and second time by unanimous consent, and referred as indicated:

By Mr. LIEBERMAN:

S. 1329. A bill to prohibit the taking of certain lands by the United States in trust for economically self-sufficient Indian tribes for commercial and gaming purposes, and for other purposes; to the Committee on Indian Affairs.

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

S. 1330. A bill to designate the United States Post Office located at 450 North Centre Street in Pottsville, Pennsylvania, as the ''Peter J. McClosky Postal Facility''; to the Committee on Governmental Affairs.

By Mr. McCAIN:

S. 1331. A bill to amend title 49, United States Code, to enhance domestic aviation competition by providing for the auction of slots at slot-controlled airports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ENZI:

S. 1332. A bill to amend title 28, United States Code, to recognize and protect State efforts to improve environmental mitigation and compliance through the promotion of voluntary environmental audits, including limited protection from discovery and limited protection from penalties, and for other purposes; to the Committee on Environment and Public Works.

By Mr. FRIST:

S. 1333. A bill to amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself, Mr. SHELBY, Mr. WARNER, Mr. REID, Mr. JOHNSON, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. MACK, Mrs. MURRAY, Mr. ASHCROFT, Mr. CRAIG, Mr. BUMPERS, Mr. LEAHY, Ms. COLLINS, Mr. SESSIONS, Mr. ALLARD, Mr. BAUCUS, and Mrs. FEINSTEIN):

S. 1334. A bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availablity of adequate health care for Medicare-eligible beneficiaries under the military health care system; to the Committee on Armed Services.

By Ms. SNOWE:

S. 1335. A bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees; to the Committee on Governmental Affairs.

By Mr. GRAHAM:

S. 1336. A bill for the relief of Roy Desmond Moser; to the Committee on the Judiciary.

S. 1337. A bill for the relief of John Andre Chalot; to the Committee on the Judiciary.

By Mr. KERREY:

S. 1338. A bill to authorize the expenditure of certain health care funds by the Ponca Tribe of Nebraska; to the Committee on Indian Affairs.

By Mrs. HUTCHISON (for herself, Mr. GRAMM, Mrs. FEINSTEIN, and Mrs. BOXER):

S. 1339. A bill to provide for an increase in pay and allowances for members of the uniformed services for fiscal year 1998, to improve certain authorities relating to the pay and allowances and health care of such members, to authorize appropriations for fiscal year 1998 for military construction, and for other purposes; to the Committee on Armed Services.

By Mr. DURBIN:

S. 1340. A bill entitled the ''Telephone Consumer Fraud Protection Act of 1997.''; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1341. A bill to provide for mitigation of terrestrial wildlife habitat lost as a result of the construction and operation of the Pick-Sloan Missouri River Basin program in the State of South Dakota, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MURKOWSKI (for himself and Mr. THOMAS):

S. 1342. A bill to amend title XVIII of the Social Security Act to increase access to quality health care in frontier communities by allowing health clinics and health centers greater medicare flexibility and reimbursement; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 1343. A bill to amend the Internal Revenue Code of 1986 to increase the excise tax rate on tobacco products and deposit the resulting revenues into a Public Health and Education Resource Trust Fund, and for other purposes; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. MURRAY (for herself, Mr. KEMPTHORNE, Mr. WELLSTONE, Mr. AKAKA, Mr. CRAIG, Mr. LAUTENBERG, Mr. HOLLINGS, Mr. CHAFEE, Mr. BRYAN, Ms. COLLINS, Mr. FORD, Mr. SARBANES, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. ROTH, Mr. KOHL, Mr. TORRICELLI, Mrs. FEINSTEIN, Mr. ABRAHAM, Mr. WARNER, Mr. FRIST, Mr. DORGAN, Mr. SPECTER, Mr. ROBB):

S. Res. 141. A resolution expressing the sense of the Senate regarding National Concern About Young People and Gun Violence Day; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LIEBERMAN:

S. 1329. A bill to prohibit the taking of certain lands by the United States in trust for economically self-sufficient Indian tribes for commercial and gaming purposes, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN TRUST LANDS REFORM ACT OF 1997

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation aimed at returning some common sense to one aspect of the Federal Government's Indian lands policies. My bill, the Indian Trust Lands Reform Act of 1997, arises out of a problem Connecticut and other States have been struggling with for the last few years.

The bill would amend the Indian Reorganization Act of 1934 to reinforce its original purpose: helping Indian tribes and individual Indians to hold on to or obtain land they need to survive economically and become self-sufficient. Congress passed the 1934 act after the landholdings of some tribes had dwindled down to acres. Tribes and their members were selling and losing land to foreclosures, tax arrearages, and the like. The 1934 act gave the Secretary of the Interior the authority needed to help tribes hold on to or acquire land on which they could earn a living and, further, to hold those lands in trust for them so they would not be sold or otherwise lost. Once the United States takes land into trust for a tribe through this process, the land becomes part of the tribe's sovereign property. This means that State and local governments no longer have jurisdiction over the land, and the land is removed from those governments' tax, zoning, and police powers.

Economic conditions for some tribes have improved since 1934 through a variety of commercial, agricultural, and other enterprises, but many are still struggling. Few could be described as rich or even comfortable; far too many still live in poverty. The 1934 act should remain available to help those tribes who still need assistance from the Federal Government in attaining economic self-sufficiency.

As our experience in Connecticut has shown, however, that act is now being used to achieve goals far removed from its original purpose. As a result of the Indian Gaming Regulatory Act of 1988, many tribes have established casinos and gambling operations, and, although gaming has not brought riches to many of those tribes, some have been very successful, particularly in my home State. One of the most successful gambling casinos in the country is located in eastern Connecticut and is owned and operated by the Mashantucket Pequot Tribe. The success of the tribe's Foxwoods Casino has been well chronicled. Established in 1992, the casino has been open 24 hours a day, 7-days a week ever since. Whatever one thinks about the Indian Gaming Regulatory Act or gambling, either morally or as a vehicle for economic growth, the Mashantucket Pequots seized the opportunity presented to them by the Indian Gaming Act. They have developed an extraordinarily successful, well-run casino in record time. Annual casino revenues for the 500-member tribe reportedly approach $1 billion. By any measure, the tribe has become very wealthy.

Given the tribe's tremendous financial success, it is not at all surprising that it has decided to buy more land near its reservation in order to expand and diversify its businesses. According to press accounts, the tribe owns over 3,500 acres outside of the boundaries of its reservation, in addition to the approximately 1,320 acres that is held in trust on its behalf within the reservation. The tribe is now the largest private landowner in southeastern Connecticut. It already runs several hotels outside of its reservation's boundaries, and tribal leaders have at various times talked of building a massive theme park and golf courses on its off-reservation land.

The tribe owns its land in fee simple and so is free to develop it like any other property owner might. But unlike other property owners—who must develop their land in compliance with State and local zoning laws and who

must pay taxes on the land and on the businesses conducted on the land—the tribe has claimed it has the option, under the 1934 act, to ask the Department of the Interior to take that land in trust on the tribe's behalf, thereby removing the land from all State and local jurisdiction. This is an option because the Department of Interior interprets the 1934 act as being available, with limitations, to all federally recognized tribes, regardless of whether the tribe's situation bears any resemblance to the conditions that originally spurred Congress to enact the 1934 provisions.

And, this is an option the Mashantucket Pequots have exercised. In 1992, the Department of Interior granted the tribe's request to take into trust approximately 20 acres located outside the tribe's reservation boundaries in the neighboring towns of Ledyard and Preston. In January 1993, the tribe filed another application, this one to have an additional 248 off- reservation acres taken in trust. The affected towns of Ledyard, North Stonington, and Preston challenged that request. Nevertheless, the Department of Interior granted that request in May 1995, subject to certain conditions regarding the land's development—a decision the towns and the Connecticut attorney general are challenging in Federal court. In March 1993, the tribe applied to have 1,200 more off-reservation acres taken in trust. That request was sent back to the tribe because of legal deficiencies in the application, but reapplication by the tribe is expected, and past statements by tribal leaders suggest that more applications may be filed in the future.

The effect of the tribe's and the Department of Interior's decisions involving off-reservation lands has been unsettling, to say the least, on the tribe's neighbors—the residents of the small towns that border the reservation. Once the United States takes land into trust on behalf of a tribe, as it has attempted to do here, boundaries change permanently. The land is no longer within the jurisdiction of the State or local governments. It is not subject to local zoning, land-use or environmental controls. Taxes cannot be collected on the land or on any business operated on the land. And State and local governments may exercise no police powers on the land unless invited by the tribe to do so.

The plight of the towns surrounding the Mashantucket Pequot lands show that these problems are not just theoretical. Ledyard, North Stonington, and Preston are small communities whose combined population is about 25,000—less than half the number of visitors the Foxwoods Casino receives on a typical summer weekend. The towns have a combined annual tax revenue of approximately $25 million—less than half the amount of revenue the casino's slot machines generate in 1 month alone. Obviously, towns of this size cannot absorb a business of this size without there being any consequences. As a result of the Casino's success, the character of the towns has been permanently altered, and the costs of local government—from crime prevention to road maintenance to countless other things—have increased, all at the same time that the 1934 act has precluded the towns from exercising zoning and other controls and from collecting taxes to help defray the newly imposed costs.

Given the financial resources of the tribe and the apparent willingness of the Department of Interior to take land into trust on their behalf regardless of any evidence that the tribe needs additional trust lands, many residents wonder where this will lead. I question the policy justification for the United States to change the boundaries of three Connecticut towns unilaterally so that an extraordinarily wealthy tribe—this one or any other —can expand its gaming or other business enterprises, free of taxes and local land-use controls, particularly when that tribe is perfectly capable of expanding its businesses on the thousands of trust and nontrust acres it presently owns. I question whether Congress—which enacted the 1934 act ''to provide for the acquisition, through purchase, of land for Indians, now landless, who are anxious to make a living on such land * * *'' and ''to meet the needs of landless Indians and of Indian individuals whose landholdings are insufficient for self-support'' (Senate Report No. 1080, 73d Congress, 2d Session 1–2 (1934))—intended in 1934 that the law would be used in this fashion.

The authority for the Department of Interior to grant the tribe's request is now subject to review in the courts. The courts will have to decide whether the 1934 act even applies to this tribe and, if so, whether the Secretary acted properly. The courts will have to decide as well whether the 1983 Mashantucket Pequot Settlement Act independently prohibits trust acquisition by the tribe outside of reservation boundaries and whether the trust acquisition complied with applicable Federal environmental laws.

To avoid future disputes and controversy, my bill would amend the Indian Reorganization Act to return to its original purpose. It would prohibit the Secretary of Interior from taking any lands located outside of the boundaries of an Indian reservation into trust on behalf of an economically self-sufficient Indian tribe, if those lands are to be used for gaming or any other commercial purpose. It directs the Secretary of Interior to determine, after providing opportunity for public comment, whether a tribe is economically self-sufficient and to develop regulations setting forth the criteria for making that determination generally. Among the criteria that the Secretary must include in those regulations to assess economic self-sufficiency are the income of the tribe, as allocated among members and compared to the per capita income of citizens of the United States, as well as the role that the lands at issue will play in the tribe's efforts to achieve economic self-sufficiency. May I note that I understand that some tribes do not have reservations in the traditional sense, and so the language of this bill will have to be adjusted in the future to address the situation of those tribes.

In short, my bill is very narrow in scope, aimed solely at ensuring that the Department of Interior's awesome power to remove lands from State and local authority is used only in accordance with the original intent of the 1934 Act. The bill would not impose any restrictions on the Department's authority to take on-reservation land into trust. It would not affect the ability of the Secretary to assist tribes that genuinely need additional land—whether on or off their reservations—in order to move toward or attain economic self-sufficiency. It would not even affect the ability of the Department of Interior to take into trust off-reservation land for wealthy tribes needing the land for non-commercial purposes. The bill contains explicit exemptions for the establishment of initial reservations for Indian tribes, whether accomplished through recognition by the Department of Interior or by an act of Congress, and in circumstances where tribes once recognized by the Federal Government are restored to recognition. And, of course, it does not impact the ability of wealthy tribes to buy as much land as they want for whatever purpose they want it. The only thing my bill does do is to require tribes who are economically self-sufficient and who wish to engage in commercial activity outside of their reservation's boundaries to do so in compliance with the same local land-use and tax laws applied to every other land holder.

Mr. President, many residents of Connecticut applaud the success that the Mashantucket Pequot Tribe has had with its Foxwoods Casino. The tribe employs thousands of Connecticut residents in an area of the State that was hard hit by a lingering recession and cuts in defense spending. The tribe's plans for economic development of the region, while not universally liked, have many in the area genuinely excited about future opportunities.

I have discovered though that even among residents cheered by the tribe's success and supportive of its plans, there is a strong sense of unfairness about how the land in trust process is being used. They believe there is no reason why this tribe, or any other in a similar situation, needs to have the U.S. Government take additional, commercial land in trust on the tribe's behalf outside of its reservation boundaries. What is at stake here, after all, is not preserving a culture or achieving self-sufficiency, but expansion of an already successful business on lands that are owned by the tribe and developable by them, as they would be by any other

landowner. Extra help is simply not needed, and continuing to grant it is not fair and, in my view, ultimately counterproductive for all involved.

It is time for Congress to make this common-sense clarification in the law. I urge my colleagues to join me in supporting this legislation, and ask unanimous consent that the text of the bill appear in the RECORD.

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

S. 1329

*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 ''Indian Trust Lands Reform Act of 1997''.

**SEC. 2. PROHIBITION AGAINST TAKING CERTAIN LANDS IN TRUST FOR AN INDIAN TRIBE.**

Section 5 of the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act of 1934'') (48 Stat. 985; 25 U.S.C. 465) is amended—

(1) by striking the section designation and inserting immediately preceding the first undesignated paragraph the following:

**''SEC. 5. ACQUISITION OF LANDS.''**;

(2) in the first undesignated paragraph, by striking ''The Secretary of the Interior'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Interior'';

(3) in the undesignated paragraph following subsection (a), as redesignated, by striking ''For the'' and inserting the following:

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the'';

(4) in the undesignated paragraph following subsection (d), as redesignated, by striking ''The unexpended'' and inserting the following:

''(e) AVAILABILITY OF UNEXPENDED BALANCES.—The unexpended'';

(5) in the undesignated paragraph following subsection (e), as redesignated, by striking ''Title to'' and inserting the following:

''(f) EXEMPTION FROM TAXATION.—Title to''; and

(6) by inserting after subsection (a) the following:

''(b) PROHIBITION.—

''(1) IN GENERAL.—Except with respect to lands described in subsection (c), the Secretary of the Interior may not take, in the name of the United States in trust, for use for any commercial purpose (including gaming, as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)) by an economically self-sufficient Indian tribe, any land that is located outside of the reservation of that Indian tribe as of the date of enactment of the Indian Trust Lands Reform Act of 1997.

''(2) DETERMINATION OF ECONOMIC SELF-SUFFICIENCY.—

''(A) IN GENERAL.—The Secretary of the Interior shall, after providing notice and an opportunity for public comment, determine whether an Indian tribe is economically self-sufficient for purposes of this subsection. The Secretary of the Interior shall issue regulations pursuant to section 553 of title 5, United States Code, to prescribe the criteria that shall be used to determine the economic self-sufficiency of an Indian tribe under this subsection.

''(B) CRITERIA.—The criteria described in subparagraph (A) shall include—

''(i) a comparison of the per capita allocation of the gross annual income of an Indian tribe (including the income of all tribal enterprises of the Indian tribe) among members of the Indian tribe with the per capita annual income of citizens of the United States; and

''(ii) the potential contribution of the lands at issue as trust lands toward efforts of the Indian tribe involved to achieve economic self-sufficiency.

''(c) TREATMENT OF CERTAIN LANDS.—Subsection (b) shall not apply—

''(1) with respect to any lands that are taken by the Secretary of the Interior in the name of the United States in trust, for the establishment of an initial reservation for an Indian tribe under applicable Federal law, including the establishment of an initial reservation by the Secretary of the Interior in accordance with an applicable procedure of acknowledgement of that Indian tribe, or as otherwise prescribed by an Act of Congress; or

''(2) to any lands restored to an Indian tribe as the result of the restoration of recognition of that Indian tribe by the Federal Government.''.

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By Mr. MCCAIN:

S. 1331. A bill to amend title 49, United States Code, to enhance domestic aviation competition by providing for the auction of slots at slot-controlled airports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE AVIATION COMPETITION ENHANCEMENT ACT OF 1997

Mr. MCCAIN. Mr. President, I am pleased to introduce the Aviation Competition Enhancement Act of 1997. This bill seeks, in a modest and rational fashion, to deregulate further our domestic aviation system, and to introduce additional competition in the airline industry for the benefit of travelers and communities.

This legislation is intended to reduce barriers to airline competition, including those imposed by the government. Anticompetitive Federal restrictions in particular—restrictions such as slot controls and the perimeter rule at National Airport—are barriers to competition in a deregulated environment.

The Department of Transportation [DOT], in a report released on October 22, 1997, reiterated its 1990 study on domestic competition, which demonstrated relatively high fares at network hubs dominated by one major carrier. In an April 1996 study, the DOT estimated that almost 40 percent of domestic passengers traveled in markets with low-fare competition, saving consumers an estimated $6.3 billion annually in airline fares. As the Department states in its most recent report, ''[i]ndeed, we concluded that virtually all of the domestic traffic growth and declines in average fares in recent years could be attributed to this growing form of competition.''

The General Accounting Office [GAO] reported in October 1996 that barriers to market entry persist in the airline industry, and that access to airports continue to be impeded by, first, Federal limits on takeoff and landing slots at the major airports in Chicago, New York, and Washington; second, long-term exclusive-use gate leases; and third, perimeter rules prohibiting flights at airports that exceed a certain distance. In addition, according to GAO, several factors have limited entry at airports serving small- and medium-sized communities in the East and upper Midwest, including the dominance of routes to and from those airports by one or two established airlines. The GAO concluded that operating barriers such as slot controls at nearby hub airports, and incumbent airlines marketing strategies' have fortified those dominant positions.

The National Commission to Ensure a Strong Competitive Airline Industry in 1993 recommended that the artificial limits imposed by slots either be removed or raised to the highest level consistent with safety. The Department of Transportation subsequently conducted a study, in which it found that eliminating slots would not affect safety and would result in increased competition. This bill, however, does not suggest that we eliminate slots.

Mr. President, I would like to outline what the Aviation Competition Enhancement Act of 1997 does:

Slot auction: The legislation mandates a slot allocation among new entrant and limited incumbent air carriers—air carriers that hold no more than 12 slots. The Secretary of Transportation is directed to create new slots where possible, and allocate unused slots.

If it is not possible to create slots because of capacity and noise limitations, which are not affected by this bill, the Secretary must withdraw a limited number of slots—up to 10 percent initially, 5 percent every 2 years following—that were grandfathered free-of-charge to the major air carriers in 1985 and that remain with those grandfathered carriers. The DOT cannot withdraw slots that are used to provide air service to under served markets. The withdrawn slots then will be auctioned among only the new entrant and limited incumbent air carriers.

The process for obtaining slots would be as follows. A new entrant or limited incumbent air carrier would apply to the DOT for slots, proposing the markets to be served and the times requested. The DOT must approve the application if it determines that the carrier can operate the proposed service for at least 180 days, and that the service will improve the competitive environment. The DOT can return the request to the applicant for further information.

While service to any city is eligible under this process, the DOT must prioritize applications that propose service between a high-density airport, a slot-controlled airport—National, Kennedy, LaGuardia, and O'Hare, and a relatively small city.

All slot auction proceeds would be deposited in the aviation trust fund. The legislation directs the DOT to institute action to ensure maximum slot usage, to tighten up the 80 percent use-

or-lose provisions, and to study the effect of the high-density rule on airline competition, and the impact of changes to the rule on safety.

Complaints concerning predatory behavior: The legislation establishes a 90-day deadline for the DOT to respond to complaints of predatory behavior on the part of major air carriers.

Exemptions to perimeter rule at National Airport: The bill mandates that the Secretary grant exemptions from the perimeter rule to an air carrier proposing to serve Washington National from points beyond the perimeter, if the carrier's proposal would, first, provide service with network benefits, and second, increase competition in multiple markets. The proposal stipulates that the Secretary should not approve applications that propose to trade under served markets within the perimeter for long-haul markets that are well served from the Washington region.

The legislation would not affect the cap on the number of hourly operations at Washington National. The number of flights at National would not increase. Commercial aircraft operations at National Airport are limited to 37 takeoffs and landings per hour. This requirement stands independent of the perimeter rule. In addition, strict noise restrictions currently in place at National Airport would not be affected, nor would Federal Aviation Administration requirements ensuring that all aircraft flying into National, regardless of the time of day, meet the most stringent noise standards by the year 2000.

All exemption operations would be limited to stage 3 aircraft. The legislation would require the DOT to certify periodically that noise, air traffic congestion, airport-related vehicular congestion, safety standards, and adequate air service to communities within the perimeter have not been degraded as a result of this exemption authority.

The fact is that changes in the perimeter rule to allow some measure of flights outside the distance limit may very well reduce noise at National, as carriers replace older, short-hop aircraft with newer, longer range aircraft that are quieter. The next generation of long-haul Boeing 737 aircraft, for instance, will offer increased range along with significantly less noise. In addition, a number of flight deck improvements represent safety features not found in the older aircraft.

As a means of derailing efforts to reform the perimeter rule, some have impugned my motives, suggesting that my secret purpose is to convenience my own travel between Washington and Arizona. I find this charge wearisome and offensive. Even so, to allay these concerns, I have pledged not to take a nonstop flight from Washington National to Arizona should such an opportunity ever result from this legislation.

This bill would result in more competition, with more convenient options and competitive air fares for travelers. It would not result in either increased noise or diminished safety. I believe that a service diversity and safety will be enhanced, as they always are in a competitive regime. The incumbent carriers should not be afraid of competition, or fear that their passengers will be taken away. This legislation would result in more competition and economical flights, which will allow more people to fly.

Most of my colleagues know that I would prefer to get rid of the perimeter rule, as well as slot restrictions, in a manner consistent with safety. My efforts to do so over the past decade, however, have encountered extreme resistance. As a result, I have scaled back my original proposals significantly in an effort to address the concerns of airlines and others who will not let legislation of that magnitude pass. In turn, I ask that the protectors of the status quo recognize my legitimate concerns about competition, and fair access for all travelers to airports that make up a national aviation system, paid for by all taxpayers. I must say that all I have heard thus far from my opponents is that there is no problem.

I do not assert that this bill represents a magical, painless solution. I do assert emphatically, however, that it is modest in nature, and that it is open to debate as the Congress moves forward on this and similar proposals. In the House of Representatives, Aviation Subcommittee Chairman JIMMY DUNCAN intends to introduce an aviation competition bill. Representative DUNCAN and I have worked together on a number of provisions, and will continue to do so as we proceed. I commend him for his effort and foresight. I can say the same for Senate Aviation Subcommittee Chairman GORTON, who has demonstrated exceptional interest and leadership in this area.

In addition, I understand that several of my Commerce Committee colleagues, including Senators HOLLINGS and FORD, are working on their own competition proposals. I believe that all of this activity is a clear indication that there is a problem with respect to domestic aviation competition. I look forward to working with my colleagues in a bipartisan fashion on a solution.

Mr. GORTON. Mr. President, I would urge my colleagues to give their full attention and consideration to the Aviation Competition Enhancement Act of 1997 that Senator MCCAIN has just introduced. I would also recognize Senator MCCAIN for his tireless efforts to address barriers to competition in the airline industry, and to provide better air service for consumers. Senator MCCAIN has devoted much time to consideration of this issue.

Competition is a hallmark of our Nation, and the benefits of competition are clear. Studies show time and again that competition improves products and services, and reduces costs to consumers. When possible, the Congress should do whatever is reasonable to enhance competition.

Airline competition has proven beneficial. Since the airline industry was deregulated, fares have fallen, and service options have increased on average across all communities. The major carriers deserve credit for responding well to competitive challenges. In addition, many of the benefits of deregulation can be attributed to the entry of so called low-fair airlines into the marketplace. The low-fare airlines have increased competition, and have enabled more people to fly than ever before. Air traffic has grown as a result, and all predictions are that it will continue to grow steadily over the next several years..

Although competition exists, there are also barriers to airline competition. The bill that Senator MCCAIN has introduced today would loosen some of the anticompetitive Federal restrictions on the Nation's aviation system. These restrictions, such as slot controls and the perimeter rule at National Airport, inhibit competition. As a result, the benefits of deregulation have been limited in certain communities.

I understand that changing the status quo by easing existing barriers is difficult. Airline businesses and services have evolved under these barriers. Airlines, airports, communities, and consumers have all grown accustomed to these barriers. This should not prevent us, however, from examining the adverse impacts of these barriers and exploring reasonable measures to remove them.

I would also note that Senator MCCAIN's bill would require the Department of Transportation to respond to complaints of predatory behavior on the part of major airlines within 90 days. There are numerous industry practices that warrant close scrutiny. Take for example computer reservation systems. Airline travelers usually buy tickets through travel agents, who almost always use a Computer Reservation System to determine what airline fares are available, and to make bookings. Each of the Computer Reservation Systems operating in the United States is entirely or predominately owned by one or more airlines or airline affiliates. This certainly gives these airlines and affiliates the ability to prejudice the competitive position of other airlines if not checked. Any airline that believes it is being subjected to predatory behavior deserves a timely response from the Department of Transportation.

Again, I would urge my colleagues to take time from their busy schedules to consider Senator MCCAIN's bill, and to provide their thoughts and insights on this important matter.

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By Mr. ENZI:

S. 1332. A bill to amend title 28, United States Code, to recognize and protect State efforts to improve environmental mitigation and compliance

through the promotion of voluntary environmental audits, including limited protection from discovery and limited protection from penalties, and for other purposes; to the Committee on Environment and Public Works.

THE STATE ENVIRONMENTAL AUDIT PROTECTION ACT

Mr. ENZI. Mr. President, I rise today to introduce the State Environmental Audit Protection Act. It is a bill that would improve environmental quality across this Nation by enlisting the voluntary aid of people to seek out environmental problems and to correct violations using State environmental audit laws. This legislation would provide protection for those States that have fully debated the issue and after the debate, have chosen to enact aggressive and proactive environmental audit laws.

First, I would like to explain briefly what an audit law is and how it works. State legislatures have chosen to enact many different kinds of audit laws with varying levels of incentives. It is important to note that audit laws are not all the same. This concept is apparently lost on those who try to mischaracterize every audit law in the most sinister and fearful terms. It is important that we recognize the difference.

The purpose of audit laws are to provide incentives for regulated entities to search for and disclose environmental violations and to clean them up at their own expense. Entities cover all kinds of groups with operations that may have an effect on the environment, such as businesses, schools, hospitals, towns, and counties. The incentives can range from relief from penalties to protection of voluntarily gathered information. The incentives usually require full disclosure and due diligence in correcting violations. When there is protection of information, some States simply agree not to inspect based on disclosure of an audit, others go further by allowing that certain documents will not be used against the entity in enforcement actions.

It is important to keep in mind when considering protection of documents that audits are conducted in good faith. By definition, any information that is compiled is voluntary and as such is above and beyond what is otherwise required by law. Following from that, any disclosures are a net gain above traditional enforcement.

Consider for a moment, Mr. President, the decisions a small business faces with regard to its environmental performance. Many small businesses are already required to monitor and report certain emissions and audit protections do not cover those reports. But consider a business that is not on an inspection schedule and has no required emissions reporting. If that entity wants to review its performance under environmental laws, it would have to conduct a study. It would have to pay an auditor to come in and review its operations—that would be voluntary. Without audit protection, that business would take on a big risk—a risk big enough so that most small entities would never undertake a voluntary audit. The risk is that once they spend the money to review their activities, if they find a violation and report it, they face both fines and cleanup expenses. Furthermore, if they don't report it, they risk criminal activity by knowingly violating the law.

Faced with the liabilities, without an audit law, most people would not voluntarily police themselves. The risks are too big. Folks choose instead to just take their chances and wait for the inspectors. After all, inspectors only visit 2 percent of all regulated entities anyway. Just 2 percent, Mr. President.

How do we encourage the other 98 percent to really think about their environmental performance?

Audit laws recognize good-faith efforts to improve environmental compliance. They encourage people to look for problems and know with assurance that they won't be penalized for their efforts.

Today, Mr. President, 24 States have enacted some form of audit law; 16 more have legislation pending. These laws have been on the books for several years in some States and I would point out—you don't see the examples of abuses that many claimed would occur during the State legislative debates.

Wyoming is one of the States that has passed an audit law. I was the prime sponsor in that process during my time in the Wyoming State Senate. I studied examples and results from other States that had gone through the process. I worked closely with our State Department of Environmental Quality and with members of the regulated community. I worked with various resource and conservation groups in Wyoming and we crafted a bill that provides very reasonable incentives for people to review their operations and clean up the problems they find. We provided no criminal immunity or criminal privilege. We deferred to Federal laws wherever conflicts existed. There was a consensus. The bill made it out of committee unanimously and then passed the House and the Senate by more than a two-thirds majority.

We had a vigorous debate in Wyoming. In the end, after all the public deliberation, we passed a reasonable bill. But it was a consensus of the legislators elected by the people of Wyoming. When I got to Washington, several States were meeting with the EPA. The EPA was using threats of overfiling and delayed approval of State enforcement programs. Overfiling means the EPA could use a document done at extra expense and exposure to a company in order to be sure there was no harm to the environment, only to find the EPA could use those documents as a road map for levying fines. The EPA wanted us to change the Wyoming law—in spite of repeated assertions from our own State attorney general that the law did not compromise our enforcement authority.

Wyoming's scenario is not unique. Working with other States where this has happened has led me to offer this piece of legislation.

The strange thing I find is that the EPA touts the value of audits. The concept has been trumpeted as part of their reinventing environmental regulation initiative and a final policy on audits was released in early 1996. Administrator Carol Browner called it, ''a policy that provides real incentives for industry and others to voluntarily identify and correct environmental violations.''

President Clinton in his 1995 State of the Union Address, stressed the need for more common sense and fairness in our environmental regulations. He recognized the limitations of the command and control approach. He stated that ''Washington is not the source of all answers and that we should shift more decision-making authority from the Federal Government to States, tribes and local communities.''

Apparently the EPA feels the States are not ready to handle audits. Apparently, Mr. President, State attorneys general are unable to verify with certainty that audit laws are reasonable. In its own astonishing way—and in seeming contradiction to its own objectives—the EPA remains opposed to State efforts to reinvent command and control through the use of audits.

The problem with EPA's audit policy is that ordinary people do not want to use it. Big business will agree to negotiate with the EPA. They will enter into cooperative agreements and consent agreements because they have entire departments of environmental litigators.

Small businesses don't have that. They don't trust the EPA. They see the EPA Office of Compliance Assistance trying to help them out, while Criminal Enforcement across the hall is concocting ways to put them in jail—and boy would those offices love to work together. The EPA has little accountability to folks at home. It is just too unpredictable. That is why people need statutory protection before they will take on the potential liability of audits.

I would like to take a minute to explain my approach to the issue. The legislation I am introducing would provide a safe-harbor for State laws that fit within certain limits. It would not give any authority to any State unless they go through the full legislative process, including all of the local discussion and debate that entails. That is a critical part of this process and something we should recognize. The boundaries of the safe-harbor we create would describe what State laws may provide:

Limited protection from discovery for audit information—but only information that is not required to be gathered. All legal reporting requirements

and permitting disclosures remain in effect and could not be covered by an audit privilege.

A State audit law may provide limited protection from penalties if violations are promptly disclosed and cleaned up. Note, the protection will not cover criminal actions, and the law must preserve the ability of regulators to halt activities that pose imminent danger to public health.

Third, if a State law falls within the safe-harbor, the EPA would be prohibited from withholding State enforcement authority or overfiling against individuals simply because of the State's audit law.

Last, the bill would require an annual State performance report that will help measure the success of different laws, so we can see what works and what doesn't.

I want to point out that this legislation will not dilute enforcement. There are safeguards to ensure that State audit laws always act to supplement—not to supplant—existing enforcement. It is important to note that. Audits are an affirmative tool. Used properly, they can only be used to improve environmental conditions above the status quo. They do not protect any entity from regular inspection or monitoring.

The principle of audit incentives is simple and reasonable. It is no surprise to me that nearly half of our States have chosen to enact some form of audit legislation. It is a positive tool that helps people understand and comply with environmental laws. It gives people a chance to ask questions without being penalized. It gives them the chance to figure out what they are doing wrong and fix it—without adding steep penalties to the cost of compliance. This bill will put into law methods that have been tested and work.

Mr. President, small business owners don't take time to read the layer after layer of byzantine regulations constructed by Washington lawyers. I know because my wife and I were small business owners for 26 years. In a small business, the owner is the same one who counts the change, helps the customers and vacuums the floor.

He or she has to stay in business, make payroll, and keep up with constantly evolving mandates from a never-ending supply of Federal attorneys. And while the small business owner has many jobs, these attorneys have only one job, to create and modify mandates and to investigate citizens. There are over 17,000 employees at the EPA and now, in spite of the rhetoric about reinventing regulations, they want funds for another 200 enforcement police.

We don't need more police to improve environmental compliance—we need translators to interpret the regulations.

But the fact is, the heavy-handed, command and control approach works well for the EPA—especially in Washington. Here I am beginning to see the process by which they protect and expand their regulatory supremacy. It is an artful combination of nebulous policies, and self-defining authority. Taken from this perspective, the EPA clearly views any State audit laws as a direct assault on its unbridled jurisdiction and power.

Shortly after promoting its own audit policy as a reinvention of regulation, the EPA was quick to remind that State audit laws ''would cause environmental programs delegated to states * * * to revert to national control at EPA.'' Since then, they have used their leverage to compel States to modify laws in accordance with the will of EPA guidelines.

This absolute circumvention of the democratic process is astonishing to me. As a former State legislator, I think it is a tragedy that the EPA is denying States the chance to test reasonable and innovative solutions to a cleaner environment. Instead of promoting reinvention, the EPA is perpetuating an environmental race to mediocrity.

Some of the people listening may wonder how Wyoming's audit law has fared. Well, Mr. President, I am proud to report that after repeated delays from the EPA on our title 5 clean air permits, and after threats to withdraw delegation of other programs—the EPA has finally decided that statutory changes may not be necessary in Wyoming's law, even though there remain problems to be worked out.

At least, Mr. President, that's what they tell us today. They just might change their minds tomorrow. It is no wonder that Wyomingites are afraid to use our State audit law.

I feel it is time we put this issue to rest by defining a ''safe-harbor'' and giving State laws the certainty they need to be effective. I would encourage Members to take a look at this bill and to support it.

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

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

S. 1332

*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 ''State Environmental Audit Protection Act''.

**SEC. 2. FINDINGS**

Congress finds that—

(1) consistent with the purpose of voluntary environmental audits of enhancing United States environmental mitigation efforts, it is in the interest of the United States to allow and encourage States to enact and implement such incentive programs as are consistent with the specific and respective needs and situations of the States;

(2) State environmental incentive laws should be allowed and encouraged by the Federal government as a means of enabling regulated entities to set minimum requirements in environmental mitigation efforts by the entities;

(3) a strong regulatory enforcement effort is necessary to ensure compliance with Federal, State, and local laws that protect the environment and public health;

(4) the use of voluntary environmental audits, in accordance with respective State laws, is intended to supplement, not supplant, regulatory enforcement efforts to improve the environmental compliance of regulated entities;

(5) the protections offered by the amendments made by this Act do not relieve regulated entities from the need to comply with otherwise applicable requirements to disclose information under Federal, State, or local environmental laws; and

(6)(A) law and regulatory policies provide ample precedent for the constructive use of voluntary audits;

(B) the final policy on the use of environmental audits (60 Fed. Reg. 66706) issued by the Administrator of the Environmental Protection Agency—

(i) provides incentives for conducting audits; and

(ii) includes limited protection from discovery and disclosure of audit information and discretionary relief from an enforcement action for voluntary disclosure of violations;

(C) Advisory Circular 120–56, issued by the Administrator of the Federal Aviation Administration, commits to a policy of cooperative problem-solving and use of self-evaluation incentives as a means of enhancing aviation safety in the commercial airline industry; and

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) provides discovery protection for information developed by creditors as a result of self-tests that are voluntarily conducted to determine the level of compliance with that Act.

**SEC. 3. VOLUNTARY AUDIT PROTECTION.**

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by inserting after chapter 176 the following:

**''CHAPTER 177—VOLUNTARY AUDIT PROTECTION**



**''§ 3601. Recognition of State efforts to provide voluntary environmental audit incentives**

''(a) VOLUNTARY ENVIRONMENTAL AUDIT INCENTIVE LAWS.—

''(1) LIMITED PROTECTION FROM DISCOVERY.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), a State law may provide that a voluntary environmental audit report, or a finding, opinion, or other communication related to and constituting part of a voluntary environmental audit report, shall not be—

''(i) subject to discovery or any other investigatory procedure governed by Federal, State, or local law; or

''(ii) admissible as evidence in any Federal, State, or local judicial action or administrative proceeding.

''(B) TESTIMONY.—Except as provided in subparagraph (C), a State law may provide that an entity, or an individual who performs a voluntary environmental audit on behalf of the entity, shall not be required to give testimony in any Federal, State, or local judicial action or administrative proceeding concerning the voluntary environmental audit.

''(C) INFORMATION NOT SUBJECT TO PROTECTION.—The protections described in subparagraphs (A) and (B) shall not apply to any information that is otherwise required to be disclosed under a Federal, State, or local law.

''(2) LIMITED PROTECTION FOR DISCLOSURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a State law may provide that an entity that promptly discloses information about noncompliance with a covered Federal law, that is discovered as a result of a voluntary environmental audit or through a compliance management system, to an appropriate Federal, State, or local official may be protected, in whole or in part, from an enforcement action in a Federal, State, or local judicial or administrative proceeding.

''(B) DISCLOSURE NOT SUBJECT TO PROTECTION.—A State law described in subparagraph (A) shall not apply to noncompliance with a covered Federal law that is—

''(i) not discovered voluntarily; or

''(ii) the result of a willful and knowing violation or gross negligence by the entity disclosing the information.

''(b) PROHIBITED FEDERAL ACTIVITIES.—A Federal agency shall not—

''(1) refuse to delegate enforcement authority under a covered Federal law to a State or local agency or refuse to approve or authorize a State or local program under a covered Federal law because the State has in effect a voluntary environmental audit incentive law;

''(2) make a permit, license, or other authorization, a contract, or a consent decree or other settlement agreement contingent on a person waiving any protection under a State voluntary environmental audit incentive law; or

''(3) take any other action that has the effect of requiring a State to rescind or limit any protection of a State voluntary environmental audit incentive law.

**''§ 3602. Performance report**

''(a) IN GENERAL.—Section 3601 shall not apply to a State voluntary environmental audit incentive law unless the appropriate State agency compiles and submits to appropriate Federal agencies an annual report in accordance with this section on the performance of the State voluntary environmental audit incentive law during the previous calendar year.

''(b) PROVISIONS OF REPORT.—The performance report shall include—

''(1) the number of noncompliance disclosures that were received by the State pursuant to the State voluntary environmental audit incentive law, with an indication of the noncompliance disclosures that were made by—

''(A) regulated entities that are normally inspected; and

''(B) regulated entities that are not on inspection schedules;

''(2) the categories and sizes of regulated entities that disclosed noncompliance problems pursuant to the State voluntary environmental audit incentive law and a description of the noncompliance problems that were disclosed;

''(3) the status of remediation undertaken by regulated entities in the State to correct noncompliance problems that were disclosed pursuant to the State voluntary environmental audit incentive law; and

''(4) a certification from the State attorney general that the State maintains the necessary regulatory authority to carry out administration and enforcement of delegated programs in light of the State voluntary environmental audit incentive law.

''(c) ADDITIONAL INFORMATION.—In addition to the information required under subsection (b), the State agency may include additional information in the annual performance report that the State agency considers important to demonstrate the performance of a State voluntary environmental audit law.

**''§ 3603. Definitions**

''In this chapter:

''(1) COVERED FEDERAL LAW.—

''(A) IN GENERAL.—The term 'covered Federal law' means—

''(i) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

''(ii) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

''(iii) the Federal Water Pollution Control Act (commonly known as the 'Clean Water Act') (33 U.S.C. 1251 et seq.);

''(iv) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);

''(v) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

''(vi) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.);

''(vii) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

''(viii) the Clean Air Act (42 U.S.C. 7401 et seq.);

''(ix) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(x) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

''(xi) the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.);

''(xii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

''(xiii) chapter 51 of title 49, United States Code;

''(xiv) section 13 or 16 of the Act entitled 'An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes', approved March 3, 1899 (commonly known as the 'River and Harbor Act of 1899') (33 U.S.C. 407, 411);

''(xv) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and

''(xvi) any other law enacted after the date of enactment of this chapter that addresses subject matter similar to a law listed in clauses (i) through (xv).

''(B) INCLUSIONS.—The term 'covered Federal law' includes—

''(i) a regulation or other binding agency action issued under a law referred to in subparagraph (A);

''(ii) the terms and conditions of a permit issued or other administrative action taken under a law referred to in subparagraph (A); and

''(iii) a State law that operates as a federally enforceable law under a law referred to in subparagraph (A) as a result of the delegation, approval, or authorization of a State activity or program.

''(2) ENFORCEMENT ACTION.—

''(A) IN GENERAL.—The term 'enforcement action' means a civil or administrative action undertaken for the purpose of imposing a penalty or any other punitive sanction, including imposition of a restriction on providing to or receiving from the United States or any State or political subdivision a good, material, service, grant, license, permit, or other approval or benefit.

''(B) EXCLUSION.—The term 'enforcement action' does not include an action solely for the purpose of seeking injunctive relief to remedy a continuing adverse public health or environmental effect of a violation.

''(4) ENVIRONMENTAL COMPLIANCE MANAGEMENT SYSTEM.—The term 'environmental compliance management system' means the systematic effort of a person or government entity, appropriate to the size and nature of the person or government entity, to prevent, detect, and correct a violation of a covered Federal law through—

''(A) a compliance policy, standard, or procedure that identifies how an employee or agent shall meet the requirements of the law;

''(B) assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for ensuring compliance at each facility or operation;

''(C) a mechanism for systematically ensuring that compliance policies, standards, and procedures are being carried out, including—

''(i) a monitoring or auditing system that is reasonably designed to detect and correct a violation; and

''(ii) a means for an employee or agent to report a violation of an environmental requirement without fear of retaliation;

''(D) an effort to communicate effectively the standards and procedures of the person or government entity to employees and agents of the person or government entity;

''(E) an appropriate incentive to managers and employees of the person or government entity to perform in accordance with any compliance policy or procedure of the person or government entity, including consistent enforcement through an appropriate disciplinary mechanism; and

''(F) a procedure for—

''(i) the prompt and appropriate correction of any violation of law; and

''(ii) making any necessary modifications to the standards or procedures of the person or government entity to prevent future violations of law.

''(5) FEDERAL AGENCY.—

''(A) IN GENERAL.—The term 'Federal agency' has the meaning given the term 'agency' in section 551 of title 5, United States Code.

''(B) INCLUSIONS.—The term 'Federal agency' includes any agency or instrumentality of an Indian Tribe with authority to administer or enforce a covered Federal law.

''(6) REGULATED ENTITY.—

''(A) IN GENERAL.—The term 'regulated entity' means a person regulated under a covered Federal law, including an officer, agent, or employee of the person.

''(B) EXCLUSIONS.—The term 'regulated entity' does not include an entity owned or operated by a Federal or State agency.

''(7) STATE AGENCY.—The term 'State agency' means an agency or instrumentality of the executive branch of a State or local government with the authority to administer or enforce any covered Federal law, including an agency or instrumentality of 2 or more States or local governments, whether or not the localities are in different States.

''(8) VOLUNTARY ENVIRONMENTAL AUDIT.—The term 'voluntary environmental audit' means an assessment, audit, investigation, or review that is—

''(A) initiated voluntarily by a regulated entity, including an officer, agent, or employee of a regulated entity, but not including a regulated entity owned or operated by a State or Federal agency;

''(B) carried out by an employee of the person, or a consultant employed by the person, for the purpose of carrying out the assessment, evaluation, investigation, or review; and

''(C) carried out in good faith for the purpose of determining or improving compliance with, or liability under, a covered Federal law, or to assess the effectiveness of an environmental compliance management system.

''(9) VOLUNTARY ENVIRONMENTAL AUDIT REPORT.—

''(A) IN GENERAL.—The term 'voluntary environmental audit report' means a document prepared as a result of a voluntary environmental audit.

''(B) INCLUSIONS.—The term 'voluntary environmental audit report' includes—

''(i) a field note, draft, memorandum, drawing, photograph, computer software, stored or electronically recorded information, map, chart, graph, survey, analysis (including a

laboratory result, instrument reading, or field analysis), and other information pertaining to an observation, finding, opinion, suggestion, or conclusion, if the information is collected or developed for the primary purpose and in the course of creating a voluntary environmental audit;

''(ii) a document prepared by an auditor or evaluator, which may describe the scope of the evaluation, the information learned, any conclusions or recommendations, and any exhibits or appendices;

''(iii) an analysis of all or part of a voluntary environmental audit or issues arising from the audit; and

''(iv) an implementation plan or tracking system that addresses an action taken or to be taken by the owner or operator of a facility as a result of a voluntary environmental audit.''.

(b) CONFORMING AMENDMENT.—The table of chapters of part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 176 the following:

''177. Voluntary Audit Protection ..... 3601''.

**SEC. 4. ASSISTANCE FROM SMALL BUSINESS DEVELOPMENT CENTERS.**

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (Q), by striking ''and'' at the end;

(2) in subparagraph (R), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(S) assisting small businesses in complying with the requirements necessary to receive protections provided by any applicable State voluntary environmental audit incentive law.''.

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By Mr. FRIST:

S. 1333. A bill to amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges; to the Committee on Energy and Natural Resources.

THE LAND AND WATER CONSERVATION FUND ACT AMENDMENT ACT OF 1997

Mr. FRIST. Mr. President, I rise today to introduce a measure which will help preserve one of our greatest national treasures and maintain one of the most significant contributors to the economy of east Tennessee. The Great Smoky Mountains National Park is by far our Nation's most visited national park, both because of its striking beauty, wildlife, and recreational opportunities, and for the fact that it is within a day's drive of half of the population of the United States.

I have often escaped to the Great Smoky Mountains National Park for hiking, camping, and enjoying the great outdoors with my three sons. I have witnessed the splendor of the turning leaves in the fall, and the glory and renewal that springtime brings to the Smokies. Spending time in the Smokies allows my family and millions of other families to reconnect with nature and to refocus on the fundamental strengths of what really holds us together as a family.

While the Great Smoky Mountains National Park plays such a valuable role in the lives of so many American families, it is also a park that strains under the burdens of heavy use. Infrastructure and services struggle to meet demands which the larger and less-visited parks can more easily attain. To compound the problems associated with heavy use and popularity, the park is prohibited from collecting an entrance fee of any kind. It is the only national park with such a prohibition, thus limiting its access to valuable, internally generated resources which supplement the budgets of other parks. The result is that the Smokies has great difficulty in meeting the infrastructure and maintenance needs generated by its 9 million yearly visitors.

In the 104th Congress we began a program which allowed individual parks to keep for their internal use up to 80 percent of the user fees collected above and beyond the level of fees collected in 1994. My bill will allow the park to retain 100 percent of that amount. While this change is modest, it is one way to begin to address the deficit in which the Smokies operates every year, and assist in sustaining the very attractions which serve to make it our most popular national park.

In 1910, Teddy Roosevelt said, ''A nation behaves well if it treats its natural resources as assets which it must turn over to the next generation increased, and not impaired, in value.'' Roosevelt was the first proponent of what has clearly become a fundamental tenet of the preservation of the Great Smoky Mountains National Park. Mr. President, we owe it to the future generations of Americans to allow this invaluable national treasure to benefit from its own popularity and accessibility and to keep more of the revenues from its fees. We can thus help ensure that it will continue to offer the services and facilities so many millions of families enjoy and will help guard one of our Nation's most precious legacies.

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By Mr. BOND (for himself, Mr. SHELBY, Mr. WARNER, Mr. REID, Mr. JOHNSON, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. MACK, Mrs. MURRAY, Mr. ASHCROFT, Mr. CRAIG, Mr. BUMPERS, Mr. LEAHY, Ms. COLLINS, Mr. SESSIONS, Mr. ALLARD, Mr. BAUCUS, and Mrs. FEINSTEIN):

S. 1334. A bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availablity of adequate health care for Medicare-eligible beneficiaries under the military health care system; to the Committee on Armed Services.

FEHBP DEMONSTRATION FOR MILITARY RETIREES LEGISLATION

Mr. BOND. Mr. President, I rise today to introduce a measure on behalf of myself, Mr. SHELBY, Mr. WARNER, Mr. REID of Nevada, Mr. JOHNSON, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. MACK, Mrs. MURRAY, Mr. ASHCROFT, Mr. CRAIG, Mr. BUMPERS, Mr. LEAHY, Mrs. COLLINS, Mr. SESSIONS, Mr. ALLARD, Mr. BAUCUS, and Mrs. FEINSTEIN.

This vital, bipartisan legislation would establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits Program [FEHBP] to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

Current trends, such as base closures, the downsizing of military treatment facilities, and the introduction of TRICARE, have all hindered access to health care services for military retirees aged 65 and over. In theory, Medicare-eligible retirees can receive health care services at military treatment facilities on a space available basis; however, active duty and their dependents have priority.

Therefore, in reality, space is rarely available—resulting in military retirees being locked out of the Department of Defense's [DOD] health care delivery system. And because of their considered secondary status, many retirees are forced to travel great distances to receive even the minimum of care.

Further, when compared to what other Federal and private sector retirees receive in terms of health care options, it is easy to note that the current health care choices for military retirees are woefully inadequate and downright inexcusable.

This measure will rectify the inequity of the current system and take the guesswork out of the financial viability of an FEHBP option for military retirees.

Scheduled for no more than 3 years, the FEHBP pilot program would be tested at two different sites. One site will be within a military treatment facility catchment area and the other in a noncatchment area. Up to 50,000 Medicare-eligible military retirees will be able to participate in the demonstration, with each site capped at 25,000 retirees.

Mr. President, this legislation represents an active step toward honoring our Nation's obligation to those military retirees who faithfully and selflessly served our country in times of war and in times of peace. Furthermore, this measure will provide retirees more dependable, consistent, and affordable care while simultaneously applying equitable standards of health care for all Federal retirees.

I look forward to working with my colleagues on this bipartisan piece of legislation.

Mr. SHELBY. Mr. President, according to the latest statistics, Alabama is home to 47,011 military retirees. We have the eight largest population of retired service personnel in the Nation. Senator BOND highlighted the many changes in DOD's health care system that are limiting access to health care for military retirees aged 65 and above. I would like to briefly explain how these general trends are affecting the 47,011 military retirees in my State.

The 1995 BRAC slated Fort McClellan for closure by 1999. When that base closes, Noble Army Hospital will be forced to close as well. The emergency room at Lyster Army Hospital at Fort

Rucker is being closed. At all of the military treatment facilities, space-available is becoming unavailable. In addition to these physical changes, TRICARE came on line in region 4, and Alabama now is experiencing excessive delays in receiving reimbursement payments and other well-known problems associated with TRICARE. Many private physicians who provided CAMPUS are leaving the DOD health care, which I believe is unacceptable and irresponsible.

Despite extended service and sacrifice, retired service members are the only Federal employees who will lose their government-sponsored health insurance when they become eligible for Medicare. This bill takes a modest step forward to insuring that military retirees receive at least as much as Members of Congress or retired Federal employees. Military retirees have dedicated their lives to protecting our Nation; we owe it to them to pave the way for health care equity.

I thank Senator BOND for his leadership in introducing this legislation. I urge my colleagues to cosponsor this bipartisan bill.

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Ms. SNOWE:

S. 1335. A bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees; to the Committee on Governmental Affairs.

THE HEALTH BENEFITS STANDARDIZATION ACT

Ms. SNOWE. Mr. President, I rise today to introduce legislation designated to standardize coverage for bone mass measurement for people at risk for osteoporosis under the Federal Employee Health Benefits Program. This legislation is similar to my bill which was enacted as part of the Balanced Budget Act to standardize coverage of bone mass measurement under Medicare. The bill I introduce today guarantees the same uniformity of coverage to Federal employees and retirees as Congress provided to Medicare beneficiaries only a few months ago.

Osteoporosis is a major public health problem affecting 28 million Americans, who either have the disease or are at risk due to low bone mass; 80 percent of its victims are women. The disease causes 1.5 million fractures annually at a cost of $13.8 billion—$38 million per day—in direct medical expenses. In their lifetime, one in two women and one in eight men over the age of 50 will fracture a bone due to osteoporosis. A woman's risk of a hip fracture is equal to her combined risk of contracting breast, uterine, and ovarian cancer.

Osteoporosis is largely preventable and thousands of fractures could be avoided if low bone mass were detected early and treated. We now have drugs that promise to reduce fractures by 50 percent. However, identification of risk factors alone cannot predict how much bone a person has and how strong bone is. Experts estimate that without bone density tests, up to 40 percent of women with low bone mass could be missed.

Unfortunately, Federal Employee Health Benefits Program [FEHBP] coverage of bone density tests is inconsistent. Instead of a comprehensive national coverage policy, FEHBP leaves it to each of the over 400 participating plans to decide who is eligible to receive a bone mass measurement and what constitutes medical necessity. A survey of the 19 top plans participating in FEHBP indicated that many plans have no specific rules to guide reimbursement and cover the tests on a case-by-case basis. Several plans refuse to provide consumers with information indicating when the plan covers the test and when it does not. Some plans cover the test only for people who already have osteoporosis.

Mr. President, we owe the people who serve our Government more than that. That is why my legislation standardizes coverage for bone mass measurement under the FEHBP. I urge my colleagues to support this legislation, in order to help prevent the 1.5 million fractures caused annually by osteoporosis.

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By Mr. GRAHAM:

S. 1336. A bill for the relief of Roy Desmond Moser; to the Committee on the Judiciary.

S. 1337. A bill for the relief of John Andre Chalot; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. GRAHAM. Madam President, I ask unanimous consent that the text of the two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1336

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

**SECTION 1. MODIFICATION OF EFFECTIVE DATE OF NATURALIZATION OF ROY DESMOND MOSER.**

Notwithstanding title III of the Immigration and Nationality Act, any predecessor provisions to such title, or any other provision of law relating to naturalization, for purposes of determining the eligibility of Roy Desmond Moser for relief under the Agreement Between the Government of the United States and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution, signed at Bonn on September 19, 1995, Roy Desmond Moser is deemed to be a naturalized citizen of the United States as of August 8, 1942.

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S. 1337

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

**SECTION 1. MODIFICATION OF EFFECTIVE DATE OF NATURALIZATION OF JOHN ANDRE CHALOT.**

Notwithstanding title III of the Immigration and Nationality Act, any predecessor provisions to such title, or any other provision of law relating to naturalization, for purposes of determining the eligibility of John Andre Chalot for relief under the Agreement Between the Government of the United States and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution, signed at Bonn on September 19, 1995, John Andre Chalot is deemed to be a naturalized citizen of the United States as of September 3, 1943.

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By Mr. DURBIN:

S. 1340. A bill entitled the ''Telephone Consumer Fraud Protection Act of 1997.''; to the Committee on the Judiciary.

THE TELEPHONE CONSUMER FRAUD PROTECTION ACT OF 1997

Mr. DURBIN. Mr. President, I rise today to introduce the Telephone Consumer Fraud Criminal Penalties Act of 1997. This measure will finally allow us to strike back against ''slamming,'' the practice of changing a telephone customer's long-distance carrier without the customer's knowledge or consent.

Slamming is the Federal Communications Commission's largest source of consumer complaints. In 1995 and 1996, more than one-third of the consumer complaints filed with the FCC's Common Carrier Bureau involved slamming. Last year 16,000 long-distance telephone consumers filed slamming complaints with the FCC. Since 1994, the number of slamming complaints has tripled. Yet, this is only the tip of the iceberg— the Los Angeles Times reports that more than 1 million American telephone consumers have been slammed in the last 2 years.

In my home State of Illinois slamming was the No. 1 source of consumer complaints to the attorney general's office in 1995, and the No. 2 source of complaints in 1996. Slamming is obviously a serious problem that must be stopped.

Slamming is not merely an inconvenience or a nuisance. It is an act of fraud that costs long-distance telephone consumers millions of dollars a year and robs them of the right to contract. The Telephone Consumer Fraud Criminal Penalties Act will now ensure that slammers are held accountable for their fraudulent acts.

My measure will help stamp out slamming in two ways:

First, the Telephone Consumer Fraud Criminal Penalties Act creates criminal fines and jail time for repeat and willful slammers. Slamming takes choices away from consumers without their knowledge and distorts the long distance competitive market by rewarding companies that engage in fraud and misleading marketing practices. This measure's criminal penalties will guarantee that slammers can no longer act with impunity.

Second, the Telephone Consumer Fraud Criminal Penalties Act charges the Attorney General with the duty of conducting a study on the fraudulent and criminal behavior of telecommunications carriers and their agents in the

solicitation, marketing, and assignment of telecommunication services. The Attorney General's study will examine the fraudulent methods by which a telecommunications consumer's local, long distance, and other telecommunications services are changed without the consumers knowledge or consent. Through this study, Congress will gain a better understanding of how slammers operate. With this knowledge we will be able to draft a well crafted, all encompassing law that will finally put a lid on slamming.

Thank you, Mr. President, for the opportunity to introduce this important initiative. I hope my colleagues will join with me and support the Telephone Consumer Fraud Criminal Penalties Act in order to protect the rights of telephone consumers.

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

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

S. 1340

*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 ''Telephone Consumer Fraud Protection Act of 1997.''

**SEC. 2. CRIMINAL PENALTIES.**

Title 18 of the United States Code is amended in the appropriate place to provide the following.

(A) PERSONS.—Any person who submits to a subscriber a request for a change in a provider of telephone exchange service or telephone toll service in willful violation of the procedures established in 47 CFR §§ 64.1100 or 64.1150:

(i) shall be fined not more than $1,000, imprisoned not more than 30 days, or both for the first offense; and

(ii) shall be fined not more than $10,000, imprisoned not more than 9 months, or both, for any subsequent offense.

(B) TELECOMMUNICATIONS CARRIERS.—Any telecommunications carrier who submits to a subscriber a request for a change in a provider of telephone exchange service or telephone toll service, or executes such a change, in willful violation of 47 CFR §§ 64.1100 or 64.1150:

(i) shall be fined not more than $50,000 for the first such conviction; and

(ii) shall be fined not more than $200,000 for any subsequent conviction.

**SEC. 3. A STUDY BY THE ATTORNEY GENERAL.**

The Attorney General shall conduct a study and report to Congress on the fraudulent and criminal behavior of telecommunications carriers and their agents in the solicitation, marketing, and assignment of wire services. The Attorney General's study shall examine the fraudulent methods by which a telecommunications consumer's local, long distance, and other telecommunications services are changed without her or his knowledge or consent. The Attorney General's study shall also examine the negative impact and costs that such fraudulent activity is having on consumers and the marketplace.

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By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1341. A bill to provide for mitigation of terrestrial wildlife habitat lost as a result of the construction and operation of the Pick-Sloan Missouri River Basin program in the State of South Dakota, and for other purposes; to the Committee on Environment and Public Works.

THE CHEYENNE RIVER SIOUX TRIBE, LOWER BRULE SIOUX TRIBE, AND THE STATE OF SOUTH DAKOTA TERRESTRIAL WILDLIFE HABITAT MITIGATION ACT OF 1997

Mr. DASCHLE. Mr. President, on behalf of the South Dakota congressional delegation and Gov. Bill Janklow, I am today introducing the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and the State of South Dakota Terrestrial Wildlife Habitat Mitigation Act. This proposal, which is the culmination of more than 2 years of discussion with Governor Janklow and his staff, South Dakota tribal leaders, representatives of South Dakota sportsmen groups and affected citizens, lays out a plan for resolving some of the environmental and jurisdictional problems created by the construction of the main stem dams nearly 40 years ago.

Land transfers and their attendant jurisdictional implications are serious issues with real world ramifications, and it has been the Governor's and my goal throughout this process to achieve consensus on how to proceed. The introduction of this legislation is one more step on the path to that consensus. I would like to take this opportunity to outline the bill, explain how we got to this point and suggest where we might go from here.

More than a half century ago, Congress set in motion a series of events that resulted in an extraordinary loss of land and wildlife habitat by the State of South Dakota, tribes, and individual landowners along the Missouri River. This loss of land and the accompanying fractionation of jurisdiction has fueled extensive and costly litigation over the regulation of hunting and fishing along the river. Moreover, the Federal Government has never mitigated the impact of the dams on critical wildlife habitat, as it is required to do by the 1958 Fish and Wildlife Coordination Act. The legislation I am introducing today is an attempt to settle those issues without further litigation, to provide a means to fairly compensate the State of South Dakota and the tribes for the loss of habitat, and to expand public hunting opportunities for sportsmen.

This bill would not have been possible without the efforts of many South Dakotans. Governor Janklow and I have worked closely together for over 2 years to craft this compromise. Many tribal leaders in the State have provided constructive input throughout this process. In particular, I would like to acknowledge Chairman Michael Jandreau of the Lower Brule Sioux Tribe and Chairman Gregg Bourland of the Cheyenne River Sioux Tribe for their wise advice, friendship and guidance.

Senator JOHNSON and Congressman THUNE have approached this often contentious project with open minds. It is significant that Senator JOHNSON is a cosponsor of this bill and that Representative THUNE will introduce a companion measure in the House of Representatives.

I would also like to thank John Cooper, the secretary of the South Dakota Game, Fish, and Parks Department, for the enormous amount of time he spent holding public meetings and diligently working with all interested parties to sketch out the broad contours of this compromise as well as to craft the small details. His patience and imagination have been critical to the successful development of this legislation.

Finally, our draft proposal was discussed with representatives of the United Sportsmen and South Dakota Wildlife Federation. Both groups made constructive comments about the draft, and I appreciate their endorsement of the bill we are introducing today.

The Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and the State of South Dakota Terrestrial Wildlife Habitat Mitigation Act establishes trust funds to compensate the State and the tribes for the terrestrial wildlife habitat that was lost due to construction of the mainstem Missouri River dams. It transfers to the Interior Department to be held in trust for the tribes the lands that were acquired for the Pick-Sloan project and that remain above the exclusive flood pool. The tribes will be able to regulate hunting and fishing on those lands for all who wish to use them, as long as they accept the conditions of the bill, which include protecting the ability of the heirs and assignees of Indian and non-Indian ranchers who lost land to the construction of the dams to graze on those lands and reaching agreement with the State on rules governing fishing on the Missouri River within reservation boundaries. Unless otherwise agreed to by the tribes and the State, recreation areas currently operated by the corps within the boundaries of the Indian reservations will be transferred into trust for those tribes to manage, while recreation areas located outside of the boundaries of Indian reservations will be leased to the State.

Since there is insufficient Federal project land in South Dakota on which to perform the necessary wildlife habitat mitigation, this legislation would authorize the tribes and the State to spend revenues from the trust funds on other projects related to wildlife conservation and public access to habitat throughout the State. The result should be expanded opportunity for South Dakota hunters.

Through the trust funds, the tribes and State will have a steady source of funding with which to implement formal wildlife habitat mitigation plans.

To supplement those plans, the tribes and State will be able to use revenues from the trust funds to implement plans developed in consultation with the U.S. Fish and Wildlife Service to lease private lands for the protection of

important habitat, including habitat for threatened and endangered species. Private landowners who participate in this program will be required to provide public access for sportsmen during hunting season. The South Dakota Game, Fish and Parks Department estimates that over 200,000 acres of private land will be enrolled in this program, significantly expanding public hunting opportunities for sportsmen throughout the State.

The tribes and the State will be able to use proceeds from the trust funds to operate the recreation areas.

The tribes and the State will be able to use the funds to develop, maintain and protect wildlife habitat and recreation areas along the Missouri River.

And, the tribes will be able to use revenues from the fund to protect native American cultural sites threatened by the operation of the Pick-Sloan project.

To understand the approach taken by this legislation, it is necessary to understand the events that were prologue to its development. In response to a series of major floods along the upper Missouri River in the early part of this century, Congress enacted the Flood Control Act of 1944, which called for implementation of a plan developed by General Pick of the U.S. Army Corps of Engineers and William Sloan of the Bureau of Reclamation, known as the Pick-Sloan plan, to establish a series of dams along the river. By authorizing the construction of these massive earthen dams, this law played a critical role in shaping the future development of the State and of the downstream States that benefited from meaningful flood control.

By hosting these dams, South Dakota has provided valuable storage of water in the region, preventing flooding, and allowing development along the river in downstream States all the way to the Mississippi River. The sacrifices South Dakota made for this purpose, however, can be counted in the loss of roughly a quarter of a million acres of the most productive, unique, and irreplaceable cottonwood forests and river bottomland in the upper Great Plains.

Land that once provided habitat and critical wintering cover for nearly 400 species of wildlife is now submerged. The remains of those cottonwood forests can be seen today from the banks of the mainstem reservoirs, their dead tops sticking out of the water reminding all of us what was once such an integral element of the upper Great Plains ecosystem. The effects of that loss also can be felt today. Last winter, South Dakota suffered through some of the most severe weather in recent memory. Wildlife throughout the State, unable to find sufficient cover, froze to death in vast numbers.

At the time the Pick-Sloan project was being constructed, Congress passed the Fish and Wildlife Coordination Act of 1958. That law officially recognized the severe loss of wildlife habitat that could accompany the construction of water projects and, as a result, required the Federal construction agency—in this case the Corps of Engineers—to consult with the U.S. Fish and Wildlife Service and the State wildlife agency for the purposes of determining the possible damage to wildlife resources and for the purposes of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources. This requirement applied to any Federal project not yet 60 percent complete at the time of enactment. In South Dakota, this meant the Oahe and Big Bend dams. Despite the requirements of the 1958 Fish and Wildlife Coordination Act, the Federal Government has never adequately mitigated the loss of habitat that accompanied those projects.

It may be impossible to completely recreate the unique habitat that once existed along the Missouri River. However, the Federal Government does bear the responsibility to the State and tribes of South Dakota to do whatever it can to mitigate that loss. Between 1960 and 1982, the corps developed seven major plans to mitigate the lost wildlife habitat. However, since each of those plans proposed the politically unpopular fee title acquisition of land and since the corps did not forward any of these plans to Congress for authorization, none was ever implemented.

In 1982, the Corps of Engineers developed a new plan, known as the Post-Authorization Mitigation Report for Fish and Wildlife Mitigation, Lake Oahe and Sharpe, SD. This plan, which called for mitigating only a fraction of the habitat that was lost, was unique in that it did not rely on acquisition of land in fee title, but rather made existing project lands available for mitigation work. An unsteady history of implementation of the 1982 plan began in 1989. In 1990, funding was cut off and then eventually restored. The corps again terminated funding for the project in 1995, only to restore it in the face of delegation opposition.

It has become clear that wildlife habitat mitigation for Lakes Oahe and Sharpe are not high priorities for the Corps of Engineers. While I recognize that this is attributable in some measure to the levels of funding provided that agency by Congress, that does not excuse the Federal Government of its responsibility to mitigate the lost habitat.

Another important feature of the legislation being introduced today deals with the management of the Corps of Engineers' recreation areas in the State. In partial compensation for South Dakota's sacrifice of prime lands to the construction of the dams, Congress had intended that considerable irrigation development would occur along the Missouri River. While irrigation development has fallen far short of expectations, today roughly 5.1 million residents and nonresidents benefit by using the reservoirs for camping, fishing, boating, hunting, and general recreation.

Despite the use that these reservoirs enjoy, there is serious concern over the corp's ability to continue to maintain its extensive network of recreation areas along the river. Adjusted for inflation, the corps' budget for this purpose has shrunk by 30 percent since 1993. Prospects for reversing this trend are poor, making the challenge of funding both wildlife habitat mitigation and recreation area maintenance more and more daunting in the future.

That is why this legislation would transfer those recreation areas to the tribes and the State and why the trust funds would be used to provide a predictable source of funding to meet the needs of the 5.1 million people who use those facilities.

There is solid precedent for the establishment of dedicated trust funds to compensate the tribes and the State for losses suffered as a result of these projects. In 1992 Congress enacted the Standing Rock and Three Affiliated Tribes Infrastructure Compensation Act, establishing a trust fund to compensate the tribes for infrastructure losses suffered as a result of construction of the dams. That trust fund was capitalized with funding equal to 25 percent of the annual revenues to the Western Area Power Administration from sales of hydropower generated by the mainstem dams of the Missouri River. In 1996, Congress unanimously passed the Crow Creek Infrastructure Compensation Act, establishing a similar fund, and I expect Congress to pass a similar bill for the Lower Brule Sioux Tribe in the near future.

In short, Congress has recognized the appropriateness of linking legitimate compensation for losses resulting from the construction of the dams to the power revenues those dams generate. The legislation I am introducing today adopts that same principle.

As I mentioned, the development of this legislation has involved extensive discussion and negotiation among many interested parties throughout the State. The bill has undergone five drafts over the course of nearly 10 months. A number of public meetings have been held to discuss the bill, and Governor Janklow and I have received, considered, and responded to, comments and suggestions from interested members of the public.

The tribes expressed a strong desire to protect their jurisdiction over the hunting and fishing of tribal members. The legislation adopts a cooperative

State-tribal enforcement system based on a previous Memorandum of Agreement reached between the Lower Brule Sioux Tribe and the South Dakota Game, Fish, and Parks Department—a system that respects and protects tribal sovereignty. To transfer the land to trust status and to keep the land in trust, the tribes would implement an enforcement system whereby both the State and the tribes would be able to arrest violators of fish and game rules on the waters of the Missouri River within Indian reservation boundaries, with tribal members prosecuted in tribal or Federal court and non-Indians prosecuted in State or Federal court. This protects tribal jurisdiction over tribal members and should maximize the effectiveness of fish and game enforcement efforts along the river. Also, under the bill, participating tribes will be able to establish seasons and bag limits for hunting on the lands that will be transferred into trust and to enforce those rules against all those who will hunt on those lands—an opportunity they are denied currently.

In response to concerns expressed by the tribes about the effect of the bill on treaty rights and water rights, language has been included in the bill stating that both treaty rights and water rights will be protected.

A number of counties expressed concern that they would lose their 75-percent share of revenues from leases the corps currently holds on the transferred lands. Under the bill, the Department of the Interior will be responsible for maintaining those leases. To ensure that the counties are not penalized by the transfer of the land to trust status the bill directs the Department of the Interior to pay the affected counties 100 percent of the revenues from leases on the lands.

Sportsmen commented that the State should obtain new lands to mitigate the loss of wildlife habitat. The bill transfers the 20,000 acre Bureau of Reclamation's Blunt Reservoir and Pierre Canal lands to the State for that purpose. Since the land will be transferred in fee title, the State will pay the county taxes on that land.

Non-Indian ranchers and Indian allottees who lost land or whose ancestors lost land to the construction of the dams, urged that the bill clarify that heirs or assignees be granted the right to graze on the lands taken from them or their ancestors, that access easements be guaranteed, and that any tribe or agency requiring fencing be responsible for installing and maintaining it. This legislation safeguards that grazing opportunity.

Those with easements and rights-of-way on land that would be transferred to the Interior Department, such as the electric utilities, asked that language be added to protect those easements and rights-of-way. Broad language has been added to preserve existing easements on any lands transferred to the Interior Department to be held in trust for the tribes and on any recreation areas leased to the State.

The Corps of Engineers needs to ensure that it retain its ability to operate the reservoirs. The bill protects its ability to do so.

Despite these modifications, not every concern or comment could be addressed. Some South Dakota tribes that do not border the river have expressed frustration that they were not included in this legislation. It has been our intention from the beginning of this process to include all eligible tribes in this legislation. Since the 1958 Fish and Wildlife Coordination Act calls for the Federal Government to mitigate the loss of habitat that occurred due to construction of the Oahe and Big Bend dams, all the tribes that lost habitat due to the construction of those projects qualify for mitigation under Federal law and have been invited to participate in this bill.

Two eligible tribes—the Standing Rock Sioux Tribe and the Crow Creek Sioux Tribe—have decided not to be part of this arrangement at this point. I respect their decisions, and they are not included in the legislation.

In summary, Mr. President, the State of South Dakota, the Federal Government, the tribes, the wildlife and all who use these reservoirs for hunting, fishing, and recreation will benefit from this bill. It provides for a fair resolution to the environmental and jurisdictional problems created by the construction of the main stem dams nearly 40 years ago.

I am hopeful that the appropriate congressional committees will schedule action on this legislation as soon as possible so that further testimony can be heard and necessary refinements can be made. Our goal is to enact a bill that will allow meaningful wildlife habitat mitigation to begin, resolve the regulatory issues relating to hunting and fishing along the Missouri River, provide the public with well-maintained recreation areas along the Missouri River and expand hunting opportunities long into the future.

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

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

S. 1341

*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 ''Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Mitigation Act of 1997''.

**SEC. 2. FINDINGS; PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) under the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.), Congress approved the Pick-Sloan Missouri River Basin program—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Big Bend and Oahe projects are major components of the Pick-Sloan Missouri River Basin program that contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water to provide flood control and other benefits for all States and tribes in the Missouri River Basin;

(3) to carry out the Pick-Sloan Missouri River Basin program, the Secretary of the Army acquired approximately 500,000 acres of land from the State of South Dakota, 4 Indian tribes, and private individuals;

(4) as of the date of enactment of this Act, of the acreage referred to in paragraph (3), approximately 200,000 acres remain at an elevation above that of the top of the exclusive flood pool of the projects of the program;

(5) of the approximately 200,000 acres of dry land referred to in paragraph (4), approximately 80,000 acres are located within the exterior boundaries of the Cheyenne River Reservation, Crow Creek Reservation, Lower Brule Reservation, and Standing Rock Reservation;

(6) as a result of the inundation from the construction of the Big Bend and Oahe projects, the State of South Dakota and the 4 Indian reservations referred to in paragraph (5) lost approximately 250,000 acres of fertile, wooded bottom land along the Missouri River;

(7) the lost acreage constituted some of the most productive, unique, and irreplaceable acres of wildlife habitat in the State of South Dakota, including habitat for game and nongame species (including species that are listed as endangered or threatened species under Federal or State law);

(8) the Federal Government has never applied the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) in such a manner as to adequately mitigate the loss of habitat in the State of South Dakota and on affected Indian reservations within the State;

(9) an insufficient quantity of Federal land within the boundaries of projects of the Pick-Sloan Missouri River Basin program is available in the State of South Dakota to provide adequate mitigation of the loss of habitat;

(10) because of complicated land ownership patterns along the Missouri River, there have been many jurisdictional disputes over the control of the land along the river, including disputes concerning—

(A) the jurisdiction of tribal or State courts over hunting and fishing activities—

(i) on land of the Pick-Sloan Missouri River Basin program projects located within an Indian reservation; or

(ii) on the Missouri River;

(B) the establishment and enforcement of hunting and fishing seasons and limits; and

(C) hunting and fishing license requirements;

(11) the jurisdictional disputes referred to in paragraph (10)—

(A) have been, and continue to be, adjudicated in Federal courts; and

(B) have resulted in great costs to the Federal Government, the State of South Dakota, and the Indian tribes;

(12) as of the date of enactment of this Act, policies of the Army Corps of Engineers encourage the leasing of public recreation facilities to, and the management of certain land by, State and local sponsors, if feasible;

(13) the State of South Dakota has demonstrated its ability to manage public recreation areas and wildlife resources along the Missouri River;

(14) the Indian tribes have demonstrated an ability to manage wildlife resources on land located within the respective reservations of those Indian tribes;

(15) the transfer of administrative jurisdiction over certain land acquired for the purposes of the Pick-Sloan Missouri River Basin program from the Secretary of the Army to the Secretary of the Interior is in the best interest of the United States, the State of South Dakota, and the Indian tribes; and

(16) the Federal Government has a trust relationship and a fiduciary responsibility to Indian tribes.

(b) PURPOSES.—The purposes of this Act are—

(1) to mitigate the loss of terrestrial wildlife habitat that occurred as a result of construction projects carried out under the Pick-Sloan Missouri River Basin program;

(2) to settle longstanding jurisdictional disputes over land and water within the Pick-Sloan Missouri River Basin program projects;

(3) to protect, and provide public access to, the remaining wildlife habitat in the State of South Dakota; and

(4) to transfer to the Department of the Interior to be held in trust for the Indian tribes of South Dakota land acquired for the Pick-Sloan Missouri River Basin program within existing exterior reservation boundaries, without altering any boundary of a reservation of an Indian tribe established by a treaty with the United States.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) INDIAN TRIBE.—The term ''Indian tribe'' means—

(A) the Cheyenne River Sioux Tribe; and

(B) the Lower Brule Sioux Tribe.

(2) MEMBER.—The term ''member'' means an individual who is an enrolled member of an Indian tribe.

(3) NON-INDIAN.—The term ''non-Indian'' means an individual who is not an enrolled member of an Indian tribe.

(4) SECRETARY OF THE ARMY.—The term ''Secretary of the Army'' means the Secretary of the Army, acting through the Chief of Engineers.

(5) TERRESTRIAL WILDLIFE HABITAT.—The term ''terrestrial wildlife habitat'' means a habitat for a wildlife species (including game and nongame species) that existed or exists on an upland habitat (including a prairie grassland, woodland, bottom land forest, scrub, or shrub) or an emergent wetland habitat.

**SEC. 4. LEASE OF CORPS OF ENGINEERS RECREATION LAND TO THE STATE OF SOUTH DAKOTA.**

(a) IN GENERAL.—At the request of the State of South Dakota, the Secretary of the Army shall lease to the State of South Dakota the land described in subsection (b) for a term not less than 50 years, with an option for renewal.

(b) LAND LEASED.—The land described in this subsection is any other land within the projects of the Pick-Sloan Missouri River Basin program in the State of South Dakota that—

(1) is located outside the external boundaries of a reservation of an Indian tribe; and

(2) the Secretary of the Army determines at the time of the transfer is designated as a recreation area in the current Project Master Plans.

(c) LEASE CONDITIONS.—The Secretary of the Army shall lease the land described in subsection (b) to the State of South Dakota on the following conditions:

(1) RESPONSIBILITY FOR DAMAGE.—The Secretary of the Army shall not be responsible for any damage to the land leased under this section caused by sloughing, erosion, or other changes to the land caused by the operation of any project of the Pick-Sloan Missouri River Basin program.

(2) FLOWAGE EASEMENT.—The Secretary of the Army shall retain a flowage easement on the land leased under this section, and the lease shall not interrupt the ability of the Army Corps of Engineers to operate the projects in accordance with the Act of December 22, 1944 (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.).

(3) MANAGEMENT OF RECREATION AREAS.—To the extent consistent with other Federal law, the Secretary of the Army shall not unreasonably impede or restrict the ability of the State of South Dakota to freely manage the recreation areas included in the lease.

(4) AGREEMENT BY THE STATE.—The State of South Dakota shall agree—

(A) to carry out the duties of the State under this Act, including, managing, operating, and maintaining the recreation areas leased to the State under this Act;

(B) to take such action as may be necessary to ensure that the hunting and fishing rights and privileges of Indian tribes described in section 5 are recognized and enforced; and

(C) not to assess a fee for sport or recreation hunting or fishing on the Missouri River by a member within the boundaries of an Indian reservation.

(5) EASEMENTS, RIGHTS-OF-WAY, LEASES, AND COST-SHARING AGREEMENTS.—The State of South Dakota shall maintain all existing easements, rights-of-way, leases, and cost-sharing agreements that are in effect as of the date of execution of a lease under this section.

(6) COMPLIANCE WITH FEDERAL LAWS.—The State of South Dakota shall ensure that the leased land described in subsection (b) are used in accordance with—

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

(B) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(C) the Act entitled ''An Act for the protection of the bald eagle'', approved June 8, 1940 (16 U.S.C. 668 et seq.);

(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(d) MANAGEMENT TRANSITION.—The Secretary of the Army shall continue to fund and implement, until such time as funds are available for use from the South Dakota Wildlife Habitat Mitigation Trust Fund under section 7(d)(3)(A)(i), the terrestrial wildlife habitat mitigation plans under section 6(a).

**SEC. 5. TRANSFER OF ARMY CORPS OF ENGINEERS LAND FOR INDIAN TRIBES.**

(a) IN GENERAL.—

(1) TRANSFER.—The Secretary of the Army shall transfer to the Secretary of the Interior the land described in subsection (b).

(2) TRUST.—The Secretary of the Interior shall hold in trust for each Indian tribe the land transferred under this section that are located within the external boundaries of the reservation of the Indian tribe.

(b) LAND TRANSFERRED.—The land described in this subsection is land that—

(1) is located above the top of the exclusive flood pool of the projects of the Pick-Sloan Missouri River Basin program;

(2) was acquired by the Secretary of the Army for the implementation of the Pick-Sloan Missouri River Basin program; and

(3) is located within the external boundaries of a reservation of an Indian tribe.

(c) MAP.—The Secretary of the Army, in cooperation with the governing bodies of the Indian tribes, shall prepare a map of the land transferred under this section. The map shall be on file in the appropriate offices of the Secretary of the Army.

(d) TRANSFER CONDITIONS.—The land described in subsection (b) that was acquired for the Pick-Sloan Missouri River Basin program shall be transferred to, and held in trust by, the Secretary of the Interior on the following conditions:

(1) RESPONSIBILITY FOR DAMAGE.—The Secretary of the Army shall not be responsible for any damage to the land transferred under this section caused by sloughing, erosion, or other changes to the land caused by the operation of any project of the Pick-Sloan Missouri River Basin program (except as otherwise provided by Federal law).

(2) FLOWAGE EASEMENT.—The Secretary of the Army shall retain a flowage easement on the land transferred under this section and the transfer shall not interrupt the ability of the Army Corps of Engineers to operate the projects in accordance with the Act of December 22, 1944 (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.).

(3) ACCESS BY ORIGINAL OWNERS.—An original owner of land (including an heir or assignee) shall be allowed access to the land in accordance with subsection (e) for the purposes described in that subsection.

(4) ACCESS BY THE STATE.—Each Indian tribe agrees to provide free and unencumbered access to the State of South Dakota, for purposes of fish and wildlife management, to each reservoir of the Missouri River that is located on or adjacent to the reservation of the Indian tribe.

(5) MANAGEMENT BY INDIAN TRIBES.—Each Indian tribe agrees, with respect to land held in trust for the Indian tribe, to manage, operate, and maintain any recreation area transferred to the Indian tribe under this section.

(6) REGULATION OF HUNTING, FISHING, AND RECREATION WITHIN EXTERIOR RESERVATION BOUNDARIES.—

(A) APPLICABILITY.—The conditions described in this paragraph shall apply—

(i) to the extent not inconsistent with other law;

(ii) except as otherwise provided in this section; and

(iii) with respect to—

(I) the water of the Missouri River within the exterior boundaries of a reservation of an Indian tribe; and

(II) land and water within the exterior boundaries of a reservation of an Indian tribe that is above the water's edge of the Missouri River, which land and water consists of allotted land and tribal trust land.

(B) LICENSE REQUIREMENTS.—

(i) IN GENERAL.—Each Indian tribe shall allow any non-Indian to purchase a license from the Indian tribe to hunt on allotted land and trust land of the Indian tribe without being required to purchase a hunting license from the State of South Dakota.

(ii) ALLOTTED LAND.—Hunting and fishing on allotted land shall require the permission of the allottee or a designated agent of the allottee.

(iii) MIGRATORY WATERFOWL.—A non-Indian shall not hunt migratory waterfowl on trust land unless the non-Indian is in possession of a Federal migratory-bird hunting and conservation stamp (known as a ''Duck Stamp'') issued under the Act of March 16, 1934 (48 Stat. 451, chapter 71; 16 U.S.C. 718 et seq.).

(iv) STATE GAME LICENSES.—Each Indian tribe shall honor big game and small game licenses issued by the State of South Dakota on non-Indian private deeded land and public land and water within the exterior boundaries of the reservation of the Indian tribe described in subparagraph (A)(iii) (referred to in this paragraph as the ''reservation boundaries'') without requiring a State licensee to purchase a hunting license or permit from the Indian tribe.

(v) NON-INDIAN LAND.—A non-Indian landowner who resides within the reservation boundaries of an Indian tribe may hunt on

the non-Indian's land without securing a license from the Indian tribe.

(vi) DEEDED LAND.—Hunting on non-Indian and member private deeded land within the reservation boundaries of an Indian tribe shall be contingent on obtaining permission from the owner or lessee.

(vii) MEMBERS.—A member of an Indian tribe may hunt and fish on allotted or tribal trust land within the reservation boundaries of the Indian tribe with only a license from the Indian tribe, if such a license is required.

(C) ESTABLISHMENT OF WILDLIFE MANAGEMENT RULES.—

(i) RULES FOR MEMBERS.—Each Indian tribe shall establish such regulations, seasons, and bag limits for hunting or fishing by a member on allotted land and trust land of the Indian tribe as the wildlife management agency of the Indian tribe determines appropriate.

(ii) RULES FOR NON-INDIANS.—Each Indian tribe shall establish such regulations, seasons, and bag limits for hunting or fishing by non-Indians on allotted land and trust land of the Indian tribe as the wildlife management agency of the Indian tribe determines appropriate.

(iii) FISHING RULES.—Each Indian tribe shall adopt and enforce rules that affect fishing on the water of the Missouri River within the reservation boundaries of the Indian tribe that are agreed to by the State and affected tribe.

(D) PROHIBITIONS.—

(i) IN GENERAL.—Each Indian tribe shall—

(I) prohibit the use of gill or trammel nets and snagging of fish, other than when used in a fishery management effort by a certified tribal or State game, fish, and parks officer or employee;

(II) require the use of nontoxic shot in the hunting of migratory waterfowl; and

(III) prohibit the sale, trade, or barter of fish or terrestrial wildlife or other such practices that are detrimental to game and fish resources.

(ii) ENFORCEMENT.—Each Indian tribe and the State of South Dakota shall actively enforce the prohibitions described in clause (i) against members and non-Indians without discrimination.

(E) ENFORCEMENT OF RULES.—

(i) EXECUTION OF CROSS-DEPUTIZATION AGREEMENTS.—

(I) IN GENERAL.—Each Indian tribe shall enter into a cross-deputization agreement with the State of South Dakota under which tribal officers, on certification by the Law Enforcement Training and Standards Commission or after receiving equivalent Federal training, are granted the credentials of a State of South Dakota Deputy Conservation officer effective only within the reservation boundaries of the Indian tribe.

(II) PROVISION OF TRIBAL ENFORCEMENT CREDENTIALS.—Each Indian tribe shall provide tribal enforcement credentials to State of South Dakota Conservation officers on proof to the tribe that the officers are certified as conservation officers under Federal, tribal, or State law, effective only within the reservation boundaries of the Indian tribe.

(ii) ARRESTS.—

(I) COORDINATION.—Any arrest made under the authority of a cross-deputization agreement shall be coordinated through the officer of the government that has prosecutorial jurisdiction for the arrest.

(II) AVAILABILITY TO TESTIFY.—The officer who arrests or causes the arrest of a person under the authority of a cross-deputization agreement shall be reasonably available to testify in the appropriate tribal, Federal, or State court.

(F) PROSECUTION.—

(i) ALLOTTED LAND AND TRIBAL TRUST LAND.—

(I) NON-INDIANS.—A non-Indian violator of a regulation that affects a hunting, fishing, or recreational activity on the allotted land or tribal trust land of an Indian tribe shall be prosecuted in Federal court or a court of the Indian tribe, whichever is appropriate.

(II) MEMBERS.—A member violator of a regulation that affects a hunting, fishing, or recreational activity on the allotted land or tribal trust land of an Indian tribe shall be prosecuted in a court of the Indian tribe.

(ii) MISSOURI RIVER.—

(I) NON-INDIANS.—A non-Indian violator of a regulation that affects a hunting, fishing, or recreational activity on the water of the Missouri River shall be prosecuted in a Federal or State court, whichever is appropriate.

(II) MEMBERS.—A member violator of a regulation that affects a hunting, fishing, or recreational activity on the water of the Missouri River within the reservation boundaries of an Indian tribe shall be prosecuted in the court of the Indian tribe.

(G) PENALTIES.—The penalties for violations of regulations that affect a hunting, fishing, or recreational activity on the water of the Missouri River shall be identical for members and non-Indians.

(7) OTHER INDIAN TRIBE REQUIREMENTS.—Each Indian tribe shall agree to meet the requirements applicable to the Indian tribe under this Act.

(8) BOATING SAFETY; TEMPORARY LANDINGS.—Each Indian tribe shall grant any person who operates a vessel the right of access, without charge, to land under the jurisdiction of the Indian tribe located along the shore of the Missouri River or the reservoirs of the Pick-Sloan Missouri River Basin program projects for the purposes of—

(A) ensuring safety under adverse weather conditions (including storms and high winds);

(B) otherwise making a landing that—

(i) is for a purpose other than hunting, fishing, or removing objects, including Indian cultural or archaeological materials;

(ii) is of a duration of not more than 24 hours; and

(iii) is consistent with the protection of natural resources and the environment.

(C) carrying out any subsequent co-management agreement that may be negotiated between the State of South Dakota and the Indian tribe relating to hunting, fishing, or recreational use; and

(D) making an unarmed retrieval of waterfowl (as determined under the law of the State of South Dakota).

(9) EASEMENTS, RIGHTS-OF-WAY, LEASES, AND COST-SHARING AGREEMENTS.—

(A) MAINTENANCE.—The Secretary of the Interior shall maintain all existing easements, rights-of-way, leases, and cost-sharing agreements that are in effect as of the date of the transfer.

(B) PAYMENTS TO COUNTY.—The Secretary of the Interior shall pay the affected county 100 percent of the receipts from the easements, rights-of-way, leases, and cost-sharing agreements described in subparagraph (A).

(e) ACCESS BY ORIGINAL OWNERS.—

(1) IN GENERAL.—An original owner of land transferred under this section (including an Indian allottee), and any other person who has been assigned or has inherited land from an original landowner (or Indian allottee), who maintains base property in the vicinity of the land, shall be guaranteed access to and a right to lease, for agricultural purposes (including grazing), the land acquired from the original owner by the Secretary of the Army for the Pick-Sloan Missouri River Basin program.

(2) EASEMENTS AND RIGHTS-OF-WAY.—An Indian tribe shall honor past easements and rights-of-way and provide reasonable future easements and rights-of-way to ensure access for use of the land.

(3) FENCING.—Any agency or Indian tribe that requires the land to be fenced shall be responsible for building and maintaining the fencing required.

(4) FEES.—An Indian tribe that leases land to an original owner or other person described in paragraph (1) may charge a grazing fee at a rate that does not exceed the rate charged by the Indian tribe for grazing on comparable land within the external boundaries of the reservation of the Indian tribe.

(5) ELIGIBILITY TO LEASE LAND FOR AGRICULTURAL PURPOSES.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall determine which original owners, heirs, and assignees (including Indian allottees) meet the eligibility criteria to lease land for agricultural purposes under this section.

**SEC. 6. TERRESTRIAL WILDLIFE HABITAT MITIGATION.**

(a) TERRESTRIAL WILDLIFE HABITAT MITIGATION PLANS.—

(1) IN GENERAL.—In accordance with this subsection and with the assistance of the Secretary of the Army and the Secretary of the Interior, the State of South Dakota and each Indian tribe shall, as a condition of the receipt of funds under this Act, develop a plan for the mitigation of terrestrial wildlife habitat loss that occurred as a result of flooding related to projects carried out as part of the Pick-Sloan Missouri River Basin program.

(2) FUNDING FOR CARRYING OUT PLANS.—

(A) STATE.—The Secretary of the Treasury shall make available to the State of South Dakota funds from the South Dakota Wildlife Habitat Mitigation Trust Fund established by section 7, to be used to carry out the plan.

(B) INDIAN TRIBES.—The Secretary of the Interior shall make available to each Indian tribe funds from the Native American Wildlife Habitat Mitigation Trust Fund established by section 8, to be used to carry out the plan.

(b) PROGRAMS FOR THE PURCHASE OF WILDLIFE HABITAT LEASES.—

(1) IN GENERAL.—The State of South Dakota may use payments received under section 7(d)(3)(A)(ii), and each Indian tribe may use payments received under section 8(d)(3)(A)(ii), to develop or expand a program for the purchase of wildlife habitat leases that meets the requirements of this subsection.

(2) DEVELOPMENT OF PLAN.—

(A) IN GENERAL.—If the State of South Dakota, or an Indian tribe, conducts a program in accordance with this subsection, the State of South Dakota, or the Indian tribe, in consultation with the United States Fish and Wildlife Service and with opportunity for public comment, shall develop a plan to lease land for the protection and development of wildlife habitat, including habitat for threatened and endangered species associated with the Missouri River ecosystem.

(B) USE FOR PROGRAM.—The plan shall be used by the State of South Dakota, or the Indian tribe, in carrying out the program developed under paragraph (1).

(3) CONDITIONS OF LEASES.—Each lease covered under a program under paragraph (1) shall specify that the owner of the property that is subject to the lease shall provide—

(A) public access for sportsmen during hunting seasons; and

(B) other outdoor uses covered under the lease, as negotiated by the landowner and the State of South Dakota or Indian tribe.

(4) USE OF ASSISTANCE.—

(A) STATE OF SOUTH DAKOTA.—If the State of South Dakota conducts a program in accordance with this subsection, the State may use payments received under section 7(d)(3)(A)(ii) to—

(i) acquire easements, rights-of-way, or leases for management of wildlife habitat, including habitat for threatened and endangered species, and public access to wildlife on private land in the State of South Dakota;

(ii) create public access to Federal or State land through the purchase of easements or rights-of-way that traverse private property; or

(iii) lease land for the creation or restoration of a wetland on tribal or private land in the State of South Dakota.

(B) INDIAN TRIBES.—If an Indian tribe conducts a program in accordance with this subsection, the Indian tribe may use payments received under section 7(d)(3)(A)(ii) for the purposes described in subparagraph (A).

(c) DEAUTHORIZATION OF BLUNT RESERVOIR PROJECT.—

(1) IN GENERAL.—The Blunt Reservoir and Pierre Canal features of the Oahe Unit, administered by the Bureau of Reclamation in the State of South Dakota, are not authorized after the date of enactment of this Act.

(2) TRANSFER OF LAND.—Land associated with the Blunt Reservoir and Pierre Canal features of the Oahe Unit that is administered by the Bureau of Reclamation is transferred in fee title to the State of South Dakota to be used for the purpose of terrestrial wildlife habitat mitigation.

**SEC. 7. SOUTH DAKOTA WILDLIFE HABITAT MITIGATION TRUST FUND.**

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''South Dakota Wildlife Habitat Mitigation Trust Fund'' (referred to in this section as the ''Fund'').

(b) FUNDING.—For the fiscal year following the fiscal year during which the aggregate of the amounts deposited in the Lower Brule Sioux Tribe Infrastructure Development Trust Fund is equal to the amount specified in section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act of 1997, and for each fiscal year thereafter until such time as the aggregate of the amounts deposited in the Fund under this subsection, is equal to $108,000,000, the Secretary of the Treasury shall deposit in the Fund an amount equal to 15 percent of the receipts from the deposits in the Treasury of the United States for the preceding fiscal year from the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(c) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) PAYMENTS.—

(1) IN GENERAL.—All amounts credited as interest under subsection (c) shall be available, without fiscal year limitation, to the State of South Dakota for use in accordance with paragraph (3).

(2) WITHDRAWAL AND TRANSFER OF FUNDS.—The Secretary of the Treasury shall withdraw amounts credited as interest under paragraph (1) and transfer the amounts to the State of South Dakota for use in accordance with paragraph (3). The Secretary of the Treasury may not withdraw the amounts for any other purpose.

(3) USE OF TRANSFERRED FUNDS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the State of South Dakota shall use the amounts transferred under paragraph (2) only to carry out the following activities:

(i) The implementation and administration of a terrestrial wildlife habitat mitigation plan under section 6(a).

(ii) The purchase and administration of wildlife habitat leases under section 6(b) and other activities described in that section.

(iii) The management, operation, administration, maintenance, and development, in accordance with this Act, of all recreation areas that are leased to the State of South Dakota by the Army Corps of Engineers.

(iv) The development and maintenance of public access to, and protection of, wildlife habitat and recreation areas along the Missouri River.

(B) ALLOCATION FOR PLAN.—The State of South Dakota shall use the amounts transferred under paragraph (2) to fully implement the terrestrial wildlife habitat mitigation plan of the State under section 6(a).

(C) PROHIBITION.—The amounts transferred under paragraph (2) shall not be used for the purchase of land in fee title.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsection (d), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

(f) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to pay the administrative expenses of the Fund.

**SEC. 8. NATIVE AMERICAN WILDLIFE HABITAT MITIGATION TRUST FUND.**

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Native American Wildlife Habitat Mitigation Trust Fund'' (referred to in this section as the ''Fund'').

(b) FUNDING.—For the fiscal year following the fiscal year during which the aggregate of the amounts deposited in the Lower Brule Sioux Tribe Infrastructure Development Trust Fund is equal to the amount specified in section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act of 1997, and for each fiscal year thereafter until such time as the aggregate of the amounts deposited in the Fund under this subsection, is equal to $47,400,000, the Secretary of the Treasury shall deposit in the Fund an amount equal to 10 percent of the receipts from the deposits in the Treasury of the United States for the preceding fiscal year from the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(c) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) PAYMENTS.—

(1) IN GENERAL.—All amounts credited as interest under subsection (c) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with paragraphs (3) and (4).

(2) WITHDRAWAL AND TRANSFER OF FUNDS.—At the request of the Secretary of the Interior, the Secretary of the Treasury shall withdraw amounts credited as interest under paragraph (1) and transfer the amounts to the Secretary of the Interior for use in accordance with paragraphs (3) and (4). The Secretary of the Treasury may not withdraw the amounts for any other purpose.

(3) USE OF TRANSFERRED FUNDS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and paragraph (4), the Secretary of the Interior shall use the amounts transferred under paragraph (2) only for the purpose of making payments to Indian tribes to carry out the following activities:

(i) The implementation and administration of a terrestrial wildlife habitat mitigation plan under section 6(a), which payment shall be made at such time as the Secretary of the Army approves a terrestrial wildlife habitat mitigation plan developed by the Indian tribe under that section.

(ii) The purchase and administration of wildlife habitat leases under section 6(b) and other activities described in that section.

(iii) The management, operation, administration, maintenance, and development, in accordance with this Act, of recreation areas held in trust for the Indian tribes.

(iv) The development and maintenance of public access to, and protection of, wildlife habitat and recreation areas along the Missouri River.

(v) The preservation of Native American cultural sites located on the transferred land.

(B) ALLOCATION FOR PLAN.—Each Indian tribe shall use the amounts transferred under paragraph (2) and paid to the Indian tribe to fully implement the terrestrial wildlife habitat mitigation plan of the Indian tribe under section 6(a).

(C) PROHIBITION.—The amounts transferred under paragraph (2) and paid to an Indian tribe shall not be used for the purchase of land in fee title.

(4) PRO RATA SHARE OF PAYMENTS.—In making payments from the interest generated under the Fund, the Secretary of the Interior shall ensure that the total amount of payments received by the Indian tribes under paragraph (3) is distributed as follows:

(A) 79 percent shall be available to the Cheyenne River Sioux Tribe.

(B) 21 percent shall be available to the Lower Brule Sioux Tribe.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsection (d), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

(f) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to pay the administrative expenses of the Fund.

**SEC. 9. AUTHORIZATION OF ADMINISTRATIVE COSTS OF THE ARMY CORPS OF ENGINEERS.**

There are authorized to be appropriated to the Secretary of the Army such sums as are necessary—

(1) to pay administrative expenses incurred in carrying out this Act; and

(2) to fund the implementation of terrestrial wildlife habitat mitigation plans under section 6(a) until such time as funds are available for use under sections 7(d)(3)(A)(i) and 8(d)(3)(A)(i).

**SEC. 10. RULE OF CONSTRUCTION; PROHIBITION.**

(a) STATUTORY CONSTRUCTION.—Nothing in this Act diminishes or affects—

(1) any water right of an Indian tribe;

(2) any other right of an Indian tribe, except as specifically provided in another provision of this Act;

(3) any valid, existing treaty right that is in effect on the date of enactment of this Act;

(4) the external boundaries of any reservation of an Indian tribe;

(5) any authority of the State of South Dakota that relates to the protection, regulation, or management of fish and terrestrial wildlife resources, except as specifically provided in another provision of this Act;

(6) any authority or responsibility of the Secretary of the Army or the Secretary of the Interior under a law in existence on the date of enactment of this Act, including—

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

(B) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(C) the Act entitled ''An Act for the protection of the bald eagle'', approved June 8, 1940 (16 U.S.C. 668 et seq.);

(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and

(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.); or

(7) the ability of an Indian tribe to use the trust land transferred to the Indian tribe under this Act in a manner that is consistent with the use of other Indian trust land, except as otherwise specifically provided in this Act.

(b) POWER RATES.—No payment made under this Act shall affect any power rate under the Pick-Sloan Missouri River Basin program.

**SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this Act.

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By Mr. MURKOWSKI (for himself and Mr. THOMAS):

S. 1342. A bill to amend title XVIII of the Social Security Act to increase access to quality health care in frontier communities by allowing health clinics and health centers greater Medicare flexibility and reimbursement; to the Committee on Finance.

THE MEDICARE FRONTIER HEALTH CLINIC AND CENTER ACT OF 1997

Mr. MURKOWSKI. Mr. President, I rise today to introduce the Medicare Frontier Health Clinic and Center Act of 1997. I am pleased that the junior Senator from Wyoming, Senator THOMAS is cosponsoring this bill.

Our bill clarifies the intent of Congress to allow health clinics to participate in the new Medicare Rural Hospital Flexibility Program.

Mr. President, great advances in health care have occurred during the past decades, however, some communities in remote areas continue to struggle to provide primary care services. These communities face unparalleled geographic, climatic and economic barriers to quality health care. They simply do not have the resources, surface transportation nor the demand to provide full service inpatient and outpatient care—yet the community might be located hours from an acute care hospital in an urban center.

The Medicare Rural Hospital Flexibility Program in the Balanced Budget Act of 1997 addresses part of this dilemma. It exempts many rural hospitals from burdensome Medicare regulations designed for large urban hospitals and does not straight jacket them under the prospective payment system. This limited-service model has already helped to reduce unnecessary overhead and prevent cost shifting in eight States.

The Medicare Rural Hospital Flexibility Act means that extremely rural communities will finally be able to provide more complete health care to the elderly. However, Mr. President, this important Medicare provision needs legislative clarification. The Medicare Rural Hospital Flexibility Program addresses part of the dilemma faced by communities located in remote areas, but misses a piece of the health care puzzle for our frontier communities—health clinics.

Frontier communities face conditions even more extreme than rural communities. For example, the communities on the Fox Islands in Alaska are 400 miles from the nearest limited-service hospital and 650 miles from the nearest major, acute care hospital. There are no hospitals or even limited-service hospitals on the Fox Islands—just health clinics.

This legislation will enable clinics in frontier communities such as the Fox Islands to participate in the program. A frontier area is defined in the bill as borough with six or fewer people per square mile. Additionally, to ensure this extension goes to frontier communities who are truly in need, participating clinics must be located in health professional shortage areas, and be more than a 50-mile drive from another facility.

Mr. President, the Medicare Frontier Health Clinic and Center Act of 1997 is the answer for ensuring health care for our elderly who live in extremely rural and frontier areas. Demonstrations conducted by the Health Care Financing Administration have already proven the cost effectiveness of limited-service facilities.

I would also point out that yesterday, the National Rural Health Association [NRHA], in a letter to Nancy-Ann Min DeParle, the nominee to be Administrator of the Health Care Financing Administration, endorsed the concept of allowing rural clinics to participate in this program.

I urge my colleagues to consider the health care needs of frontier communities and adopt this bill.

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By Mr. LAUTENBERG:

S. 1343. A bill to amend the Internal Revenue Code of 1986 to increase the excise tax rate on tobacco products and deposit the resulting revenues into a Public Health and Education Resource Trust Fund, and for other purposes; to the Committee on Finance.

THE PUBLIC HEALTH AND EDUCATION RESOURCE ACT [PHAER]

Mr. LAUTENBERG. Mr. President, last spring, various State attorneys general announced that they had reached a global agreement to settle ongoing State lawsuits against the tobacco industry in exchange for certain concessions by the industry aimed at reducing teen smoking. This truly historic agreement followed a persistent effort by President Clinton to empower the Food and Drug Administration to regulate nicotine and develop strategies to stop the addiction of our children to this deadly drug. President Clinton is the first President in our Nation's history to take on the tobacco industry on behalf of the American people and he deserves enormous credit for his bold and relentless leadership on this issue.

Since the announcement of the global tobacco settlement, President Clinton, his health advisers, former FDA Commissioner David Kessler, former Surgeon General C. Everett Koop, our leading public health groups, and many of us in the Congress have reviewed the proposed settlement. While the attorneys general pushed the industry as hard as they could, they had to make significant compromises along the way to keep the industry at the bargaining table. An examination of their deal with the industry reflects the limits under which they were operating and shows that the settlement is flawed in many respects.

The Congress, Mr. President, is in an entirely different position vis-a-vis the tobacco industry. The Congress has no need to make the kinds of concessions to the industry that the attorneys general did. The Congress does not need permission from the industry to take steps to reduce teen smoking and put an end to hundreds of thousands of preventable deaths each year. We don't have to settle. Our job is to develop legislation in the public interest and promote the public health.

Mr. President, virtually no one in the Congress today supports the settlement proposed by the industry and the attorneys general. The settlement is dead. It is gone with Joe Camel. After extensive review, President Clinton recommended to the Congress that we enact comprehensive tobacco control legislation, and focus on the public health—not the tobacco industry's interests.

Mr. President, I share President Clinton's deep reservation about the settlement as a framework for this legislation. Instead, I would like to propose an alternative framework for my colleagues and others in the public health community to consider. I hope it will influence our deliberations next year, and contribute to the enactment of effective and comprehensive tobacco legislation. Mr. President, this approach is not premised on the notion of a deal with the industry. Instead, it attempts to build on the extremely thoughtful and knowledgeable work of Drs. Kessler and Koop, and many other public health experts and economists, who have studied these questions for a long time. It is a public health measure, pure and simple.

Mr. President, today Representative JIM HANSEN and I are introducing the Public Health and Education Resource Act—or the PHAER Act. The PHAER Act is, in some ways simple and straightforward. It goes right at the problem. It would raise the excise tax on tobacco by $1.50, consistent with the President's recommendation on pricing. It specifically targets the revenues raised to public health, with an emphasis on reducing youth smoking rates. This bipartisan, bicameral proposal is intended to serve as the blueprint for accomplishing the public health goals that the President and public health leaders have outlined.

Mr. President, the overarching goal of the public health community is to

decrease the rate of tobacco addiction in children. I believe the PHAER Act is the simplest and most direct way to accomplish that goal. Every health expert concludes that the single most effective way to reduce youth consumption of cigarettes is to increase the price. According to the Congressional Research Service, a $1.50 increase in the price of cigarettes will result in a 45-percent reduction in youth smoking rates. The President has made this a prerequisite to any tobacco legislation.

So, Mr. President, the question before Congress is how to accomplish this price increase and serve our public health interests. The tobacco settlement would raise prices by funneling money through the tobacco companies to accomplish a price increase. This approach relies on the industry to raise the price—which is a Catch-22. If the industry does raise the price by a $1.50, then there is no guarantee that all of these revenues will go toward the public health. In fact, health experts and the Federal Trade Commission have concluded that under the proposed settlement, the companies would make a substantial profit from such a price increase—as less than half of the $1.50 would actually go toward settlement payments.

On the other hand, the companies might not ever raise their prices to a point that actually makes a real dent in teen smoking. They could choose to simply raise it high enough to cover their settlement costs—estimated at 62 cents per pack.

Neither of these outcomes are positive for America's health. That is why the only fair way to accomplish these goals is through the PHAER Act I am introducing today.

Mr. President, we know that an increase in excise taxes is the single most effective step we can take to reduce teen smoking, and through PHAER we can ensure that every penny of the price increase is targeted to programs that will further reduce illegal youth tobacco consumption and promote other critical public health priorities. This is the most effective and reliable mechanism to guarantee that prices go up and that revenues are targeted to the proper programs.

Mr. President, this is not a partisan issue. Senators from both sides of the aisle have stated that the excise tax is the most efficient and effective way to reduce teen smoking and decrease the cost of tobacco illness in our country. This is one of the few taxes that people actually support increasing. It is one of the few taxes that can be directly linked to positive policy goals. Now, all we need is the will to act.

Mr. President, we propose a revenue pipeline to the public health rather than relying on the Rubik's cube payment scheme offered by the industry. Under my bill, excise tax increases will turn teenagers away from cigarettes and the proceeds of the increase will go directly to benefit America's health. These funds are targeted to public health and educational programs to further reduce teen tobacco addiction.

Our PHAER tobacco excise tax increase will be phased in over 3 years. Each year the fee will increase by 50 cents until it reaches $1.50. Once at $1.50, the PHAER fee will be indexed for inflation to guarantee that its price-deterrent effect continues to be strong enough to maintain the reduction in teen tobacco use.

Mr. President, many have stated that a price increase alone will not sustain a long term decrease in youth tobacco addiction, and they are right. That is why the revenues from the PHAER fee will be targeted to public health programs, with an emphasis on those that will directly decrease the number of kids who begin to smoke every day.

Three-quarters of PHAER funds will be disbursed at the State and local level for health and education programs that bring home to young people the deadly consequences of smoking. These funds will be distributed to the States with the supervision and assistance by the Secretary of Health and Human Services. We should set out national goals for reducing teen smoking, and insist on accountability, but we should also give States the flexibility to develop the best programs for their people.

Mr. President, each State will be able to design teen smoking cessation programs that are most effective for its particular circumstance. An average of $15 billion per year will be available for these States programs. Eligible uses include smoking cessation programs and services, school and community-based tobacco education and prevention programs, counteradvertising campaigns, expansion of the children's health insurance program created in the budget act, and other public health purposes.

Mr. President, it is critical that smoking cessation and addiction treatment programs be put into place, and the PHAER Program will do that. I hear a great deal of talk about adult choice. Well, most adults who smoke are not really choosing to smoke—they are addicted. It is not merely a habit—it is an addiction as powerful as the addiction to cocaine. And as the price of cigarettes goes up, we should put a system in place that will help bring addicted smokers off nicotine. Cessation and treatment programs should be available to all Americans, regardless of their income.

Mr. President, these programs will be coordinated at the State level and the States will have flexibility to design their own programs. The States vary widely in the patterns of tobacco use. Some States have youth cigarette consumption rates reaching catastrophic levels; other States have a more pressing problem with chewing—or smokeless—tobacco.

Mr. President, the remaining 25 percent of PHAER funds—an average of $5 billion per year—will be available at the Federal level to expand critical research at the National Institutes of Health and the Centers for Disease Control. They will also be used to adequately fund tobacco control programs at the Food and Drug Administration and to assure that tobacco farmers, factory workers, and their communities will not suffer economic devastation as we move to reduce smoking. The PHAER Act would also contribute to tobacco prevention programs at the Veterans' Administration, the Drug Czar's office, and across the world through assistance to international programs. PHAER would also fund Medicare prevention programs and premium and cost-sharing assistance for low-income Medicare beneficiaries.

Mr. President, all of these goals—and many more—can be accomplished, and we do not need to ask the tobacco industry's permission to do it. We just need to raise the tobacco excise tax and use the revenues to promote clear public health objectives.

Mr. President, the reason we can accomplish these goals is that the PHAER fund will raise $494 billion over 25 years—an average of nearly $20 billion per year. This estimate is based on the tobacco consumption curve developed by the Joint Committee on Taxation. It is a realistic calculation of the revenues that will flow from this excise tax boost, even given anticipated reductions in tobacco consumption.

Mr. President, this revenue projection of $494 billion over 25 years is much more reliable than the $368.5 billion figure projected by the tobacco industry and State attorneys general as a result of their proposed settlement. Those numbers are full of holes and deceptions. The Federal Trade Commission recently found that the much-publicized $368.5 billion figure so widely associated with the proposed tobacco settlement failed to take into account the effect of reduced consumption of tobacco on the industry's payment obligations under the terms of the settlement. A more realistic estimate would peg the proceeds of the proposed tobacco settlement closer to $250 billion over 25 years.

Mr. President, when you look at real numbers, it is clear that the PHAER Act will provide States with considerably more funds than the proposal by the tobacco industry and the attorneys general.

Finally, Mr. President, our bill includes a series of sense-of-the-Senate provisions. We include them in the bill to reflect our recognition that comprehensive tobacco legislation should include a broader range of measures than the revenue proposals in PHAER. These provisions state that any final legislation should include: stiff penalties to serve as an incentive for the industry to stop targeting kids, full authority for the Food and Drug Administration to regulate tobacco, disclosure of documents, restrictions on secondhand smoke, ingredient and constituent disclosure and a ban on the use of Federal Government resources

to weaken nondiscriminatory public health laws abroad.

Already this year, several key pieces of tobacco legislation have been introduced that should be part of congressional action next year on tobacco. I have introduced the Tobacco Disclosure and Warning Act, dealing with ingredient labeling, the Smoke-Free Environment Act, which would restrict secondhand smoke, and the Worldwide Tobacco Disclosure Act, which would set out our international trade policy on tobacco. I have also cosponsored Senator DURBIN's legislation, the No Tobacco for Kids Act, which would set up real penalties to stop the industry from targeting kids.

In addition, along with Minnesota State Attorney General Humphrey and others, I have called for a full disclosure of hidden documents from the industry, including those that have been fraudulently concealed under the cloak of the attorney-client privilege. I have asked relevant committee chairmen to subpoena documents being held by Minnesota courts because Congress must have the unfiltered truth before we legislate on such a critical issue.

Hopefully, Mr. President, the State of Minnesota will do what the Congress of the United States has so far failed to do. Minnesota—which did not sign on to the supposedly ''global'' tobacco settlement—is expected to go to trial in January. That case should bring significant information to light—information on tobacco and health that will be critical to crafting appropriate legislation in Congress.

Mr. President, opponents of strengthening the proposed tobacco settlement assert the industry will ''walk away'' if any legislation is too favorable to the public health. Last time I checked the Constitution of the United States, only duly elected U.S. Senators could vote in this Chamber, and only Members, staff, and former Members could have access to the floor. As far as I'm concerned, the tobacco industry can walk anywhere it wants to—but not onto this floor to cast votes for or lobby against this legislation.

Mr. President, all of us were elected to serve the people of our individual States and the Nation as a whole. There are few things that I could do for the people of New Jersey—especially the young people and their parents—that are more critical than preventing children from inhaling a deadly and addicting toxin into their body.

Mr. President, I urge my colleagues to cosponsor the PHAER legislation. It is not time to strike a deal with Big Tobacco, but rather it is time to make a healthy future real for America's kids.

Mr. President, I ask unanimous consent that letters I have received from public health groups supporting the approach taken in this legislation be entered into the RECORD. This includes a letter from the ENACT Coalition, which is signed by the American Medical Association, the American Cancer Society, the American Heart Association, American Academy of Pediatrics, American College of Preventive Medicine, National Association of County and City Health Officials, Partnership for Prevention, and the Campaign for Tobacco-Free Kids. In addition, I am inserting letters from the American Lung Association and the National Association of Counties, which also indicated support for the introduction of the PHAER legislation.

I also ask unanimous consent to insert the bill, a fact sheet, and a chart reflecting how many more lives would be saved under the PHAER Act as opposed to the tobacco industry's proposed settlement into the RECORD.

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

S. 1343

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

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

(a) SHORT TITLE.—This Act may be cited as the ''Public Health and Education Resource (PHAER) Act''.

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



## TITLE I—IMPOSITION OF INCREASED TAXES ON TOBACCO PRODUCTS

**SEC. 101. INCREASE IN EXCISE TAX RATE ON TOBACCO PRODUCTS IN ADDITION TO SUCH INCREASE CONTAINED IN THE BALANCED BUDGET ACT OF 1997.**

(a) CIGARETTES.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992);'' in paragraph (1) and inserting ''the applicable rate per thousand determined in accordance with the following table:

| ''In the case of cigarettes removed during: | The applicable rate is: |
|---|---|
| 1998 | $12.00 |
| 1999 | $37.00 |
| 2000 | $67.00 |
| 2001 | $92.00 |
| 2002 | $94.50.; |

and

(2) by striking paragraph (2) and inserting the following:

''(2) LARGE CIGARETTES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on cigarettes, weighing more than 3 pounds per thousand, the applicable rate per thousand determined in accordance with the following table:

| ''In the case of cigarettes removed during: | The applicable rate is: |
|---|---|
| 1998 | $25.20 |
| 1999 | $77.70 |
| 2000 | $140.70 |
| 2001 | $193.20 |
| 2002 | $198.45. |

''(B) EXCEPTION.—On cigarettes more than 6½ inches in length, at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.''

(b) CIGARS.—Subsection (a) of section 5701 of such Code is amended—

(1) by striking ''$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992),'' in paragraph (1) and inserting ''the applicable rate per thousand determined in accordance with the following table:

| ''In the case of cigars removed during: | The applicable rate is: |
|---|---|
| 1998 | $1.125 cents |
| 1999 | $3.4687 cents |
| 2000 | $6.2822 cents |
| 2001 | $8.6264 cents |
| 2002 | $8.8588 cents.''; |

and

(2) by striking paragraph (2) and inserting the following:

''(2) LARGE CIGARS.—On cigars, weighing more than 3 pounds per thousand, the applicable percentage of the price for which sold but not more that the applicable rate per thousand determined in accordance with the following table:

| In the case of cigars removed during:. | The applicable percentage is:. | The applicable rate is: |
|---|---|---|
| 1998 | 12.750% | $30.00 |
| 1999 | 39.312% | $92.50 |
| 2000 | 71.189% | $167.50 |
| 2001 | 97.753% | $230.00 |
| 2002 | 100.407% | $236.25.'' |

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 of such Code is amended to read as follows:

''(c) CIGARETTE PAPERS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), on each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 papers or fractional part thereof as determined in accordance with the following table:

| "In the case of cigarette papers removed during: | The applicable rate is: |
|---|---|
| 1998 | 0.75 cent |
| 1999 | 2.31 cents |
| 2000 | 4.18 cents |
| 2001 | 5.74 cents |
| 2002 | 5.91 cents. |

''(2) EXCEPTION.—If cigarette papers measure more than 6½ inches in length, such cigarette papers shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.''

(d) CIGARETTE TUBES.—Subsection (d) of section 5701 of such Code is amended to read as follows:

''(d) CIGARETTE TUBES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), on cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 tubes or fractional part thereof as determined in accordance with the following table:

| "In the case of cigarette tubes removed during: | The applicable rate is: |
|---|---|
| 1998 | 1.50 cents |
| 1999 | 4.62 cents |
| 2000 | 8.39 cents |
| 2001 | 11.53 cents |
| 2002 | 11.82 cents. |

''(2) EXCEPTION.—If cigarette tubes measure more than 6½ inches in length, such cigarette tubes shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.''

(e) SMOKELESS TOBACCO.—Paragraphs (1) and (2) of subsection (e) of section 5701 of such Code are is amended to read as follows:

''(1) SNUFF.—On snuff, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

| "In the case of snuff removed during: | The applicable rate is: |
|---|---|
| 1998 | 36 cents |
| 1999 | $1.11 |
| 2000 | $2.01 |
| 2001 | $2.76 |
| 2002 | $2.835 cents. |

''(2) CHEWING TOBACCO.—On chewing tobacco, the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

| "In the case of chewing tobacco removed during: | The applicable rate is: |
|---|---|
| 1998 | 12 cents |
| 1999 | 37 cents |
| 2000 | 67 cents |
| 2001 | 92 cents |
| 2002 | 94.5 cents.'' |

(f) PIPE TOBACCO.—Subsection (f) of section 5701 of such Code is amended to read as follows:

''(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

| "In the case of pipe tobacco removed during: | The applicable rate is: |
|---|---|
| 1998 | 67.5 cents |
| 1999 | $2.0812 cents |
| 2000 | $3.7705 cents |
| 2001 | $5.1774 cents |
| 2002 | $5.3157 cents.'' |

(g) IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Section 5701 of such Code (relating to rate of tax) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate per pound determined in accordance with the following table (and a proportionate tax at the like rate on all fractional parts of a pound):

| "In the case of roll-your-own tobacco removed during: | The applicable rate is: |
|---|---|
| 1998 | 67.5 cents |
| 1999 | $2.0812 cents |
| 2000 | $3.7705 cents |
| 2001 | $5.1774 cents |
| 2002 | $5.3157 cents.'' |

(2) ROLL-YOUR-OWN TOBACCO.—Section 5702 of such Code (relating to definitions) is amended by adding at the end the following new subsection:

''(p) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.''

(3) TECHNICAL AMENDMENTS.—

(A) Subsection (c) of section 5702 of such Code is amended by striking ''and pipe tobacco'' and inserting ''pipe tobacco, and roll-your-own tobacco''.

(B) Subsection (d) of section 5702 of such Code is amended—

(i) in the material preceding paragraph (1), by striking ''or pipe tobacco'' and inserting ''pipe tobacco, or roll-your-own tobacco'', and

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

''(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and''.

(C) The chapter heading for chapter 52 of such Code is amended to read as follows:

**"CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES".**

(D) The table of chapters for subtitle E of such Code is amended by striking the item relating to chapter 52 and inserting the following new item:

''CHAPTER 52. Tobacco products and cigarette papers and tubes.''

(h) INFLATION ADJUSTMENT OF RATES AND FLOOR STOCKS TAXES.—Section 5701 of such Code, as amended by subsection (g), is amended by redesignating subsection (h) as subsection (j) and by inserting after subsection (g) the following:

''(h) INFLATION ADJUSTMENT.—In the case of a calendar year after 2002, the dollar amount contained in the table in each of the preceding subsections (and the percentage contained in the table contained in subsection (b)(2)) applicable to the preceding calendar year (after the application of this subsection) shall be increased by an amount equal to—

''(1) such dollar amount (or percentage), multiplied by

''(2) the greatest of—

''(A) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'the second preceding calendar year' for 'calendar year 1992' in subparagraph (B) thereof,

''(B) the medical consumer price index for such calendar year determined in the same manner as the adjustment described in subparagraph (A), or

''(C) 3 percent.

''(j) FLOOR STOCKS TAXES.—

''(1) IMPOSITION OF TAX.—On tobacco products and cigarette papers and tubes manufactured in or imported into the United States which are removed before any tax increase date, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

''(A) the tax which would be imposed under any preceding subsection of this section on the article if the article had been removed on such date, over

''(B) the prior tax (if any) imposed under such subsection on such article.

''(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

''(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax increase date, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

''(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

''(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 1 following any tax increase date.

''(3) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on any tax increase date, shall be subject to the tax imposed by paragraph (1) if—

''(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

''(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

''(4) TAX INCREASE DATE.—The term ''tax increase date'' means January 1.

''(5) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) shall apply for purposes of this subsection.

''(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by the preceding subsections of this section shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such subsections. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.''

(i) MODIFICATIONS OF CERTAIN TOBACCO TAX PROVISIONS.—

(1) EXEMPTION FOR EXPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES TO APPLY ONLY TO ARTICLES MARKED FOR EXPORT.—

(A) Subsection (b) of section 5704 of such Code is amended by adding at the end the following new sentence: ''Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe.''

(B) Section 5761 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

''(c) SALE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FOR EXPORT.—Except as provided in subsections (b) and (d) of section 5704—

''(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

''(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

''(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.''

(C) Subsection (a) of section 5761 of such Code is amended by striking ''subsection (b)'' and inserting ''subsection (b) or (c)''.

(D) Subsection (d) of section 5761 of such Code, as redesignated by subparagraph (B), is amended by striking ''The penalty imposed by subsection (b)'' and inserting ''The penalties imposed by subsections (b) and (c)''.

(E)(i) Subpart F of chapter 52 of such Code is amended by adding at the end the following new section:

**''SEC. 5754. RESTRICTION ON IMPORTATION OF PREVIOUSLY EXPORTED TOBACCO PRODUCTS.**

''(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

''(b) CROSS REFERENCE.—

**''For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c).''**

(ii) The table of sections for subpart F of chapter 52 of such Code is amended by adding at the end the following new item:

''Sec. 5754. Restriction on importation of previously exported tobacco products.''

(2) IMPORTERS REQUIRED TO BE QUALIFIED.—

(A) Sections 5712, 5713(a), 5721, 5722, 5762(a)(1), and 5763 (b) and (c) of such Code are each amended by inserting ''or importer'' after ''manufacturer''.

(B) The heading of subsection (b) of section 5763 of such Code is amended by inserting ''QUALIFIED IMPORTERS,'' after ''MANUFACTURERS,''.

(C) The heading for subchapter B of chapter 52 of such Code is amended by inserting ''**and Importers**'' after ''**Manufacturers**''.

(D) The item relating to subchapter B in the table of subchapters for chapter 52 of such Code is amended by inserting ''and importers'' after ''manufacturers''.

(3) BOOKS OF 25 OR FEWER CIGARETTE PAPERS SUBJECT TO TAX.—Subsection (c) of section 5701 of such Code is amended by striking ''On each book or set of cigarette papers containing more than 25 papers,'' and inserting ''On cigarette papers,''.

(4) STORAGE OF TOBACCO PRODUCTS.—Subsection (k) of section 5702 of such Code is amended by inserting ''under section 5704'' after ''internal revenue bond''.

(5) AUTHORITY TO PRESCRIBE MINIMUM MANUFACTURING ACTIVITY REQUIREMENTS.—Section 5712 of such Code is amended by striking ''or'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

''(2) the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe, or''.

(j) REPEAL OF DUPLICATIVE PROVISIONS.—Section 9302 (other than subsection (i)(2)) of the Balanced Budget Act of 1997 is repealed.

(k) EFFECTIVE DATE.—The amendments and repeal made by this section shall apply to articles removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1997.

**SEC. 102. TAX TREATMENT FOR CERTAIN TOBACCO-RELATED EXPENSES.**

(a) IN GENERAL.—Section 275(a) of the Internal Revenue Code of 1986 (relating to certain taxes) is amended by inserting after paragraph (6) the following:

''(7) Taxes imposed by chapter 52, but only in an amount determined at rates in excess of the rates of such taxes effective in 1998.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1998.

## TITLE II—PHAER TRUST FUND

**SEC. 201. PUBLIC HEALTH AND EDUCATION RESOURCE TRUST FUND.**

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

**''SEC. 9512. PUBLIC HEALTH AND EDUCATION RESOURCE TRUST FUND.**

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Health and Education Resource Trust Fund' (hereafter referred to in this section as the 'PHAER Trust Fund'), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund an amount equivalent to the net increase in revenues received in the Treasury attributable to the amendments made by section 2 of the Public Health and Education Resource (PHAER) Act as estimated by the Secretary.

''(c) OBLIGATIONS FROM TRUST FUND.—

''(1) STATE PROGRAMS.—

''(A) IN GENERAL.—An applicable percentage of 75 percent of the amounts available in the Trust Fund in a fiscal year shall be distributed by the Secretary of Health and Human Services to each State meeting the requirements of subparagraphs (C) and (D) to be used by such State and by local government entities within such State in such fiscal year and the succeeding fiscal year in the following manner:

''(i) Not less than 10 nor more than 30 percent of such amounts to State and local school and community-based tobacco education, prevention, and treatment programs.

''(ii) Not less than 10 nor more than 30 percent of such amounts to State and local smoking cessation programs and services, including pharmacological therapies.

''(iii) Not less than 10 nor more than 30 percent of such amounts to State and local counter advertising programs.

''(iv) Not less than 10 nor more than 25 percent of such amounts to the State Children's Health Insurance Program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be in addition to the amount appropriated under section 2104 of such Act.

''(v) Not less than 5 nor more than 10 percent of such amounts to—

''(I) the Special Supplemental Food Program for Women, Infants, and Children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) to be in addition to the amount appropriated under such section, or

''(II) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.) to be in addition to the amount appropriated under such title, or

''(III) a combination of both programs as determined by the State.

''(vi) Not less than 1 nor more than 3 percent of such amounts to the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) program for such State or other State or local community-based tobacco control programs.

''(vii) Not more than 5 percent of such amounts to a State general health care block grant program.

''(B) ALLOCATION RULES.—For purposes of subparagraph (A), the applicable percentage for any State is determined in accordance with the following table:

| State | Applicable Percentage |
|---|---|
| Alabama | 1.270390 |
| Alaska | 0.241356 |
| Arizona | 1.163883 |
| Arkansas | 0.751011 |
| California | 8.805641 |
| Colorado | 1.054018 |
| Connecticut | 1.596937 |
| Delaware | 0.227018 |
| District of Columbia | 0.534487 |
| Florida | 3.590667 |
| Georgia | 2.007112 |
| Hawaii | 0.642527 |
| Idaho | 0.257835 |
| Illinois | 4.272898 |
| Indiana | 1.714594 |
| Iowa | 0.758686 |
| Kansas | 0.762230 |
| Kentucky | 1.875439 |
| Louisiana | 1.916886 |
| Maine | 0.870740 |
| Maryland | 2.051849 |
| Massachusetts | 3.700447 |
| Michigan | 4.431824 |
| Minnesota | 2.474364 |
| Mississippi | 0.851450 |
| Missouri | 1.659116 |
| Montana | 0.335974 |
| Nebraska | 0.445356 |
| Nevada | 0.307294 |
| New Hampshire | 0.552048 |
| New Jersey | 3.494187 |
| New Mexico | 0.465816 |
| New York | 4.529380 |
| North Carolina | 2.097625 |
| North Dakota | 0.250758 |
| Ohio | 4.690156 |
| Oklahoma | 0.841972 |
| Oregon | 1.092920 |
| Pennsylvania | 5.233270 |
| Rhode Island | 0.821727 |
| South Carolina | 0.883628 |
| South Dakota | 0.234849 |
| Tennessee | 2.479873 |

| State | Applicable Percentage |
|---|---|
| Texas | 4.451382 |
| Utah | 0.330016 |
| Vermont | 0.370244 |
| Virginia | 1.373860 |
| Washington | 1.794612 |
| West Virginia | 1.003660 |
| Wisconsin | 2.098696 |
| Wyoming | 0.122405 |
| American Samoa | 0.008681 |
| N. Mariana Islands | 0.001519 |
| Guam | 0.006506 |
| U.S. Virgin Islands | 0.004804 |
| Puerto Rico | 0.193175 |

''(C) STATE PLANS FOR CERTAIN ALLOCATIONS.—Each State, working in collaboration with local government entities, shall submit a plan to the Secretary of Health and Human Services for approval for an allocation under the programs described in subparagraph (A), specifying the percentage share for each program. Each State plan shall provide for an equitable allocation of funds to local government entities, specifically in relation to local government tobacco-related health care needs and anti-tobacco education, prevention, and control activities. If a State fails to provide any component of a State plan with respect to any program allocation or if the Secretary of Health and Human Services disapproves any such component, the Secretary may make the allocation for such program to 1 or more local government or private entities located in such State pursuant to plans submitted by such entities and approved by the Secretary.

''(D) PROHIBITION OF SUPPLANTATION OF STATE FUNDS.—Each State shall demonstrate to the satisfaction of the Secretary of Health and Human Services that an allocation to a State under a program described in subparagraph (A) in any fiscal year shall be used to supplement, not supplant, existing funding for such program.

''(2) FEDERAL PROGRAMS.—

''(A) IN GENERAL.—Twenty-five percent of the amounts available in the Trust Fund in a fiscal year shall be distributed in the following manner:

''(i) 10 percent of such amounts to the Office of the Commissioner of Food and Drug Administration to be allocated at the Commissioner's discretion to conduct tobacco control activities.

''(ii) 25 percent of such amounts to the Office of the Secretary of Agriculture to be allocated at the Secretary's discretion to protect the financial well-being of tobacco farmers, their families, and their communities.

''(iii) 20 percent of such amounts to be allocated at the discretion of the Secretary of Health and Human Services to—

''(I) the Office of the Director of the National Institutes of Health to be allocated at the Director's discretion to conduct disease research, and

''(II) the Office of the Director of the Centers for Disease Control and Prevention to be allocated at the Director's discretion to decrease smoking.

''(iv) 20 percent of such amounts to the Office of the Secretary of Health and Human Services to be allocated at the Secretary's discretion—

''(I) to conduct prevention programs resulting from the study under section 4108 of the Balanced Budget Act of 1997, and

''(II) to increase the Federal payment for the coverage of qualified medicare beneficiaries under section 1902(a)(10)(E)(i) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(i)) and specified low-income medicare beneficiaries under section 1902(a)(10)(E)(iii) of such Act (42 U.S.C. 1396a(a)(10)(E)(iii)).

''(v) 20 percent of such amounts to fund a national counter advertising program.

''(vi) 2 percent of such amounts to the Office of the Administrator of the Agency for International Development to be allocated at the Administrator's discretion to strengthen international efforts to control tobacco.

''(vii) 2 percent of such amounts to the Office of the Director of the Office of National Drug Control Policy to be allocated at the Director's discretion to conduct tobacco education and prevention programs.

''(viii) 1 percent of such amounts to the Office of the Secretary of Veterans Affairs to be allocated at the Secretary's discretion to conduct tobacco education, intervention, and outreach programs.

''(B) GRANTS AND CONTRACTS FULLY FUNDED IN FIRST YEAR.—With respect to any grant or contract funded by amounts distributed under paragraph (1), the full amount of the total obligation of such grant or contract shall be funded in the first year of such grant or contract, and shall remain available until expended.''

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following new item:

''Sec. 9512. Public Health and Education Resource Trust Fund.''

## TITLE III—FEDERAL STANDARDS WITH RESPECT TO TOBACCO PRODUCTS

### SEC. 301. FEDERAL STANDARDS WITH RESPECT TO TOBACCO PRODUCTS.

(a) CIGARETTES.—Subsection (b) of section 5 of the Federal Cigarette Labeling And Advertising Act (15 U.S.C. 1334(b)) is repealed.

(b) SMOKELESS TOBACCO.—Subsection (b) of section 7 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(b)) is repealed.

## TITLE IV—SENSE OF THE SENATE

### SEC. 401. SENSE OF THE SENATE REGARDING COMPREHENSIVE TOBACCO LEGISLATION.

It is the sense of the Senate that any final comprehensive tobacco legislation funded by the PHAER Trust Fund under section 9512 of the Internal Revenue Code of 1986, as added by section 201 of this Act, must include, at the very least, the following additional elements:

(1) Stiff penalties that give the tobacco industry the strongest possible incentive to stop targeting children.

(2) Full authority for the Food and Drug Administration to regulate tobacco like any other drug or device with sufficient flexibility to meet changing circumstances.

(3) Codification of the Food and Drug Administration's initiative to prevent teen smoking and the imposition of stronger restrictions on youth access and advertising consistent with the United States Constitution.

(4) Broad disclosure of tobacco industry documents, including documents that have been hidden under false claims of the attorney-client privilege.

(5) Efforts to ensure that the tobacco industry stops marketing and promoting tobacco to children, including comprehensive corporate compliance programs.

(6) Elimination of secondhand tobacco smoke in public and private buildings in which 10 or more people regularly enter.

(7) Disclosure of the ingredients and constituents of all tobacco products to the public and the imposition of more prominent health warning labels on packaging to send a strong and clear message to children about the dangers of tobacco use.

(8) A prohibition on the use of Federal Government resources to weaken nondiscriminatory public health laws or promote tobacco sales abroad.

THE PUBLIC HEALTH AND EDUCATION RESOURCE [PHAER] ACT

PHAER would raise the price of cigarettes to a level that would decrease youth smoking by half.

PHAER would place a $1.50 Public Health and Education Resource (PHAER) per-pack fee on cigarettes and a comparable fee on other tobacco products.

The PHAER fee would be phased in by 50-cent increments over three years.

In the fourth year, the PHAER fee would be indexed for inflation to ensure that youth smoking does not rise again due to inflationary effects. This index will be based on the CPI, the Medical CPI or an increase of 3%, whichever is greater.

The PHAER fee will raise approximately $494 billion over 25 years (using the tobacco consumption projections of the Joint Committee on Taxation), an average of almost $20 billion per year. Of these funds:

75% (an average of $15 billion per year) will be distributed at the State level for: Smoking cessation programs and services; school and community-based tobacco education and prevention programs; State-level counter-advertising campaigns; ASSIST and similar community-based tobacco control programs; expansion of the Children's Health Insurance Program created in the 1977 Budget Reconciliation Act; early childhood development programs through the Maternal Child Health Block Grant and WIC; and other appropriate public health uses.

25% (an average of $5 billion per year) will be distributed at the Federal level for: Research and prevention programs at NIH and CDC; FDA jurisdiction over tobacco products; USDA programs to assist tobacco farmers, their families and their communities; a national counter-advertising campaign; Medicare prevention programs and premium and cost-sharing assistance for low-income Medicare beneficiaries; International Programs to decrease worldwide tobacco-related illness; the Drug Czar to conduct tobacco education and prevention programs; and the VA to conduct tobacco education, intervention and outreach programs.

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EFFECTIVE NATIONAL ACTION TO CONTROL TOBACCO,
*Washington, DC, October 28, 1997.*

Hon. FRANK R. LAUTENBERG,
*U.S. Senate.*

Hon. JAMES V. HANSEN,
*House of Representatives.*

DEAR SENATOR AND CONGRESSMAN: On behalf of our millions of public health officials and professionals, health care providers and volunteer members of ENACT, the coalition for Effective National Action To Control Tobacco, we applaud the introduction of the Public Health and Education Resource (PHAER) Act.

We particularly want to thank you for your leadership in reaffirming what the members of the coalition have said in the ENACT consensus statement regarding increases in the cost of tobacco products. Experts in the area of tobacco control agree that significant increases in the cost per pack deter children and others from taking up the use of tobacco. The ENACT coalition believes strongly that such an increase in the federal excise tax is essential.

In addition to providing for a $1.50 excise tax per pack, indexed to inflation, and the nondeductibility of those new taxes, you have addressed many essential public health programs. Adequate funding of these programs is integral to comprehensive, sustainable, effective, well-funded tobacco control legislation. We look forward to working with you and the supporters of your legislation to get action on tobacco now.

Signed,

AMERICAN ACADEMY OF PEDIATRICS.
AMERICAN CANCER SOCIETY.
AMERICAN COLLEGE OF PREVENTIVE MEDICINE.
AMERICAN HEART ASSOCIATION.
AMERICAN MEDICAL ASSOCIATION.
CAMPAIGN FOR TOBACCO FREE KIDS.
NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH OFFICIALS.
PARTNERSHIP FOR PREVENTION.

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AMERICAN LUNG ASSOCIATION,
*Washington, DC, October 23, 1997.*

Hon. FRANK LAUTENBERG,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR LAUTENBERG: The American Lung Association commends you on the introduction of the Public Health and Education Resource Act (PHAER). As you know, the American Lung Association has pursued a significant price increase in the federal cigarette excise tax for many years.

Tobacco use is the nation's leading preventable cause of death and disability. Each year an estimated 419,000 people die from diseases directly caused from smoking. Three thousand children start smoking each day in this country. One thousand of them will eventually die from a smoking-related disease. Smoking costs this nation at least $97.2 billion annually. Of that total cost, $22 billion is paid by the Federal government. Over the next 20 years, Medicare alone will spend an estimated $800 billion to care for people with smoking related illnesses.

Reducing tobacco consumption among our nation's youth has long been a goal of the American Lung Association. The bulk of academic research indicates that a sharp and sudden increase in the price of tobacco products has the effect of lowering smoking rates among teens. Raising the price per pack by at least $1.50 or more would help achieve that desired outcome.

The American Lung Association applauds your continued efforts and leadership in reducing tobacco consumption, especially among our youth, and we look forward to working with you as this tobacco-related legislation progresses through Congress.

Sincerely,

FRAN DUMELLE,
*Deputy Managing Director.*

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NATIONAL ASSOCIATION OF COUNTIES,
*Washington, DC, October 23, 1997.*

Hon. FRANK R. LAUTENBERG,
*U.S. Senate, Hart Senate Office Building, Washington, DC*

DEAR SENATOR LAUTENBERG: The National Association of Counties (NACo) is pleased to support your bill, the Public Health and Education Resource (PHAER) Act. The legislation is a strong step forward for public health activities related to tobacco and helps focus the congressional debate on legislative language rather than broad concepts.

We particularly support your recognition of the role of counties and other local governments in the provision of health services. Counties, in collaboration with states, will be key to the success of the public health programs outlined in the PHAER trust fund, including tobacco education and prevention, smoking cessation, and counter advertising. NACo appreciates your work to ensure a local government role in the planning and implementation of the trust fund's health activities.

Thank you again for your leadership on this issue. Dan Katz of your staff has been very responsive to our concerns. NACo looks forward to working with you and your staff as tobacco legislation moves forward.

Very Truly Yours,

RANDY JOHNSON,
*President, NACo,*
*Hennepin County Commissioner.*

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PHAER: REDUCTION IN YOUTH SMOKING AND INCREASE IN LIVES SAVED

| State | Youth smoking reduction under Industry/AG settlement (percent) [1] | Youth smoking reduction under $1.50-per-pack tax (percent) [1] | Additional lives saved under $1.50-per-pack tax vs. Industry/AG settlement [1] |
|---|---|---|---|
| Alabama | 25.1 | 60.6 | 29,666 |
| Alaska | 19.6 | 47.3 | 4,996 |
| Arizona | 18.9 | 45.6 | 26,359 |
| Arkansas | 23.1 | 55.9 | 16,351 |
| California | 20.9 | 50.6 | 137,480 |
| Colorado | 24.1 | 58.2 | 29,680 |
| Connecticut | 20.0 | 48.5 | 15,962 |
| Delaware | 24.3 | 58.9 | 5,725 |
| D.C. | 18.2 | 44.0 | 1,272 |
| Florida | 22.9 | 55.3 | 96,439 |
| Georgia | 26.3 | 63.7 | 48,981 |
| Hawaii | 17.2 | 41.7 | 5,051 |
| Idaho | 22.8 | 55.0 | 7,875 |
| Illinois | 21.0 | 50.9 | 77,720 |
| Indiana | 26.8 | 64.9 | 53,553 |
| Iowa | 22.1 | 53.6 | 16,846 |
| Kansas | 24.5 | 59.2 | 17,103 |
| Kentucky | 28.7 | 69.4 | 35,762 |
| Louisiana | 25.1 | 60.6 | 37,716 |
| Maine | 22.0 | 53.3 | 9,757 |
| Maryland | 21.9 | 53.0 | 26,659 |
| Massachusetts | 17.1 | 41.3 | 25,617 |
| Michigan | 17.9 | 43.3 | 58,614 |
| Minnesota | 19.3 | 46.7 | 26,554 |
| Mississippi | 24.8 | 59.9 | 17,165 |
| Missouri | 25.7 | 62.1 | 43,386 |
| Montana | 25.4 | 61.4 | 5,416 |
| Nebraska | 22.6 | 54.7 | 11,396 |
| Nevada | 21.0 | 50.9 | 9,434 |
| New Hampshire | 23.6 | 57.2 | 7,979 |
| New Jersey | 21.5 | 51.9 | 41,304 |
| New Mexico | 23.8 | 57.5 | 11,262 |
| New York | 18.8 | 45.4 | 100,545 |
| North Carolina | 27.5 | 66.6 | 64,751 |
| North Dakota | 21.6 | 52.2 | 3,758 |
| Ohio | 25.1 | 60.6 | 101,429 |
| Oklahoma | 24.3 | 58.9 | 22,047 |
| Oregon | 21.1 | 51.1 | 18,402 |
| Pennsylvania | 23.6 | 57.2 | 92,073 |
| Rhode Island | 19.3 | 46.7 | 6,433 |
| South Carolina | 27.2 | 65.8 | 25,691 |
| South Dakota | 23.0 | 55.6 | 4,774 |
| Tennessee | 26.0 | 62.9 | 38,859 |
| Texas | 22.0 | 53.3 | 115,888 |
| Utah | 22.5 | 54.4 | 11,127 |
| Vermont | 20.7 | 50.1 | 3,633 |
| Virginia | 26.2 | 63.3 | 50,287 |
| Washington | 15.8 | 38.2 | 24,163 |
| West Virginia | 26.0 | 62.9 | 14,219 |
| Wisconsin | 20.8 | 50.4 | 34,603 |
| Wyoming | 25.5 | 61.7 | 3,671 |
| Total | n/a | n/a | 1,695,433 |

[1] Source: American Cancer Society, October 1997.

## ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 89

At the request of Ms. SNOWE, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 219

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 219, a bill to amend the Trade Act of 1974 to establish procedures for identifying countries that deny market access for value-added agricultural products of the United States.

S. 222

At the request of Mr. DOMENICI, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 222, a bill to establish an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies.

S. 358

At the request of Mr. DEWINE, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

S. 440

At the request of Mr. FEINGOLD, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of S. 440, a bill to deauthorize the Animas-La Plata Federal reclamation project and to direct the Secretary of the Interior to enter into negotiations to satisfy, in a manner consistent with all Federal laws, the water rights interests of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe.

S. 714

At the request of Mr. AKAKA, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 714, a bill to make permanent the Native American Veteran Housing Loan Pilot Program of the Department of Veterans Affairs.

S. 829

At the request of Mrs. BOXER, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 829, a bill to amend the Internal Revenue Code of 1986 to encourage the production and use of clean-fuel vehicles, and for other purposes.

S. 850

At the request of Mr. AKAKA, the names of the Senator from California [Mrs. BOXER] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 850, a bill to amend the Packers and Stockyards Act, 1921, to make it unlawful for any stockyard owner, market agency, or dealer to transfer or market nonambulatory livestock, and for other purposes.

S. 852

At the request of Mr. LOTT, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from South Dakota [Mr. JOHNSON] were added as cosponsors of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.