECTION-BY-SECTION ANALYSIS—INDIAN CHILD WELFARE ACT AMENDMENTS OF 1996

SECTION 1. SHORT TITLE; REFERENCES

Section 1 cites the short title of the bill as the ''Indian Child Welfare Act Amendments of 1996'' and clarifies that references in the bill to amendment or repeal relate to the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SECTION 2. EXCLUSIVE JURISDICTION

Section 2 adds a provision to 25 U.S.C. 1911(a) to clarify that an Indian tribe retains exclusive jurisdiction over any child otherwise made a ward of the tribal court when the child subsequently changes residence or domicile for treatment or other purposes.

SECTION 3. INTERVENTION IN STATE COURT PROCEEDINGS

Section 3 makes a conforming technical amendment conditioning an Indian tribe's existing right of intervention under 25 U.S.C. 1911(c) to the time limitations added by Section 8 of the bill.

SECTION 4. VOLUNTARY TERMINATION OF PARENTAL RIGHTS

Section 4 amends 25 U.S.C. 1913(a) to clarify that the Act applies to voluntary consents in adoptive, preadoptive and foster care placements. In addition, Section 4 adds a requirement that the presiding judge certify that any attorney or public or private agency facilitating the voluntary termination of parental rights or adoptive placement has informed the birth parents of the placement options available and of the applicable provisions of the Indian Child Welfare Act, and has certified that the birth parents will be notified within 10 days of any change in the adoptive placement. An Indian custodian vested with legal authority to consent to an adoptive placement is to be treated as a parent for purposes of these amendments, including the requirements governing notice provided or received and consent given or revoked.

SECTION 5. WITHDRAWAL OF CONSENT

Section 5 amends the Act by adding several new paragraphs to 25 U.S.C. 1913(b). The additional paragraphs would set limits on when an Indian birth parent may withdraw his or her consent to an adoption. Paragraph (2) would permit revocation of parental consent in only two instances before a final decree of adoption is entered except as provided in paragraph (4). First, a birth parent could revoke his or her consent if the original placement specified by the birth parent terminates before a final decree of adoption has been entered. Second, a birth parent could revoke his or her consent if the revocation is made before the end of a 30 day period that begins on the day that parent received notice of the commencement of the adoption proceeding or before the end of a 180 day period that begins on the day the Indian tribe has received notice of the adoptive placement, whichever period ends first. Paragraph (3) provides that upon the effective revocation of consent by a birth parent under the terms of paragraph (2), the child shall be returned to that birth parent. Paragraph (4) requires that if a birth parent has not revoked his or her consent within the time frames set forth in paragraph (2), thereafter he or she may revoke consent only pursuant to applicable State law or upon a finding by a court of competent jurisdiction that the consent was obtained through fraud or duress. Paragraph (5) provides that upon the effective revocation of consent by a birth parent under the terms of paragraph (4)(B), the child shall be returned to that birth parent and the decree vacated. Paragraph (6) provides that no adoption that has been in effect for a period of longer than or equal to two years can be invalidated under any of the conditions set forth in this section, including those related to a finding of duress or fraud.

SECTION 6. NOTICE TO INDIAN TRIBES

Section 6 requires notice to be provided to the Indian tribe by any person seeking to secure the voluntary placement of an Indian child or the voluntary termination of the parental rights of a parent of an Indian child. The notice must be provided no later than 100 days after a foster care placement occurs, no later than five days after a preadoptive or adoptive placement occurs, no later than ten days after the commencement of a proceeding for the termination of parental rights, and no later than ten days after the commencement of an adoption proceeding. Notice may be given prior to the birth of an Indian child if a particular placement is contemplated. If an Indian birth parent is discovered after the applicable notice periods have otherwise expired, despite a reasonable inquiry having been made on or before the commencement of the placement about whether the child may be an Indian child, the time limitations placed by Section 8 upon the rights of an Indian tribe to intervene apply only if the party discovering the Indian birth parent provides notice to the Indian tribe under this section not later than ten days after making the discovery.

SECTION 7. CONTENT OF NOTICE

Section 7 requires that the notice provided under Section 6 include the name of the Indian child involved and the actual or anticipated date and place of birth of the child, along with an identification, if known after reasonable inquiry, of the Indian parent, grandparent, and extended family members of the Indian child. The notice must also provide information on the parties and court proceedings pending in State court. The notice must inform the Indian tribe that it may have the right to intervene in the court proceeding, and must inquire whether the Indian tribe intends to intervene or waive its right to intervene. Finally, the notice must state that if the Indian tribe fails to respond by the statutory deadline, the right of that Indian tribe to intervene will be considered to have been waived.

SECTION 8. INTERVENTION BY INDIAN TRIBE

Section 8 adds four new subsections to 25 U.S.C. 1913, which would limit the right of an Indian tribe to intervene in a court proceeding involving foster care placement or termination of parental rights and which would authorize voluntary agreements for enforceable rights of visitation.

Under subsection (e), an Indian tribe could intervene in a voluntary proceeding to terminate parental rights only if it has filed a notice of intent to intervene or a written objection not later than 30 days after receiving the notice required by Sections 6 and 7. An Indian tribe could intervene in a voluntary adoption proceeding only if it has filed a notice of intent to intervene or a written objection not later than the later of 90 days after receiving notice of the adoptive placement or 30 days after receiving notice of the adoption proceeding pursuant to sections 6 and 7. If these notice requirements are not complied with, the Indian tribe could intervene at any time. However, an Indian tribe may no longer intervene in a proceeding after it has provided written notice to a State court of its intention not to intervene or of its determination that neither the child nor any birth parent is a member of that Indian tribe. Finally, subsection (e) would require that an Indian tribe accompany a motion for intervention with a certification that documents the tribal membership or eligibility for membership of the Indian child under applicable tribal law.

Subsection (f) would clarify that the act or failure to act of an Indian tribe to intervene or not intervene under subsection (e) shall not affect any placement preferences or other rights accorded to individuals under the Act, nor may this preclude an Indian tribe from intervening in a case in which a proposed adoptive placement is changed.

Subsection (g) would prohibit any court proceeding involving the voluntary termination of parental rights or adoption of an Indian child from being conducted before the date that is 30 days after the Indian tribe has received notice under sections 6 and 7.

Subsection (h) would authorize courts to approve, as part of the adoption decree of an Indian child, a voluntary agreement made by an adoptive family that a birth parent, a member of the extended family, or the Indian tribe will have an enforceable right of visitation or continued contact after entry of the adoption decree. However, failure to comply with the terms of such agreement may not be considered grounds for setting aside the adoption decree.

SECTION 9. FRAUDULENT REPRESENTATION

Section 9 would add a new section 114 to the Indian Child Welfare Act that would apply criminal sanctions to any person other than a birth parent who—(1) knowingly and willfully falsifies, conceals, or covers up a material fact concerning whether, for purposes of the Act, a child is an Indian child or a parent is an Indian; or (2) makes any false or fraudulent statement, omission, or representation, or falsifies a written document knowing that the document contains a false or fraudulent statement or entry relating to a material fact described in (1). Upon conviction of an initial violation, a person shall be subjected to the fine prescribed in 18 U.S.C. 3571 for a Class A misdemeanor (not more than $100,000), imprisonment for not more than 1 year, or both. Upon conviction of any subsequent violation, a person shall be subjected to the fine prescribed in 18 U.S.C. 3751 for a felony (not more than $250,000), imprisonment for not more than 5 years, or both.

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JULY 16, 1996.

Hon. JOHN MCCAIN,

*Chairman, Senate Indian Affairs Committee, Washington, DC*

DEAR CHAIRMAN MCCAIN: Thank you for your swift attention and hard work on the issue of the Indian Child Welfare Act (ICWA) as it relates to adoption.

I have reviewed a draft of the legislation you plan to introduce to amend the ICWA and, after careful consideration, have decided that I can lend the bill my qualified support. As you know, your legislation offers

a much different approach to reform of the ICWA than what I prefer and what was passed by the House, your changes being procedural and mine substantive. I believe, however, the procedural reforms will help to facilitate compliance with the ICWA and prevent some of the adoption tragedies that have occurred under the current Act.

Further, I appreciate your willingness to address some of my concerns by incorporating protections for adoptive parents in cases where there is no disclosure or knowledge of a child's Native American heritage. These provisions are necessary in situations like that of the Rost family of Columbus, Ohio. The Rosts were unaware of the Native American ancestry of their twin adoptive daughters because that information was withheld by the birth parents.

While I believe the reforms in your bill are useful, I still feel that additional reforms are necessary to address the underlying and fundamental problems with the ICWA as it relates to adoption. The definition and jurisdiction problems involved in the application of the ICWA remain unsolved, as it is still unclear to whom this Act should apply. More and more frequently, the courts are deciding that application of the ICWA based on race alone is unconstitutional. I believe it would be desirable for your committee to address this issue at some point, or the legitimate purpose of the ICWA—to preserve the Indian family and culture—may be lost with the Act's eventual demise.

However, at this point, I support your legislation, recognizing that it has the support of Native Americans, adoption attorneys, and the Rost family. In my view, this legislation represents a step toward ICWA reform that will provide stability and security to the adoption process and more importantly decrease the likelihood of adoption tragedies.

Thank you for your consideration of my views and for your hard work to develop a solution to some of the problems that the ICWA poses as currently applied. I look forward to continuing to work with you on this issue as we monitor the implementation of the changes purposed by your legislation.

Very truly yours,

DEBORAH PRYCE,
*Member of Congress.*

Mr. INOUYE. Mr. President, the Indian Child Welfare Act was enacted by the Congress in 1978 to secure long overdue protection for Indian children. In enacting the Indian Child Welfare Act, the Congress was concerned not only with the removal of Indian children from their families, but also their removal from their Indian heritage, culture, and identity.

For the past 18 years, the Indian Child Welfare Act has served as a ray of hope and promise to Indian people striving to protect their children and the security and integrity of their families and tribal communities.

While there is much debate about whether or not amendments are needed to the Indian Child Welfare Act, I have great respect for the leaders of the tribal governments who have come together to address the concerns of others notwithstanding the fact that these amendments will affect their most precious resource—the children of the native people of America.

I wish to take this opportunity to make it clear to my colleagues that the amendments contained in this bill are intended to and will apply to all child custody proceedings affecting Indian children and their families.

Mr. GLENN. Mr. President, I am pleased to join Senator MCCAIN as an original cosponsor of this legislation to amend the Indian Child Welfare Act [ICWA]. By clarifying and improving a number of provisions of ICWA, this legislation brings more stability and certainty to Indian child adoptions while preserving the underlying policies and objectives of ICWA. This bill embodies the consensus agreement reached when Indian tribes from around the Nation met in Tulsa, OK, to address questions regarding ICWA's application. Mr. President, I believe that the overriding goal of this agreement, which I support, is to serve the best interests of children.

The bill being introduced today deals with several issues critical to the application of ICWA to child custody proceedings including notice to Indian tribes for voluntary adoptions, time lines for tribal intervention in voluntary cases, criminal sanctions to discourage fraudulent practices in Indian adoptions and a mandate that attorneys and adoption agencies must inform Indian parents under ICWA. I believe that the formal notice requirements to the potentially affected tribe as well as the time limits for tribal intervention after the tribe has been notified are significant improvements in providing needed certainty in placement proceedings.

Mr. President, I am also pleased that this legislation contains provisions addressing my specific concern: the retroactive application of ICWA in child custody proceedings. ICWA currently allows biological parents to withdraw their consent to an adoption for up to 2 years until the adoption is finalized. With the proposed changes, the time that the biological parents may withdraw their consent under ICWA is substantially reduced. I believe that a shorter deadline provides greater certainty for the potential adoptive family, the Indian family, the tribe, and the extended family. This certainty is vital for the preservation of the interest of the child.

Mr. President, my concern with this issue and my insistence on the need to address the problem of retroactive application of ICWA was a direct response to a situation with a family in Columbus, OH. The Rost family of Columbus received custody of twin baby girls in the State of California in November 1993, following the relinquishment of parental rights by both birth parents. The biological father did not disclose his native American heritage in response to a specific question on the relinquishment document. In February 1994, the birth father informed his mother of the pending adoption of the twins. Two months later, in April 1994, the birth father's mother enrolled herself, the birth father, and the twins with the Pomo Indian tribe in California. The adoption agency was then notified that the adoption could not be finalized without a determination of the applicability of ICWA.

The Rost situation made me aware of the harmful impact that retroactive application of ICWA could have on children. While I would have preferred tighter restrictions to preclude other families enduring the hardships the Rosts have experienced, I appreciated the efforts of Senator MCCAIN, other members of the Committee and the Indian tribes to address these concerns. I believe that the combination of measures contained in this bill will significantly lessen the possibility of future Rost cases. Taken together the imposition of criminal sanctions for attorneys and adoption agencies that knowingly violate ICWA, the imposition of formal notice requirements and the imposition of deadlines for tribal intervention, provide new protections in law for children and families involved in child custody proceedings.

Mr. President, I have reviewed the Rost case to reiterate that my interest in reforming ICWA has been limited to the issue of retroactive application. I have no intention to weaken ICWA protection, to narrow the designation of individuals as members of an Indian tribe, or to change any tribes' ability to determine its membership or what constitutes that membership. Once a voluntary legal agreement has been entered into, I do not believe that it is in the best interest of the child for this proceeding to be disrupted because of the retroactive application of ICWA. To allow this to happen could have a harmful impact on the child. I know that my colleagues share my overriding concern in assuring the best interest of children.

Mr. President, I look forward to continued efforts to reform ICWA in ways that protect the best interest of children. I appreciate the work of Senator MCCAIN and others to accommodate my concerns in this legislation and am pleased to cosponsor the bill.

## ADDITIONAL COSPONSORS

S. 704

At the request of Mr. SIMON, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 773

At the request of Mrs. KASSEBAUM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 773, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improvements in the process of approving and using animal drugs, and for other purposes.

S. 794

At the request of Mr. LUGAR, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of S. 794, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to facilitate the minor use of a pesticide, and for other purposes.